

# Strengthening U.S. Efforts to Attack the Financial Networks of Cartels

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A REPORT

BY THE

UNITED STATES SENATE CAUCUS  
ON  
INTERNATIONAL NARCOTICS CONTROL

ONE HUNDRED SEVENTEENTH CONGRESS  
SECOND SESSION

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SEPTEMBER 2022

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WASHINGTON, D.C.

**U.S. SENATE CAUCUS ON INTERNATIONAL NARCOTICS CONTROL**

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## LETTER OF TRANSMITTAL

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### UNITED STATES SENATE CAUCUS ON INTERNATIONAL NARCOTICS CONTROL

Washington, D.C.  
September 2022

DEAR COLLEAGUE:

The attached report builds on the bipartisan Senate Caucus on International Narcotics Control's (the Caucus) report, titled *The Buck Stops Here: Improving U.S. Anti-Money Laundering Practices*. It represents the findings gathered by Caucus members and staff through hearings, briefings, interviews, and the review of documents from government and non-government subject matter experts. The report outlines how narcotics traffickers exploit gaps in the United States' anti-money laundering framework using both traditional and novel techniques to disguise and move their illicitly obtained profits, as well as recommendations for how to address those gaps. The proposed actions will help erode the international systems that narcotics traffickers and other criminals use to protect their illicit proceeds.

We look forward to working with you to implement these recommendations.

Sincerely,



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Senator Sheldon Whitehouse  
Chairman



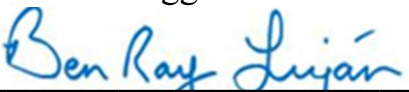
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Senator Richard Blumenthal



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Senator Maggie Hassan



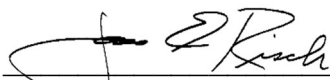
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Senator Ben Ray Lujan



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Senator Charles Grassley  
Co-Chairman



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Senator James E. Risch

## INTENT OF THIS REPORT

Money is the oxygen of drug trafficking organizations (DTOs).<sup>i,ii,iii</sup> Like kleptocrats and other criminal actors, DTOs use elaborate international systems to protect the secrecy of their ill-gotten wealth. Recently enacted legislation and current legislative initiatives address substantial vulnerabilities in the United States' anti-money laundering (AML) framework, but traffickers' evolving techniques and technologies demand that the United States further strengthen its AML regime while prioritizing the investigation and prosecution of the vast international money laundering schemes connected to the illicit narcotics trade that are cloaked in anonymity. This report offers recommendations on how to do so.

## FINDINGS AND RECOMMENDATIONS

*The illicit narcotics trade fuels corruption and thrives on illicit wealth. To address the supply and demand of illicit drugs, the United States must modernize its domestic authorities and redouble its efforts to help partner nations address corruption and cripple the financial networks of DTOs.*

### ASSIST PARTNER NATIONS IN STRENGTHENING GOVERNANCE AND JUDICIAL SYSTEMS

***Finding:*** The narcotics trade fuels corruption across the globe. Some partner nations have taken steps to reduce corruption by implementing transparency laws and establishing specially-tailored law enforcement units to fight corruption. However, in many drug producing and transit countries, corruption remains endemic due to weak governance and judicial structures.

***Recommendation:*** The United States should continue to seek opportunities to increase support for partner nations to defend their institutions from corruption, and to implement justice sector reforms to ensure the successful prosecution of narcotics traffickers. Failure to do so endangers U.S. counternarcotics efforts at home and abroad.

### BETTER TRACK WHOLE-OF-GOVERNMENT EFFORTS TO COMBAT NARCOTICS-RELATED ILLICIT FINANCE

***Finding:*** Attacking the financial networks of DTOs is critical to reducing the supply of illicit narcotics in the United States. At present, no mechanism exists to enable national drug control program agencies (NDCPAs) to track, without

duplication, the amount of revenue denied to DTOs or the number of investigations and related prosecutions.

**Recommendation:** The Caucus urges the Attorney General to convene an interagency working group to develop a standardized process by which all NDCPAs uniformly collect information on the number and status of investigations involving drug trafficking with a money laundering nexus. The working group should ensure that this process includes a mechanism to eliminate duplication in the case of seizures or forfeitures carried out and reported by multiple agencies so that the data can be disaggregated by agency.

## INCREASE INTERNATIONAL COOPERATION

### *Deploy Experts in Narcotics-Related Illicit Finance to Assist Partner Nations*

**Finding:** The U.S. Department of State's Bureau of International Narcotics and Law Enforcement Affairs (INL) facilitates training and support to help partner nations better address narcotics-related illicit finance. INL, for instance, collaborated with the Drug Enforcement Administration to host money laundering training courses that drug producing and transit countries, such as Colombia and Guatemala, attended in 2020. In addition to U.S.-led programming, INL engages with international organizations, such as the United Nations Office on Drugs and Crime, to boost partner countries' abilities to dismantle illicit finance schemes.

To build on these efforts, the *Anti-Money Laundering (AML) Act of 2020*, enacted as part of the *Fiscal Year (FY) 2021 National Defense Authorization Act*, expanded the Treasury attaché program and created the Foreign Financial Intelligence Unit Liaison program. These programs deploy U.S. financial experts to partner nations to strengthen AML frameworks and better engage with international financial organizations, including the Financial Action Task Force. Although less than the Department of the Treasury requested, Congress provided the Financial Crimes Enforcement Network (FinCEN) with \$161 million, which will be used, in part, to implement the Foreign Financial Intelligence Unit Liaison program, along with other programs established by the *AML Act*, in the *Consolidated Appropriations Act, 2022*. Congress also provided additional resources to FinCEN in the supplemental appropriation bills to support U.S. efforts in Ukraine.<sup>iv,v</sup> Congress, however, has not yet appropriated funds for the Treasury attaché program.

**Recommendation:** Within budgetary constraints, the Caucus urges Congress to support the Department of the Treasury's request for the attaché program.



Meanwhile, the Caucus also encourages FinCEN to quickly stand up the liaison program and ensure officials' expertise for both programs include narcotics-related finance.

### ***Authorize Trade Transparency Units and Increase Data Sharing***

***Finding:*** Trade-based money laundering (TBML) “is the process of disguising criminal proceeds through trade to legitimize their illicit origins.”<sup>vi</sup> Drug traffickers frequently use TBML schemes like the Black Market Peso Exchange (BPME), mirror transfers, and double invoicing to move and launder their illicit drug proceeds. Professional money laundering organizations, primarily from China, increasingly facilitate TBML transactions for drug traffickers.<sup>vii</sup>

Trade Transparency Units (TTUs), which are operated by the Department of Homeland Security (DHS), are the United States' main weapon in combating TBML. These units allow the United States and certain partner nations to share trade data to detect TBML. DHS currently does not share TTU data with other U.S. law enforcement agencies, which the Government Accountability Office notes could hinder the federal response to TBML.

TTUs draw funds from the Treasury Executive Office for Asset Forfeiture (TEOAF) allotments to the National Targeting Center-Investigations, which can vary from year to year.

***Recommendation:*** The Caucus urges Congress to authorize the TTU program. The Caucus further urges DHS to continue developing TTUs with allied partner nations that could enhance efforts to combat TBML. The Caucus additionally urges DHS to share its TTU data with other U.S. law enforcement agencies, provided that such data sharing does not jeopardize U.S. relationships with partner nations with whom DHS already has TTU agreements.

## **TAKE REGULATORY ACTION TO CLOSE LOOPHOLES IN THE UNITED STATES' AML FRAMEWORK**

### ***Prevent Narcotics Traffickers from Using Opaque Corporate Structures to Launder Funds***

***Finding:*** Narcotics traffickers exploit gaps in U.S. law to establish opaque corporate structures, such as shell companies, for purposes of laundering their illicit proceeds. Chairman Whitehouse's *Corporate Transparency Act (CTA)*,

enacted as part of the *FY 2021 National Defense Authorization Act*, required financial institutions to gather beneficial ownership information—the true identity of the person behind the corporate entity—and report it to a centralized database. FinCEN, citing a lack of funding, did not meet its statutory deadline to finalize the implementing regulations for this law. The *Consolidated Appropriations Act, 2022* provides FinCEN with \$161 million, which “includes funds for FinCEN to develop and maintain a national beneficial ownership database...”<sup>viii</sup>

**Recommendation:** The Caucus urges FinCEN to use the funds Congress provided to it in the *Consolidated Appropriations Act, 2022* to expeditiously complete the CTA’s rulemaking process. Doing so will help prevent narcotics traffickers from exploiting the U.S. financial system to launder and safeguard their illicit proceeds.

### ***Finalize Rules to Require Cross-Border Reporting of Stored Value***

**Finding:** Stored value, such as prepaid cards and mobile phone applications, are not subject to cross-border reporting requirements. As such, they provide narcotics traffickers with an easy and anonymous means to transport illicit proceeds across international borders. Congress enacted the *Credit Card Accountability Responsibility and Disclosure Act* in 2009 to address this vulnerability. A proposed rule was also issued in 2011 but it was never finalized.

**Recommendation:** The Caucus urges the Department of the Treasury to expeditiously finalize and implement regulations subjecting stored value to cross-border reporting requirements.

## **BETTER UTILIZE AND STRENGTHEN THE U.S. AML SYSTEM**

### ***Use Current Law to Hold Culpable Banks, Employees and Executives Accountable***

**Finding:** Large financial institutions, even after investing in AML reporting and record-keeping requirements, consider fines for flouting those same requirements an insignificant cost of doing business, leading to widespread noncompliance. This permits drug traffickers and other bad actors to abuse the U.S. financial system to hide their illicitly obtained profits.

**Recommendation:** The Department of Justice should use its existing authorities to aggressively investigate, prosecute, and pursue the maximum allowable criminal

penalties for banks and their employees and executives, who are knowingly and intentionally responsible for criminal activity.

***Ensure Passage of Legislation to Strengthen and Modernize U.S. Anti-Money Laundering Laws***

***Finding:*** While the United States has a robust AML framework, DTOs and other criminals continue to exploit loopholes in this framework to launder and safeguard illicit funds. Co-Chairmen Grassley, Whitehouse and their colleagues have repeatedly introduced the *Combating Money Laundering, Terrorist Finance, and Counterfeiting Act*. The bill seeks to better deter money laundering techniques used by DTOs and other criminals, including by prohibiting the transfer of funds into and out of the United States in order to avoid paying taxes, and to modernize the United States' AML framework to keep pace with new illicit finance techniques.

The Senate Judiciary Committee passed this legislation during the 116<sup>th</sup> Congress, but the bill never received a vote in the full Senate. Co-Chairmen Grassley and Whitehouse, with Senators Cornyn, Klobuchar, and Feinstein, reintroduced the bill during the 117<sup>th</sup> Congress.

***Recommendation:*** The Caucus urges the swift passage and enactment of the *Combating Money Laundering, Terrorist Finance, and Counterfeiting Act*.

## SCOPE OF THE PROBLEM

In 2013, the Caucus issued a report that concluded, “[s]imply put, illicit proceeds from crime are ‘blood money,’ and blood money has no place in the U.S. financial system. Therefore, much more needs to be done to improve the U.S. anti-money laundering [AML] framework.”<sup>ix</sup> While the United States has made some improvements since that report was issued, drug traffickers continue to use international networks to exploit loopholes and lax enforcement to hide illicit funds. They also exploit weak laws in other countries to manufacture, move, and traffic illicit drugs, and to hide the associated proceeds.

### *The Nexus between Drug Trafficking Organizations and Money Laundering*

Drug trafficking organizations (DTOs) are singularly focused on increasing their profit margin. The illicit drug trade in the United States is estimated to be worth \$150 billion.<sup>x</sup> Worldwide, it is worth as much as \$652 billion.<sup>xi</sup> The nearly \$17.4 billion that the United States spends on attacking the illicit drug supply, including the flow of illicit funds, pales in comparison.<sup>xii</sup>

DTOs launder illicit funds in two primary ways: concealing their ill-gotten gains and promoting continued drug trafficking and production. Federal criminal law prohibits both methods.<sup>xiii</sup> When DTOs use the cash obtained from selling illicit drugs to buy more illicit drugs for resale, it can constitute money laundering because it uses the proceeds of drug trafficking to promote further drug trafficking.<sup>xiv</sup> As discussed in this report, DTOs constantly seek new ways to take advantage of technology and financial services and products to both conceal their dirty money and promote their illegal activities spanning the globe.

### *The Consequences of Drug Trafficking and Money Laundering*

The consequences associated with the illicit drug trade and related money laundering schemes are enormous. The United States sustained more than 107,000 drug overdose deaths in 2021.<sup>xv</sup> The United Nations Office on Drugs and Crime estimates that 65,000 world-wide homicides annually stemmed from organized crime and gangs, many of which participate in the illicit drug trade.<sup>xvi</sup> In Mexico alone, there were 33,308 homicides in 2021.<sup>xvii</sup> According to counternarcotics expert Celina Realuyo, this near record-level of homicides is due to “the atomization of large Mexican cartels and increased competition to dominate trafficking routes.”<sup>xviii</sup>

Corrupt state actors who facilitate the drug trade, either through active participation or by turning a blind eye to these activities and the associated money laundering schemes that enable them, produce destabilizing effects which undermine transparency and public trust in government.

