

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB JDC 24-02 Drug Cartels

SPONSOR(S): Judiciary Committee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Judiciary Committee	21 Y, 0 N	Leshko	Kramer

SUMMARY ANALYSIS

Drug cartels – sometimes referred to as transnational crime organizations – are defined by the United States Department of Justice, as:

Large, highly sophisticated organizations composed of multiple drug trafficking organizations (DTOs) and cells with specific assignments such as drug transportation, security and enforcement, or money laundering. Drug cartel command-and-control structures are based outside the United States; however, they produce, transport, and distribute illicit drugs domestically with the assistance of DTOs that are either a part of or in an alliance with the cartel.

Section 1189 of the Immigration and Nationality Act authorizes the United States Secretary of State to designate an organization as a foreign terrorist organization if the Secretary finds that:

- The organization is a foreign organization.
- The organization engages in terrorist activity, or retains the capability and intent to engage in terrorist activity or terrorism.
- The terrorist activity or terrorism of the organization threatens the security of United States nationals or the national security of the United States.

On February 8, 2023, 21 Attorneys General, including Florida Attorney General Ashley Moody, sent a letter to President Biden and Secretary Antony Blinken calling on them to designate the Sinaloa Cartel, the Cartel Jalisco Nueva Generación, and other similarly situated cartels as foreign terrorist organizations.

In March 2023, Secretary Antony Blinken stated in a United States Senate hearing that the Department would consider designating Mexican drug cartels as foreign terrorist organizations.

The memorial asserts that drug cartels are responsible for the export and distribution to the United States of wholesale amounts of fentanyl, methamphetamine, heroin, cocaine, and other illicit substances, which has caused tens of thousands of drug-related overdoses and deaths in this country. Additionally, the memorial indicates that in federal fiscal year 2023, the United States Customs and Border Protection seized 27,000 pounds of fentanyl and millions of fentanyl pills, which is enough to kill every American several times over, and that this amount only represents 10 to 15 percent of the fentanyl actually sent across the border into the United States each year.

The memorial further declares that drug cartels meet the criteria to be designated as foreign terrorist organizations.

The memorial is directed to the United States Department of State urging the United States Secretary of State to designate drug cartels as foreign terrorist organizations, so that appropriate means may be initiated to mitigate and, eventually, eliminate their operations.

Legislative memorials are not subject to the Governor's veto powers and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the federal government to act on a particular subject.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

United States Customs and Border Protection

Immigration

The Federal Government establishes and enforces immigration laws. The federal Immigration and Nationality Act (INA) contains many of the most important provisions of immigration law.¹

The Department of Homeland Security, the United States Immigration and Customs Enforcement, Enforcement and Removal Operations, is responsible for enforcing the immigration laws and identifying, apprehending, and removing aliens who are a risk to national security or public safety, who are in the country illegally, or who undermine the integrity of the country's immigration laws or border control efforts.²

The United States Customs and Border Protection (CBP) is the federal law enforcement agency responsible for securing the nation's borders and facilitating international travel and trade. The CBP's top priority is to keep terrorists and their weapons from entering the United States.

In federal fiscal year (FFY) 2023,³ the total enforcement actions of the Office of Field Operations (OFO) and the U.S. Border Patrol (USBP)⁴ were 1,137,452, and are 354,753 to date in FFY 2024, including apprehensions, inadmissibles, and expulsions.^{5, 6}

Criminal noncitizens⁷ encountered at the United States borders are a subset of the total inadmissibles encountered and United States Border Patrol arrests of criminal noncitizens are a subset of total apprehensions. Encounters with criminal noncitizens for the past five years at all land borders were:⁸

FFY 2020	FFY 2021	FFY 2022	FFY 2023	FFY 2024 (to date)
7,009	6,567	16,993	20,166	4,805

Drug Seizures

¹ 8 U.S.C. §§ 1101-1778.

