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COMMENT

TERROR IN MEXICO: WHY DESIGNATING MEXICAN CARTELS AS TERRORIST ORGANIZATIONS EASES PROSECUTION OF DRUG TRAFFICKERS UNDER THE NARCOTERRORISM STATUTE

Stephen Roy Jackson*

In 2006, Felipe Calderón assumed the Mexican presidency and triggered one of the bloodiest drug wars in modern history. With deaths numbering in the tens of thousands, this threat continues to impact the United States today. The emergence of Los Zetas and the Vicente Carrillo Fuentes Organization led to a new form of terrorism garnering recognition by the United States. Congress acted against this threat by passing a law widely recognized as the “Narcoterrorism Statute,” which increases mandatory minimum sentences for anyone found guilty of aiding a terrorist group through illicit drug cultivation or sales. While Congress previously failed to pass legislation officially recognizing Mexican drug cartels as foreign terrorist organizations, this idea should be revisited in order to implement an aggressive extradition campaign to the United States to prosecute members of these cartels for violating the Narcoterrorism Statute. This campaign would help counter the reign of terror brought by these cartels on both Mexicans and Americans alike.

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INTRODUCTION

On a barren road in the hot desert, a decapitated body lies next to an idling car. A masked man appears from behind the vehicle and opens fire on a group of local farmers as they pass by. Several are killed and dumped in a mass grave adjacent to the road. While this scene may conjure images of war torn Afghanistan or Syria, it is in fact a portrayal of narcoterrorism commonly found in Mexico.¹

¹ See Daniel Tovrov, *Mexico Drug Wars: Zetas Cartel Boss Reveals Mass Graves*, INT'L BUS. TIMES (Feb. 9, 2012), <http://www.ibtimes.com/mexico-drug-war-zetas-cartel-boss-reveals-mass-graves-408216>; Randal C. Archibold, Editorial, *Drug Kingpin Is Captured in Mexico Near Border*, N.Y. TIMES (July 15, 2013), http://www.nytimes.com/2013/07/16/world/americas/drug-kingpin-is-captured-in-mexico-near-border.html?_r=0 (explaining that Los Zetas is known for decapitating and

Since Felipe Calderón assumed the Mexican presidency in 2006, drug-related violence has risen to an unprecedented level. This cartel² violence has affected more than 100,000 Mexican households, caused more than 20,000 disappearances, and resulted in at least 90,000 deaths.³ The poorly controlled southern U.S. border has only exacerbated matters. Insufficient border enforcement has allowed the Mexican drug war to traverse state lines, resulting in a reign of terror encompassing several American cities like El Paso and Phoenix.⁴ Efforts to curtail cartel power in both Mexico and the United States have produced limited results.

Mexican drug cartels continue to pose a dangerous threat to U.S. citizens and national security. Responding to the militarization of these organizations, the U.S. government developed several programs to provide critical assistance to the Mexican government. These programs, like the Mérida Initiative, provide training to Mexican police forces, supply weapons and military equipment (such as Black Hawk helicopters), and increase financial assistance to

dismembering its victims); Eduardo Castillo, *Mexico Migrants Massacre: Drug Cartel Suspected In Killing of 72*, THE WORLD POST (Oct. 26, 2010), http://www.huffingtonpost.com/2010/08/26/mexico-migrants_massacre_n_695299.html (explaining how drug cartels engage in indiscriminate murders).

² “Cartel” is defined as “[a] combination of producers or sellers that join together to control a product’s production or price.” BLACK’S LAW DICTIONARY (10th ed. 2014). Organizations in Mexico involved in the drug trade, irrespective of whether they continue to collaborate with other producers and sellers, are known as “Mexican drug cartels”.

³ See Marguerite Cawley, *Mexico Victims’ Survey Highlights Under-Reporting of Crime*, INSIGHT CRIME, Oct. 1, 2014, <http://www.insightcrime.org/news-briefs/6062-mexico-victimization-survey-highlights-reporting-gap>; *Mexico Captures Gulf Cartel Leader Behind Wave of Violence*, NBC News, May 26, 2014, <http://www.nbcnews.com/news/world/mexico-captures-gulf-cartel-leader-behind-wave-violence-n114436>; Evelyn Krache Morris, *Think Again: Mexican Drug Cartels: They Aren’t Just About Mexico or Drugs Anymore*, FOREIGN POLICY, Dec. 4, 2013, http://www.foreignpolicy.com/articles/2013/12/03/think_again_mexican_drug_cartels.

⁴ See, e.g., Nina Golgowski, *Mexican Cartel Violence Spills into U.S. as ‘Drug Assassin’ Pleads No Contest to Beheading Man in Arizona*, DAILYMAIL.COM, March 7, 2013, <http://www.dailymail.co.uk/news/article-2289976/Arizona-beheading-Mexican-cartel-violence-spills-U-S-drug-assassin-pleads-contest-murder.html>.

combat cartel violence.⁵ Despite this assistance, the violence resulting from drug trafficking has not ceased.

In order to protect its border, its citizens, and its national security, the United States must identify a new solution to address the threat of cartel violence. The Controlled Substances Act of 2006 holds one possible solution. In section 960a of the Act,⁶ Congress broadened the federal government's jurisdiction over offenders of U.S. drug and terrorism laws.⁷ This statutory provision increases mandatory minimum prison sentences⁸ for offenders who assist terrorist organizations via drug trafficking and cultivation.⁹ There is no question that Mexican drug cartels violate U.S. drug laws, as they engage in drug trafficking, manufacturing, and cultivation.¹⁰

Given their propensity toward violence and politically based attacks, cartels pose a significant threat to American national security, and arguably constitute terrorist organizations. If the United States designated these groups as terrorist organizations, the Department of Justice ("DOJ") could apply section 960a jurisdiction to individuals assisting the cartels in the illegal narcotics market. This jurisdiction

⁵ One of these programs, the Mérida Initiative, included training about 4,500 Mexican federal police, supplying \$1.6 billion in funds, and offering technical assistance between 2008 and 2011. William Dean, et al., *The War on Mexican Cartels: Options for U.S. and Mexican Policy-Makers*, INST. OF POL. 31 (Sept. 2012), http://www.iop.harvard.edu/sites/default/files_new/research-policy-papers/TheWarOnMexicanCartels_0.pdf.

⁶ Foreign Terrorist Organizations, Terrorist Persons and Groups, 21 U.S.C. § 960a (2006).

⁷ See, e.g., 151 CONG. REC. S9835, S9846 (daily ed. Sept. 8, 2005) (statement of Sen. Cornyn); 151 CONG. REC. H6273, H6292 (daily ed. July 21, 2005) (statement of Rep. Hyde).

⁸ The recent Supreme Court decision of *Johnson v. United States* does change the process in which mandatory minimum sentences are implemented in the Armed Career Criminal Act. The broader implications of *Johnson* remain to be seen outside of the context of the Act. See *Johnson v. United States*, 135 S. Ct. 2551, 2553, 2574-75 (2015).

⁹ See Foreign Terrorist Organizations, Terrorist Persons and Groups, 21 U.S.C. § 960a (2006).

¹⁰ See, e.g., Tristan Reed, *Mexico's Drug War: A New Way to Think About Mexican Organized Crime*, FORBES, Jan. 15, 2015, <http://www.forbes.com/sites/stratfor/2015/01/15/mexicos-drug-war-a-new-way-to-think-about-mexican-organized-crime/>.

would authorize the government to take the necessary actions to combat cartel violence. Such designation would empower the government to increase captured cartel members' prison sentences. Applying this designation to Mexican cartels like Los Zetas and the Vicente Carrillo Fuentes Organization would ease extradition of their members and affiliates to the United States, which would better protect the nation's borders from this deadly threat. Imprisoning cartel members in the United States as terrorists would reduce the likelihood that these members would escape and reengage in narcoterrorism. It would also demonstrate that the United States has prioritized the prosecution of drug cartels and serve as a means of deterring prospective members from violating U.S. law.

This Comment explores the grave situation along the U.S.-Mexico border and the threat it poses to U.S. national security.¹¹ The United States must take a new approach to address this threat by invoking the "terrorist organization" designation under section 219 of the Immigration and Nationality Act, and prosecute cartel members and affiliates under section 960a of the Controlled Substances Act. A vital aspect of this new approach includes a paradigm shift within the Foreign Terrorist Organization ("FTO") classification system implemented by the Department of State. This Comment argues that those organizations that engage in both terrorist activities and political violence must be considered terrorist groups, regardless of whether they are also motivated by financial gain.

Part I of this Comment provides an overview of the current conflict in Mexico. This section details the terror wrought by the cartels and how this currently threatens both Mexico and the United States. This section identifies and examines four major drug cartels and determines that two should be considered FTO designation by the Department of State, while the remaining two operate as traditional

¹¹ Cartel members have engaged in assassinations and torture in the states of Oregon, Virginia, Minnesota, and South Carolina. While those killed tend to be cartel members themselves, this violence occurred in U.S. territory and may result in future American casualties. See Andrew O'Reilly, *Mexican Drug Cartel Violence Spreading To Rural U.S. As Police Crack Down In Big Cities*, FOX NEWS LATINO, Aug. 12, 2014, <http://latino.foxnews.com/latino/news/2014/08/12/mexican-drug-cartel-violence-spreading-to-rural-us-as-police-crackdown-in-major/>.

organized crime syndicates and should not be considered for FTO designation. These four cartels demonstrate that two types of Mexican cartels operate in Mexico: those that still operate as traditional organized crime and those that are terrorist organizations.

Part II details the definitions of “terrorist organization” and “terrorist activity” germane to section 960a and section 219.¹² After notifying members of Congress, the Secretary of State may add a foreign group to the FTO list under section 219.¹³ The process of assigning an organization to the State Department’s terrorist list is examined in conjunction with the application of section 960a jurisdiction to organizations or individuals.¹⁴ This section also discusses the benefits of designating a group as a terrorist organization for the purposes of U.S. government extradition, prosecution, and sentencing.

Part III illustrates how the both FTO designation and section 960a jurisdiction are applied to an actual terrorist organization using the Fuerzas Armadas Revolucionarias de Colombia (“FARC”) as a case study.¹⁵ Specifically, this case study demonstrates how the FARC’s designation as a terrorist organization led to the extradition of José María Corredor-Ibague to the United States for violating section 960a.¹⁶

Part IV addresses whether Mexican drug cartels meet the “politically motivated” element required for terrorist organization designation.¹⁷ In particular, various actions, comments, and behaviors

¹² Designation of Foreign Terrorist Organizations, 8 U.S.C. § 1189 (2004). The Foreign Terrorist Organization label is paramount to the proposed extradition and prosecution scheme because of the persuasiveness of the label and its ability to unify all U.S. laws pertaining to terrorism.

¹³ 8 U.S.C. § 1189(a)(2)(A)(i) (2004).

¹⁴ 21 U.S.C. § 960a(b) (2006).

¹⁵ English translation: the Revolutionary Armed Forces of Colombia–People’s Army. See *Foreign Terrorist Organizations*, DEP’T OF STATE: BUREAU OF COUNTERTERRORISM, <http://www.state.gov/j/ct/rls/other/des/123085.htm> (last visited Sept. 21, 2015).

¹⁶ John E. Thomas, Jr., *Narco-Terrorism: Could the Legislative and Prosecutorial Responses Threaten Our Civil Liberties*, 66 WASH. & LEE L. REV. 1881, 1889 (2009).

¹⁷ For the purposes of section 219 of the Immigration and Nationality Act, to engage in “terrorism,” an organization must engage in “politically motivated violence...” Annual Country Reports on Terrorism, 22 U.S.C. § 2656f(d)(2) (2004).

of Mexican drug trafficking organizations (“DTOs”) illustrate that several cartels are politically motivated. These cartels seek to overthrow the Mexican government and establish de facto narcorule. In the event that they achieve this goal, the United States faces an even greater threat as its southern neighbor battles violence, economic instability, and political upheaval.¹⁸ Furthermore, these cartels are rumored to hold relationships with U.S.-designated terrorist organizations like Hezbollah,¹⁹ demonstrating a threat to American security interests.

Part V reviews potential jurisdictional challenges associated with the use of section 960a for Mexican cartels. To properly extradite cartel members to the United States, issues pertaining to extraterritorial jurisdiction must be considered. The U.S.-Mexico Extradition Treaty of 1978 and common law notions of extraterritorial jurisdiction grant the U.S. government the ability to extradite cartel members for prosecution.