For these reasons, the Department of the Treasury’s Financial Crimes Enforcement Network’s (FinCEN) *Anti-Money Laundering and Countering the Financing of Terrorism National Priorities*, issued on June 30, 2021, explicitly designates DTO activity, transnational criminal organization (TCO) activity, and corruption as top priorities.<sup>xix</sup> The Office of National Drug Control Policy (ONDCP) similarly prioritized attacking the financial networks of DTOs in its *2022 National Drug Control Strategy*.<sup>xx</sup>

### *Money Laundering Cycle and Techniques*

Money laundering is carried out in three phases—placement, layering, and integration:

1. “Placement” involves the initial introduction of illicit funds into the financial system. As the Caucus has described previously, this can be accomplished in a variety of ways, including through “cash deposits into bank accounts, depositing cash with non-bank financial institutions, wire transfers and placement of money onto pre-paid stored value cards.”<sup>xxi</sup>
2. In the “layering” stage, illicitly placed funds undergo a series of processes to conceal their true source and ownership. This often “entails routing the money through multiple bank accounts, corporations, and shell companies.”<sup>xxii</sup> As noted in the 2013 Caucus report:

The goal of layering is to confuse the paper trail and move the money farther away from the crimes that generated them and to cause it to appear legitimate. Just as money transmitters can be used in the initial stages of money laundering to place illicit cash into the financial system, so too can they be used in the secondary stages. Money laundering facilitators often move funds across international boundaries via wire transfer. This serves the purpose of increasing the distance between the

crimes that generated the funds as well as increasing the appearance of legitimacy.<sup>xxiii</sup>

3. In the “integration” stage, illicit funds become indistinguishable from legitimate funds and flow undetected through the financial system. These funds can be used to purchase real estate and other goods. In addition, these “clean” or “legitimate” funds are used to pay off corrupt officials, purchase arms or drugs or hire more personnel.<sup>xxiv</sup>

DTOs use various methods, schemes, and professional organizations or businesses to launder money, some of which have evolved since the 2013 Caucus report was issued. The following are among the most common methods used:

- *Bulk Cash Smuggling* — This technique involves moving large sums of cash or monetary instruments, such as checks, traveler’s checks, and money orders, within and across the U.S.’ borders to evade detection in the traditional financial system. In 2020, U.S. law enforcement seized over \$741 million in bulk cash smuggling incidents.<sup>xxv</sup>
- *Trade-Based Money Laundering (TBML)* — As the 2013 report explained, this technique “involves the purchase of goods with the proceeds of drug sale or other crimes either in cash or through electronic transfers. These goods are then transported across borders in order to pay a supplier or disguise the criminal origin of the funds used to buy the goods.”<sup>xxvi</sup> A variation of this method is the Black Market Peso Exchange (BMPE), in which U.S.-based cartel members use money brokers and import-export merchants as intermediaries to pay their contacts in Central America in local currency. Sometimes these transactions are referred to as “mirror swaps.” Chinese and Asian money laundering organizations have become increasingly involved in these schemes since the Caucus issued its 2013 report.
- *Chinese Money Laundering Organizations (CMLO)* — CMLOs partner with DTOs and use a combination of traditional money laundering methods, such as TBML, and more novel techniques, like the black market foreign exchange. They rely “on basic principles of supply and demand of currency and match[es] individuals that have a supply of U.S. dollars with those in the market that have a demand for U.S. dollars.”<sup>xxvii</sup> In this way, CMLOs exploit the needs of Mexican DTOs to repatriate their ill-gotten gains, while simultaneously helping wealthy Chinese nationals transfer large sums of money held in Chinese bank accounts for use abroad, as they are constrained by China’s capital flight laws.

- *Opaque Corporate Structures* — Shell companies are often opaque corporate structures with little to no physical presence that allow DTOs to engage in “legitimate” business transactions while concealing their identity and the illicit origins of their funds. Like shell companies, DTOs use front companies to hide their identity and dirty funds. The difference between the two types of companies is that front companies often have a physical revenue-generating operation that the DTO uses to co-mingle its illicit funds.
- *Money Services Businesses (MSB)* — MSBs are subject to BSA record keeping requirements and provide check cashing, remittance services, and foreign currency exchanges, and also sell money orders, traveler’s checks, and pre-paid access devices.<sup>xxviii</sup> Drug traffickers often exploit these products and services to repatriate narcotics-related funds.<sup>xxix</sup>

### *Updates to the United States’ AML Framework Since 2013*

Since the 2013 Caucus report was issued, there have been two major legislative updates to the U.S. AML framework: the *Fiscal Year (FY) 2020 National Defense Authorization Act*, which included the *Fentanyl Sanctions Act*, and the *FY 2021 NDAA*, which included both the *Anti-Money Laundering Act (AMLA)* and the *Corporate Transparency Act (CTA)*.

While the primary goal of the *Fentanyl Sanctions Act* is to deter the production and shipment of illicit fentanyl into the United States, it also authorizes sanctions against foreign financial institutions and other entities that assist in the trafficking of synthetic opioids.

The *CTA* requires, among other things, the disclosure of the beneficial owners of newly formed shell companies to a FinCEN database.

Other laws governing the AML framework include:

- The *Bank Secrecy Act (BSA)* (1970) — established requirements for reporting, customer identification, due diligence, recordkeeping, and compliance programs for relevant financial and non-financial institutions. This law forms the basis of the U.S. AML framework.
- The *Money Laundering Control Act* (1986) — made money laundering a federal crime, prohibited structuring transactions (a large transaction broken

down into a series of smaller transactions in order to avoid reporting requirements), and introduced civil/criminal forfeiture for *BSA* violations.

- The *Anti-Drug Abuse Act* (1988) — expanded the *BSA*'s definition of a financial institution to include businesses such as car dealers and real estate closing personnel, thereby requiring them to file reports on large currency transactions.
- The *Annunzio-Wylie Anti-Money Laundering Act* (1992) — created suspicious activity reports and required verification/recordkeeping for wire transfers.
- The *Money Laundering Suppression Act* (1994) — requires the owner or controlling person of money services businesses, such as casinos, to register with FinCEN.
- The *Foreign Narcotics Kingpin Designation Act* (1999) — allows the Department of the Treasury's Office of Foreign Assets Control to freeze the assets of foreign narcotics traffickers as well as their organizations/supporters.
- The *USA PATRIOT Act* (2001) — applied increased reporting and recordkeeping requirements to financial institutions, classes of transactions or account types that are of primary money laundering concerns. It also facilitated information sharing between law enforcement, regulators, and financial institutions about those suspected of being involved in terrorism or money laundering.

In addition to newly enacted legislation, both the Trump and Biden administrations issued executive orders aimed at strengthening the U.S.' AML framework and dismantling the TCOs that exploit it, including:

- Executive Order 13773 (2017), Enforcing Federal Law With Respect to Transnational Criminal Organizations and Preventing International Trafficking — This order prioritized the Trump administration's focus on enforcing federal law, particularly as it relates to drug smuggling, corruption, cybercrimes, financial crimes, and "the illegal concealment or transfer of proceeds derived from such illicit activities."<sup>xxx</sup> It also directed



the preexisting Threat Mitigation Working Group to improve federal coordination and to:

- Pursue and dismantle TCOs;
  - Increase data collection;
  - Review existing laws to determine which laws can be better enforced or amended;
  - Issue quarterly reports detailing convictions related to TCOs; and,
  - Report to the President on the extent to which TCOs operate in the United States.<sup>xxxii</sup>
- Executive Order 13818 (2017), Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption — This order implements the Global Magnitsky Act and declared a national emergency regarding human rights abuses and global corruption. In doing so, it authorized the property of individuals and entities, including current or former government officials or individuals acting on their behalf, who were complicit or who engaged in serious human rights abuses or corruption, including the transfer or the facilitation of the transfer of proceeds connected to corruption to be blocked.<sup>xxxiii</sup> The Biden administration extended this emergency.<sup>xxxiii</sup>
  - Executive Order 14059 (2021), Imposing Sanctions on Foreign Persons Involved in the Global Illicit Drug Trade — This order builds on sanctions established by the *Foreign Narcotics Kingpin Designation Act* and the *Fentanyl Sanctions Act* by authorizing the Treasury Secretary to impose sanctions against any foreign person who:
    - Engages in the illicit narcotics trade, regardless of whether they are associated with drug kingpins or cartels; or
    - Knowingly receives property associated with illicit drug trafficking activities.<sup>xxxiv</sup>
  - Executive Order 14060 (2021), Establishing the United States Council on Transnational Organized Crime (TOC) — This order revokes the Threat

Mitigation Working Group established via Executive Order 13773, and replaces it with the U.S. Council on TOC. It also established a coordination mechanism for government-wide efforts to combat TOC and directs U.S. government agencies to:

- Utilize authorized intelligence and operational capabilities to target, disrupt, and degrade criminal organizations that pose the greatest threats to U.S. national security;
- Foster and enhance collaboration with private entities and international organizations to combat TOC;
- Improve information sharing between law enforcement and the intelligence community;
- Expand efforts to attack illicit finance related to TOC groups and DTOs; and,
- Utilize new and existing technologies to identify, disrupt, and dismantle emerging threats.<sup>xxxv</sup>

In 2021, the Biden administration also launched the Presidential Initiative for Democratic Renewal. The goal of this initiative, in part, is to counter corruption through targeted efforts such as “increase[ing] transparency in the U.S. real estate market by establishing reporting requirements for those closest to real estate transactions,” as real estate is often used to launder illicit proceeds, and to “build the capacity of partner governments to deny corrupt actors the ability to hide ill-gotten gains through anti-money laundering measures, to encourage like-minded partners to adopt anti-corruption sanctions and visa restriction regimes, and to detect and disrupt complex corruption schemes.”<sup>xxxvi</sup>

### *Conclusion*

These laws, their implementing regulations, executive orders, and other initiatives take a whole-of-government approach to dismantling the international networks shrouded in secrecy that allow narcotics traffickers to gain access to the United States’ financial system. The recommendations outlined in this report can further strengthen this infrastructure.

## ASSIST PARTNER NATIONS IN STRENGTHENING GOVERNANCE AND JUDICIAL SYSTEMS

### *Overview*

According to Ambassador Todd D. Robinson, Assistant Secretary of State for International Narcotics and Law Enforcement Affairs, “the illicit drug trade is probably the single greatest revenue stream behind corruption globally. No other criminal revenue stream approaches the scale of illicit drug profits, which reach hundreds of billions of dollars annually.”<sup>xxxvii</sup> Indeed, drug traffickers’ business empires in the United States, collectively, exceed the GDP of 150 countries.<sup>xxxviii</sup>

Such a massive, illicit trade thrives with the coerced or willing complicity of government officials and law enforcement. As Ambassador Robinson noted, “wealth on this scale gives transnational criminal organizations an almost unlimited capacity to corrupt government institutions and guarantee themselves more secure operating environments.”<sup>xxxix</sup> Examples abound:

- Former Honduran Congressman Tony Hernandez, brother of former Honduran President Juan Hernandez, was sentenced on March 30, 2021 for brokering large bribes from major drug traffickers to powerful political figures, bribing law enforcement officials to protect drug shipments, and other corrupt acts. On February 15, 2022, Honduran law enforcement arrested President Juan Hernandez in response to a U.S. extradition request “on charges that he helped smuggle hundreds of tons of cocaine into the U.S. in exchange for millions of dollars in bribes that financed his political career.”<sup>xl</sup> On March 28, 2022, the Honduran Supreme Court granted the U.S.’ extradition request.<sup>xli</sup>
- Mexico’s former Security Minister, Genaro Garcia Luna, was indicted for accepting millions of dollars in bribes from the Sinaloa Cartel to help facilitate cocaine shipments to the United States and for leaking sensitive law enforcement information, including intelligence on rival drug organizations.<sup>xlii</sup> He is currently awaiting trial.
- The United States indicted Venezuelan President Nicolas Maduro and many of his allies on charges of narcoterrorism and conspiracy to smuggle cocaine, demonstrating the ease with which narcotics-related corruption can infiltrate the highest levels of government.<sup>xliii</sup>

Data from Transparency International indicates that the majority of countries designated as major drug producing or transit countries are among the most corrupt in the world.<sup>xliv</sup> Most perpetrators of crimes in these countries escape prosecution.<sup>xlv</sup> In Mexico, for example, over 90 percent of crimes go unpunished.<sup>xlvi</sup>

For these reasons, the United States must help partner nations strengthen their institutions to better defend against corruption, such as implementing judicial reforms to ensure the successful prosecution of narcotics traffickers and those who exploit the licit financial systems to accumulate and obscure their illicit wealth. Failure to deliver on these goals endangers U.S. counternarcotics efforts at home and abroad, and undermines national security.

### *The Narcotics Trade Fosters Corruption*

Drug trafficking organizations (DTOs) and transnational criminal organizations (TCOs) often partner with corrupt public and private sector officials or use threats of violence or intimidation to market, move, and sell their illicit narcotics and goods with impunity. In many instances, funding derived from these activities is used to control or influence areas where government services and a state presence are lacking.