² U.S. Immigration and Customs Enforcement, *Enforcement and Removal Operations, Mission*, <https://www.ice.gov/ero> (last visited Feb. 1, 2024).

³ The federal fiscal year runs October 1 – September 30.

⁴ Both are federal law enforcement agencies under CBP.

⁵ CBP, *CBP Enforcement Statistics Fiscal Year 2023*, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics> (last visited Feb. 1, 2024).

⁶ These figures include both Title 8 enforcement actions and Title 42 expulsions. Title 8 enforcement actions include apprehensions or inadmissibles. Inadmissibles refers to individuals encountered at ports of entry who are seeking lawful admission into the U.S. but are determined to be inadmissible, individuals presenting themselves to seek humanitarian protection under our laws, and individuals who withdraw an application for admission and return to their countries of origin within a short timeframe. Apprehensions refers to the physical control or temporary detainment of a person who is not lawfully in the U.S. which may or may not result in an arrest. Title 42 expulsions refers to individuals encountered by USBP or OFO and expelled to the country of last transit or home country in the interest of public health. CBP, *Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions Fiscal Year 2023*, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics> (last visited Feb. 1, 2024).

⁷ "Criminal noncitizens" refers to noncitizens who have been convicted of a crime, whether in the U.S. or abroad, so long as the conviction is for conduct which is deemed criminal in the United States. CBP, *CBP Enforcement Statistics Fiscal Year 2023*, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics> (last visited Feb. 1, 2024).

⁸ CBP, *supra* at note 5.

OFO and USBP reported the following drug seizure statistics for the past four years:⁹

	FFY 2021	FFY 2022	FFY 2023	FFY 2024 (to date)
Drug Seizure Events	82,946	62,465	53,538	12,677
Drug Seizure Weight (lbs)	913,000	656,000	549,000	116,000

Additionally, of the total weight of drugs seized, methamphetamine, cocaine, and fentanyl accounted for 248,000 pounds of the total weight in FFY 2023 and 57,500 pounds of the total weight in FFY 2024 to date,¹⁰ which is almost 50 percent of the total seizure weight each year.

Most of these seizures are not large scale, but rather consistent seizures of between five and ten kilograms (11 to 22 pounds) from individuals crossing the border on a constant basis.¹¹

Drug Cartels

Drug cartels – sometimes referred to as transnational crime organizations (TCOs)¹² – are defined by the United States Department of Justice (DOJ), as:

Large, highly sophisticated organizations composed of multiple drug trafficking organizations (DTOs) and cells with specific assignments such as drug transportation, security and enforcement, or money laundering. Drug cartel command-and-control structures are based outside the United States; however, they produce, transport, and distribute illicit drugs domestically with the assistance of DTOs that are either a part of or in an alliance with the cartel.¹³

In its 2020 National Drug Threat Assessment, the United States Drug Enforcement Administration identified the nine Mexican TCOs having the greatest drug trafficking impact on the United States, including the:

- Sinaloa Cartel.
- Cartel Jalisco Nueva Generación (CJNG).
- Beltran-Leyva Organization.
- Cartel del Noreste and Los Zetas.
- Guerreros Unidos.
- Gulf Cartel.
- Juarez Cartel and La Linea.
- La Familia Michoacána.

⁹ CBP, *Drug Seizure Statistics*, <https://www.cbp.gov/newsroom/stats/drug-seizure-statistics> (last visited Feb. 1, 2024).

¹⁰ *Id.*

¹¹ NPR, Joel Rose, *Who is sneaking fentanyl across the southern border? Hint: it's not the migrants*, Aug. 9, 2023, <https://www.npr.org/2023/08/09/1191638114/fentanyl-smuggling-migrants-mexico-border-drugs> (last visited Feb. 1, 2024).