This Comment concludes by proposing that designating several Mexican cartels as terrorist organizations and subsequently extraditing them to the United States for violating section 960a is a beneficial policy for battling narcoterrorism. U.S. law enforcement

¹⁸ See Brett O'Donnell & David H. Gray, *The Mexican Cartels: Not Just Criminals but Terrorists*, 3 GLOBAL SECURITY STUDIES, 29, 38 (2012) (stating that Mexican cartels are “actively seeking to weaken the state [of Mexico] to continue their operations”).

¹⁹ See Press Release, Treasury Targets Major Money Laundering Network Linked to Drug Trafficker Ayman Joumaa and a Key Hizballah Supporter in South America (June 27, 2012), <http://www.treasury.gov/press-center/pressreleases/Pages/tg1624.aspx> (explaining that Ayman Joumaa, a high-level money launderer and drug trafficker, maintained connections with both Hezbollah and Los Zetas); Joel Hernández, *Terrorism, Drug Trafficking, and the Globalization of Supply*, 7 PERSPECTIVES ON TERRORISM 41, 42 (2013) (explaining that Hezbollah sought to use Ayman Joumaa and the Lebanese Canadian Bank to conduct narcotrafficking with Los Zetas); Terence Rosenthal, *Los Zetas and Hezbollah, a Deadly Alliance of Terror and Vice*, CTR. FOR SECURITY POL'Y (July 10, 2013), <https://www.centerforsecuritypolicy.org/2013/07/10/los-zetas-and-hezbollah-a-deadly-alliance-of-terror-and-vice/> (claiming that Los Zetas assists Hezbollah in forming communities for Lebanese and Syrian immigrants in Mexico, and that Los Zetas partners with Iran's Quds Force). Cf. U.S. Dep't of State: Bureau of Counterterrorism, Country Reports on Terrorism 2013, at 217 (2014) (“[t]here are no known international terrorist organizations operating in Mexico, and there is no evidence that any terrorist group has targeted U.S. citizens in Mexican territory.”).

must engage in a strategic extradition effort aimed at destabilizing the cartels while protecting innocent Mexicans and Americans from retaliatory cartel violence.²⁰ This process best serves American interests because it utilizes U.S. law enforcement in countering cartel terrorism without committing large military resources to Mexico. The tactical approach to countering cartel violence remedies previous mistakes made in countries like Colombia and reestablishes a safer southern border for Americans.

I. SETTING THE SCENE IN MEXICO

A. *The Current Situation: Death and Destruction*

The Mexican war against drug trafficking escalated in 2006, when Felipe Calderón assumed the Mexican presidency and began directly targeting drug cartels, destroying the status quo held for decades.²¹ Since this initial effort, deaths resulting from Mexican cartel violence increased dramatically.²² This war poses a major concern for the United States because of its close proximity to the southern American border. Reports indicate that the Mexican states of Chihuahua, Nuevo León, and Tamaulipas, which lie along the U.S.-Mexico border, have endured some of the deadliest cartel violence since Mexico's drug war began in 2006.²³ This region is

²⁰ See Vanda Felbab-Brown, *Despite its Siren Song, High-Value Targeting Doesn't Fit All: Matching Interdiction Patterns to Specific Narcoterrorism and Organized Crime Contexts*, COUNTER NARCO-TERRORISM AND DRUG INTERDICTION CONF., Sept. 16-19, at 5-8 (outlining the failures of targeting high value targets in order to decapitate Medellín and Cali leadership in Colombia).

²¹ See, e.g., Craig A. Bloom, *Square Pegs and Round Holes: Mexico, Drugs, and International Law*, 34 HOUS. J. INT'L L. 345, 359 (2012).

²² Total murders in Mexico rose exponentially from 8,867 in 2007 to 27,199 in 2011 which was the largest increase in murders in the Western Hemisphere in two decades. See KIMBERLY HEINLE, ET AL., *DRUG VIOLENCE IN MEXICO: DATA AND ANALYSIS THROUGH 2014* 4 (Justice in Mex., ed., 2015). In 2014, the number of intentional homicides in Mexico was an estimated 15,649, which is a 13.8 percent drop from 2013. *Id.* at 7.

²³ In 2011, these states ranked in the top five deadliest states in Mexico. The state of Sinaloa, which is connected to the southern border of Chihuahua, was the third deadliest state that year, See JUNE S. BEITTEL, CONG. RESEARCH SERV., R41576, *MEXICO'S DRUG TRAFFICKING ORGANIZATIONS: SOURCE AND SCOPE OF THE VIOLENCE* 30 (2013).

predominantly controlled by DTOs and serves as direct transportation routes for drug smuggling into the United States.²⁴ Cartel members penetrate the border through these states and enter U.S. cities to distribute illegal substances on the streets.²⁵

While there is no evidence to suggest that cartel members consistently target American citizens within the United States, they have not hesitated to murder Americans within Mexican territory.²⁶ According to the State Department, 81 Americans were murdered in Mexico in 2013, while 100 Americans were murdered in Mexico in 2014.²⁷ To put these statistics in perspective, in 2014, 55 American soldiers were killed in Afghanistan, and 127 were killed in 2013.²⁸ The fact that murder rates in Mexico are even remotely comparable to American military casualties in a declared war zone is serious cause for alarm.

B. Meet the Cartels: Four Major Players in Mexican Drug Trafficking

Although the number of DTOs currently operating in Mexico fluctuates, it is common to classify Mexican drug traffickers into nine main cartels.²⁹ Operations conducted by DTOs in Mexico tend to be

²⁴ See generally Eric Goldschein, *Following the Cocaine Trail: How the White Powder Gets into American Hands*, BUS. INSIDER, Dec. 8, 2011, <http://www.businessinsider.com/cocaine-facts-2011-12?op=1> (including a map of drug smuggling routes entering the U.S. utilized by cartels).

²⁵ See, e.g., JUNE S. BEITTEL, CONG. RESEARCH SERV., R41576, MEXICO'S DRUG TRAFFICKING ORGANIZATIONS 22 (2015) (noting that Mexican cartels operate in the U.S. as far north as Chicago).

²⁶ See, e.g., Bob Ortega, *American Killed After U.S. Travel Warning in Nogales*, AZ CENTRAL, May 27, 2014, <http://www.azcentral.com/story/news/arizona/2014/05/27/american-killed-nogales-travel-warning/9642615/> (reporting on an American killed execution-style).

²⁷ *Mexico Travel Warning*, U.S. DEP'T OF STATE, <http://travel.state.gov/content/passports/english/alertswarnings/mexico-travel-warning.html> (last updated May 5, 2015).

²⁸ IRAQ COALITION CASUALTY COUNT, icasualties.org (last visited Sept. 21, 2015).

²⁹ These cartels include the Sinaloa cartel, Los Zetas, the Gulf Cartel, Tijuana Cartel, Juárez Cartel, La Familia, Knights Templar, Beltrán Leyva Organization, and the Jalisco Cartel. See Malcolm Beith, *The Current State of Mexico's Many Drug Cartels*, INSIGHT CRIME, Sept. 25, 2013, <http://www.insightcrime.org/news-analysis/the-current-state-of-mexicos-many-drug-cartels>.

violent and pose a threat to enemy drug traffickers, government employees, police, and average citizens. This violence is a direct result of the ongoing turf wars fought between warring cartels and the Mexican government. While all of these DTOs employ tactics reminiscent of terrorism seen in nations like Afghanistan and Syria, many still operate like traditional organized crime syndicates.³⁰ The following sections examine four emblematic Mexican cartels that demonstrate the differences in tactics utilized by these various organizations. These descriptions will better define which Mexican cartels merit the terrorist organization designation and which do not.

1. The Sinaloa Cartel

Until 2011, the Sinaloa Cartel controlled more Mexican states than any other DTO.³¹ Originating from a group of marijuana and poppy cultivators in the state of Sinaloa, this DTO grew into a dominant cartel, ultimately expanding its influence to reach 50 countries.³² The organization previously employed current rivals like the Juárez Cartel and Beltrán Leyva, but experienced a major fissure around 2008.³³ Joaquin “El Chapo” Guzman Loera (“El Chapo”), one of the richest and most wanted narcotraffickers in the world, headed the cartel until Mexican Marines and U.S. agents arrested him on February 22, 2014.³⁴ Though El Chapo escaped from a maximum-security prison in Mexico on July 11, 2015, the group’s current leadership remains unclear.³⁵ Prior to El Chapo’s escape, the Drug

³⁰ Traditional organized criminals, for instance Nicodemo “Little Nicky” Scarfo, gained reputations as ruthless murderers, but still functioned as mob bosses for the conducting organized crime. See PHILIP LEONETTI, ET AL., *MAFIA PRINCE: INSIDE AMERICA’S MOST VIOLENT CRIME FAMILY AND THE BLOODY FALL OF LA COSA NOSTRA 11* (Running Press ed., 2012).

³¹ Los Zetas surpassed Sinaloa Cartel in state holdings in 2011. See Kazi Stastna, *The Cartels Behind Mexico’s Drug War*, CBC NEWS, Aug. 28, 2011, <http://www.cbc.ca/news/world/the-cartels-behind-mexico-s-drug-war-1.1036931>.

³² See Kirk J. Durbin, *International Narco-Terrorism and Non-State Actors: The Drug Cartel Global Threat*, 4 GLOBAL SECURITY STUD. 16, 17 (2013); BEITTEL, *supra* note 25, at 14.

³³ The exact year of Sinaloa Cartel’s division is disputed. See BEITTEL, *supra* note 25, at 15.

³⁴ See Stastna, *supra* note 31.

³⁵ See Jeremy Bender, *This will be ‘El Chapo’s’ biggest challenge now that he’s escaped from prison*, BUS. INSIDER, July 22, 2015, <http://www.businessinsider.com/this-will->

Enforcement Agency (“DEA”) extradited Jose Rodrigo Arechiga-Gamboa, a.k.a. “Chino Antrax,” the supposed replacement for Guzman from the Netherlands.³⁶ While the Sinaloa Cartel’s leadership void may alter the cartel’s internal structure,³⁷ it will likely continue to function as a traditional organized crime syndicate. The cartel differs from its more violent contemporaries by relying primarily on bribery over violence.³⁸ Based on the more restrained manner in which the Sinaloa Cartel conducts business, it fails to engage in terrorist activities and must not receive terrorist organization designation.³⁹

2. Los Zetas

Formed by members of Mexico’s elite special forces unit, Grupos Aeromoviles de Fuerzas Especiales (“GAFE”), Los Zetas initially functioned as the Gulf Cartel’s paramilitary arm until it became an independent DTO in 2009.⁴⁰ Los Zetas quickly developed a reputation for engaging in extreme violence and indiscriminately

be-el-chapos-biggest-challenge-now-that-hes-escaped-from-prison-2015-7 (suggesting that El Chapo may not automatically resume control of the Sinaloa Cartel).

³⁶ *Alleged Sinaloa Cartel Leader Extradited to the United States from the Netherlands*, DEA, July 10, 2014, <http://www.justice.gov/dea/divisions/sd/2014/sd071014.shtml>.

³⁷ The Sinaloa Cartel also must counter the emerging threat posed by the *Cártel de Jalisco Nueva Generación* (Jalisco New Generation Cartel), which is currently challenging Los Zetas in Guadalajara. See *Jalisco Cartel – New Generation (CJNG)*, INSIGHT CRIME, May 6, 2015, <http://www.insightcrime.org/mexico-organized-crime-news/jalisco-cartel-new-generation>; Alasdair Baverstock, *Inside Mexico’s Deadliest Cartel: How the Twisted ‘New Generation’ Gang – Which Took Down Army Helicopter with an RPG – is Trying to Win the Public’s Heart with Ultra-Violent ‘Robin Hood’ Image*, DAILYMAIL.COM, May 12, 2015, <http://www.dailymail.co.uk/news/article-3077149/Inside-Mexico-s-deadliest-cartel-twisted-New-Generation-gang-took-army-helicopter-RPG-bids-win-hearts-civilians-ultra-violent-Robin-Hood-image.html>.

³⁸ The Sinaloa Cartel’s tactic of bribery first, then bullets is known as “plata o plomo” (“silver or lead”). See Durbin, *supra* note 18, at 32.