DTOs and TCOs often assume a governmental role by providing health care, building infrastructure, and, in some cases, imposing taxes, all while controlling lucrative drug trafficking routes and spreading corruption. For example, the Taliban was the de facto government in many rural poppy-growing areas of Afghanistan prior to its takeover of the country.<sup>xlvii</sup> Similarly, in Colombia, guerilla groups and paramilitaries like the National Liberation Army (ELN) and Revolutionary Armed Forces of Colombia (FARC) controlled and provided governmental services in coca-growing and other communities that lack functioning government.<sup>xlviii</sup> Also in Colombia, public reporting indicates that the Clan de Golfo exercised “complete political and social control” in certain areas.<sup>xlix</sup> In Mexico, particularly during the COVID-19 lockdowns, DTOs like the Cartel Jalisco Nueva Generacion (CJNG) distributed aid packages to communities within their territorial control and publicized these acts on social media.<sup>1</sup> These “Robin Hood” acts allow DTOs and TCOs to rehabilitate their image, gain wider community support, and attract new recruits.<sup>li,lii,liii</sup>

Weak institutions also enable DTOs and TCOs to directly influence politics. For example, the United Self Defense Forces of Colombia (AUC)—a paramilitary

group in Colombia that profited from the cocaine trade—ensured favorable terms and conditions in peace negotiations with the Colombian government. The AUC also worked to ensure the election of government officials in exchange for contracts to make infrastructure improvements in the towns that elected them.<sup>liv</sup>

During Mexico’s 2021 midterm elections, at least 89 politicians in Mexico were murdered.<sup>lv</sup> According to the U.S. Ambassador to Mexico, Ken Salazar, “there’s a very big problem of narco politics in the country that is advancing with gigantic steps.”<sup>lvi</sup> The motivation is likely control – both of territory and the legislature.<sup>lvii</sup>

### *International Capacity to Address Narcotics-Fueled Corruption*

The United States helps partner nations increase their institutional capacity and transparency and implement judicial reform through its foreign assistance programs.

USAID is a key agency involved in these efforts. It works across the globe to help allies:

strengthen specialized anti-corruption units; improve the capacity of prosecutors, judges, and law enforcement officers to detect, investigate, and prosecute financial crimes and corruption; strengthen inter-governmental coordination in detection and referral; and support administrative and other civil sanctions for corruption.<sup>lviii</sup>

USAID also helps partner nations ensure that their budgets are executed in a transparent, participatory manner in order to reduce opportunities for corruption.<sup>lix</sup> It has provided such training and technical assistance in Colombia, Guyana, and Peru.<sup>lx</sup>

In addition, USAID assists partner nations in expanding state presence and increasing citizen security and safety. Through its Justice for a Sustainable Peace in Colombia program, for example, USAID deployed 159 mobile justice brigades to rural areas to provide alternative dispute resolution services between 2017 and 2021.<sup>lxi</sup> It has also provided legal and administrative assistance to more than 26,000 individuals.<sup>lxii</sup> In many cases, these are the first interactions Colombian citizens have had with government services.

In 2022, USAID initiated a new program, Inclusive Justice Activity, to further increase access to justice. Through this program, USAID will expand the availability of alternative dispute resolution mechanisms in 30 municipalities.<sup>lxiii</sup> According to USAID, “[s]uch work is especially important because illegal armed groups often attempt to secure and maintain territorial control in rural areas through serving as a dispute resolution authority.”<sup>lxiv</sup>

*International Criminal Investigative Training Assistance Program and Office of Overseas Prosecutorial Development Assistance and Training*

The U.S. Department of Justice (DOJ) helps partner nations increase their judicial capacity and implement reforms through the International Criminal Investigative Training Assistance Program (ICITAP) and its Office of Overseas Prosecutorial Development Assistance and Training (OPDAT) program. The U.S. Department of State provides funding to DOJ to operate both programs. Currently, 175 ICITAP personnel and 73 OPDAT prosecutors are deployed to 69 U.S. missions worldwide.<sup>lxv</sup>

The OPDAT and ICITAP programs deploy “highly-experienced federal prosecutors and law enforcement assistance attachés to serve multiple year terms as resident advisors in their host countries.”<sup>lxvi</sup> These advisors provide case-based mentoring to their foreign counterparts on how best to investigate and prosecute narcotics and corruption cases. As testimony before the Caucus has made clear:

because OPDAT advisors and ICITAP attachés are federal employees, not contractors, they can link back to the Department’s [DOJ’s] domestically-based prosecutors and investigators, in order to bring the Department’s [DOJ’s] full expertise to bear, and in order to link together foreign and U.S.-based investigations regarding common criminal actors.<sup>lxvii</sup>

These programs have yielded significant results:

- Mexican law enforcement, working with OPDAT-trained prosecutors, arrested the leader of the Gulf Cartel, along with three other individuals on narco-trafficking and firearms trafficking charges. One defendant is also facing charges for attempted bribery after trying to bribe federal prosecutors to release him.<sup>lxviii</sup>
- On July 23, 2021, ICITAP-trained Tactical Operations Response (TOR) Officers in Ukraine helped disrupt an international drug-trafficking group

transporting heroin from Iran through the Ukraine to the European Union. The TOR officers seized more than 368 kilograms of heroin in this operation, which “involved officers from several branches of the National Police of Ukraine, Border and Customs Services of Ukraine and Armenia, law enforcement from Georgia, Crimean authorities and the Drug Enforcement Administration.”<sup>lxxix</sup>

- OPDAT’s Resident Legal Advisors established a technical assistance working group in Colombia to strengthen Colombia’s ability to attack the country’s largest national drug trafficking organization, the Clan de Golfo. On October 23, 2021, Colombian security forces arrested the leader of Clan de Golfo, Dairo Usage, a.k.a. “Otoniel.” He was extradited to the United States on May 4, 2022.<sup>lxxx</sup> The two Colombian prosecutors who filed charges against Otoniel were members of the OPDAT-trained working group.<sup>lxxxi</sup> On November 25, 2021, the United States requested that Colombia extradite Otoniel.<sup>lxxxii</sup>
- With assistance from OPDAT, a regional working group of prosecutors was established to focus on corruption in the Northern Triangle countries of El Salvador, Guatemala, and Honduras. This working group coordinates with the U.S.-based Central American Anti-Corruption Task Force, which focuses on “prosecuting corruption-related money laundering from Central America, and on recovering corrupt assets from the region that may have been invested in the U.S.”<sup>lxxxiii</sup>

### *Corruption-Related Challenges Remain*

Despite the effectiveness of these programs, challenges remain, particularly in drug producing and transit countries and those designated as major money laundering jurisdictions. For example, according to the U.S. Department of State’s *2022 International Narcotics Control Strategy Report*:<sup>lxxxiv</sup>

- Credible allegations suggest that many individual government officials in the Ghani administration engaged in and benefited from the drug trade. While the Taliban has stated that it plans to eliminate government corruption, it too has a history of engaging in and benefiting from the drug trade.
- Haiti established an anti-corruption agency in 2005, but only 32 corruption-related cases have gone to the courts since then. Moreover, the country did not formally classify corruption as a crime until 2014, and its

implementation has lagged, with only five successful drug trafficking convictions and one successful corruption-related conviction. Law enforcement efforts are further impeded because Haiti's constitution provides immunity to members of parliament. While the United States assisted Haiti in adopting new penal and criminal procedure codes in 2020, these codes have yet to be fully implemented.<sup>lxxv</sup>

- Mexico's current administration has taken some steps to reduce TCO influence over government officials. "Nevertheless, TCO affiliation with and influence over senior Mexican government officials continues to significantly impede Mexico's drug control efforts."<sup>lxxvi</sup> Mexico's recent anti-corruption efforts have generally been used to prosecute members of prior administrations, while largely ignoring corrupt acts committed by current government officials.<sup>lxxvii,lxxviii</sup> Additionally, the current administration has failed to appoint the necessary officials to implement the National Anti-Corruption System, which was statutorily established in 2015.<sup>lxxix</sup> Moreover, public reporting indicates that Mexico's executive branch has weakened the independence of the judicial system by controlling evaluations and promotions for court officials, thereby diminishing the independence of the judicial system. Judges who hand down decisions that the executive branch disagrees with are routinely reassigned.<sup>lxxx</sup>

### *The United States Anticorruption Strategy*

Recognizing these challenges, the Biden administration's *Memorandum on Establishing the Fight Against Corruption as a Core United States National Security Interest (Memorandum)* called for an interagency review to help craft a whole-of-government strategy to combat corruption and hold TCOs accountable. The administration released the *United States Strategy on Countering Corruption (the Strategy)* approximately six months later.<sup>lxxxii</sup> As part of these efforts, the Department of State announced that it would provide up to \$15.1 million to the Departments of the Treasury and Justice to implement the Democracies Against Safe Havens Initiative, which "will build the capacity of partner governments to deny corrupt actors the ability to hide ill-gotten gains and promote accountability by building a larger coalition to impose sanctions and visa restrictions."<sup>lxxxiii</sup>

Following the release of the *Memorandum*, and in light of the role that the illicit narcotics trade plays in fueling corruption, the Caucus Co-Chairs requested that the National Security Council consult with ONDCP on its anti-corruption efforts.<sup>lxxxiii</sup>



The Caucus is pleased that the 2022 *National Drug Control Strategy* addresses corruption through international engagement and efforts to curb illicit finance. It urges ONDCP's continued involvement in this arena.

### *Conclusion*

Experts agree that transparency in government action, the presence of a strong state, delivery of basic services, and judicial reform all contribute to reducing corruption. Without these elements, citizens have little incentive to report crimes or corruption. In these instances, they often turn to others, including DTOs and TCOs, to provide critical services and alternative forms of justice. Moreover, lack of government transparency also creates conditions that allow corruption to thrive, which threatens the legitimacy of democracy and the judicial process.

For these reasons, and consistent with the *Strategy's* call to “to maximize the potential for diplomatic tools, including foreign assistance and targeted sanctions, to stem corruption and to hold corrupt actors accountable, while expanding efforts to ensure that foreign assistance and engagement do not inadvertently contribute to corrupt practices,” Congress must ensure adequate funding for programs that assist partner nations in increasing their institutional capacities to prevent and swiftly address corruption and to implement judicial reforms that ensure the successful prosecution of narcotics traffickers and deny them access to their illicit revenue streams.<sup>lxxxiv</sup> ONDCP should also be included in the U.S. government's anti-corruption initiatives, given the inextricable link between narcotics trafficking and corruption.

## BETTER TRACK WHOLE-OF-GOVERNMENT EFFORTS TO COMBAT NARCOTICS-RELATED ILLICIT FINANCE

### *Overview*

In the United States, nearly one-third of the dozens of federal drug control program agencies and component agencies/offices investigate or prosecute narcotics-related illicit financial crimes.<sup>lxxxv</sup> Yet the United States cannot provide a reliable estimate of the revenue it denies drug trafficking organizations (DTOs) and transnational criminal organizations (TCOs) involved in the narcotics trade.

At the urging of Chairman Whitehouse, the Office of National Drug Control Policy (ONDCP) made attacking the financial networks of DTOs and TCOs an explicit priority in its 2022 *National Drug Control Strategy (NDCS)* and has established related goals and metrics.<sup>lxxxvi</sup> The Caucus is concerned, however, that ONDCP will be unable to effectively measure success or determine the return on its investment into these efforts due to the federal government's inability to accurately track the status and results of narcotics-related illicit financial investigations and crimes.

With this in mind, and given the number of federal agencies charged with disrupting DTOs' and TCOs' financial networks, consistent with language included in the Fiscal Year 2023 *Senate Explanatory Statement for the Commerce, Justice, and Related Agencies Appropriations bill*, the Caucus strongly urges the Department of Justice to develop and implement an interagency mechanism to better track whole-of government efforts to combat narcotics-related illicit finance.<sup>lxxxvii</sup>

### *National Drug Control Program Agencies (NDCPAs) Focused on Narcotics-Related Illicit Finance*

The following NDCPAs dedicate significant portions of their resources to combating narcotics-related illicit finance:

- Department of Defense (DOD) — Through its international drug control function, the DOD supports counter drug efforts in the six Combatant Commands' Areas of Responsibility, which include detecting, interdicting, disrupting, or curtailing activities related to illicit drugs and resources used to finance, support, secure, cultivate, process or transport such drugs.

These efforts assist the United States and partner nations in mapping and tracking the financial networks of DTOs. In 2016, for example, DOD helped the Colombian military develop its “strategic analysis capabilities to target the funding of drug trafficking and terrorism.”<sup>lxxxviii</sup>

- Department of Homeland Security (DHS) — United States Immigration and Customs Enforcement Homeland Security Investigations (ICE-HSI) is the primary component within DHS that addresses narcotics-related illicit finance. In this capacity, ICE-HSI works to “identify and seize illicit proceeds of crime and target financial networks and third-party facilitators that launder and hide illegal financial gains.”<sup>lxxxix</sup> In doing so, HSI targets narcotics-related illicit trade, travel, and finance. It prioritizes investigations involving organizations on the lists of Consolidated Priority Organization Targets (CPOTS) and Regional Priority Organization Targets (RPOTS), which include “the most significant drug and money laundering organizations threatening the Nation.”<sup>xc</sup>

ICE-HSI has implemented a number of programs and task forces to accomplish its goals, including but not limited to Border Enforcement Security Task Force Teams, Trade Transparency Units, the Bulk Cash Smuggling Center, and the Illicit Digital Economy Program. In fiscal year (FY) 2020, ICE-HSI made 31,915 criminal arrests and seized \$1.8 billion in currency and assets and 6,105 pounds of fentanyl.<sup>xc</sup>

- Department of Justice (DOJ) — DOJ plays a critical role in addressing narcotics-related illicit finance. In addition to implementing programs that increase partner nations’ capacities to prosecute money laundering crimes and to implement justice sector reform – such as the Overseas Prosecutorial Development, Assistance and Training (OPDAT) program and the International Criminal Investigative Training Assistance Program (ICITAP) – the following agencies and programs within DOJ address narcotics-related money laundering:
  - The Drug Enforcement Administration (DEA) — targets the illicit finance networks associated with DTOs and TCOs through its Office of Domestic Operations, Financial Investigations Section. Together with DEA field offices, interagency partners, and counterparts in partner nations, DEA investigates and initiates undercover financial investigations. It also assists in narcotics-related asset seizures and prosecutions.<sup>xcii</sup>

Through its under-cover financial investigations, DEA initiated 28 investigations, continued 58 investigations, and closed two investigations in FY 2020. The two closed investigations resulted in 170 arrests, and the seizure of \$28.3 million in illicit revenue, 5,457 kg of illicit narcotics, and 66 firearms.<sup>xciii</sup>

- The Federal Bureau of Investigation (FBI) — provides training and technical assistance to help partner nations develop:

a foundational understanding of drug trafficking investigative and analytical techniques and tactics, money laundering and public corruption, or terrorism financing crimes and their relationship to drug trafficking as a support for terrorism activities.<sup>xciv</sup>

The FBI has also identified criminal organizations engaging in money laundering and DTOs as the “highest priority threats.”<sup>xcv</sup> As such, the FBI concentrates significant resources on disrupting and dismantling criminal organizations, money laundering facilitators and organizations, and DTOs.

- Organized Crime Drug Enforcement Task Force (OCDETF) — is a multi-agency task force that targets the CPOT and RPOT lists. Every OCDETF case includes a financial component “to enable the identification and destruction of the financial systems supporting drug organizations.”<sup>xcvi</sup> Through its Fusion Center, OCDETF establishes actionable leads, based on cross-agency intelligence related to drug and financial data, which it shares with its partner agencies and task force members.
- Department of State — The Bureau of International Narcotics and Law Enforcement Affairs (INL) is the primary office within the Department that addresses narcotics-related money laundering. Through interagency and cooperative agreements, INL funds the development and dissemination of anti-money laundering (AML) training to partner nations across the globe. The “strategic objective [of these trainings] is to disrupt the activities of transnational criminal organizations and drug trafficking organizations by disrupting their financial resources.”<sup>xcvii</sup>
- Department of the Treasury — Multiple agencies and programs within the Department focus on disrupting the financial networks of DTOs.

- The Under Secretary of Terrorism and Financial Intelligence safeguards the financial system from illicit use and national security threats and oversees several offices critical to AML, including:
  - The Financial Crimes Enforcement Network (FinCEN) — administers the *Bank Secrecy Act* and regulates activities related to AML and countering the finance of terrorism. In this capacity, FinCEN works with its foreign counterparts (known as Financial Intelligence Units) to: share information; establish exchange programs and trainings; and strengthen international capacities to identify, track, and develop actionable intelligence.<sup>xcviii</sup>
  - The Office of Foreign Assets Control (OFAC) — administers and enforces the United States’ economic sanctions program, including those associated with the *Foreign Narcotics Kingpin Designation Act (the Kingpin Act)* and Executive Order (EO) 13581, Blocking Property of Transnational Criminal Organizations. Pursuant to these authorizations, OFAC sanctions individuals and organizations for their roles in facilitating the illicit drug trade and for orchestrating and executing money laundering schemes. In FY 2020, OFAC took 22 actions to impose sanctions pursuant to the *Kingpin Act* and EO 13581.<sup>xcix</sup>
- The Internal Revenue Service Criminal Investigation Division (IRSCI) Narcotics Program:

supports the President’s priorities to contribute to the whole-of-government multi-agency efforts to combat Transnational Organized Crime; executes the *NDCS* and the *National Strategy for Combating Terrorist and other Illicit Financing*; and plays a key role in multiple initiatives that are part of the highly visible National Southwest Border Counter-Narcotics Strategy.<sup>c</sup>

IRSCI directly engages in illicit finance investigations involving a host of money laundering methods and trains international partners on investigative techniques associated with narcotics-related crimes involving illicit finance.<sup>ci</sup> In FY 2020, IRSCI Narcotics Program investigators completed 616 investigations related to “narcotics source income,” which are the “profits and financial gains of organized drug groups involved in narcotics, narcotics trafficking, and money

laundering.”<sup>cii</sup> The FY 2020 conviction rate for these crimes was 89.6 percent.

*Standardized Reporting Is Essential to Determining the Effectiveness of the National Drug Control Strategy*

ONDCP advises the President on drug control issues and coordinates drug control activities, as well as the associated funding, across the Federal government. To deliver on this mission, ONDCP develops and implements the *NDCS* and related performance metrics to assess whether the United States achieves its objectives relative to addressing both the demand for and supply of illicit drugs. As stated by Senator Hassan, “[c]racking down on money laundering is key to stopping drug cartels,” and is a critical component of supply reduction.<sup>ciii</sup>

Unfortunately, as noted by the Congressional Research Service:

... there is no central database housing information on illicit drug seizures from all law enforcement agencies. In addition, there is not a set of discrete, yet comprehensive, drug seizure datasets that, if combined, could tally illicit drug seizures for all of the United States. Rather, there are a number of datasets and systems that contain some information on drug seizures.<sup>civ</sup>

ONDCP similarly alludes to the lack of standardized reporting and a centralized database to track illicit finance activities of DTOs and TCOs and related prosecutions in its *National Drug Control Strategy Performance Review System Report*, which accompanied the *NDCS*:

Currently there is not a single source database that can track whole-of-government efforts against the illicit finance activities of the TCOs or their enablers. BSA data owned by FinCEN are shared with multiple agencies for analysis and use against TCOs and their enablers—including OCDETF. However, there is not an existing feedback mechanism to track all enforcement action and prosecutorial outcomes against the full FinCEN dataset. Individual agency case management systems can track agency work against illicit finance enablers and TCOs, but no coordinating mechanism between departments can track interagency coordination or collaboration.<sup>cv</sup>

While this quote specifically references the lack of a single source database for FinCEN-related prosecutions, a database to track whole-of-government efforts

to attack the financial networks of DTOs and TCOs involved in the narcotics trade is also non-existent. This will impede ONDCP's ability to accurately determine whether the *NDCS* is effective.

The Caucus therefore urges the Attorney General to establish an interagency working group to develop a standardized process by which all NDCPAs uniformly collect information on the number and status of investigations involving drug trafficking with a money laundering nexus. This process should capture, annually, the amount of money and other things of value in various forms that the Government seized from individuals involved in these investigations. It should also include a mechanism to eliminate duplication in the case of seizures or forfeitures carried out and reported by multiple agencies so that the data can be disaggregated by agency.

Because DOJ is the sole agency that prosecutes drug trafficking cases with a money laundering nexus, it has access to information related to cases initiated both inside and outside of DOJ. The Attorney General is therefore best suited to lead this working group.

### *Conclusion*

Standardized data collection across Federal agencies on narcotics-related illicit finance investigations and prosecutions will ensure a better understanding of the magnitude of drug trafficking in the United States. It will further ensure that all NDCPAs are held accountable for meeting the goals established by the *NDCS* to disrupt and dismantle the illicit financial networks of DTOs and TCOs. To that end, the Caucus urges the Attorney General to expeditiously convene an interagency working group to develop and implement an interagency mechanism to better track whole-of government efforts to attack narcotics-related illicit finance.

## **INCREASE INTERNATIONAL COOPERATION**

Neither the narcotics trade nor the illicit financial networks that sustain it are bound by geography. As such, the United States must redouble its efforts to increase international cooperation to degrade the supply and demand for illicit drugs and to attack the financial networks that enable drug trafficking organizations to thrive.

With this in mind, the Caucus urges the administration to utilize its diplomatic authorities to deploy experts in narcotics-related illicit finance to assist partner nations. It further urges Congress to authorize effective programs to combat international money laundering, such as Trade Transparency Units.



## **Deploy Experts in Narcotics-Related Illicit Finance to Assist Partner Nations**

### *Overview*

The United States has invested substantial financial and human capital into combating narcotics-related finance in major drug-producing and transit countries. To strengthen these efforts, Congress included provisions in the *Fiscal Year 2021 National Defense Authorization Act* (NDAA) that authorize the U.S. Department of the Treasury to deploy attachés and liaisons to partner nations to help dismantle illicit finance networks. The *Consolidated Appropriations Act, 2022* provided funds for the Department, acting through the Financial Crimes Enforcement Network (FinCEN), to implement the Foreign Financial Intelligence Unit (FIU) Liaison program. The Caucus urges Treasury to use this funding to expeditiously deploy liaisons and ensure they have expertise in narcotics-related finance, among other areas.

Congress has not yet provided Treasury with the funding to establish the attaché program as authorized. The Caucus urges Congress, within budgetary constraints, to appropriate adequate funds and for Treasury to use these resources to deploy officials that have expertise in narcotics-related finance, among other areas.

### *Past U.S. Efforts to Dismantle Narcotics-Related Finance*

The Department of State, through the Bureau of International Narcotics and Law Enforcement Affairs (INL), provides and coordinates training, resources, and other support to help partner nations pursue legal action, secure convictions, and confiscate the proceeds from narcotics-related and other crimes.<sup>cv</sup> These efforts can take multiple forms, such as bilateral and multilateral programming and initiatives conducted through international organizations.

### *Bilateral Efforts with Mexico*

Mexico is a top producer and waypoint for narcotics destined for the United States. While estimates vary, credible projections suggest DTOs derive significant revenue from trafficking narcotics into the United States. The United Nations Office on Drug and Crime (UNODC) asserts that “trafficking in heroin, cocaine and methamphetamine are estimated to have generated a combined annual average of \$12.1 billion in [illicit financial flows] into Mexico during the 2015-2018 period.”<sup>cvii</sup> According to Global Financial Integrity, “money laundering amounts

to US\$50 billion a year, which includes drug proceeds, as well as other types of criminal proceeds.”<sup>cviii</sup>

In part to curb these narcotics-related financial flows, the United States and Mexico jointly developed the Mérida Initiative in 2008. The plan aimed to reduce drugs coming into the United States and cartel violence in Mexico. Through this initiative, U.S. and Mexican officials focused on disrupting the movement of illicit drug proceeds across the Southwest Border and attacking the cartels’ financial networks, among other things.<sup>cix</sup> In 2021, the U.S. and Mexican governments agreed to replace the Mérida Initiative with the U.S.-Mexico Bicentennial Framework for Security, Public Health, and Safe Communities (Bicentennial Framework). Like its predecessor, the Bicentennial Framework also prioritizes efforts “to combat money laundering related to illicit activities.”<sup>cx</sup>

### *Multilateral Programming*

In addition to country specific efforts, the U.S. Department of State coordinates federal efforts to provide training for enforcement efforts in allied nations. In 2020, the U.S. Department of State partnered with the Federal Bureau of Investigation to train 12 drug producing and transit countries on “drug trafficking investigative and analytical techniques and tactics, money laundering and public corruption...and their relationship to drug trafficking.”<sup>cxii</sup> Similarly, the U.S. Department of State worked with the Drug Enforcement Administration in 2020 to train representatives from drug-producing and transit countries – including Colombia, Panama, Costa Rica, Guatemala, and Mexico – on “virtual money laundering training courses and workshops with a number of international partners.”<sup>cxiii</sup>

### *Partnerships with International Organizations*

As noted by Ambassador Todd D. Robinson, Assistant Secretary of State for INL, the U.S. Department of State is working with “our international partners to make sure we are creating effective structures around the world to go after these transnational criminal organizations and specifically their assets.”<sup>cxiv</sup> One of its key implementing partners in these efforts is UNODC. In testimony before the Caucus, UNODC Division of Treaty Affairs Director John Brandolino provided details about the agency’s Strengthening Criminal Investigation and Criminal Justice Cooperation along Drug Trafficking Routes (CRIMJUST) program, which was initiated in 2016.<sup>cxv</sup> The program’s initial objective was to “strengthen criminal investigation and criminal justice cooperation along the cocaine

trafficking route.”<sup>cxv</sup> CRIMJUST has since expanded to cover “multiple drug trafficking routes, regardless of drug type.”<sup>cxvi</sup>

Ambassador Robinson heralded UNODC’s work on this issue, stating that “INL is a proud supporter of [UNODC’s] work, including its flagship CRIMJUST program,” and:

has contributed more than \$29 million over the past five years to CRIMJUST programs in eight countries, including in Mexico, Nigeria, and other West African countries to bolster cross-border cooperation against drug trafficking and other forms of transnational organized crime.<sup>cxvii</sup>

### *Current and Proposed Efforts to Address Narcotics-Related Finance*

In its *U.S. Strategy on Countering Corruption*, the Biden administration recognizes the need to expand international cooperation and specified additional actions federal agencies should take to assist partner nations in increasing their capacity to investigate illicit finance. These include increasing law enforcement coordination; preventing the establishment of new safe havens for ill-gotten gains; strengthening asset forfeiture and recovery initiatives; and increasing oversight of lawyers, accountants, and other professionals that control access to financial systems.<sup>cxviii</sup> After releasing this plan, President Biden issued several executive orders (EOs). Among them was EO 14060, which established the U.S. Council on Transnational Organized Crime (TOC) to expand efforts to attack illicit finance related to drug trafficking and other criminal activities.<sup>cxix</sup> Furthermore, the administration’s *2022 National Drug Control Strategy* makes disrupting the illicit finance activities of drug trafficking organizations a primary line of effort to reduce the narcotics supply.<sup>cxx</sup>

### *Fiscal Year 2021 National Defense Authorization Act*

The Caucus supports the efforts to expand international partnerships that are already underway, and as outlined in the *U.S. Strategy on Countering Corruption* and the EO 14060. To bolster these efforts, the Caucus encourages the U.S. Department of the Treasury to utilize existing programs to tackle narcotics-related finance, including the Treasury attachés and Foreign FIU Liaisons, which were authorized and expanded by the *Fiscal Year 2021 National Defense Authorization Act* (NDAA).