¹² “Organized crime has been defined as ‘illegal activities, conducted by groups or networks acting in concert by engaging in violence, corruption or related activities in order to obtain, directly or indirectly, a financial or material benefit.’ Transnational organized crime occurs when these activities, or these groups or networks, operate in two or more countries.” Transnational crime organizations engage in a broad range of criminal activities, including, but not limited to, drug and weapons trafficking, human smuggling, human trafficking, cybercrime, and money laundering, generating an estimated revenue of between \$1.6 trillion and \$2.2 trillion annually. Dr. Marina Caparini, *Transnational organized crime A threat to global public goods*, Stockholm International Peace Research Institute (Sept. 2, 2022), <https://www.sipri.org/commentary/topical-background/2022/transnational-organized-crime-threat-global-public-goods> (last visited Feb. 1, 2024); Executive Order 14060, Establishing the United States Council on Transnational Organized Crime, 86 Fed. Reg. 71793 (Dec. 15, 2021).; See The White House, *FACT SHEET: The Biden Administration Launches New Efforts to Counter Transnational Criminal Organizations and Illicit Drugs*, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/15/fact-sheet-the-biden-administration-launches-new-efforts-to-counter-transnational-criminal-organizations-and-illicit-drugs/> (last visited Feb. 1, 2024) and Channing Mavrellis, *Transnational Crime and the Developing World*, Global Financial Integrity (Mar. 27, 2017), <https://gointegrity.org/report/transnational-crime-and-the-developing-world/> (last visited Feb. 1, 2024).

¹³ United States Department of Justice, National Drug Intelligence Center, National Drug Threat Assessment 2010, *Drug Trafficking Organizations*, <https://www.justice.gov/archive/ndic/pubs38/38661/dtos.htm> (last visited Feb. 1, 2024).

- Los Rojos.¹⁴

Mexican TCOs take in between \$19 billion and \$29 billion annually from drug sales in the United States.¹⁵

Mexican TCOs use a wide range of smuggling techniques to move drugs into the United States including via:

- Commercial and passenger vehicles with concealed compartments or commingled with legitimate goods.
- Underground tunnels that originate in Mexico and end in safe houses in the United States.
- Commercial cargo trains, passenger buses, and maritime vessels.
- Backpackers and couriers, also known as drug mules.
- Airdrops.¹⁶

“These TCOs expand their criminal influence by engaging in business alliances with other organizations, including independent DTOs, and working in conjunction with transnational gangs, United States-based street gangs, prison gangs, and Asian money laundering organizations.”¹⁷ Additionally, TCOs have increasingly engaged in violence for political purposes and to intimidate uncooperative government officials and the general public.¹⁸

Moreover, TCOs strive to increase profits and market control through diversification. TCOs often use the same routes for drug trafficking for different illicit activities including human, weapons, and wildlife trafficking.¹⁹ For instance, TCOs use trafficked women and children to smuggle drugs across the border, doubling up on the money they can make from these victims.²⁰ TCOs use drugs both as a lure to recruit people who have a substance abuse disorder and as a means to assert control over their victims.²¹

March 2023 Abduction of Americans by Gulf Drug Cartel

In March 2023, four Americans traveling in Matamoros,²² Mexico came under fire and were kidnapped by the Gulf drug cartel that likely mistakenly misidentified the Americans as Haitian drug smugglers.²³ Two of the Americans were killed and while the other two survived, one suffered several gunshot wounds.²⁴ The incident highlights the ongoing violence in some Mexican cities that are wracked by conflict and violence due to drug trafficking and territorial disputes between drug cartels.²⁵

Foreign Terrorist Organizations

¹⁴ United States Drug Enforcement Administration (DEA), *2020 National Drug Threat Assessment*, p. 66, https://www.dea.gov/sites/default/files/2021-02/DIR-008-21%202020%20National%20Drug%20Threat%20Assessment_WEB.pdf (last visited Feb. 1, 2024).

¹⁵ CNN, *Mexico Drug War Fast Facts*, <https://www.cnn.com/2013/09/02/world/americas/mexico-drug-war-fast-facts/index.html> (last visited Feb. 1, 2024).