³⁹ The Sinaloa Cartel has engaged in some indiscriminate killing, however, and must not be ruled out for future consideration. See, e.g., *News Report: 2008, Justice in Mexico Project*, JUSTICE IN MEXICO 1 (Trans-Border Inst. ed., Apr. 2008).

⁴⁰ See Peter Chalk, *Profiles of Mexico’s Seven Major Drug Trafficking Organizations*, 5 CTC SENTINEL 5, 6 (2012), <https://www.ctc.usma.edu/posts/profiles-of-mexicos-seven-major-drug-trafficking-organizations>.

targeting Mexican civilians. Its members have engaged in beheadings, mass murders, and dismemberment, which are acts similar to those conducted by the Islamic State of Iraq and the Levant (“ISIL”).⁴¹ In regions where Los Zetas exerts its influence—in the state of Tamaulipas, for instance—the cartel continues to indiscriminately kill on a large scale,⁴² decapitate victims, participate in public gunfights, and disrupting civilian life.⁴³ Los Zetas is currently fighting a turf war with the Sinaloa Cartel and its allies over Mexican border states, which hold key trafficking routes into the United States.⁴⁴ Because Los Zetas’ actions parallel those of groups like the FARC and ISIL, this DTO qualifies for the terrorist organization designation.

3. The Gulf Cartel

The Gulf Cartel, one of the oldest DTOs in Mexico with historical ties to the Colombian Cali Cartel, is primarily located in the state of Tamaulipas.⁴⁵ This cartel previously employed Los Zetas as its military wing, but is now battling its former employee for dominance

⁴¹ *Compare ISIS Threatens to Behead Iraq Journalist, Is Holding Others Captive*, NBC NEWS, Sept. 16, 2014, <http://www.nbcnews.com/storyline/isis-terror/isis-threatens-behead-iraqi-journalist-holding-others-captive-n204226> (quoting Ziad Al-Ajily: “we are dealing with human beings who turned into monsters”) and Alice Fordham, *Prominent Syrian Archaeologist Killed By ISIS In Palmyra*, NPR, Aug. 19, 2015, <http://www.npr.org/2015/08/19/432910251/prominent-syrian-archaeologist-killed-by-isis-in-palmyra> (ISIL beheading an 81-year-old archaeologist) with Jerry Seper, *Mexican Drug Cartel Recruiting in U.S.: Los Zetas Looks to Prisons, Street Gangs*, THE WASH. TIMES (July 7, 2013), <http://www.washingtontimes.com/news/2013/jul/7/ruthless-mexican-drug-cartel-recruiting-in-the-us/?page=all>.

⁴² *See Aumenta a 193 los Muertos por Matanza en San Fernando, Tamaulipas: PGR*, ZÓCALO SALTILLO, July 6, 2011, <http://www.zocalo.com.mx/seccion/articulo/aumenta-a-193-los-muertos-por-matanza-en-san-fernando-tamaulipas-pgr> (describing a mass killing of 193 migrants in the state as well as the discovery of six other mass graves).

⁴³ *See Tracy Wilkinson, In Mexico, Tamaulipas State Residents Rise up Against Cartel Violence*, L.A. TIMES (June 19, 2014), <http://www.latimes.com/world/mexico-americas/la-fg-mexico-tampico-20140619-story.html#page=1>.

⁴⁴ After Los Zetas became independent in 2009, the Gulf Cartel diverted its attention from combating the Sinaloa Cartel to battling Los Zetas. *See* BEITTEL, *supra* note 25, at 18.

⁴⁵ *See id.*

in northern Mexico.⁴⁶ The cartel controls substantial territory along the Texas border and it maintains its power through bribing Mexican law enforcement officials.⁴⁷ In one instance, Gulf Cartel boss Juan García Ábrego paid the Mexican Deputy Director for the Attorney General \$1.5 million per month to ensure the safety of trafficking operations.⁴⁸ While the Gulf Cartel does engage in violence to control key areas of the Texas-Mexico border and has been waging war against Los Zetas since 2008, this DTO still tends to function more akin to a traditional organized criminal syndicate. It engages in bribery with state officials and only utilizes violence against opposing cartel factions, though sometimes at the expense of bystanders.⁴⁹ Because of the manner in which the Gulf Cartel currently functions, it does not merit consideration for FTO designation.

4. Vicente Carrillo Fuentes Organization

One of the deadliest cities along the U.S.-Mexico border,⁵⁰ Ciudad Juárez is home to the notorious Vicente Carrillo Fuentes Organization (“Juárez Cartel”). Based in the border state of Chihuahua, the cartel formed after the Matamoros Cartel split into smaller factions.⁵¹ The Juárez Cartel gained its reputation for implementing extreme terror tactics through dismembering victims’

⁴⁶ The Gulf Cartel previously formed an alliance with the Sinaloa Cartel to combat Los Zetas. See O’Donnell & Gray, *supra* note 18, at 33.

⁴⁷ See U.S. GOV’T ACCOUNTABILITY OFF., GAO-07-1018, DRUG CONTROL: U.S. ASSISTANCE HAS HELPED MEXICAN COUNTERNARCOTICS EFFORTS, BUT TONS OF ILLICIT DRUGS CONTINUE TO FLOW INTO THE UNITED STATES 15, 17 (2007).

⁴⁸ United States v. Garcia Abrego, 141 F.3d 142, 149 (5th Cir. 1998).

⁴⁹ *Gulf Cartel*, INSIGHT CRIME, http://www.insightcrime.org/mexico-organized-crime-news/gulf-cartel-profile#modus_operandi (last visited Oct. 8, 2014).

⁵⁰ See THE OVERSEAS SEC. ADVISORY COUNCIL, MEXICO 2014 CRIME AND SAFETY REPORT: CIUDAD JUAREZ (2014), <https://www.osac.gov/pages/ContentReportDetails.aspx?cid=15634> (explaining that there were 530 murders in Ciudad Juárez in 2013); U.S. HOUSE COMM. ON HOMELAND SEC. SUBCOMM. ON OVERSIGHT, INVESTIGATIONS, AND MGMT., 112TH CONG., A LINE IN THE SAND: COUNTERING CRIME, VIOLENCE AND TERROR AT THE SOUTHWEST BORDER 36 (Comm. Print 2012) [hereinafter A LINE IN THE SAND] (“[s]ince 2008, more than 5,300 people have been killed in [the Ciudad Juárez] conflict earning Juárez the dubious title of the most dangerous city in the world.”).

⁵¹ Bloom, *supra* note 21, at 357.

corpses,⁵² car bombing Mexican and American officials,⁵³ and assassinating police officers.⁵⁴ The organization utilizes several smaller gangs, namely La Línea and Barrio Azteca, to carry out executions.⁵⁵ These ruthless extensions of the Juárez Cartel have helped stave off the Sinaloa Cartel from controlled regions and ensured that police and civilians did not pose a threat to their operations. Though the cartel recently lost much of its dominance in Chihuahua after the city of Ciudad Juárez hired retired lieutenant colonel Julian Leyzaola as its police chief in 2011, the organization remains a threat to the stability of northern Mexico.⁵⁶ In assessing the devastation and terror created by the Juárez Cartel in the state of

⁵² The Juárez Cartel is known to dismember multiple corpses and display the severed body parts in front of elementary schools and day care centers. See Alejandro Martínez-Cabrera & Daniel Borunda, *Dismembered Bodies Found all over Juárez*, EL PASO TIMES (Oct. 26, 2011), http://www.elpasotimes.com/ci_19190390.

⁵³ See Press Release, Dep't of Justice, Barrio Azteca Lieutenant Who Ordered the Consulate Murders in Ciudad Juarez Found Guilty on All Counts (Feb. 19, 2014), <http://www.justice.gov/opa/pr/barrio-azteca-lieutenant-who-ordered-consulate-murders-ciudad-juarez-found-guilty-all-counts>; *Police: Car Bomb in Mexican Border Town Kills 4*, CNN, July 17, 2010, <http://edition.cnn.com/2010/WORLD/america/07/16/mexico.juarez.explosion/?hpt=Sbin#fbid=KxD1dx2nuoa&wom=false> (quoting municipal police spokesman Jacinto Seguro) (“[t]hey put him in a civilian car but dressed him up in a municipal police uniform. That’s when the bomb went off. It’s like an act of terrorism.”).

⁵⁴ See Jason McGahan, *The Juarez Cartel Goes on Trial in El Paso*, TEX. OBSERVER (Feb. 21, 2014), <http://www.texasobserver.org/juarez-cartel-goes-trial-el-paso/>.

⁵⁵ See Affidavit in Support of Criminal Complaint at 4, United States v. Castellon, No. 3:10-cr-02213 (W.D. Tex. Aug. 18, 2010); RICARDO C. AINSLIE, *THE FIGHT TO SAVE JUÁREZ: LIFE IN THE HEART OF MEXICO’S DRUG WAR* 82-87 (2013).

⁵⁶ See Stastna, *supra* note 31. After Leyzaola assumed his new position, the Juárez Cartel stated that “si [él] no se iba, mataban a un policía al día” (“if he does not leave, a police officer would be killed a day”). See *Cártel Ordena la Ejecución de un Policía al Día en Juárez*, TERRA, Jan. 27, 2012, noticias.terra.com.mx/mexico/seguridad/cartel-ordena-la-ejecucion-de-un-policia-al-dia-en-juarez,312c076313125310VgnVCM10000098f154d0RCRD.html?icid=Publicadores_Links_Relacionados; see also Randal C. Archibold, *Ex-Police Chief in Mexico Known for Crackdowns Is Shot*, N.Y. TIMES (May 8, 2015), http://www.nytimes.com/2015/05/09/world/americas/ex-police-chief-in-mexico-known-for-crackdowns-is-shot.html?_r=0 (explaining that Leyzaola, known for controversial crackdowns in Ciudad Juárez, was shot by hitmen on May 8, 2015).

Chihuahua, this DTO must be considered for the State Department's terrorist organization designation.⁵⁷

Between these four DTOs, only Los Zetas and the Juárez Cartel display characteristics of organizations already listed as FTOs. Their brutal tactics, indiscriminate killings, and political targets reveal that these cartels pose a threat to established political institutions. Both the Sinaloa and Gulf Cartels choose to use only strategies representative of organized crime, which disqualifies them from FTO designation. Their propensity toward bribery and violence limited to enemy DTOs does not reflect the tactics and motivations made illegal by Congress under section 219. As shown in Part II, Los Zetas and the Juárez Cartel fulfill the criteria required for FTO designation.

II. DEFINING TERRORISM

In order to understand the necessity of designating Los Zetas and the Juárez Cartel as terrorist organizations, it is important to analyze the definitions of "terrorism" and "terrorist activity," as defined by section 960a of the Controlled Substances Act, and section 219 of the Immigration and Nationality Act. Part II examines section 960a and section 219 independently to assess the qualifications necessary for a cartel's designation as an FTO.

A. Qualifications Under Section 960a

The Controlled Substances Act contains a small but powerful section appropriately referred to as the "Narcoterrorism Statute."⁵⁸ The actual title of section 960a is "Foreign terrorist organizations, terrorist persons and groups." It details both the acts prohibited, and the jurisdictional elements an individual must meet in order to be

⁵⁷ For the remainder of this Comment, references to the Juárez Cartel include the La Línea and Barrio Azteca gangs. These gangs function as military arms for the Juárez Cartel and conduct indiscriminate killings, extortion, and other terroristic activities. See Affidavit, *supra* note 55, at 4; Ainslie, *supra* note 55, at 82-87.

⁵⁸ See, e.g., Michael Jacobson & Matthew Levitt, *Tracking Narco-Terrorist Networks: The Money Trail*, 34 THE FLETCHER F. OF WORLD AFF. 117, 121 (2010).

successfully convicted in U.S. federal court under U.S. federal law. The Act reads:

(a) Prohibited acts

Whoever engages in conduct...if committed within the jurisdiction of the United States, or attempts or conspires to do so, knowing or intending to provide, directly or indirectly, anything of pecuniary value to any person or organization that has engaged or engages in terrorist activity (as defined in section 1182(a)(3)(B)...) or terrorism (as defined in section 2656f(d)(2)...), shall be sentenced to a term of imprisonment of not less than twice the minimum punishment under section 841(b)(1), and not more than life, a fine..., or both...

(c) Proof requirements

To violate subsection (a), a person must have knowledge that the person or organization has engaged or engages in terrorist activity (as defined in section 1182(a)(3)(B)...) or terrorism (as defined in section 2656f(d)(2)...).⁵⁹

These definitions are critical in understanding how a person violates section 960a because the terms “terrorism” and “terrorist activity” differ under various titles of the U.S. Code.⁶⁰ The question of whether these groups fall under these definitions begins with a textual analysis of the statute. For section 960a to apply to Los Zetas or the Juárez Cartel, these DTOs must assist an organization or individual engaging in either “terrorism” or “terrorist activity.” DOJ may use either of these definitions to describe a cartel member in a section 960a criminal proceeding if both DTOs are added to the FTO list. The FTO designation allows DOJ to more easily prosecute members of Los Zetas and the Juárez Cartel as narcoterrorists because the FTO list unifies the perspectives of all federal agencies about certain organizations.⁶¹

⁵⁹ 21 U.S.C. § 960a(a) (2006).

⁶⁰ See, e.g., GREGORY E. MAGGS, *TERRORISM AND THE LAW: CASES AND MATERIALS 1* (2d. ed. 2010) (explaining that at least 22 different definitions exist for terrorism in federal law).

⁶¹ See *infra* Part II(b)-(c).

The definition for “terrorism” is relatively short, but contains several crucial elements describing the precise nature of the crime. The definition in 22 U.S.C. § 2656f (d)(2) explains that terrorism is “premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents.”⁶² Moreover, under Title 22 of the U.S. Code this definition of terrorism has remained the same since 1996.⁶³ The fact that Congress has not altered this definition in nearly two decades indicates the definition is relatively settled.

To properly apply the definition of “terrorism” to both Los Zetas and the Juárez Cartel, one must determine if these cartels fit each individual criterion in section 2656f(d)(2). An organization must meet four elements: (1) premeditation; (2) politically motivated violence; (3) perpetrated against noncombatants; and (4) performed by subnational groups or clandestine agents.

Regarding the qualification of subnational groups or clandestine agents, both Los Zetas and the Juárez Cartel easily meet this criterion because they are not branches of the Mexican government. Their violent acts are also premeditated, as they conduct planned assassinations and strategically dismember their victims to display their ruthlessness, aggression, and dominance.⁶⁴ Furthermore, both of these DTOs engage in acts against noncombatants.⁶⁵

Thus, the sole remaining issue is whether Los Zetas and the Juárez Cartel are politically motivated when they target citizens, political officials, and police. Although these groups initially formed to enter the lucrative illegal narcotics trade, Los Zetas and the Juárez Cartel evolved into organizations whose mission is to actively disrupt

⁶² 22 U.S.C. § 2656f(d)(2) (2004).

⁶³ See 22 U.S.C. § 2656f(d)(2) (1996).

⁶⁴ See, e.g., *Mexican Drug Cartel Hitman Tells How he Committed 800 Murders Before he Stopped Keeping Track*, DAILYMAIL.COM, Feb. 11, 2014, <http://www.dailymail.co.uk/news/article-2557171/Mexican-drug-cartel-hitman-says-committed-800-murders-stopped-keeping-track.html>.

⁶⁵ See, e.g., Martínez-Cabrera & Borunda, *supra* note 52; Wilkinson, *supra* note 43. This factor necessarily excludes cartels like the Sinaloa Cartel and the Gulf Cartel because they tend to direct their violence toward enemy cartels and officials that pose a significant threat to their operations.

and overthrow the Mexican government by utilizing terrorist tactics. For this reason, both DTOs necessarily fulfill the politically motivated requirement.⁶⁶

The actions conducted by Los Zetas and the Juárez Cartel fall under section 1182(a)(3)(B)'s definition of "terrorist activity." The statute lists multiple acts that constitute terrorist activity. These acts include: sabotaging vehicles; seizing or threatening to kill individuals to compel a third party (including governmental agencies) to do or abstain from an act; assassination; violently attacking an internationally protected person; using a firearm with the intent to danger one or multiple persons; or threatening to commit any of the aforementioned acts.⁶⁷ Given the previously described actions of both DTOs, it is rational to conclude that both commit "terrorist activity" for the purposes of section 1182(a)(3)(B).

Since Los Zetas has committed all of the acts listed in 22 U.S.C. § 2656f(d)(2), the DTO engages in "terrorist activity" as defined in section 1182(a)(3)(B). First, Los Zetas has engaged in kidnapping for both monetary and intimidation purposes.⁶⁸ For example, in June 2013, Mexican soldiers located and rescued 165 migrant workers abducted by Los Zetas.⁶⁹ These kidnappings also occur on American soil, with border states experiencing abductions more frequently than non-border states.⁷⁰ This DTO also engages in firefights on the streets of Tamaulipas⁷¹ and assassinates police and government officials.⁷² Furthermore, the cartel has utilized fragmentation grenades against

⁶⁶ Part IV deals exclusively with the issue of political motivation exemplified by Los Zetas and the Juárez Cartel.

⁶⁷ See Inadmissible Aliens, 8 U.S.C. § 1182(a)(3)(B)(iii) (2013).

⁶⁸ See, e.g., Deborah Hastings, *Soldiers Rescue 165 People Brutally Kidnapped in Mexico—Adults and Children Held Terrified for Weeks at Gunpoint*, NY DAILY NEWS (June 6, 2013, 4:21 PM), <http://www.nydailynews.com/news/world/soldiers-tamaulipas-mexico-rescue-165-migrants-central-america-kidnapped-organized-crime-article-1.1365304> (explaining that Los Zetas kidnaps migrants for ransom and prostitution).

⁶⁹ A LINE IN THE SAND, *supra* note 50, at 26-27.

⁷⁰ See *id.*

⁷¹ See Wilkinson, *supra* note 43.

⁷² For example, Los Zetas tortured and killed Cancún's tactical police operations commander Martínez Góngora in 2008. *News Report: 2008, Justice in Mexico Project*, *supra* note 39, at 4.

large groups of Mexicans celebrating national holidays.⁷³ Second, Los Zetas members often threaten to kill any person perceived to be in the way of their operations, mutilate bodies, and leave messages by the remains of their victims, warning Mexican civilians and other DTOs to “[s]ee. Hear. Shut up, if you want to stay alive.”⁷⁴ In addition, since the escalation of cartel violence began during the Calderón presidency, the use of car bombs in Mexico has increased exponentially.⁷⁵ Los Zetas, a major contributor to this phenomenon, is responsible for detonating at least one car bomb on January 22, 2011, and is linked to two others.⁷⁶

Members of Los Zetas have also murdered U.S. agents and personnel. On February 15, 2011, Los Zetas members ambushed and gunned down U.S. Immigration and Customs Enforcement Agent Jaime Zapata and injured his partner Victor Avila, Jr., despite Zapata and Avila identifying themselves as U.S. agents while driving a vehicle with diplomatic plates.⁷⁷ This is but one example of where Los Zetas murdered internationally protected persons in cold blood.⁷⁸ These actions are illustrative of Los Zetas’ ability to successfully conduct “terrorist activity” as defined in section 1182(a)(3)(B).

The Juárez Cartel also engages in “terrorist activity” because its members currently commit or previously engaged in all of the acts outlined in the statute. In addition to routine assassinations, kidnappings, and death threats,⁷⁹ this DTO is responsible for the triple homicide in 2010, of U.S. Consulate employee Leslie Enriquez, her

⁷³ See ROBERT J. BUNKER & JOHN P. SULLIVAN, CARTEL CAR BOMBINGS IN MEXICO 14 (Strategic Studies Inst. ed., 2013) (referring to the attack in September 2008 on Mexicans celebrating Mexican Independence Day in the city of Morelia, which resulted in 8 deaths and 101 injuries).

⁷⁴ Los Zetas wrote this quote in the Mexican town of Reynosa next to the butchered torsos and severed heads of its victims. See Jerry Seper, *supra* note 41.

⁷⁵ See BUNKER & SULLIVAN, *supra* note 73, at 13-14.

⁷⁶ See *id.* at 18.

⁷⁷ *Id.*

⁷⁸ See Murder or Manslaughter of Foreign Officials, Official Guests, or Internationally Protected Persons, 18 U.S.C. § 1116(b)(4)(B) (1996) (defining “internationally protected person” as “any other...officer...or agent of the United States Government...who at the time and place concerned is entitled pursuant to international law to special protection against attack...”).

⁷⁹ See *e.g.*, Press Release, Dep’t of Justice, *supra* note 53; Wilkinson, *supra* note 43.

husband Arthur Redelfs, and Jorge Salcido, the husband of another Consulate employee.⁸⁰ Several months after these murders, La Línea, acting on behalf of the Juárez Cartel, constructed a car bomb to use against federal police in Ciudad Juárez.⁸¹ The gang premeditated this attack by “dressing a bound, wounded man in a police uniform and call[ed] in a false report of an officer shot...” and then detonated the car bomb, killing the decoy and several others.⁸²

Torture and murder are not new practices for the Juárez Cartel. The cartel’s use of “terrorist activity” was prevalent in the infamous 2004, “House of Death” murders, where cartel members abducted, tortured, and killed nearly 20 individuals and buried their remains in Ciudad Juárez.⁸³ One of the victims of this atrocity, Luis Padilla, was abducted after leaving his home in El Paso, bound with duct tape, and tortured to death.⁸⁴ These targeted killings of internationally protected personnel, citizens, and political figures reveals that the definition of “terrorist activity” defined in section 1182(a)(3)(B) applies to the Juárez Cartel.

In reexamining the text of section 960a, a person engaging or attempting to aid a person or organization engaging in either “terrorism” or “terrorist activity” by manufacturing, distributing, or dispensing controlled substances violates the Narcoterrorism Statute.⁸⁵ This clearly indicates that the individual or group participating in the trafficking of illegal substances must assist *either* an individual or organization engaging in “terrorism” or an individual or organization engaging in “terrorist activity.” This standard is easier to meet than a standard requiring a trafficker to engage or assist in the execution of both terrorism and terrorist activity. Since Los Zetas and the Juárez Cartel sell and manufacture illegal narcotics while simultaneously engaging in violence against political figures and

⁸⁰ See Press Release, Dep’t of Justice, *supra* note 53. These U.S. citizens are also “internationally protected person[s]” under Title 18 of the U.S. Code. See 18 U.S.C. § 1116(b)(4).

⁸¹ See BUNKER & SULLIVAN, *supra* note 73 at 15-16.

⁸² *Id.* at 16.

⁸³ See Complaint at 16, Padilla v. United States, No. 3:05-cv-00478 (2005).

⁸⁴ See Affidavit of Janet Padilla at 143, Padilla v. United States, No. 3:05-cv-00478 (2006).

⁸⁵ 21 U.S.C. § 960a(a) (2006).

citizens, these cartels participate in *both* “terrorism” and “terrorist activity,” and thus qualify for section 960a jurisdiction.

B. Qualifications Under Section 219 of the Immigration and Nationality Act

The plain language of section 960a supports the conclusion that Los Zetas and the Juárez Cartel assist organizations, i.e. themselves, in facilitating both “terrorism” and “terrorist activity” through the trafficking of narcotics. Yet, these DTOs are not members of the State Department’s FTOs List.⁸⁶ As long as Los Zetas and the Juárez Cartel remain off of this list, any criminal actions brought under section 960a against extradited cartel members may fail. In choosing to not recognize these DTOs as terrorist groups, the executive branch implicitly undermines any claims brought against extradited cartel members for section 960a offenses. To ensure courts do not dismiss narcoterrorism suits against members of Los Zetas and the Juárez Cartel for jurisdictional reasons, the Secretary of State must place these DTOs on the FTO list. This requires the Secretary to find:

(A) the organization is a foreign organization;

(B) the organization engages in terrorist activity (as defined in section 1182(a)(3)(B)...or terrorism (as defined in section 2656f(d)(2)...) or retains the capability and intent to engage in terrorist activity or terrorism); and

(C) the terrorist activity or terrorism of the organization threatens the security of United States nationals or the national security of the United States.⁸⁷

The language of section 219 of the Immigration and Nationality Act suggests Congress contemplated that the Secretary might determine DTOs like Los Zetas and the Juárez Cartel to be terrorist organizations.⁸⁸ The criteria in section 219 are almost

⁸⁶ See *Foreign Terrorist Organizations*, *supra* note 15.

⁸⁷ 8 U.S.C. § 1189(a)(1)(A)-(C) (2004).

⁸⁸ “[T]his bill says that whether you are a member of or assisting a drug cartel along the border that employs terrorist tactics to protect its drug trade...this bill targets

identical to those used in section 960a for deciding what conduct establishes terrorism.⁸⁹ As in the section 960a analysis, Los Zetas and the Juárez Cartel fulfill the foreign organization requirement and the requirement of engaging in “terrorist activity,” defined in 8 U.S.C. § 1182(a)(3)(B), or “terrorism,” defined in 22 U.S.C. § 2656f(d)(2).

Having established that Los Zetas and the Juárez Cartel satisfy factors (A) and (B) of section 219, the Secretary need only determine whether the conduct of Los Zetas and the Juárez Cartel threatens U.S. national security or the security of U.S. nationals. Given both cartels’ actions—supplying the United States with illegal narcotics (interfering with interstate commerce), abducting Mexicans and Americans in the United States, killing personnel working for U.S. agencies, and generally disrupting the U.S.-Mexico border—this should not be a difficult determination to make.⁹⁰ These cartels have even recruited American gang members and U.S. military personnel to serve as “hitmen” and drug runners in the United States and Mexico.⁹¹ Also, Los Zetas and the Juárez Cartel operate in at least 3,000 American cities.⁹² Furthermore, the operations and tactics of Los Zetas and the

you.” 151 CONG. REC. S9835, S9846 (daily ed. Sept. 8, 2005) (statement of Sen. Cornyn).

⁸⁹ See 21 U.S.C. § 960a(a) (2006).

⁹⁰ See, e.g., Affidavit, *supra* note 55, at 4; A LINE IN THE SAND, *supra* note 50, at 26-27; Hastings, *supra* note 68; McGahan, *supra* note 54.

⁹¹ The FBI has reported that Los Zetas contracted with the Texas Mexican Mafia as early as 2010. See Memorandum for the FBI: Los Zetas’ Reliance on Non-Traditional Associates May Pose Threat to the United States, (Feb. 4, 2011) (on file with FBI San Antonio Office). Former Army First Lieutenant Kevin Corley, Army Sergeant Samuel Walker, and five other Americans received jail sentences for conspiracy to function as “hitmen” for Los Zetas. See *United States v. Corley*, No. 5:12 cr 185 (S.D. Tex. Feb. 28, 2012). Army Private First-Class Michael Apodaca received a life sentence for killing Jose Daniel Gonzalez-Galeana for the Juárez Cartel after the cartel paid him \$5,000. See Michael B. Kelley, *Mexican Cartels Are Recruiting US Soldiers as Hitmen, and the Pay Is Good*, BUS. INSIDER, Aug. 5, 2013, <http://www.businessinsider.com/cartels-are-recruiting-us-soldiers-as-hitmen-2013-8>.

⁹² Other cartels currently not under consideration for the terrorist organization assignment by this Comment also operate in the U.S. *Mexican Drug Cartels Outgunning Law Enforcement Across the U.S. – Not just near the Border – and have Infiltrated 3,000 Cities, Sheriffs Warn*, DAILYMAIL.COM, Apr. 13, 2014, <http://www.dailymail.co.uk/news/article-2603819/Mexican-drug-cartels-outgunning-law-enforcement-U-S-not-just-near-border-infiltrated-3-000-cities-sheriffs-warn.html>.

Juárez Cartel threaten American security along the U.S.-Mexico border and within U.S. non-border states. The Secretary need only consider these facts to determine that the last criterion of section 219 is fulfilled.

C. The Benefits of Section 960a and Section 219 Designation

Applying section 219 FTO designation to Los Zetas and the Juárez Cartel to help prosecute cartel members for violating section 960a would be significant in combating cartel violence. For example, once a DTO becomes a designated FTO under section 219, the Department of the Treasury may force U.S. financial institutions to block the financial assets of the DTO.⁹³ This is important for combating Mexican cartels because of their previous utilization of major banking firms like HSBC and Bank of America in financing their activities.⁹⁴ With the section 219 designation, Los Zetas and the Juárez Cartel will face added obstacles to laundering money through legitimate sources to fund their operations.

While section 219 would grant the U.S. federal government the authority to freeze Los Zetas and the Juárez Cartel's assets, the government already holds the ability to do so under the Foreign Narcotics Kingpin Designation Act ("Kingpin Act"). Under the Kingpin Act, the U.S. government shall "apply economic and other financial sanctions to significant narcotics traffickers and their organizations worldwide...."⁹⁵ The federal government has used the Kingpin Act to place sanctions on Los Zetas as recently as February 2014.⁹⁶

⁹³ 8 U.S.C. § 1189(a)(2)(C) (2004).

⁹⁴ In 2012, HSBC paid \$1.9 billion in fines to the U.S. Treasury for laundering money for the Sinaloa and the Colombian Norte del Valle cartels. See Carrick Mollenkamp, *HSBC Became Bank to Drug Cartels, Pays Big for Lapses*, REUTERS, Dec. 12, 2012, <http://uk.reuters.com/article/2012/12/12/us-hsbc-probe-idUSBRE8BA05M20121212>; Miguel Angel Trevino Morales, a major leader of Los Zetas, was indicted for laundering over \$1 million through Bank of America. See Indictment at 15, *United States v. Trevino*, No. 1:12-cr-00210-SS (W.D. Tex. May 30, 2012).

⁹⁵ Findings and Policy, 21 U.S.C. § 1901(b) (1999).

⁹⁶ See Press Release, Dep't of the Treasury, *Treasury Expands Sanctions Against the Los Zetas Drug Cartel* (Feb. 14, 2014), <http://www.treasury.gov/press-center/press->

One might question the purpose of section 219 designation given the U.S. government's use of the Kingpin Act to undermine the financial stability of Los Zetas. However, section 219 designation is significant for purposes other than applying sanctions. It is an essential tool for extraditing members of Los Zetas and the Juárez Cartel for section 960a violations. When an organization becomes an FTO under section 219, all relevant executive agencies recognize the organization as such, which clarifies any issues regarding the organization's legal status.⁹⁷ Agencies like the Departments of State, Treasury, Justice, and Homeland Security all recognize the FTO list and act in unison against those groups on the FTO list.⁹⁸ The executive branch's unified recognition of Los Zetas and the Juárez Cartel as terrorist organizations alleviates obstacles for prosecutors pursuing terrorist charges against cartel members.

Furthermore, section 219 designation eases the government's ability to extradite members of Los Zetas and the Juárez Cartel to the United States for prosecuting section 960a violations. As explained, these cartels pose a major threat to U.S. national security.⁹⁹ Through the use of section 960a, those cartel members convicted face mandatory increased prison sentences and may be deterred from participating in cartel activities in the future.¹⁰⁰

releases/Pages/jl2254.aspx. Los Zetas was added to the list of drug kingpins under the Drug Kingpin Act on April 15, 2009. See Fact Sheet, The White House, Overview of the Foreign Narcotics Kingpin Designation Act (Apr. 15, 2009), <https://www.whitehouse.gov/the-press-office/fact-sheet-overview-foreign-narcotics-kingpin-designation-act>.

⁹⁷ AUDREY KRUTH CRONIN, CONG. RESEARCH SERV., RL32120, THE "FTO LIST" AND CONGRESS: SANCTIONING DESIGNATED FOREIGN TERRORIST ORGANIZATIONS 7 (2003).

⁹⁸ *Id.*

⁹⁹ See, e.g., BEITTEL, *supra* note 25, at 22; Press Release, Dep't of Justice, *supra* note 53; Anthony Kimery, *Shots That Forced Down CBP Helicopter Not The First Time A CBP Chopper Brought Down*, HOMELAND SECURITY TODAY, June 8, 2015, <http://www.hstoday.us/single-article/shots-that-forced-down-cbp-helicopter-not-the-first-time-a-cbp-chopper-brought-down/00dcaab8ebb0a196d9f847c1f3d1e28c.html> (reporting on an emergency landing by a Customs and Border Protection helicopter in Laredo, Texas after taking fire from drug traffickers located in the Los Zetas stronghold of Nuevo Laredo, Mexico).

¹⁰⁰ Section 960a automatically doubles the minimum punishment under 21 U.S.C. § 841(b)(1), with a maximum sentence of life. 21 U.S.C. § 960a(a) (2006). Under

The Narcoterrorism Statute automatically increases the mandatory minimum sentences for selling or manufacturing narcotics to support a terrorist organization.¹⁰¹ This automatic provision does not limit a court from implementing a harsher jail sentence if it determines that the offender's actions warrant a longer incarceration. Violators of section 960a face the possibility of a court increasing their base offense level by 12 through the terrorism enhancement provision located in the U.S. Sentencing Commission Guidelines Manual.¹⁰² For the terrorism enhancement provision to apply, an organization must engage in the "[f]ederal crime of terrorism," which is defined as any offense "calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct."¹⁰³ In at least one section 960a case, the U.S. Court of Appeals for the District of Columbia upheld the use of the terrorism enhancement provision in sentencing a person engaging in narcoterrorism.¹⁰⁴

Most importantly, when an organization receives, section 219 FTO designation, a defendant facing criminal action cannot challenge the organization's FTO designation either before or after trial.¹⁰⁵ Without the ability to challenge Los Zetas or the Juárez Cartel's FTO designation, cartel members or cartel affiliates cannot escape prosecution by disputing whether these cartels commit acts of terrorism. Without having to prepare for long arguments over

§ 841(b)(1), any person dealing vast quantities of illegal substances like heroin or cocaine automatically receive a minimum of ten years in prison, and automatically receives twenty years if death or serious bodily injury resulted from using the substance. Prohibited Acts A, 21 U.S.C. § 841(b)(1)(A) (2010).

¹⁰¹ 21 U.S.C. § 960a(a) (2006).

¹⁰² U.S. SENTENCING COMMISSION GUIDELINES MANUAL § 3A1.4 (U.S. SENTENCING COMM'N 2014). The Sentencing Table in the Manual explains the system of incarceration levels for various criminal activities. The terrorism enhancement section of the Manual allows a court to increase the base offense level by 12 if it deems this to be appropriate. See U.S. SENTENCING COMMISSION GUIDELINES MANUAL § 5, pt. A, sentencing table (U.S. SENTENCING COMM'N 2014).

¹⁰³ Acts of Terrorism Transcending National Boundaries, 18 U.S.C. § 2332b(g)(5)(A) (2008). See *infra* Part IV for in-depth analysis on the matter of government coercion, intimidation, and retaliation against both the Mexican and American governments.

¹⁰⁴ See *United States v. Mohammed*, 693 F.3d 192, 201 (D.C. Cir. 2012).

¹⁰⁵ 8 U.S.C. § 1189(a)(8) (2004).

whether Los Zetas or the Juárez Cartel commit terrorism, prosecutors can focus their efforts on finding evidence in support of section 960a charges.

The D.C. Court of Appeals already recognizes the legitimacy and value of using section 960a by law enforcement personnel. In *United States v. Mohammed*, the court recognized the fact that penalties under section 960a surpass those for drug trafficking and material support combined.¹⁰⁶ This did not deter the court from upholding the lower court in finding that Khan Mohammed, a Taliban affiliate, violated section 960a when he sought to fund the construction of a car bomb to be used at a NATO airbase with drug profits.¹⁰⁷ The court explained that Mohammed could not argue section 960a failed to apply in his case because he lacked the intent to finance terrorism with drug sales.¹⁰⁸ The language of the statute fails to include a *mens rea* requirement and is unambiguous as to when it applies. A person violates section 960a when he directly or indirectly supports terrorism through selling, manufacturing, distributing, or dispensing illegal narcotics.¹⁰⁹ The court explicitly stated that Congress intended to ensure the Narcoterrorism Statute extended to those using narcotics to further terrorism violate section 960a, regardless of whether they knew the profits would directly fund terrorist attacks.¹¹⁰ The person need only assist the terrorist organization with the sale or supply of narcotics.¹¹¹

Using a criminal scheme of higher mandatory minimum sentences and increased apprehensions for narcoterrorism could deter cartel members on the margin from further engaging in cartel violence. The theory of general deterrence explains that the criminal law can make citizens law abiding with the right incentive structure.¹¹² Though most Los Zetas and Juárez Cartel members are not U.S.

¹⁰⁶ *Mohammed*, 693 F.3d at 199-200.

¹⁰⁷ *Id.* at 195.

¹⁰⁸ *Id.* at 199.

¹⁰⁹ 21 U.S.C. § 960a(a) (2006). *See also* 21 U.S.C. § 841(a) (2010).

¹¹⁰ *Mohammed*, 693 F.3d at 199-01.

¹¹¹ *Id.* at 201.

¹¹² J. ANDENAES, PUNISHMENT AND DETERRENCE 7 (Ann Arbor: Univ. of Mich. ed., 1974).

citizens, the general deterrence theory does apply to those who are subject to the punishments of the law. Merely increasing mandatory minimum sentences will not likely deter cartel members if there is no added risk of apprehension. Criminals who perceive an increased certainty of punishment associated with their illicit conduct tend to avoid these activities more often than if there is an increase in severity of the punishment.¹¹³ By designating these cartels as terrorist organizations while also implementing a policy of rigorous extradition with heightened prison sentences, cartel members on the margin could be deterred from engaging in illegal and violent activities.

This is not to say that the law will deter most members of Los Zetas and the Juárez Cartel. The culture and nature of cartel life is reminiscent of an intimate family, where pride and unity are valued over legal repercussions.¹¹⁴ Both Los Zetas and the Juárez Cartel embrace the idea of narcoculture and base their entire personal and social identification framework on this concept.¹¹⁵ Both DTOs incorporate spiritual symbols like Santa Muerte, or Saint Death, into cartel folklore, which may explain why members engage in heinous acts of violence.¹¹⁶ Santa Muerte serves as a source of spiritual motivation and courage, thus supplementing the narcoculture of violence and death.¹¹⁷ For these cartel members, the cult-like atmosphere of Los Zetas and the Juárez Cartel outweighs a heightened probability of capture and severe incarceration sentence. However, deterrence may be possible for those individuals considering whether to join one of these organizations. Deterrence may also be possible for those current cartel members who are not yet completely engulfed in narcoculture.

¹¹³ VALERIE WRIGHT, DETERRENCE IN CRIMINAL JUSTICE: EVALUATING CERTAINTY VS. SEVERITY OF PUNISHMENT 4 (The Sentencing Project ed., 2010).

¹¹⁴ See generally Paul Wood, *Inside Mexico's Feared Sinaloa Drugs Cartel*, BBC NEWS, May 16, 2014, <http://www.bbc.com/news/magazine-27427123>; Tony M. Kail, *The Narco Cult of Santa Muerte*, 16 J. OF COUNTERTERRORISM & HOMELAND SECURITY INT'L 40, 40-42 (2005).

¹¹⁵ See Kail, *supra* note 114, at 41.

¹¹⁶ *Id.* Santa Muerte is seen as a spiritual guide and a symbol of courage. *Id.* For cartels, Santa Muerte serves as a guide for spiritual courage in committing severe acts of violence. See *id.* at 45.

¹¹⁷ See *id.*

III. APPLICATION - THE FUERZAS ARMADAS REVOLUCIONARIAS DE COLOMBIA

To better understand the benefits of prosecuting members or affiliates of terrorist organizations under section 960a, it is useful to examine how U.S. prosecutors have already specifically referenced section 219 FTO designation in support of section 960a prosecutions. The FARC serves as a proper case study, as the FTO is located in Latin America and has traditionally participated in the illegal drug trade. The FARC serves as a better example for comparison with Mexican DTOs than Islamic terror groups like al-Qaeda because the FARC is not motivated by religion in waging war against Colombia, killing civilians, or maiming political figures.

Established in 1964, the FARC is a Marxist-Leninist guerrilla group based in Colombia.¹¹⁸ Secretary of State Madeline Albright designated the FARC as a terrorist organization in 1997,¹¹⁹ pursuant to section 219 of the Immigration and Nationality Act because of its repeated efforts to overthrow the Colombian government, and for killing Americans and destroying American property abroad.¹²⁰ The FARC carried out these attacks against Americans in retaliation for assisting the Colombian government in combating FARC operations.¹²¹ The FARC previously maintained ties with other terrorist organizations, including the Irish Republican Army, who shared knowledge on constructing explosive devices.¹²² The FARC has also conducted bombing campaigns against the Colombian government, police officers, and American civilians. Moreover, the

¹¹⁸ ENCYCLOPEDIA OF THE DEVELOPING WORLD 1362 (Thomas M. Leonard ed., 3d vol. 2006).

¹¹⁹ Fact Sheet, Dep't of State, Secretary of State designates Foreign Terrorist Organizations (FTO's) (Oct. 1, 2001), <http://20012009.state.gov/r/pa/prs/ps/2001/5265.htm>.

¹²⁰ United States v. Issa, No. 1:09-cr-01244-BSJ, 2 (S.D.N.Y. Dec. 30, 2009).

¹²¹ *Id.*

¹²² See *Revolutionary Armed Forces of Colombia*, GLOBALSECURITY.ORG, <http://www.globalsecurity.org/military/world/para/farc.htm> (last visited Sept. 15, 2015).

group is notorious for assassination attempts on major Colombian political figures.¹²³

The FARC funds its operations predominantly through cultivating coca plants to make cocaine, and generates between \$200 and \$400 million annually in revenue.¹²⁴ The FARC has diversified its sources of revenue by expanding into the illegal markets of prostitution, kidnapping, extortion, and rural farming taxation schemes.¹²⁵ Though it began predominantly as an ideological group, the FARC evolved into a major cocaine trafficking organization, and implemented terroristic tactics in order to further its lucrative narcotics operation.¹²⁶ The FARC slowly evolved from a politically motivated organization to one focused on both narcoprofits and political intimidation.

To counter this narcoterrorism threat, the U.S. government extradited José María Corredor-Ibague to the United States for violating section 960a.¹²⁷ During a grand jury hearing, the grand jury accused Corredor-Ibague of controlling airstrips used to transport cocaine between Venezuela and Colombia in exchange for high caliber firearms.¹²⁸ In its first charge against Corredor-Ibague, the grand jury emphasized that the FARC was an FTO under section 219 of the Immigration and Nationality Act.¹²⁹ In acknowledging the FARC's location on the State Department's FTO list, the grand jury demonstrated that no question existed as to the validity of charging a person with assisting the FARC in trafficking cocaine under

¹²³ In 2002, newly elected President Álvaro Uribe Vélez survived mortar shells during his inauguration in Bogotá. See, e.g., Juan Forero, *Explosions Rattle Colombian Capital During Inaugural*, N.Y. TIMES (Aug. 8, 2002), <http://www.nytimes.com/2002/08/08/world/explosions-rattle-colombian-capital-during-inaugural.html>.

¹²⁴ ENCYCLOPEDIA OF THE DEVELOPING WORLD, *supra* note 118, at 1362.

¹²⁵ *Id.*

¹²⁶ Donnie Marshall, *Narco-Terrorism: The New Discovery of an Old Connection*, 35 CORNELL INT'L L.J. 599, 602 (2002).

¹²⁷ Corredor-Ibague was the first person to be indicted for violating section 960a. See Thomas, Jr., *supra* note 16, at 1889.

¹²⁸ Indictment at 4, United States v. Corredor-Ibague, No. 1:06-cr-00344 (2006), http://counterterrorismblog.org/newslinks/upload/2008/10/us_two_colombians_arraigned_in/Boyaco_Terror_Indictment_113006%5B1%5D.pdf (indictment issued by the grand jury).

¹²⁹ *Id.* at 2.

section 960a. The Corredor-Ibague grand jury case illustrates the necessity of section 219 designation in charging an individual under section 960a. Without the FARC's inclusion on the FTO list, the possibility existed that the grand jury would have deemed section 960a inapplicable.

In September 2013, the United States District Court for the District of Columbia found Corredor-Ibague guilty of assisting the FARC in selling cocaine to materially support the group's terrorist campaign under section 960a.¹³⁰ In approving Corredor-Ibague's 16-year jail sentence, Acting Assistant Attorney General Raman, one of the case's prosecutors, explained that this unprecedented ruling demonstrated the Justice Department's commitment to incarcerate supporters of narcoterrorism.¹³¹ The case is indicative of how the Narcoterrorism Statute functions when applied to terrorist groups that are not Islamic fundamentalists.

The FARC has evolved into an entity focused as much on narcoprofit as on implementing its Marxist ideology. It implements campaigns of terror against the Colombian government and its citizens to further its cocaine empire and its Marxist goals.¹³² In sentencing Corredor-Ibague, the D.C. District Court referred to him as an international drug lord seeking to assist the FARC through drug sales.¹³³

IV. POLITICAL MOTIVATION

The recognition of the FARC's narcoterror agenda is comparable to that of Los Zetas and the Juárez Cartel, and offers support as to why these Mexican DTOs operate in accordance

¹³⁰ *High-Level Colombian Drug Trafficker Sentenced to 194 Months in Prison*, DEP'T OF JUSTICE (Sept. 16, 2013), <http://www.justice.gov/opa/pr/high-level-colombian-drug-trafficker-sentenced-194-months-prison>.

¹³¹ *Id.*

¹³² Although attacks conducted by FARC occur less frequently than during the 1990s and early 2000s, the organization still seeks to further their political goals through violence. See, e.g., *Colombia Farc Rebel Attack Leave 500,000 Without Power*, BBC NEWS, June 12, 2015, <http://www.bbc.com/news/world-latin-america-33105398>.

¹³³ *High-level Colombian Drug Trafficker Sentenced to 194 Months in Prison*, *supra* note 130.

with section 960a's requirement of political motivation. Though the FARC began as an organization outspoken against the Colombian government, it evolved into a group that sought to gain narcoprofits while also seeking to wage war against the state.¹³⁴ In regard to Los Zetas and the Juárez Cartel, their evolutionary history is the opposite of the FARC's: they began merely as DTOs but are now pursuing the eradication of the Mexican government in several Mexican states while waging war against American police forces.¹³⁵ Though these cartels may not expressly state that their intentions are politically motivated, their actions demonstrate that they are not only motivated in violently toppling democratically elected governments, but are successful in doing so.¹³⁶ An inquiry into the definition of "terrorism" found within section 960a reveals that Congress not only aimed to include Mexican DTOs as terrorist organizations, but also that Los Zetas and the Juárez Cartel currently display the proper political motivation necessary to be deemed FTOs.

A. Cartel Actions: More than Purely Financial Gain

The definition of "terrorism" in section 960a is "premeditated, *politically motivated* violence perpetrated against noncombatant targets by subnational groups or clandestine agents" (emphasis

¹³⁴ See ENCYCLOPEDIA OF THE DEVELOPING WORLD, *supra* note 118, at 1362-63.

¹³⁵ This eradication is apparent through the DTOs' successful disruption of political processes and social structures. See, e.g., *Barrio Azteca Leader Sentenced to Life in Prison and Two Barrio Azteca Soldiers Sentenced to 20 and 30 Years in Prison*, DEP'T OF JUSTICE, June 29, 2012, <http://www.justice.gov/opa/pr/barrio-azteca-leader-sentenced-life-prison-and-two-barrio-azteca-soldiers-sentenced-20-and-30> (describing cartel tax systems); Jo Tuckman, *Leading Politician Rodolfo Torre Cantú Murdered in Mexico*, THE GUARDIAN (June 28, 2010), <http://www.theguardian.com/world/2010/jun/29/leading-politician-rodolfo-torre-cantu-murdered-mexico>; *Clinton Says Mexico Drug Crime like an Insurgency*, BBC NEWS, Sept. 9, 2010, <http://www.bbc.com/news/world-us-canada-11234058> (Secretary of State Hillary Clinton equating Mexican DTO violence to an "insurgency").

¹³⁶ See, e.g., Guadalupe Correa-Cabrera, *The Spectacle of Drug Violence: American Public Discourse, Media, and Border Enforcement in the Texas-Tamaulipas Border Region During Drug-War Times*, 7 NORTEAMÉRICA 199, 208 (2012) (quoting Representative Silvestre Reyes) ("[cartel members] frequently engage in brutal acts of narco-terrorism to undermine democratic institutions and the rule of law, and to incite fear among the people and law enforcement"); Shawn T. Flanigan, *Terrorists Next Door? A Comparison of Mexican Drug Cartels and Middle Eastern Terrorist Organizations*, 24 TERRORISM AND POLITICAL VIOLENCE 279, 285-87 (2012).

added).¹³⁷ Though section 960a applies to those persons who assist a group engaging in either “terrorist activity” or “terrorism,” it is necessary to determine that both Los Zetas and the Juárez Cartel engage in terrorism to ensure that these DTOs are defined cohesively for section 219 and section 960a purposes. It is not enough to cite extreme violence by these organizations because other Mexican DTOs commit similar acts without adequate political motivations. To be considered “politically motivated” for the purposes of meeting this standard, Los Zetas and the Juárez Cartel must seek to coerce the Mexican and American governments to act in a certain way through terrorist tactics and violence.

Several experts in Mexican cartel violence argue that only profits motivate Los Zetas and the Juárez Cartel.¹³⁸ Los Zetas and the Juárez Cartel are often described as not “wish[ing] to remove the Mexican Government and replace it with one of their own...[t]hey simply want to maximize their profits and keep government...out of their business.”¹³⁹ The conclusion that these DTOs are motivated only by profit overlooks the intentionality of their sheer violence against civilians and public employees, strategic targeting schemes against politicians and police, and quasi-governmental structures in controlled territories. The actions of Los Zetas and the Juárez Cartel speak louder than words and are vital in recognizing their commitment to disrupt and hamper the Mexican government.

Former Secretary of Homeland Security Michael Chertoff explained that Mexican DTOs seek to “terrorize the population of Mexico so that either [the] President...will be forced to pull back, or

¹³⁷ 22 U.S.C. § 2656f(d)(2) (2004).

¹³⁸ See, e.g., Shawn T. Flanigan, *supra* note 136, at 285-87; see also Ben Jakovljevic, *Terror in Trading: Should the United States Classify Mexican Drug Trafficking Organizations as Terrorist Organizations?*, 23 S. CAL. INTERDISC. L.J. 355, 383-85 (2014).

¹³⁹ Sylvia M. Longmire & Lt. John P. Longmire, *Redefining Terrorism: Why Mexican Drug Trafficking is More than Just Organized Crime*, 1 J. OF STRATEGIC STUD. 35, 47 (2008) (arguing that organizations do not need to display political motivation to constitute as terrorist organizations, offering Autodefensas Unidas de Colombia as an example of a non-politically motivated terrorist organization).

[be] willing to make peace with the cartels.”¹⁴⁰ This became glaringly true when members of Los Zetas assassinated gubernatorial candidate Rodolfo Torre Cantú in the state of Tamaulipas in 2010.¹⁴¹ Following Cantú’s assassination, more political figures and law enforcement personnel were assassinated, including twelve mayors, police officers, and military personnel.¹⁴² In targeting and assassinating political figures, Los Zetas and the Juárez Cartel have disrupted the Mexican political process, which allows these DTOs to control vast areas of the nation for their own benefit. Killing these political and law enforcement figures allows Los Zetas and the Juárez Cartel to implement taxes that lesser illicit narcotics organizations¹⁴³ and civilians living in territory controlled by the DTOs must pay.¹⁴⁴ Taxation is a vital part of a state’s functionality in governing its citizens. Los Zetas and the Juárez Cartel understand the importance of these taxes, and use deadly force and terror tactics to implement their own taxes and eliminate government competition for tax revenue collection. These DTOs target and kill citizens, political figures, and law enforcement not only to further drug profits, but also to function as a quasi-political state and strike fear in the Mexican and American populations.

B. *Los Zetas and the Juárez Cartel: A Threat to U.S. National Security*

Los Zetas and the Juárez Cartel attempt to disrupt and undermine the U.S. government in several ways. In particular, Los

¹⁴⁰ Michael Chertoff, *Keynote Address: “The Nexus Between Drug Trafficking, Terrorism and Organized Crime”*, 13 CHAP. L. REV. 681, 685 (2010).

¹⁴¹ See Tuckman, *supra* note 135.

¹⁴² O’Donnell & Gray, *supra* note 18, at 30.

¹⁴³ See Samuel Logan, *A Profile of Los Zetas: Mexico’s Second Most Powerful Drug Cartel*, COMBATING TERRORISM CTR. (Feb. 16, 2012), <https://www.ctc.usma.edu/posts/a-profile-of-los-zetas-mexicos-second-most-powerful-drug-cartel>. See also *Barrio Azteca Leader Sentenced to Life in Prison and Two Barrio Azteca Soldiers Sentenced to 20 and 30 Years in Prison*, *supra* note 135 (explaining that Barrio Azteca extorts “quota,” or taxes, on non-Barrio Azteca drug dealers).

¹⁴⁴ See GEORGE W. GRAYSON, *MEXICO: NARCO-VIOLENCE AND A FAILED STATE?* 82 (Transaction Publishers 2010) (describing the territory tax Mexican citizens pay to drug cartels). See also *A LINE IN THE SAND*, *supra* note 50, at 39 (2012) (explaining that Los Zetas burnt down a casino because its owners refused to pay a protection tax).

Zetas allegedly maintains ties with Hezbollah, a group the United States has recognized as an FTO since 1997.¹⁴⁵ Also, both DTOs have targeted and killed U.S. civilians, border patrol agents, and diplomats. The concentration of violence along the U.S.-Mexico border and the terroristic activity instigated by these DTOs toward Americans support the conclusion that Los Zetas and the Juárez Cartel should receive FTO status.

With the steady influx of Lebanese nationals immigrating to Mexico, both legally and illegally for decades, members of Hezbollah, a State Department-designated FTO, have reportedly settled in the Central American nation.¹⁴⁶ While Hezbollah traditionally operates out of the tri-border region of Argentina, Brazil, and Paraguay,¹⁴⁷ the FTO also functions in Mexico.¹⁴⁸ Los Zetas members and affiliates have allegedly helped Hezbollah establish residencies in Mexico, engage in illegal drug trade, launder money, and possibly enter the United States illegally.¹⁴⁹ In return, Hezbollah has purportedly trained cartel members in bomb construction and explosives development, and provided them with weapons.¹⁵⁰

¹⁴⁵ See *Foreign Terrorist Organizations*, *supra* note 15. The extent of these ties is unknown at the time of publication for this Comment.

¹⁴⁶ Rosenthal, *supra* note 19.

¹⁴⁷ LIBRARY OF CONG., TERRORIST AND ORGANIZED CRIME GROUPS IN THE TRI-BORDER AREA (TBA) OF SOUTH AMERICA 14 (ed. 2015).

¹⁴⁸ See O'Donnell & Gray, *supra* note 18, at 32. See also *See Hezbollah in Latin America – Implications for U.S. Homeland Security: Hearing Before the Subcomm. On Counterterrorism and Intelligence*, 112th Cong. 27 (2011) [hereinafter *Hezbollah in Latin America*] (explaining that Mexico serves as a “financial conduit” for Hezbollah and that Hezbollah has infiltrated the U.S. through the “porous” southern border); LIBRARY OF CONG., *supra* note 147, at 19 (describing a Hezbollah plot to assassinate President Vicente Fox and carry out a terrorist attack against the Mexican Senate in Mexico City on October 10, 2001).

¹⁴⁹ Rosenthal, *supra* note 19; *Terrorist group Hezbollah is Working with Mexican Cartels (U.S. Homeland Security)*, THE YUCATAN TIMES (May 30, 2015), <http://www.theyucantimes.com/2015/03/terrorist-group-hezbollah-is-working-with-mexican-cartels-u-s-homeland-security/> (explaining that Tom Diaz, former senior policy analyst at Violence Policy Center, claims that Hezbollah is involved with drug trafficking in Mexico).

¹⁵⁰ *Hezbollah in Latin America*, *supra* note 148, at 1 (written testimony of Ambassador Roger T. Noriega before the Subcommittee on Counterterrorism and Intelligence).

This emerging relationship poses a major national security concern for the United States, as evidenced by the recent attempted assassination of the Saudi Arabian ambassador in Washington D.C.¹⁵¹ Mannsor Arbabsiar, an affiliate of Hezbollah and Iran's al Quds Force, attempted to hire a Los Zetas hitman to bomb a restaurant while the Saudi ambassador dined there.¹⁵² Arbabsiar understood that the purported Los Zetas hitman would bomb the restaurant, and likely kill between 100 and 150 bystanders.¹⁵³ Any attempt by Hezbollah to use the cartel as a means to try and execute extensive terrorist attacks within the United States poses a direct threat to U.S. national security. The Arbabsiar plot indicates that Los Zetas is a potential asset for Islamic terrorist organizations seeking to act within in the Americas.

The Juárez Cartel also conducts terrorist acts against the United States and Mexican governments to alter their behavior. Through its proxy Barrio Azteca, the Juárez Cartel murdered U.S. Consulate employee Leslie Enriquez, her husband Arthur Redelfs, and Jorge Salcido, the husband of another Consulate employee.¹⁵⁴ Also, because the Juárez Cartel controls drug trafficking corridors through Texas, the cartel's operations are subject to the actions and influence of U.S. law enforcement. Furthermore, the Juárez Cartel seeks to remove U.S. personnel from its claimed territory in order to impose its tax plans¹⁵⁵ and continue drug trafficking, human smuggling, and indiscriminate migrant killings. The Juárez Cartel has a strong incentive to eliminate United States and Mexican governments from

¹⁵¹ Arbabsiar v. United States, No. 14 Civ. 3222, 2014 WL 6463229, at *5 (S.D.N.Y. Nov. 18, 2014); Peter Finn, *Man in Iran-Backed Plot to Kill Saudi Ambassador Gets 25 Years*, THE WASH. POST (May 30, 2013), https://www.washingtonpost.com/world/national-security/man-in-iran-backed-plot-to-kill-saudi-ambassador-gets-25-years/2013/05/30/0435e7a2-c952-11e2-8da7-d274bc611a47_story.html.

¹⁵² Reply Brief for Appellant, United States v. Ali-M Aldawsari, No. 5:11-CR-15-1 (5th Cir. 2013) (No. 12-11166), 2013 WL 4050816, at *21.

¹⁵³ *Id.* The Hezbollah affiliate contacted an undercover DEA agent posing as a member of Los Zetas and explained that he would bomb the restaurant, which would likely kill many bystanders. *Id.*

¹⁵⁴ See Press Release, Dep't of Justice, *supra* note 53.

¹⁵⁵ See Tuckman *supra* note 135. See also O'Donnell & Gray, *supra* note 18, at 30.

its territory, which would allow the Juárez Cartel to function as the sole authority in the greater Ciudad Juárez region.

While one stated goal of Los Zetas and the Juárez Cartel is to increase profits, their actions reveal their related goals of disrupting the U.S. and Mexican governments. The cartel was previously successful in partially overthrowing the Mexican government in cartel-controlled territories and may do so again in the future. The Juárez Cartel's activities altered the political and social frameworks within the state of Chihuahua and forced the U.S. government to respond to threats along the border. These governmental responses are enough to show that the Juárez Cartel aims to disrupt political life in Mexico and the United States. Thus, the cartel displays sufficient political motivation for FTO designation.

Upon receiving FTO designation, a Los Zetas or Juárez Cartel member, affiliate, or drug supplier need only assist Los Zetas or the Juárez Cartel in selling or cultivating illicit narcotics in order to be extradited to the United States, where they may be sentenced to lengthy incarceration in the American penal system.¹⁵⁶ This will aid the Mexican and American governments in combating the dangers posed by DTOs and convey that the United States deals with extreme terrorist cartels seriously and effectively.

V. JURISDICTIONAL CONCERNS

Though Los Zetas and the Juárez Cartel fulfill the requirements of an FTO outlined in section 219 of the Immigration and Nationality Act, the United States must also be able to assert proper extraterritorial jurisdiction over individuals assisting in selling or manufacturing illegal narcotics. Traditionally, the United States holds extraterritorial jurisdiction over an individual whose overt act outside of the United States effectuates an adverse occurrence within

¹⁵⁶ See 21 U.S.C. § 960a(a) (2006); *see also* Superseding Indictment at 4, 9, United States v. Juma Khan, No. S2 08 Cr. 621 (S.D.N.Y. 2009) (explaining that Haji Juma Khan violated 21 U.S.C. § 960a by supplying morphine base to the Taliban, a group actively engaging in terrorist activity).

American territory.¹⁵⁷ Jurisdiction may also extend to individuals whose conspiracy occurred outside the United States, but whose final effects were intended to occur within American territory.¹⁵⁸ Accordingly, when individuals seek to sell or cultivate illegal narcotics on behalf of Los Zetas or the Juárez Cartel abroad with the intent to cause an effect in the United States, the U.S. government possesses extraterritorial jurisdiction to extradite them to the United States for trial.

Two requirements must be met in order for section 960a to hold any weight in extraditing violators who are located outside U.S. territory: (1) the statute must clearly express Congress's intent for it to apply outside of the U.S.,¹⁵⁹ and (2) a treaty must exist between the United States and the nation in which the perpetrator is located.¹⁶⁰ The text of section 960a makes it clear that Congress intended to provide for U.S. jurisdiction over violators of the statute.

A. *Jurisdiction in Section 960a*

The statute includes the following section devoted solely to jurisdiction:

(b) Jurisdiction. There is jurisdiction over an offense under this section if...

¹⁵⁷ See, e.g., *United States v. Postal*, 589 F.2d 862, 885 (5th Cir. 1979) (stating that proof of an overt act in the U.S. creates extraterritorial jurisdiction over subsequent attempted acts abroad).

¹⁵⁸ Wayne R. LaFave, et al., *Federal Jurisdiction*, 4 Crim. Proc. § 16.4(b) (3d ed.) (describing "objective territoriality").

¹⁵⁹ See *United States v. Bowman*, 260 U.S. 94, 98-99 (1922) (explaining that the nature of the offense may allow Congress's intent to be inferred without a specific provision); see also, *United States v. Martinelli*, 62 M.J. 52, 61 (C.A.A.F. 2005) (explaining that a statute's language "must be clear enough to overcome a presumption that it was intended to apply domestically, not simply lend itself to a plausible argument that it applies overseas.").

¹⁶⁰ DEP'T OF JUSTICE, U.S. ATTORNEY'S MANUAL tit. 9 § 15.210 (2015), <http://www.justice.gov/usam/usam-9-15000-international-extradition-and-related-matters#9-15.210>.

(2) the offense, the prohibited drug activity, or the terrorist offense occurs in or affects interstate or foreign commerce;

(3) an offender provides anything of pecuniary value for a terrorist offense that causes or is designed to cause death or serious bodily injury to a national of the United States while that national is outside the United States, or substantial damage to the property of a legal entity organized under the laws of the United States (including any of its States, districts, commonwealths, territories, or possessions) while that property is outside of the United States;

(4) the offense or the prohibited drug activity occurs in whole or in part outside of the United States (including on the high seas), and a perpetrator of the offense or the prohibited drug activity is a national of the United States or a legal entity organized under the laws of the United States (including any of its States, districts, commonwealths, territories, or possessions); or

(5) after the conduct required for the offense occurs an offender is brought into or found in the United States, even if the conduct required for the offense occurs outside the United States.¹⁶¹

The language in sections 960a(b)(2)-(5) suggests Congress intended section 960a to apply to actions conducted by both citizens and noncitizens alike. Section 960a(b)(4) grants the United States jurisdiction over section 960a violations occurring both partially, and completely, outside of the United States.¹⁶² The explicit nature of the statute's language may only be read as granting extraterritorial jurisdiction to perpetrators acting abroad.

The legislative history of section 960a also supports the notion that Congress intended to provide for extraterritorial jurisdiction. Senator John Cornyn observed, "this bill says that whether you are a member of or assisting a drug cartel along the border that employs terrorist tactics to protect its drug trade...this bill targets you."¹⁶³

¹⁶¹ 21 U.S.C. § 960a(b)(2)-(5) (2006).

¹⁶² *Id.*

¹⁶³ 151 CONG. REC. S9835, S9846 (daily ed. Sept. 8, 2005) (statement of Sen. Cornyn).

Congressman Henry Hyde added that the statute would create “a new crime that...address[es] and punish[es] those who would use...illicit narcotics to promote and support terrorism.”¹⁶⁴ Statements by Representatives and Senators demonstrate that Congress intended to grant extraterritorial jurisdiction over individuals supporting terrorist organizations through the illicit drug trade. These statements by Senator Cornyn and Representative Hyde outlined Congress’ concern about the relationship between the illegal narcotics trade and support of international terrorist organizations.¹⁶⁵ To combat this emerging dilemma, Congress enacted section 960a because they believed that section 960a would empower the United States to apprehend and try offending individuals in a U.S. court. Because both Los Zetas and the Juárez Cartel fulfill the criteria for FTO designation, the United States holds extraterritorial jurisdiction over members and affiliates of both DTOs who engage in the drug trade.

B. *International Extradition Treaties*

Though the Narcoterrorism Statute itself grants the United States jurisdiction over extraterritorial violations, a valid treaty of extradition must exist in order for the United States to compel a foreign perpetrator to appear in a U.S. court. According to the U.S. Attorney’s Manual, the United States must submit a request for extradition via the Office of International Affairs pursuant to an existing extradition treaty between the United States and the relevant foreign nation.¹⁶⁶ Additional requirements may also apply if they exist within the extradition treaty itself, which both parties must follow during the extradition process.¹⁶⁷

The extradition treaty relevant in this instance is the Extradition Treaty Between the United States of America and the United Mexican States (“Extradition Treaty”).¹⁶⁸ Signed in 1978, the

¹⁶⁴ 151 CONG. REC. H6273, H6292 (daily ed. July 21, 2005) (statement of Rep. Hyde).

¹⁶⁵ 151 CONG. REC. S9846 (daily ed. Sept. 8, 2005) (statement of Sen. Cornyn); 151 CONG. REC. H6292 (daily ed. July 21, 2005) (statement of Rep. Hyde).

¹⁶⁶ DEP’T OF JUSTICE, U.S. ATTORNEY’S MANUAL, *supra* note 160.

¹⁶⁷ *Id.*

¹⁶⁸ *See generally* Treaty Signed at Mexico City, May 4, 1978 appd’x, Jan. 25, 1980, 31 U.S.T. 5059.

Extradition Treaty allows either nation to request the extradition of an individual accused of committing murder, fraud, rape, robbery, embezzlement, extortion, trafficking and cultivating illegal narcotics, and offenses relating to the international transit of goods.¹⁶⁹ Under this treaty, both nations are compelled to comply with an extradition request if the requesting nation's "laws would provide for the punishment of such an offense committed in similar circumstances."¹⁷⁰ If Los Zetas and the Juárez Cartel become designated as FTOs, drug trafficking or cultivating drugs for either cartel would violate section 960a. Therefore, Mexico must extradite these individuals to the United States upon request.¹⁷¹

VI. CONCLUSION

In 2012, several members of Congress attempted to pass a law designating Los Zetas, the Sinaloa Cartel, and the Gulf Cartel as terrorist organizations under the Immigration and Nationality Act.¹⁷² This legislation ultimately died in the House of Representatives, and none of these cartels became FTOs.¹⁷³ This bill failed to distinguish between cartels engaging in acts reminiscent of traditional organized crime as opposed to those engaging in terrorism. Mexican drug cartels are traditionally known to commit acts of violence against opposing cartel members and those law enforcement members who pose major threats to drug operations. These DTOs are motivated by money when committing violence and do not seek to control vast areas of Mexican territory to create quasi-governmental structures.

¹⁶⁹ *Id.* (the Treaty includes various other criminal offenses, but the offenses listed pertain to Los Zetas and the Juárez Cartel).

¹⁷⁰ Treaty Signed at Mexico City, May 4, 1978 art. 1, Jan. 25, 1980, 31 U.S.T. 5059.

¹⁷¹ To successfully extradite these individuals to the U.S., other treaty obligations must be followed, like presenting evidence and fulfilling timing requirements. *See generally* Treaty Signed at Mexico City, May 4, 1978 arts. 3, 4, 7, 8, 10, 12, and 13, Jan. 25, 1980, 31 U.S.T. 5059.

¹⁷² This bill also included the Arellano Feliz Organization, the Beltran Leyva Organization, and La Familia Michoacana. H.R. 4303, 112th Cong. (2012).

¹⁷³ *Bill & Summary Status, 112th Congress (2011-2012): H.R. 4303 All Congressional Actions*, THE LIBR. OF CONGRESS, THOMAS, <http://thomas.loc.gov/cgi-bin/bdquery/z?d112:HR04303:@@X> (last visited Sept. 17, 2015) (showing the last major action taken in the House on this bill occurred on May 7, 2012).

Los Zetas and the Juárez Cartel, however, are not stereotypical cartels and thus should be designated as FTOs. These organizations create mayhem by indiscriminately attacking and killing Mexican civilians and migrants and significantly disturbing political life in Mexico and the United States. Both groups utilize terrorist tactics, like car bombings and beheadings, to further their goals of control, intimidation, and persuasion. Both are also not motivated only by monetary gain, for their actions ultimately lead to the disruption of the Mexican and American governments in significant ways.¹⁷⁴ Los Zetas in particular may be in the process of forming a relationship with Hezbollah or its affiliates.

In light of President Obama's Immigration Accountability Executive Action, the United States may experience an increase in illegal immigration along its southern border.¹⁷⁵ As a result, American national security likely faces increased violence, human trafficking, and death along regions of the U.S.-Mexico border controlled by Los Zetas and the Juárez Cartel.¹⁷⁶ Cartels target immigrants seeking to enter the United States illegally in order to use them to smuggle drugs¹⁷⁷ or to sell them into sex slavery.¹⁷⁸ Cartels like Los Zetas and

¹⁷⁴ See, e.g., Press Release, Dep't of Justice, *supra* note 53; Chertoff, *supra* note 140, at 685.

¹⁷⁵ The Executive Action arguably creates an added incentive to enter the U.S. illegally in order to take advantage of the expanded "provisional waiver" and "Lawful Permanent Residents" statuses either immediately or at some point in the future. See generally Fact Sheet, The White House, Immigration Accountability Executive Action (Nov. 20, 2014), <http://www.whitehouse.gov/the-press-office/2014/11/20/fact-sheet-immigration-accountability-executive-action>; Ian Smith, *Yes, Amnesty Encourages More Illegal Immigration*, NAT'L REVIEW, Feb. 26, 2015, <http://www.nationalreview.com/article/414436/defying-common-sense-immigration-ian-smith> (arguing that executive actions created by President Obama, including the creation of the Deferred Action for Childhood Arrivals program, incentivize migrants to cross the U.S.-Mexico border illegally).

¹⁷⁶ See, e.g., Seper, *supra* note 41; *Juarez Cartel*, INSIGHT CRIME, <http://www.insightcrime.org/mexico-organized-crime-news/juarez-cartel-profile> (last visited Sept. 26, 2015).

¹⁷⁷ See Jess Rollins, *In Missouri, Illegal Immigrants Used to Smuggle Drugs*, USA TODAY (Feb. 10, 2013), <http://www.usatoday.com/story/news/nation/2013/02/10/missouri-meth-smuggling-illegal-immigrants/1907003/>.

¹⁷⁸ See, e.g., Anne-Marie O'Connor, *Mexican Cartels Move into Human Trafficking*, THE WASH. POST (July 27, 2011), <http://www.washingtonpost.com/world/americas/>

the Juárez Cartel will likely take advantage of any influx in illegal immigration across the U.S.-Mexico border, posing a major threat to U.S. national security. The United States must implement a new policy to protect Americans and their interests against all current and future threats posed by cartels, especially those utilizing terrorist tactics.

The importance of designating both of these cartels as FTOs under section 219 of the Immigration and Nationality Act is crucial if the United States seeks to counter cartel violence. This designation refutes any notion that applying the Narcoterrorism Statute to individuals assisting designated cartels is improper. With the continuing threat of narcoterrorism adjacent to the American border, the potential for violence entering the United States is high. This is particularly true because both Los Zetas and the Juárez Cartel repeatedly target American civilians, police, and diplomats. To combat this major threat to national security, the United States must utilize current existing laws pragmatically and create a policy that does not repeat similar mistakes made in the recent past.

In the short term, a policy of tactical and relentless extraditions is an effective tool to combat terrorist funding in Mexico. The United States must not utilize extraditions of key terrorist leaders in the same manner used in Iraq and Colombia. The policy of “decapitation” of terrorist organizations continues to prove unsuccessful and, in the long term, detrimental to the security of American assets at home and abroad.¹⁷⁹ To better serve American interests, the U.S. government should seek to extradite individuals in the mid to lower ranks of these cartels as well as those individuals seeking to assist cartels in drug trafficking and cultivation. Section 960a should serve as both a way to incarcerate individuals that pose a major threat to American national security as well as dissuade those who aim to assist or are considering assistance as an option.



mexican-cartels-move-into-human-trafficking/2011/07/22/ gIQArmPVcl_
story.html.

¹⁷⁹ See, e.g., Felbab-Brown, *supra* note 20, at 8.