Attachés are financial experts from the United States Department of the Treasury who will help partner nations strengthen their anti-money laundering and counter-terrorism financing measures. Foreign FIU Liaisons are personnel deployed from Treasury's FinCEN, who will perform similar functions but who have additional expertise in international anti-money laundering laws and regulations along with experience engaging in international financial organizations such as the Egmont Group and the Financial Action Task Force. These two programs can further the United States' efforts to dismantle narcotics-related finance.

On December 15, 2021, Caucus Co-Chairs Whitehouse and Grassley urged U.S. Treasury Secretary Yellen to, upon receipt of the requisite funding, deploy financial experts from the United States to countries involved in the drug trade and money laundering. The Co-Chairs specified in their letter that these officials should have expertise in the illicit finance methodologies that drug traffickers commonly use such as bulk cash smuggling and trade-based money laundering.<sup>cxxi</sup>

Congress provided the U.S. Department of the Treasury with funds to implement the liaison program in the *Consolidated Appropriations Act, 2022*, but did not appropriate resources for attachés.

### *Conclusion*

The U.S. has historically helped partner nations strengthen their efforts to attack the illicit finance networks underpinning the drug trade. The Biden administration has furthered these efforts by releasing a whole-of-government plan to counter corruption. The administration has also issued EOs tackling TOC, all of which explicitly focus on illicit finance. While these are important steps, the administration could further strengthen U.S. efforts by deploying officials with expertise in narcotics-related finance to partner nations.

To that end, the Caucus urges that, within current budgetary constraints, Congress provide adequate funding for attachés. Furthermore, it encourages the U.S. Department of the Treasury to ensure the personnel deployed through these programs have expertise in the illicit finance techniques used by drug traffickers.

## **Authorize Trade Transparency Units and Increase Data Sharing**

### *Overview*

In 2021, international trade was worth \$28.5 trillion.<sup>cxxii</sup> This volume of global trade creates significant opportunities for illicit financial flows through trade mis-invoicing and other criminal techniques.

Trade mis-invoicing is a tactic that drug cartels use frequently in trade-based money laundering (TBML) schemes. Global Financial Integrity estimates the scale of trade mis-invoicing at \$1.6 trillion for 2018.<sup>cxxiii</sup>

Trade Transparency Units (TTUs) are the United States' primary response to combat TBML. Through these units, the United States forms partnerships with foreign nations that allow law enforcement to access import-export trade data, gaining a detailed view of international trade transactions and thereby enabling them to better evaluate potential TBML cases. TTUs have successfully dismantled illicit finance networks supporting drug cartels.

To better ensure stable funding, the Caucus urges Congress to authorize the TTU program. It also encourages the Department of Homeland Security (DHS) to expand its TTU partnerships with allied nations, and to share data with relevant U.S. agencies, when appropriate.

### *Trade-Based Money Laundering*

TBML “involves the purchase of goods with the proceeds of drug sale or other crimes either in cash or through electronic transfers. These goods are then transported across borders in order to pay a supplier or disguise the criminal origin of the funds used to buy the goods.”<sup>cxxiv</sup> At its core, TBML involves the “mis-invoicing of goods and services, such as through over- and under-invoicing.”<sup>cxxv</sup>

Although there is a general consensus that the volume of TBML worldwide is significant, credible estimates of its exact magnitude are lacking. The U.S. Department of State noted that:

U.S. law enforcement agencies and independent economists have estimated that somewhere between \$5 billion to \$10 billion in cocaine proceeds are laundered back to Colombia each year, frequently using TBML.<sup>cxxvi</sup>

These figures only represent a fraction of the TBML that occurs globally. In 2018 and in 2021, the U.S. Department of the Treasury and the Government Accountability Office (GAO), respectively, reported that law enforcement has seen an uptick in TBML activity, suggesting the revenue lost to TBML could far surpass the highest current estimates.<sup>cxxvii</sup> Treasury Under Secretary for Terrorism and Financial Intelligence, Brian Nelson, further underscored this point in testimony before the Caucus, stating that “the movement and laundering of drug proceeds in the United States continues to be dominated by traditional methods and techniques, such as all-cash smuggling, trade-based money laundering, and others.”<sup>cxxviii</sup>

### *TBML Typologies*

Electronics, textiles, automobiles and precious metals are some of the most commonly-used products in TBML schemes. In some TBML schemes, mis-invoicing—“misrepresenting the price, quantity or type of goods or services in trade transactions”—is the centerpiece.<sup>cxxix</sup> The GAO notes that in these schemes:

the parties involved in the trade transaction may under or over invoice goods or services; issue multiple invoices for the same goods or services; provide more or less goods or services than the declared amount, including in some cases providing no goods or services; or falsely describe the types of goods and services provided.<sup>cxxx</sup>

One of the most common TBML methods employed by Central and South American drug cartels is the Black Market Peso Exchange (BMPE). In this scheme, U.S.-based narcotics traffickers pay their Central and South American suppliers in local currency without having to export cash out of the country.<sup>cxxxi</sup> In one scheme that law enforcement dismantled in February 2019, “money derived from the sale of drugs in the United States was laundered through businesses in Laredo, Texas to return [the] proceeds to Mexican drug dealers.”<sup>cxxxii</sup> The drug money was distributed among downtown Laredo perfume stores, and the owners accepted loose bulk cash, even after being told it was “narco dinero.”<sup>cxxxiii</sup>

As highlighted by Under Secretary Nelson, “law enforcement is seeing an increase in TCOs’ use of Chinese money laundering organizations (CMLOs).”<sup>cxxxiv</sup> Many of these groups carry out TBML schemes.<sup>cxxxv</sup> Under these arrangements, money brokers exchange U.S. dollars from illicit drug sales with Chinese residents for yuan. Money brokers use the newly-acquired yuan to purchase Chinese-made goods, which are then exported to Mexican drug cartels for domestic sale.

These arrangements are mutually beneficial: they enable “DTOs to repatriate drug proceeds into the Mexican banking system and wealthy Chinese nationals restricted by China’s capital flight laws from transferring large sums of money held in Chinese bank accounts for use abroad.”<sup>cxxxvi</sup>

According to the Drug Enforcement Administration (DEA):

Current day DTOs in Mexico, including CJNG [Jalisco New Generation Cartel], have become more willing to rely upon international money brokers who are engaged in a hybrid of trade-based money laundering activity and the black market peso exchange, and are not beholden to any one particular organization...The rise of Chinese money laundering organizations [CMLOs] around the globe has added another component to an already crowded pool of TCOs eager to profit from the abundance of illicit dollars.<sup>cxxxvii</sup>

The Caucus hearing, titled *The \$150 Billion Drug Trade: A Dive Into the Economics of Cartels*, highlighted the various roles that CMLOs play in repatriating drug cartels’ illicit funds, including by facilitating bulk cash smuggling and orchestrating elaborate money laundering schemes involving real estate and TBML.<sup>cxxxviii</sup>

### *Trade Transparency Units (TTUs)*

The United States has established TTU agreements with 18 countries to combat TBML, including with major drug-producing and transit countries such as Mexico and Colombia. Costing about \$200,000 each, they are operated by Immigration and Customs Enforcement/Homeland Security Investigations and are relatively inexpensive to set up, involving only the expenses associated with computer equipment, training, and personnel.<sup>cxxxix</sup>

Per these agreements, U.S. law enforcement exchange trade data with international counterparts through a secure electronic system known as Data Analysis and Research for Trade Transparency System (DARTTS).<sup>cxli</sup> The DARTTS system enables investigators to see both ends of a trade transaction and “detect anomalies such as over or undervaluing of traded goods [generating] actionable leads to investigate suspected money laundering.”<sup>cxli</sup> This system, along with other law enforcement techniques, has proven invaluable.

For example, ICE used the DARTTS system and other investigatory techniques to investigate a trade-based money laundering organization (TBMLO) that used electronics as part of a BPME scheme to launder drug trafficking proceeds. The DARTTS system showed that the TBMLO exported about \$110 million worth of electronics from the United States, while trade documents in the importing country valued the electronics at \$200 million between 2017 and 2021. The investigation resulted in the seizure of more than \$500,000 and the indictment of multiple co-conspirators.<sup>cxlii</sup> Given such successes, a bipartisan group of Senators, including Chairman Whitehouse, introduced a resolution that calls on the DHS to strengthen TTUs, among other lines of effort to combat TBML.<sup>cxliii</sup>

Through the course of their investigations, TTUs gather data that could support other U.S. law enforcement agencies in fighting TBML. The GAO, in a November 2021 report on TBML, requested by Caucus Co-Chairs Whitehouse and Grassley, as well as Senators Cassidy and Rubio, recommended that TTUs share this data with other agencies.<sup>cxliv</sup> While the Caucus supports this recommendation, it recognizes that in certain cases it may not be appropriate to do so, given political and privacy sensitivities or restrictions imposed by bilateral agreements governing TTUs. The Caucus therefore urges TTUs to judiciously share their data with agency partners to strengthen federal efforts to combat TBML.

Despite their success and cost-effectiveness, TTUs could be used more by DHS and its agency components. Given that TTUs are “net revenue raisers,” the Caucus urges Congress to authorize the DHS to maintain and identify new TTU partners.

### *Conclusion*

The growth and increasing complexity of international trade creates unique opportunities for drug cartels to move and launder their illicit proceeds. These schemes are becoming more difficult to detect given the rise of CMLOs, which can allow DTOs to keep narcotics proceeds out of the U.S. financial system altogether. TTUs are a proven tool in the fight against TBML and can disrupt CMLO schemes while simultaneously strengthening international partnerships to combat the narcotics trade overall. If shared judiciously and within the parameters of bilateral agreements, the data gathered by the TTU program could also prove invaluable to other U.S. federal agencies investigating TBML-related cases.



## **TAKE REGULATORY ACTION TO CLOSE EXISTING LOOPHOLES IN THE U.S. AML FRAMEWORK**

Cartel operatives routinely exploit gaps in the U.S. anti-money laundering (AML) framework to clean their ill-gotten proceeds. The Caucus urges the Department of the Treasury and the Financial Crimes Enforcement Network (FinCEN) to use existing authorities to implement regulatory changes to close these loopholes. The Caucus further urges Congress to ensure that the appropriate resources are available to update the AML framework.

The lack of oversight and transparency associated with shell companies and the cross-border transportation of stored value or prepaid access devices provide easy entry points for narcotics traffickers to hide and clean their ill-gotten gains in the legitimate financial system.

Fortunately, with appropriate resources, the U.S. Department of the Treasury, acting through FinCEN, has the authority to update its regulations to address these gaps in the U.S. AML regulatory framework. The following sections detail additional actions FinCEN can take.

## Prevent Narcotics Traffickers from Using Opaque Corporate Structures

### *Overview*

Beneficial ownership refers to the individuals who ultimately own or control an asset, such as a bank account or company, and reap its economic benefits.<sup>cxlv</sup> As noted in the 2022 *National Drug Control Strategy*, narcotics traffickers use webs of shell companies and other schemes to obscure their beneficial ownership information for purposes of laundering and later using their illicit drug proceeds for legitimate economic activity.<sup>cxlvi</sup>

The Financial Action Task Force (FATF) reported in its 2016 assessment of U.S. anti-money laundering (AML) regulations that “lack of timely access to adequate, accurate and current beneficial ownership information remains one of the fundamental gaps in the U.S context.”<sup>cxlvii</sup> Since then, the United States has implemented the 2018 Customer Due Diligence (CDD) rule and enacted the 2020 *Corporate Transparency Act (CTA)*, in part to address this criticism.

The Biden administration’s December 2021 *United States Strategy on Countering Corruption* (the *Strategy*) calls on federal agencies to implement the *CTA* by “finalizing effective beneficial ownership regulations, and building a database of the beneficial owners of certain companies, in order to help domestic and international partners identify bad actors.”<sup>cxlviii</sup>

The Caucus urges the administration to swiftly implement the *CTA*, including the beneficial ownership requirements, to “address deficiencies in the U.S. anti-money laundering regime.”<sup>cxlix</sup> The need to do so is even more urgent as the Tax Justice Network recently designated the United States as “the world’s largest enabler of financial secrecy, surpassing notorious tax havens like Switzerland, the Cayman Islands, and Bermuda” and is calling on G-7 members to establish “beneficial ownership registers, which would reveal the true owners behind anonymous offshore companies.”<sup>cl</sup>

### *Shell Companies*

Shell companies are organizations without any real economic operations.<sup>cli</sup> Put another way, they often just exist on paper. They can be used to anonymously buy assets, open bank accounts, and transfer money. The Financial Crimes Enforcement Network (FinCEN) has cited reports that suggest “shell companies purchased nearly half of the most expensive residential properties in the United

States.”<sup>clii</sup> While shell companies can be used for legitimate purposes, often they are used in concert with illicit financial activities, such as trade-based money laundering.<sup>cliii</sup>

In the United States, state laws govern shell companies. Many states do not require companies to report or disclose their beneficial owners, providing narcotics traffickers with a veil of anonymity behind which to conduct money laundering activities.<sup>cliv</sup> Some individuals may even use third-party nominees as stand-in beneficial owners for shell companies, providing another layer of anonymity. These third-party nominees can include corporate formation agents, who specialize in creating and operating companies at the state-level. As noted by Senator Blumenthal during a 2017 Senate Judiciary Committee hearing, shell companies “...all too often create an impenetrable wall of secrecy” that narcotics traffickers frequently use to hide illicit funds.<sup>clv</sup>

While state law largely governs the formation of shell companies, federal officials have had some success in piercing the veil of shell companies that narcotics traffickers use. For example, in 2013, the Federal Bureau of Investigation (FBI) dismantled the money laundering operation of the Los Zetas cartel. The cartel’s leaders, the Trevino-Morales brothers, made structured deposits of drug proceeds into anonymous U.S. shell companies, which they used to purchase many racehorses at auction. The Trevino-Morales brothers then sold the racehorses between their anonymous shell companies to legitimize the drug proceeds they had deposited in their bank accounts.<sup>clvi</sup> In total, the Trevino-Morales brothers laundered and repatriated over \$22 million to Mexico through this scheme.<sup>clvii</sup> The FBI reports that, “the wide use of shell companies, in both the United States and Mexico, made it nearly impossible for banks and investigators to associate the drug cartel with horses and bank accounts.”<sup>clviii</sup>

In 2018, Jesus Rodriguez-Jimenez was sentenced to 30 years in prison for leading an international money laundering organization that laundered over \$250 million for Mexican and Central American drug cartels. Rodriguez-Jimenez used shell bank accounts, front companies, and money couriers to operate different laundering schemes.<sup>clix</sup> In one scheme, Rodriguez-Jimenez’s associate, Las Vegas-based real estate agent, Luis Eduardo Rodriguez, used ill-gotten funds stashed in a shell corporation, Innova Properties LLC, to flip residential properties in Las Vegas. Luis Rodriguez also helped Jesus Rodriguez-Jimenez find “strawman” managers for shell companies that executed transactions on behalf of Rodriguez-Jimenez’s drug cartel clients.<sup>clx</sup>

## *Customer Due Diligence Rule*

In its 2013 report, the Caucus called on FinCEN to finalize its draft rule requiring financial institutions to determine the beneficial owners of bank accounts.<sup>clxi</sup> In 2018, FinCEN implemented the CDD Rule.<sup>clxii</sup> This rule directs most banks and securities brokers to collect and verify beneficial ownership information for individuals who own 25 percent or more of a corporation or limited liability corporation (LLC) opening a new account.<sup>clxiii</sup> Law enforcement can use this information to identify bank accounts involved in illicit schemes or conducting transactions to launder drug proceeds.

The Caucus believes that the rule could be improved, as it only applies to new bank accounts. Furthermore, because the beneficial ownership reporting threshold is only triggered if an individual owns more than 25 percent of the corporation or LLC, narcotics traffickers and other criminal actors can easily circumvent the rule by having five individuals invest in the business. The Caucus urges FinCEN to revise the rule to address these concerns.

## *Corporate Transparency Act (CTA)*

The Fiscal Year (FY) 2021 *National Defense Authorization Act* (NDAA) included the landmark *CTA*, which was championed by Caucus Chairman Whitehouse. The *CTA* builds on the CDD rule by exposing the beneficial owners of corporations that are used to open bank accounts. The *CTA* requires corporations and LLCs to report basic information about their beneficial owners, such as names and addresses, to a confidential FinCEN database. FinCEN then provides database disclosures to support law enforcement investigations. Once fully implemented, this law will make it more difficult for narcotics traffickers to use shell companies and other corporate structures to hide and launder their illicit drug proceeds through the U.S. financial system.

On December 7, 2021, FinCEN issued a Notice of Proposed Rulemaking, requesting comments from stakeholders on potential regulations to require certain corporate structures to identify their beneficial owners and the individuals who filed the application to form the corporate structure.<sup>clxiv</sup> On February 8, 2022, FinCEN announced that it had received over 230 comments and will use the comments to publish proposed rules in 2022.<sup>clxv</sup> Congress subsequently provided FinCEN with \$161 million in *Consolidated Appropriations Act, 2022*, which includes funding, in part, “to develop and maintain a national beneficial ownership database, and for staffing and support costs to implement and enforce the other

new requirements of the *Anti-Money Laundering Act of 2020*, including the *Corporate Transparency Act of 2020*.<sup>clxvi</sup> Pursuant to testimony provided to the Caucus, Treasury is aiming to finalize the beneficial ownership regulations by the end of 2022.<sup>clxvii</sup>

### *Conclusion*

The lack of beneficial ownership information permits narcotics traffickers to use shell companies to clean their illicit money, and then to spend their laundered proceeds on seemingly legitimate economic activities. The Caucus appreciates the efforts that FinCEN has taken to address this gap, including implementing the CDD rule, but more remains to be done. To pierce the veil of secrecy often surrounding beneficial ownership, FinCEN should work to swiftly implement the CTA. As noted by the Department of the Treasury in its 2022 *National Strategy for Combating Terrorist and Other Illicit Financing*, this important action will “[protect] U.S. national security and provide critical information to law enforcement and promote financial integrity and compliance...”<sup>clxviii</sup>

## Finalize Rules to Require Cross-Border Reporting of Stored Value

### *Overview*

Stored value (SV), or prepaid access devices, refer to monetary instruments that are prefunded, like gift cards, mobile phone applications, government benefit cards, and reloadable cards.<sup>clxix</sup> These instruments are not subject to cross-border reporting requirements.<sup>clxx</sup> Narcotics traffickers have thus exploited this gap in the U.S.' AML framework to move their ill-gotten gains back to drug producing and transit countries.

Congress enacted the *Credit Card Accountability Responsibility and Disclosure (CARD) Act* in 2009 to address this vulnerability, but multiple presidential administrations have failed to finalize the implementing regulations. The Caucus is renewing its call for these regulations to be finalized and implemented.

### *SV Background*

SV “provide[s] a portal to funds that have been paid in advance and are retrievable and transferable.”<sup>clxxi</sup> SV instruments are either open loop or closed loop: open loop “carry credit card company logos and are re-loadable;” closed loop are “gift cards that can be used at specific outlets.”<sup>clxxii</sup> Although SV can expand access to financial services, they also “increase the risk of fraud and money laundering,” according to the Office of the Comptroller of the Currency.<sup>clxxiii</sup>

### *Money Laundering Vulnerability*

Narcotics traffickers often use SV because they are convenient, transportable, and anonymous.<sup>clxxiv</sup> In fact, the Federal Bureau of Investigation (FBI) reported that “drug traffickers have been known to convert drug cash to prepaid debit cards, which they then use to purchase goods and services or send to drug suppliers, who use the cards to withdraw money from a local ATM.”<sup>clxxv</sup> In one example, the Sinaloa Cartel moved “money from New York to Colombia and Ecuador to buy more cocaine...us[ing] debit cards that could be loaded up with as much as \$9,900 per card...After the cards arrived in South America, the cartel hired workers to withdraw the money from ATMs.”<sup>clxxvi</sup> SV is particularly appealing to narcotics traffickers as it allows them to move drug proceeds from the United States to other countries without the risks of bulk cash smuggling and getting caught by reporting requirements. Consequently, “a drug trafficker or

terrorist with hundreds of thousands of dollars on pre-paid cards could literally walk across the U.S.-Mexico border without penalty.”<sup>clxxvii</sup>

### *Congressional Action*

Since 2009, Congress has pushed Democratic and Republican administrations to address this vulnerability. Congress enacted the *CARD Act* in 2009, directing Treasury to “issue regulations in final form implementing the *Bank Secrecy Act*, regarding the sale, issuance, redemption, or international transport of stored value, including stored value cards,” within 270 days of enactment. The U.S. Department of the Treasury did not meet this deadline. After hearing from Treasury officials during a 2011 Caucus hearing, Senators Feinstein, Whitehouse, and Grassley sent a letter urging the Department to finalize SV cross-border reporting requirements.<sup>clxxviii</sup> On October 12, 2011, the Obama administration submitted a Notice of Proposed Rulemaking (NPRM), but it never finalized the rule. In its 2013 report, *The Buck Stops Here: Improving U.S. Anti-Money Laundering Practices*, the Caucus again called for a SV rule. In 2021, counternarcotics expert Celina Realuyo, also called for a final rule and “explor[ing] similar requirements for emerging digital cross-border payments.”<sup>clxxix</sup>

### *Conclusion*

SV remains a financial vulnerability. In its own 2022 *National Money Laundering Risk Assessment*, the Department of the Treasury acknowledged that “law enforcement has...observed that organized fraud rings are increasingly using credit cards and stored value gift cards to launder money.”<sup>clxxx</sup> Furthermore, federal law enforcement officials have shared with Caucus staff that SV cross-border reporting requirements will help curb the flow of ill-gotten gains across U.S. borders.<sup>clxxx</sup> To that end, the Caucus again urges the U.S. Department of the Treasury to expeditiously update and finalize its October 12, 2011 NPRM.

## **BETTER UTILIZE AND MODERNIZE THE U.S. AML SYSTEM**

The United States has issued a plethora of laws and regulations to prevent narcotics traffickers and other criminals from hiding their wealth in its licit financial system. All too often, however, the federal government does not effectively utilize all of the tools in its arsenal to prevent money laundering and to hold those responsible to full account. The Caucus urges the relevant agencies responsible for implementing such laws and regulations to do so. The Caucus further urges Congress to swiftly pass legislation to close the loopholes in existing law that narcotics traffickers exploit.



## Use Current Law to Hold Culpable Banks, Employees, and Executives Accountable

### *Overview*

The willful negligence of financial institutions, their employees, and executives to implement appropriate and effective anti-money laundering (AML) practices enables drug traffickers and others to use the U.S. financial system to disguise and access illicitly obtained profits. The federal government's failure to pursue the maximum criminal penalties allowed under the law sends the message that breaking money laundering laws is inconsequential. It suggests money laundering is a victimless crime for which a small fine—at least relative to a financial institution's overall profit—is simply the cost of doing business.

In reality, these financial institutions, their employees, and executives are aiding and abetting criminal enterprises that have engaged in the illicit drug trade that has resulted in the deaths of hundreds of thousands of U.S. citizens.

### *Prioritization of Corporate Criminal Activity Prosecutions*

The Department of Justice (DOJ) regularly issues guidance and updates its *United States Attorneys' Manual* regarding how U.S. Attorneys should prioritize the prosecution of various corporate crimes.

For example, in a 2015 memorandum, then-Deputy Attorney General (DAG) Sally Yates stated:

Fighting corporate fraud and other misconduct is a top priority of the Department of Justice. Our nation's economy depends on effective enforcement of the civil and criminal laws that protect our financial system and, by extension, all our citizens...One of the most effective ways to combat corporate misconduct is by seeking accountability from the individuals who perpetrated the wrongdoing.<sup>clxxxii</sup>

With that guiding principle in mind, she advised all U.S. Attorneys that no corporation should qualify for any cooperation credit unless it provided DOJ with "all relevant facts relating to the individuals responsible for the misconduct."<sup>clxxxiii</sup> She further instructed that "absent extraordinary circumstances or approved departmental policy, the Department will not release culpable individuals from civil or criminal liability when resolving a matter with a corporation" and that

“Department attorneys should not resolve matters with a corporation without a clear plan to resolve related individual cases.”<sup>clxxxiv</sup> Additionally, “civil attorneys should consistently focus on individuals as well as the company and evaluate whether to bring suit against an individual based on considerations beyond that individual’s ability to pay.”<sup>clxxxv</sup>

While acknowledging the challenges associated with prosecuting such cases, including that it is difficult to prove knowledge and criminal intent beyond a reasonable doubt, the underlying message was clear: cases against corporations, including financial institutions, and their executives should be aggressively pursued.

In 2017, then-DAG Rod Rosenstein announced a new corporate enforcement policy, which was incorporated into the *United States Attorneys’ Manual*.<sup>clxxxvi</sup> This policy asserted that DOJ would generally decline to prosecute a corporation if it satisfies “the standards of voluntary self-disclosure, full cooperation, and the timely and appropriate remediation,” unless there are “aggravating circumstances related to the nature and seriousness of the offense, or if the offender is a criminal recidivist.”<sup>clxxxvii</sup> Moreover, if aggravating circumstances prevail but the offender cooperates with the Department, the offender would still be eligible for a “50 percent reduction off the low end of the Sentencing Guidelines fine range.”<sup>clxxxviii</sup>

In 2021, DAG Lisa Monaco instructed U.S. Attorneys to consider a corporation’s criminal history in its totality, and condition cooperation agreements on the corporation providing all information “concerning all persons [inside and outside of the corporation] involved in corporate misconduct.”<sup>clxxxix</sup> She further instructed that compliance monitors, which can be imposed on corporations involved in deferred prosecution agreements (DPAs), non-prosecution agreements (NPAs), or plea agreements, in order to strengthen the corporation’s compliance with the criminal resolution and reduce recidivism risks, should be imposed when a “corporation’s compliance program and controls are untested, ineffective, inadequately resourced, or not fully implemented at the time of resolution.”<sup>cxc</sup>

DPAs and NPAs frequently require the financial institution to install a compliance monitor, who is paid by the institution, and selected by DOJ from a pool of the institution’s recommendations.<sup>cxc</sup> Such agreements, if not followed by prosecutions of culpable individuals, can undermine the appearance of impartiality.

Although prosecution agreements can have the capacity for abuse, they have also proven to be important tools in investigating and prosecuting corrupt

individuals within complex corporate organizations.<sup>excii,exciii,exciv</sup> Accordingly, where used, these agreements should leverage information obtained through corporate cooperation to prosecute individual corporate criminal actors, as appropriate.

In addition to the guidance related to compliance programs, DAG Monaco also established a Corporate Crime Advisory Group, charged with reviewing DOJ’s “approach to prosecuting criminal conduct by corporations and their executives, management, and employees.”<sup>excv</sup>

### *Repeated Violations Have Little Impact*

The Caucus is heartened by DOJ’s most recent guidance. However, given that similar, past guidance has not resulted in increased criminal prosecutions or a decrease in NPAs and DPAs, even when repeat offenders are involved, the Caucus remains skeptical that culpable financial institutions, their employees, and executives will be held to full account.

In some of the most prominent instances, DOJ did not pursue criminal charges, but instead entered into DPAs with Wachovia Bank and HSBC Bank (HSBC) for their failures to apply effective AML programs. These collective failures, as underscored in the 2013 Caucus report, enabled narcotics traffickers to launder more than \$1 billion through the U.S. financial system.<sup>excvi, excvii</sup>

DOJ went on to enter into two additional DPAs with HSBC for fraud and tax evasion.

Following the decision to forego criminal prosecution in the HSBC case, Co-Chairman Grassley sent a letter to the Attorney General stating:

[t]he Department has not prosecuted a single employee of HSBC—no executives, no directors, no AML compliance staff members, no one. By allowing these individuals to walk away without any real punishment, the Department is declaring that crime actually does pay. Functionally, HSBC has quite literally purchased a get-out-of-jail-free card for its employees for the price of \$1.92 billion dollars.<sup>excviii</sup>

Similar to Co-Chairman Grassley, in a 2021 Caucus hearing on *The Nexus Between the Illicit Drug Trade and Corruption*, Senator Luján derided DOJ’s decision to enter into multiple DPAs with HSBC, stating “there was a decision

made in 2012 with HSBC in the United States to levy a \$1.9 billion fine, which is about five weeks of profits for the bank. But there was a decision by the United States Department of Justice not to criminally prosecute anyone that was caught laundering money in that case, 175 criminal charges that we know about.”<sup>ccxcix</sup>

The Wachovia Bank and HSBC cases are egregious examples, with direct ties to the illicit drug trade, but they are far from the only instances in which the federal government has entered into multiple DPAs or NPAs with corporations rather than revoking their charter or pursuing criminal charges against the institution, its executives, or boards.

In fact, as of 2019, DOJ:

has brought subsequent federal criminal enforcement actions against 38 corporations after the department entered deferred or non-prosecution agreements with the same companies. Most of these repeat offender corporations (63% – 24 out of 38) received at least one additional DPA or NPA after already having received a prior DPA or NPA, and most have pleaded guilty to subsequent crimes (66% – 25 out of 38). These corporations’ 78 NPAs and DPAs make up 15% of the 535 agreements the DOJ entered since 1992.<sup>cc</sup>

Correspondingly, the number of corporate prosecutions has decreased. In 2020, DOJ entered into 38 corporate DPAs and NPAs, while only 94 organizational offenders were prosecuted and sentenced.<sup>cci</sup> This is a 20 percent decrease compared to 2019.<sup>ccii</sup> Moreover, according to the U.S. Sentencing Commission, “the number of organizational offenders has continued to trend downward from a peak of 304 since 2000.”<sup>cciii</sup>

Also in 2020, an International Consortium of Investigative Journalists and *Buzzfeed News* investigation, known as the “FinCEN Files,” found that large banks allowed the transfer of funds even when compliance officers flagged them as suspicious, and did not report the transactions to FinCEN until months or even years later.<sup>cciv</sup> The investigation further revealed that five global banks—HSBC, JP Morgan Chase, Standard Chartered Bank, Deutsche Bank, and Bank of New York Mellon—continued to profit from suspicious transactions, despite having paid prior fines for related misconduct or signing deferred prosecution agreements.<sup>ccv</sup>

DOJ routinely enters into DPAs and NPAs that often result in little more than fines or imposes compliance monitors, or does both. Consequently, many financial institutions, their employees, and executives continue to implement weak AML programs and engage in activity that facilitates money laundering, viewing such actions merely as the cost of doing business. Thus, the repeated use of DPAs and NPAs may well serve as a perverse incentive for criminal behavior.

### *Conclusion*

Financial institutions, their employees, and executives who knowingly and intentionally enable drug cartels to launder illicit proceeds through the U.S. financial system must be held to full account. As underscored in the *2022 National Strategy for Combating Terrorist and Other Illicit Financing*, “the U.S. government must continue to employ an “all-tools” approach to combating illicit finance activity.”<sup>ccvi</sup> The Caucus concurs with this statement and strongly urges DOJ and other relevant agencies to use their existing authorities to aggressively investigate, prosecute, and pursue the maximum allowable criminal and civil penalties for culpable financial institutions, employees, and executives that facilitate narcotics trafficking. Their failure to implement robust, effective AML programs costs lives and untold suffering.

## Modernize the U.S. Anti-Money Laundering System

### *Overview*

Like any business, drug trafficking organizations (DTOs) diversify their strategies to maximize profit. A critical aspect of this diversification involves using multiple methods to launder illicit proceeds to avoid law enforcement detection and scrutiny from financial institutions. As such, DTOs routinely exploit loopholes in current law.

To close these loopholes, Co-Chairmen Grassley and Whitehouse, along with Senators Cornyn, Klobuchar and Feinstein introduced the *Combating Money Laundering, Terrorist Finance and Counterfeiting Act of 2022* (S.3697). The bill is virtually identical to the *Combating Money Laundering, Terrorist Finance and Counterfeiting Act of 2019* (S.1883), which was passed by the full Senate Judiciary Committee. In testimony provided to the Caucus in July, 2022, Treasury Under Secretary for Terrorism and Financial Intelligence, Brian Nelson, noted that this bill “makes important strides towards remedying deficiency in the U.S. [anti-money laundering (AML)] regime, absolutely.”<sup>ccvii</sup>

The Caucus urges Congress to swiftly pass S.3697.

### *Bulk Cash Smuggling*

Bulk cash smuggling is among the most established and commonly employed methods that DTOs use to launder money. This method involves moving large sums of cash or monetary instruments – such as checks, traveler’s checks, and money orders – within and across U.S. borders to evade detection in the traditional financial system. Pursuant to the *Bank Secrecy Act (BSA)*, it is illegal to knowingly conceal more than \$10,000 in currency or other monetary instruments and to transport or transfer, or attempt to transport or transfer, such currency or monetary instruments from within the United States to outside of the United States, or vice versa. Violations of these *BSA* provisions can result in a five-year prison sentence and or a fine.

Despite this, bulk cash smuggling remains a preferred method for narcotics traffickers to repatriate their illicitly-derived profits. According to the Financial Action Task Force, “[T]he widespread use of U.S. currency abroad and the important role that the U.S. financial sector plays in the global financial system

leave it significantly exposed to risks of cross-border illicit flows, including bulk cash....”<sup>ccviii</sup>

DTOs typically use privately owned vehicles and tractor-trailers to transport cash from throughout the United States across the Southwest Border and into Mexico and other Central or South American countries.<sup>ccix</sup> The fact that Customs and Border Protection (CBP) only has the capacity to inspect a fraction of the commercial truck (16 percent) and personal vehicle (1.5 percent) traffic entering and exiting the United States makes bulk cash smuggling an attractive option for DTOs.<sup>ccx, ccxi</sup>

To help combat bulk cash smuggling, and to augment CBP’s efforts, the Bulk Cash Smuggling Center was established within the Department of Homeland Security’s (DHS) Immigrations and Customs Enforcement, Homeland Security Investigations (HSI). Since 2007, HSI’s “bulk cash smuggling investigations have led to the arrest of 8,810 individuals and more than \$2.63 billion United States Dollar (USD) in seizures. In Fiscal Year (FY) 2021 alone, HSI Special Agents arrested 1,256 individuals and seized more than \$192 million USD during bulk cash smuggling and cryptocurrency investigations.”<sup>ccxii</sup>

The United States has clearly prioritized bulk cash smuggling, recognizing that it “fuels criminal enterprises that traffic in illicit drugs, engage in violent crime against persons and property, fund terrorism and extremist groups, engage in human trafficking and smuggling and commit commercial fraud.”<sup>ccxiii</sup> Nonetheless, the figures above demonstrate that the maximum allowable penalty of five years is not an effective deterrent.

This point was emphasized by then-Acting Assistant Director, Investigative Programs, Immigrations and Customs Enforcement, U.S. DHS, Matthew C. Allen, in his response to questions for the record submitted to the Senate Judiciary Committee in 2017. Allen stated that:

[Bulk cash smuggling] is often used in combination with different money laundering methodologies such as interstate funnel accounts, TBML, and peer-to-peer cryptocurrency exchanges. Increasing the penalties for [bulk cash smuggling] could potentially deter TCOs from conducting this illicit activity.<sup>ccxiv</sup>

DHS’s HSI continues to support this position, and reiterated to Caucus staff that it:

has long advocated for increasing the incarceration penalty for violations of 31 U.S.C. 5332 from a five year prison term to a 10 year term. We believe doing so will directly strengthen law enforcement’s ability to stop the illicit cross-border flow of currency and provide increased leverage to disrupt TCO and the associated courier and money laundering networks.<sup>ccxv</sup>

### *DTOs Diversify Money Laundering Techniques to Ensure Maximum Profits*

As noted by then-Acting Assistant Director Allen, drug trafficking organizations use a variety of methods to conceal their profits. The recent prosecution of Harinder Singh provides a good case study.

Singh was indicted by a federal grand jury in 2015 for conspiring to move proceeds for narcotics traffickers, including the Sinaloa Cartel. In this conspiracy, participants:

used a traditional hawala network of brokers spanning the United States, Canada and India to secretly transfer millions of dollars of drug proceeds to the United States, where brokers such as Singh delivered money to couriers acting on behalf of the Canadian drug traffickers and Mexican drug cartels.<sup>ccxvi</sup>

In the hawala system:

[t]he transfer of monetary value occurs between the brokers—who are typically located in different countries, but sometimes in different cities in one nation—based solely upon the trust that exists between the brokers... Through hawala transactions, only the value of the money is transferred, not the money itself.<sup>ccxvii</sup>

As noted in the 2013 Caucus report, “the majority of hawala transfers are for legitimate purposes and are legal in the United States so long as the hawala is registered as a money service business with FinCEN and licensed in the state in which it is doing business.”<sup>ccxviii</sup> Singh, however, proved to be an exception to this rule.

Not only was Singh not registered as a money service business, but he took numerous steps to obscure his illicit transactions, including using burner phones and switching out his SIM card and phone number regularly.<sup>ccxix</sup> Singh and others involved in the scheme charged higher than usual fees to their customers, used



code words “like ‘shaman’ and ‘merchandise’ to disguise the nature of the transactions,” and verified the recipients’ identities by using serial numbers on a dollar bill.<sup>ccxx</sup>

Singh was ultimately convicted of conspiracy to launder money, conspiracy to operate an unlicensed money transmitting business, and operating such a business. Seventeen additional individuals pled guilty in this case, which resulted in the seizure of approximately \$15.5 million in bulk cash, over 300 kilograms of cocaine, 98 pounds of methamphetamine, 11 kilograms of ecstasy, and nine kilograms of heroin.<sup>ccxxi</sup>

In another case study, more than 75 defendants were charged with carrying out an international money laundering scheme using a variety of methods to move and conceal narcotics-related funds in March, 2018.<sup>ccxxii</sup> Through this scheme, a network of money launderers directed money movers who were located throughout the United States to collect and deposit bulk cash associated with the sale of illicit narcotics into bank accounts, creating a web of funnel accounts.<sup>ccxxiii</sup> The money movers transported large amounts of funds—ranging from thousands to hundreds of thousands of dollars at a time—and concealed them in vehicle compartments, luggage, duffle boxes, and shoe boxes.<sup>ccxxiv</sup> Once funds were deposited into the funnel accounts, the money movers awaited instruction from other co-conspirators to initiate and conduct international wire transfers to move the funds into Mexican bank accounts, which were associated with shell companies in Mexico and controlled by the money laundering organization.<sup>ccxxv</sup> The proceeds ultimately made their way into the hands of narcotics traffickers and DTOs, including the Sinaloa Cartel.<sup>ccxxvi</sup>

In this case, the Federal Bureau of Investigation worked with its interagency partners to infiltrate the money laundering organization, and seized more than 500 kilograms of narcotics, and 20 firearms.<sup>ccxxvii</sup> Several members of this international money laundering organization have been convicted and sentenced, and others remain fugitives.<sup>ccxxviii</sup>

Both of these case studies illustrate the lengths to which narcotics traffickers and their associates go to hide illicitly-derived proceeds.

## *Chinese Money Laundering Organizations (CMLOs) Make Use of Traditional and Novel Money Laundering Techniques*

Similar to the examples above, CMLOs use a combination of traditional money laundering methods and more novel techniques, such as the black market foreign exchange. Such exchanges rely “on basic principles of supply and demand of currency and match individuals that have a supply of U.S. dollars with those in the market that have a demand for U.S. dollars.”<sup>ccxxxix</sup>

As a result, the U.S. Department of the Treasury identified CMLOs as a risk in its *2022 National Money Laundering Risk Assessment*, noting that:

what makes CMLOs unique is their ability to offer services at lower fees than traditional money brokers, to exploit Chinese currency controls, and to use communication technology effectively. These organizations are often compartmentalized, and they disguise themselves behind legitimate business activity to reduce their exposure.<sup>ccxxx</sup>

Often, CMLOs still pay out, even if law enforcement interdicts their funds.

## *The Combating Money Laundering, Terrorist Finance and Counterfeiting Act of 2022*

While the United States has a robust anti-money laundering (AML) framework, more must be done to address current loopholes, which allow vast criminal organizations operating under the veil of anonymity to gain entry to our legitimate financial systems. The *Combating Money Laundering, Terrorist Finance and Counterfeiting Act of 2022* modernizes the AML framework with the goal of better deterring drug traffickers from using or skirting the United States’ financial system to clean and launder their dirty money. As noted by Senator Cornyn upon introduction, “This legislation equips law enforcement with the financial tools to hit the cartel’s bottom line...”<sup>ccxxxix</sup> In addition to increasing the penalties for bulk cash smuggling, and ensuring that money laundering laws apply to hawalas and other informal value transfer systems, the legislation:

- Prohibits the cross-border shipment of blank checks for the purpose of evading reporting requirements of monetary instruments;
- Establishes a new money laundering violation that prohibits the transfer of funds into or out of the United States with the intent to violate U.S. income tax laws;

- Prohibits conspiracies to create illegal money services businesses, such as services allowing the transfer of money by wire and allowing multiple violations of laundering monetary instruments to be charged in a single count in an indictment or information;
- Grants wiretapping authority to investigate currency reporting, bulk cash smuggling, illegal money services businesses and counterfeiting offenses; and,
- Grants the U.S. Secret Service the explicit authority to investigate ransomware crimes and other uses of unlicensed money transmitting.

### *Conclusion*

Narcotics traffickers, DTOs, transnational criminal organizations, and others continue to use “tried and true” money laundering methods to repatriate ill-gotten gains. *The Combating Money Laundering, Terrorist Financing, and Counterfeiting Act of 2022* increases penalties for these commonly-used methods, while also providing law enforcement with the tools it needs to keep up with newer money laundering techniques. The Caucus urges Congress to swiftly pass this legislation.

## CONCLUSION

The narcotics trade is underpinned by profit and corruption. As highlighted by Senator Risch in his bipartisan resolution in support of the Summit of the Americas, “transnational criminal organizations [TCOs] and their involvement in money laundering and the trafficking of people, narcotics, and weapons...pose complex transnational threats to United States public health and national security, as well as the stability of the Americas, by undermining citizen security, basic human rights, the rule of law, good governance, and economic development.”<sup>ccxxxii</sup> No matter the commodity, these TCOs exploit the laws in the United States and fellow rule-of-law countries to conceal and launder their illicit wealth, often using the same international networks and schemes. This poses national health, safety, and security challenges to the United States, and it must end.

Simply put, the United States must do more to degrade the international networks that protect the secrecy of illicit proceeds, thereby allowing DTOs to continue flourishing. The Caucus therefore urges the United States to implement the following actionable recommendations:

- Ensure the successful prosecution of narcotics traffickers by helping partner nations strengthen their institutions to better defend against corruption and implement justice sector reforms;
- Better track whole-of government efforts to combat narcotics-related illicit finance;
- Deploy experts in narcotics-related illicit finance to assist partner nations, and authorize innovative and effective programs to combat international money laundering, such as Trade Transparency Units;
- Use regulatory authorities to close loopholes in the U.S. anti-money laundering (AML) framework, including by ensuring greater transparency in the cross-border transportation of stored value or prepaid access devices and fully implementing the beneficial ownership requirements of the *Corporate Transparency Act*;
- Aggressively investigate, prosecute, and pursue the maximum allowable criminal penalties for culpable banks, employees, and executives who fail to report suspicious transactions; and,

- Address vulnerabilities in the AML framework by swiftly enacting the *Combating Money Laundering, Terrorist Finance, and Counterfeiting Act*.

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## **APPENDIX**

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### **I. Additional Views from Chairman Whitehouse**

## **Additional Views from Chairman Whitehouse on Regulatory Actions to Strengthen the U.S. Anti-Money Laundering (AML) Framework**

A covert international system, or dark economy, has developed for the sole purpose of assisting drug traffickers and other criminal actors to hide and protect their ill-gotten gains. This dark economy often uses money laundering and other financial schemes in rule-of-law countries, including the United States, to create a veneer of legitimacy over illicit proceeds. In the United States, the dark economy often targets the real estate and the financial sectors. To address these vulnerabilities, the administration should take immediate action to close two regulatory loopholes by: 1) making geographic targeting orders permanent, nationwide, and applicable to commercial real estate; and 2) imposing reporting requirements on investment advisors.

### *Geographic Targeting Orders (GTOs)*

Narcotics traffickers often use all-cash purchases of residential real estate to launder their ill-gotten gains. The former governor of the Mexican state of Veracruz, Javier Duarte, who had known ties to drug cartels, purchased a Miami mansion for \$7.6 million in cash. Duarte also acquired 30 other Miami homes between 2006 and 2014 using a network of shell companies in Texas, Delaware, and Florida.<sup>i</sup> Similarly, Genaro Garcia Luna, the former Mexican minister of security, took multi-million dollar bribes from the Sinaloa Cartel and used that money to acquire real estate.<sup>ii,iii</sup>

Narcotics traffickers seek out the real estate market because: (1) it generally holds its value; (2) authorities have limited visibility into real estate transactions; (3) it allows illicit proceeds to be transformed into legitimate sources of income through rental payments or property development; and, (4) it shields their assets from seizures if they are located in a foreign jurisdiction.<sup>iv</sup>

GTOs help the Financial Crimes Enforcement Network (FinCEN) target these criminal actors by increasing oversight of the residential real estate sector through time-limited recordkeeping and reporting requirements for no more than six months.<sup>v</sup> Unlike prior GTOs that had been implemented at the request of law enforcement, FinCEN issued its first self-initiated GTO in 2016. This GTO applied to transactions of \$3 million or more in Manhattan and \$1 million or more in Miami-Dade County. Since 2016, this GTO has been renewed 12 times with an expanding number of localities and monetary instruments subject to the GTO.

GTOs effectively curb real estate-based money-laundering schemes and assist law enforcement. An evaluation from the University of Miami found that all-cash purchases by corporations, including shell companies, decreased by 66 percent following the implementation of the 2016 GTO.<sup>vi,vii</sup> A 2020 Government Accountability Office report found that data collected under the GTO supports law enforcement activities. The Federal Bureau of Investigation (FBI), for example, reported “that their searches [of GTO data] found that nearly 7 percent of the GTO reports identified individuals or entities connected to the [FBI’s] ongoing cases since the issuance of [the] GTO in 2016.”<sup>viii</sup> Similarly, the Department of Justice’s flagship program to tackle the illicit narcotics trade, the Organized Crime and Drug Enforcement Task Force, reported that “they used GTO data to generate between six and 10 leads since the GTO was issued.”<sup>ix</sup>

Perhaps because of their effectiveness, cartels and other criminals are beginning to seek out locations in jurisdictions that are not subject to GTOs in order to launder their illicit proceeds. According to Global Financial Integrity “60.71 percent of U.S. [real estate money laundering] cases involved properties in one or more non-GTO counties,” suggesting that criminals are intentionally purchasing property to evade FinCEN oversight.<sup>x</sup> The Department of the Treasury highlighted this drawback in its *2022 National Strategy for Combatting Terrorist and Other Illicit Financing*, noting that the “limiting the scope of the regulations by geography may simply push money laundering activity to other locations.” At a recent Caucus hearing, Under Secretary Nelson stated “we agree that GTOs are temporary and obviously have limited geographic reach.”<sup>xi</sup>

Moreover, GTOs do not cover commercial real estate, which drug traffickers have been known to target. Sefira Capital LLC, “invested more than \$100 million in high-end commercial and residential real estate projects across the United States, after allegedly receiving millions of dollars in criminal proceeds from ‘investors’ who were actually drug trafficking organizations laundering through the Black Market Peso Exchange.”<sup>xii</sup>

To improve on their success, FinCEN should make the residential GTOs permanent and nationwide. FinCEN should further expand the GTOs to cover commercial real estate to ensure that ill-gotten gains do not simply move from the residential sector to the commercial sector. Addressing these shortcomings will help achieve the “permanent regulatory solution to address [the] problem of anonymity in the real estate sector” envisioned by Under Secretary Nelson.<sup>xiii</sup>

## *Investment Advisers*

Investment advisers control access to the U.S. financial system, making them “gatekeeper” professionals. Despite this critical role, they are not subject to any of the AML recordkeeping or reporting requirements that are imposed on bankers, another gatekeeper professional. In testimony provided to the Caucus, Under Secretary Nelson underscored the fact that “...there are financial intermediaries, gatekeepers and the like, that are obviously not covered by comprehensive AML/CFT obligations, and we are looking at this question in particular very closely...”<sup>xiv</sup> The Department of the Treasury, in its 2022 *National Money Laundering Risk Assessment*, also noted that investment advisers provide “a low risk-way to enter the U.S. financial system.”<sup>xv</sup>

FinCEN, in 2015, proposed a rule that would have required investment advisers to develop risk-based AML programs. The rule would also have required advisers to designate an individual responsible for managing their AML program and ensuring that employees receive AML training. Further, it would have directed investment advisers to submit reports to FinCEN that could assist law enforcement in stopping money laundering and other illicit finance activities. Lastly, investment advisors would have been required to keep records and share with relevant financial institutions basic information about the owner of the funds that they move or handle. This rule was never finalized.

As a result, drug traffickers continue to exploit this vulnerability to launder their ill-gotten gains. For example, an FBI intelligence memo in 2020 documented a case of a “Mexican [drug] cartel operative in Los Angeles and Orange County [who] recruited and paid people to open hedge fund accounts at private banking institutions. ‘The cartel laundered approximately \$1 million through the accounts each week and then withdrew the money to purchase gold.’”<sup>xvi</sup>

The Biden administration recognizes that it is a national and financial security imperative to impose record keeping requirements on gatekeepers, like investment advisors. For that reason, it asserted in its 2021 *United States Strategy on Countering Corruption* that it will collaborate with “Congress to expand authorities where necessary, to make sure that key gatekeepers to the financial system...cannot evade scrutiny.” While legislation to provide for these expanded authorities may ultimately be necessary, in the interim, the administration should exercise its regulatory authority to finalize and update the 2015 investment adviser rule.

## Conclusion

The administration has a unique opportunity to shrink the dark economy by initiating and finalizing the rulemaking process to close critical loopholes in the U.S. AML framework. Given the threats posed by DTOs and others who regularly exploit these vulnerabilities, the administration should act immediately.

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<sup>i</sup>Kumar, Lakshmi and deBel, Kaisa. *Acres of Money Laundering*. Washington, DC: Global Financial Integrity, 2021. <https://secureservercdn.net/50.62.198.97/34n.8bd.myftpupload.com/wp-content/uploads/2021/08/Acres-of-Money-Laundering-Final-Version-2021.pdf?time=1632747809>

<sup>ii</sup> Eastern District of New York, “Former Mexican Secretary of Public Security Genaro Garcia Luna Charged with Engaging in a Continuing Criminal Enterprise.” U.S. Attorney’s Office, United States Department of Justice, August 6, 2020. <https://www.justice.gov/usao-edny/pr/former-mexican-secretary-public-security-genaro-garcia-luna-charged-engaging-continuing>

<sup>iii</sup> “The Luxury Properties of García Luna that López Obrador Could Claim from the U.S.” *World Today News*, January 14, 2020. <https://www.world-today-news.com/the-luxury-properties-of-garcia-luna-that-lopez-obrador-could-claim-from-the-us/>

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<sup>v</sup> United States Government Accountability Office. *Anti-Money Laundering: FinCEN Should Enhance Procedures for Implementing and Evaluating Geographic Targeting Orders*, Washington, DC. Report No. GAO-20-546, July 2020. <https://www.gao.gov/assets/gao-20-546.pdf>

<sup>vi</sup> Hundtofte, Sean, and Ville Rantala. “Anonymous capital flows and US housing markets.” *University of Miami Business School Research Paper* 18-3 (2018).

<sup>vii</sup> Colin, Matthew, Hollenbach, Florian and David Szakonyi. “The Impact of Treasury’s Pilot Program on Stemming the Tide of Dirty Money into US Real Estate.” Washington, DC: Brookings, March 7, 2022. <https://www.brookings.edu/blog/up-front/2022/03/07/the-impact-of-treasurys-pilot-program-on-stemming-the-tide-of-dirty-money-into-us-real-estate/>

<sup>viii</sup> United States Government Accountability Office. *Anti-Money Laundering: FinCEN Should Enhance Procedures for Implementing and Evaluating Geographic Targeting Orders*, Washington, DC. Report No. GAO-20-546, July 2020. <https://www.gao.gov/assets/gao-20-546.pdf>

<sup>ix</sup> Ibid.

<sup>x</sup>Kumar, Lakshmi and deBel, Kaisa. *Acres of Money Laundering*. Washington, DC: Global Financial Integrity, 2021. <https://secureservercdn.net/50.62.198.97/34n.8bd.myftpupload.com/wp-content/uploads/2021/08/Acres-of-Money-Laundering-Final-Version-2021.pdf?time=1632747809>

<sup>xi</sup> *The Role of the Federal Government in Attacking the Financial Networks of Cartels, Before the Senate Caucus on International Narcotics Control*. 117<sup>th</sup> Cong. (2022) (Testimony of Brian Nelson, Under Secretary, Terrorism and Financial Intelligence). <https://www.drugcaucus.senate.gov/wp-content/uploads/2022/07/118712.pdf>

<sup>xii</sup>Kumar, Lakshmi and deBel, Kaisa. *Acres of Money Laundering*. Washington, DC: Global Financial Integrity, 2021. <https://secureservercdn.net/50.62.198.97/34n.8bd.myftpupload.com/wp-content/uploads/2021/08/Acres-of-Money-Laundering-Final-Version-2021.pdf?time=1632747809>

<sup>xiii</sup> *The Role of the Federal Government in Attacking the Financial Networks of Cartels, Before the Senate Caucus on International Narcotics Control*. 117<sup>th</sup> Cong. (2022) (Testimony of Brian Nelson, Under Secretary, Terrorism and Financial Intelligence). <https://www.drugcaucus.senate.gov/wp-content/uploads/2022/07/118712.pdf>

<sup>xiv</sup> Ibid.