¹⁶ DEA, *supra* at 14, p. 69.

¹⁷ CNN, *supra* at note 15, at p. 65.

¹⁸ Center for Security Policy, Kyle Shideler, *Decision Brief: A new designation to address the growing threat from cartels*, Oct. 20, 2023, <https://centerforsecuritypolicy.org/decision-brief-a-new-designation-to-address-the-growing-threat-from-cartels/> (last visited Feb. 1, 2024).

¹⁹ Interpol, *Drug trafficking*, <https://www.interpol.int/en/Crimes/Drug-trafficking> (last visited Feb. 1, 2024).

²⁰ DEA, Jarod Forget, Special Agent in Charge, Washington D.C. Division, *Violent drug organizations use human trafficking to expand profits*, Jan. 28, 2021, <https://www.dea.gov/stories/2021/2021-01/2021-01-28/violent-drug-organizations-use-human-trafficking-expand-profits> (last visited Feb. 1, 2024).

²¹ *Id.*

²² Matamoros is located just across the Rio Grande from Brownsville, Texas. CNN, *4 US citizens were kidnapped by gunmen in Mexico in case of mistaken identity, US official says*, <https://www.cnn.com/2023/03/06/americas/fbi-mexico-kidnapping-us-citizens/index.html> (last visited Feb. 1, 2024).

²³ *Id.*

²⁴ CNN, *2 Americans kidnapped in Mexico found dead and 2 found alive, officials say*, <https://www.cnn.com/2023/03/07/americas/mexico-matamoros-us-citizens-kidnapping-tuesday/index.html> (last visited Feb. 1, 2024).

²⁵ CNN, *supra* at note 15.

Section 1189 of the Immigration and Nationality Act²⁶ authorizes the United States Secretary of State (Secretary) to designate an organization as a foreign terrorist organization if the Secretary finds that:

- The organization is a foreign organization.
- The organization engages in terrorist activity,²⁷ or retains the capability and intent to engage in terrorist activity or terrorism.²⁸
- The terrorist activity or terrorism of the organization threatens the security of United States nationals or the national security of the United States.

Upon proper notification by the Secretary, the Secretary of the Treasury may require United States financial institutions possessing or controlling any assets of any foreign terrorist organization to block all financial transactions involving those assets until further directive from either the Secretary of the Treasury, Act of Congress, or order of court.²⁹

Effects of Designation

The United States Department of State (Department) asserts that designating an organization as a foreign terrorist organization:

- Supports the Department's efforts to curb terrorism financing and to encourage other nations to do the same.
- Stigmatizes and isolates designated terrorist organizations internationally.
- Deters donations or contributions to and economic transactions with named organizations.
- Heightens public awareness and knowledge of terrorist organizations.
- Signals to other governments our concern about named organizations.³⁰

Specifically, such a designation has legal ramifications for both the organizations and individuals who are members of such organizations. Section 2339B of Title 18, U.S.C.A., prohibits a person from knowingly providing, or attempting or conspiring to provide, material support or resources to a foreign terrorist organization.³¹ Additionally, any financial institution that becomes aware that it is in possession of, or has control over, any funds in which a foreign terrorist organization, or its agent, has an interest must retain possession, or control over, such funds and report to the Secretary of the Treasury the existence of such funds.^{32, 33}

Section 1225 of the Immigration and Nationality Act, authorizes an immigration officer or an immigration judge to order an alien³⁴ removed without further hearing if the immigration officer or immigration judge

²⁶ 8 U.S.C.A. §1189.

²⁷ "Terrorist activity" means any activity which is unlawful under the laws of the place where it is committed, or which, if it had been committed in the United States, would be unlawful under the laws of the United States or any state, and which involves any of the following: the hijacking or sabotage of any conveyance, including an aircraft, vessel, or vehicle; the seizing or detaining, and threatening to kill, injure, or continue to detain, another individual in order to compel a third person, including a governmental organization, to do or abstain from doing any act as an explicit or implicit condition for the release of the individual seized or detained; a violent attack upon an internationally protected person or upon the liberty of such a person; an assassination; the use of any biological agent, chemical agent, nuclear weapon or device, explosive, firearm, or other weapon or dangerous device (other than for mere personal monetary gain) with the intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property, or a threat, attempt, or conspiracy to do any of the foregoing. 8 U.S.C.A. §1182(a)(3)(B)(iii).

²⁸ "Terrorism" means premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents. 22 U.S.C.A. §2656f(d)(2).

²⁹ 8 U.S.C.A. §1189(a)(2)(C).

³⁰ United States Department of State, *Foreign Terrorist Organizations*, <https://www.state.gov/foreign-terrorist-organizations/> (last visited Feb. 1, 2024).

³¹ Punishable by a fine or a term of imprisonment not to exceed 20 years, unless the death of any person results, and then a person who violates this prohibition is subject to any term of imprisonment up to and including life. 18 U.S.C.A. §2339B(a)(1).

³² 18 U.S.C.A. §2339B(a)(2).

³³ A financial institution that fails to comply with these provisions is subject to a civil penalty in an amount that is the greater of: \$50,000 per violation or twice the amount of the funds belonging to the foreign terrorist organization, or its agent, which the financial institution was required to retain possession or control over. 18 U.S.C.A. §2339B(b).

³⁴ "Alien" means any person not a citizen or national of the United States. 8 U.S.C.A. §1101(a)(3).

suspects that an arriving alien is inadmissible³⁵ because he or she is a member of a terrorist organization.³⁶

In January 2021, DOJ indicted 14 leaders of La Mara Salvatrucha, commonly known as MS-13,³⁷ on charges of terrorism and material support for terrorism, for their alleged intimidation of El Salvadoran government officials, and efforts to influence political outcomes in the Central American economy.³⁸

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Effect of Memorial

The memorial asserts that drug cartels are responsible for the export and distribution to the United States of wholesale amounts of fentanyl, methamphetamine, heroin, cocaine, and other illicit substances, which has caused tens of thousands of drug-related overdoses and deaths in this country. Additionally, the memorial indicates that in FFY 2023, CBP seized 27,000 pounds of fentanyl and millions of fentanyl pills, which is enough to kill every American several times over, and that this amount only represents 10 to 15 percent of the fentanyl actually sent across the border into the United States each year.

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B. SECTION DIRECTORY:

Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

³⁵ Any alien who at the time of entry or adjustment of status is within one or more of the classes of aliens inadmissible by the law existing at such time is deportable. 8 U.S.C.A. §1227(a)(1)(A).

³⁶ 8 U.S.C.A. §1182(a)(3)(B)(IV).

³⁷ A transnational criminal organization composed primarily of immigrants or descendants of immigrants from El Salvador, functioning in the United States since the 1980's, with more than 30,000 members in the world, and more than 10,000 in the United States. DOJ, *Department of Justice Fact Sheet on MS-13*, <https://www.justice.gov/opa/speech/file/958481/download> (last visited Feb. 1, 2024).

³⁸ Center for Security Policy, *supra* at note 19.

³⁹ Ltr. from the Office of the Attorney General of the Commonwealth of Virginia, Jason S. Miyares, et al., Attorneys General, to President Joe Biden and Secretary Antony Blinken, (Feb. 8, 2023), https://ago.vv.gov/Documents/Letter%20to%20the%20President%20and%20Secretary%20of%20State_2.8.2023.pdf (last visited Feb. 1, 2023).

⁴⁰ CBS News, *The U.S. could designate Mexican drug cartels as terrorist organizations – what would that mean?*, <https://www.cbsnews.com/news/mexican-drug-cartels-terrorist-organization-what-would-that-mean/> (last visited Feb. 1, 2024).

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES