



COMMONWEALTH of VIRGINIA
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February 8, 2023

The Honorable Joseph R. Biden, Jr.
President of the United States
The White House
1600 Pennsylvania Avenue NW
Washington, D.C. 20500

The Honorable Antony J. Blinken
Secretary of State
Department of State
2201 C Street NW
Washington, D.C. 20520

Dear President Biden and Secretary Blinken:

Drug overdoses have killed more than 100,000 Americans over the past year. Sixty-six percent of those deaths were related to synthetic opioids like fentanyl.¹ I write to ask you to exercise power conferred on you by Congress to take swift and decisive action to abate this deadly scourge.

The cause of this scourge is well known. The Drug Enforcement Administration (DEA) reports that Mexican drug cartels, including the Sinaloa Cartel and the Jalisco New Generation Cartel (CJNG), import dangerous raw materials from China, use them to produce deadly synthetic opioids at low cost, and unlawfully transport those opioids into the United States.² Between October 2021 and June 2022, U.S. Customs and Border Protection seized 8,425 pounds of fentanyl

¹ Press Release, DEA, DEA Warns of Increase in Mass-Overdose Events Involving Deadly Fentanyl, (Apr. 6, 2022), <https://www.dea.gov/press-releases/2022/04/06/dea-warns-increase-mass-overdose-events-involving-deadly-fentanyl>.

² DEA Washington Division, Public Information Office, *Fentanyl Deaths Climbing, DEA Washington Continues the Fight*, (Feb. 16, 2022), <https://www.dea.gov/stories/2022/2022-02/2022-02-16/fentanyl-deaths-climbing-dea-washington-continues-fight>.

being smuggled into the United States.³ Both the Sinaloa Cartel and the CJNG have expanded their deadly business into Virginia, where fatal overdoses have increased by forty percent since 2021.⁴ These foreign drugs have created twin public-health and national-security crises of unparalleled magnitude.

The Mexican drug cartels threaten our national security beyond the sale of these deadly drugs. Over the past decade, Mexican drug cartels have developed well-organized armed forces to protect their reprehensible trade from rivals and from the Mexican government. The existence of such forces just across our southwestern land border, and the Mexican government's inability to control them, pose a threat to our national security far greater than a typical drug-trafficking enterprise. That threat is made greater still by the known links between the Mexican drug cartels and Foreign Terrorist Organizations (FTO) like Hezbollah who already intend to do us harm.⁵ Our national security requires the federal government to disrupt this collaboration between cartels and terrorist groups.

DEA Administrator Anne Milgram has emphatically declared that that “[f]entanyl is the single deadliest drug threat our nation has ever faced.”⁶ As the Washington Post recently reported, “an estimated 196 Americans are now dying *each day* from the drug—the equivalent of a fully loaded Boeing 757-200 crashing and killing everyone on board.”⁷ The Mexican drug cartels are essentially conducting chemical warfare on everyday Americans affecting every community, town, and city in our nation. It is time to respond.

That is why I joined seventeen other state attorneys general in calling on you to treat fentanyl as the danger it truly is and declare it a weapon of mass destruction.⁸ To date, no action has been taken.

The same cartels who produce and traffic this dangerous chemical are also assassinating rivals and government officials, ambushing, and killing Americans at the border, and engaging in

³ Press Release, U.S. Attorney's Office, Southern District of California, Fentanyl Seizures at Border Continue to Spike, Making San Diego a National Epicenter for Fentanyl Trafficking; U.S. Attorney's Office Prioritizes Prosecutions and Prevention Programs, (Aug. 11, 2022), <https://www.justice.gov/usao-sdca/pr/fentanyl-seizures-border-continue-spike-making-san-diego-national-epicenter-fentanyl>.

⁴ See *supra* note 2.

⁵ See generally Matthew Levitt, Hezbollah: The Global Footprint of Lebanon's Party of God (2013). As early as 2008, the DEA had linked 19 of the 43 existing FTOs designated under 8 U.S.C. § 1189 to some aspect of the global drug trade and estimated that up to 60 percent of them are connected with the trade of illegal narcotics. See Michael Braun, *Drug Trafficking and Middle Eastern Terrorist Groups: A Growing Nexus?*, (July 5, 2008), Wash. Inst. for Near East Pol'y, <https://www.washingtoninstitute.org/policy-analysis/drug-trafficking-and-middle-eastern-terrorist-groups-growing-nexus>.

⁶ *Fentanyl Awareness*, DEA, <https://www.dea.gov/fentanylawareness>.

⁷ Nick Mirroff et al., *Cause of Death: Washington Faltered as Fentanyl Gripped America*, Wash. Post (Dec. 12, 2022), <https://www.washingtonpost.com/investigations/interactive/2022/dea-fentanyl-failure/> (emphasis added).

⁸ Press Release, Office of the Attorney General of Virginia, *Attorney General Miyares Urges President Biden to Classify Fentanyl a Weapon of Mass Destruction* (Sept. 15, 2022), <https://www.oag.state.va.us/media-center/news-releases/2453-september-15-2022-attorney-general-miyares-urges-president-biden-to-classify-fentanyl-a-weapon-of-mass-destruction>.

an armed insurgency against the Mexican government.⁹ This dangerous terrorist activity occurring at our border will not abate unless we escalate our response.

Because of the severe threat to our nation and our States posed by these cartels, I hereby request that the Sinaloa Cartel, CJNG, and other similarly situated Mexican drug cartels be designated as Foreign Terrorist Organizations pursuant to 8 U.S.C. § 1189. Designating the cartels as FTOs will give state and federal law enforcement agencies increased powers to freeze cartel assets, deny entry to cartel members, and allow prosecutors to pursue tougher punishments against those who provide material support to the cartels.

Traditional counter-narcotics efforts are inadequate to address the threat posed by the Mexican drug cartels. The Kingpin Act, for instance, focuses too narrowly on financial transactions with Significant Foreign Narcotics Traffickers who are already designated as such. This narrow law is ill-suited to the problem at hand. Mexican drug cartels have diversified their operations beyond mere narcotics trafficking to include seemingly legitimate enterprises like the avocado trade, gasoline pipelines, gold mines, and even supermarkets.¹⁰ Unless these cartel-driven enterprises have directly engaged in narcotics trafficking, they escape designation under the Kingpin Act and can fund the cartels' terrorist activity with relative impunity. Now that the cartels have made widespread use of assassinations and armed insurgency against the Mexican government, FTO designation is the only way to disrupt these increasingly violent cartel tactics and weaken their criminal enterprise.

The cartels' recent embrace of extreme violence further justifies their designation as an FTO. Under 8 U.S.C. § 1189, the Secretary of State may designate an organization as an FTO where: (1) it is a foreign organization, (2) it engages in terrorist activity as defined in 8 U.S.C. § 1182(a)(3)(B) . . . , and (3) the terrorist activity or terrorism of the organization threatens the security of the United States or its nationals. 8 U.S.C. § 1182(a)(3)(B) further provides that "terrorist activity" means

any activity which is unlawful under the laws of the place where it is committed. . . and which involves [among other things] an assassination, or the use of any . . . chemical agent. . . or explosive, firearm, or other weapon or dangerous device . . . with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property.

Mexican drug cartels are intentionally endangering "the safety of one or more individuals" in host of ways. First and foremost, the cartels are importing a chemical agent—synthetic opioids like fentanyl—into the United States to endanger the safety of the American people. The horrifying consequences of these drugs are known to all, and the cartels' continued trafficking of these drugs

⁹ See Robert Cheney, *Should Mexican Cartels Be Designated as Terrorist Organizations?*, Lawfare (Mar. 31, 2011, 6:38 PM), <https://www.lawfareblog.com/should-mexican-cartels-be-designated-terrorist-organizations>; see also Jalisco Cartel New Generation, Insight Crime (July 8, 2022), <https://insightcrime.org/mexico-organized-crime-news/jalisco-cartel-new-generation/>.

¹⁰ See, e.g., Kate Linthicum, *Inside the Bloody Cartel War for Mexico's Multi-Billion Dollar Avocado Industry*, L.A. Times (Nov. 21, 2019), <https://www.latimes.com/world-nation/story/2019-11-20/mexico-cartel-violence-avocados>.

in the face of these consequences demonstrates their intention to endanger, or their reckless disregard for, the safety of Americans.

Moreover, since 2019, the Mexican drug cartels have also mounted an increasingly violent insurgency against the Mexican government ranging from assassinations of public officials to full-scale military confrontations. In one particularly illustrative incident, gunman from the Sinaloa Cartel openly drove trucks with mounted machine guns and exchanged fire with security forces for hours, all as part of a successful campaign to secure the release of the drug lord Ovidio Guzman.¹¹

The national security threats posed by this ongoing campaign of violence are particularly acute. Clashes between gunman from rival cartels claimed the lives of 9 U.S. citizens just across the U.S. border on November 4, 2019.¹² The cartels' intense violence goes far beyond mere resistance to interference with their drug trafficking and now encompasses a general effort to intimidate rivals and expand their influence. This violence, which necessarily involves using firearms and explosives to kill security forces, plainly constitutes terrorist activity.

Collectively, the destructive status quo caused by fentanyl and violence is costing hundreds of thousands of American lives each year. This catastrophic loss of life is inexcusable, yet it has received an anemic response from the federal government. To protect Americans from these terrorist organizations,¹³ you must take decisive action against the Mexican drug cartels by designating the Sinaloa Cartel, the Jalisco New Generation Cartel, and other similarly situated

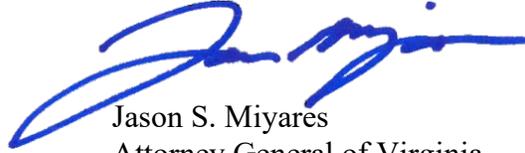
¹¹ See Sinaloa Cartel, Insight Crime (May 4, 2021), <https://insightcrime.org/mexico-organized-crime-news/sinaloa-cartel-profile/>; see also Ioan Grillo, *How the Sinaloa Cartel Bested the Mexican Army*, Time (Oct. 18, 2019), <https://time.com/5705358/sinaloa-cartel-mexico-culiacan/> (“They openly drove in trucks with mounted machine guns, blockaded streets flashing their Kalashnikovs and burned trucks unleashing plumes of smoke like it was a scene in Syria. They took control of the strategic points in the metro area, shut down the airport, roads, and government buildings, and exchanged fire with security forces for hours leaving at least eight people dead. . . . And in this unusual battle, the Sinaloa Cartel won. . . . after hours of cartel chaos, Mexico’s federal government gave soldiers the go ahead to release him. It capitulated.”).

¹² Louis Casiano, *Mexico: 7 Detained in Drug-Cartel Massacre that Killed 9 Americans*, Fox News (Dec. 31, 2019), <https://www.foxnews.com/world/mexico-7-detained-in-drug-cartel-massacre-that-killed-9-americans>; see also Mark Osborne, *Multiple People Arrested in Deadly Ambush of 9 Americans in Mexico, Authorities Say*, ABC News, (Dec. 1, 2019) <https://abcnews.go.com/International/mexican-authorities-arrest-individuals-related-ambush-killed-americans/story?id=67426093>.

¹³ An FTO declaration would have no effect on individual immigration-law claims made by individuals coming to the United States from Mexico. The Department of Justice’s longstanding position is that there “is no indication whatsoever that the designation of a group as a FTO was intended to, or should enhance, an individual asylum claim.” Brief for Respondent at 23, *Saldarriaga v. Gonzales*, 241 Fed. Appx. 432 (9th Cir. 2007) (No. 05-72841), 2005 WL 4122040. In order to designate a group as an FTO, the Secretary of State must find, among other things, that “the terrorist activity or terrorism of the organization threatens the security of United States nationals or the national security of the United States.” 8 U.S.C. § 1189(a)(1). A group designated as an FTO could pose a threat to the United States or its nationals but not pose a threat to nationals of other countries. The designation of a group as a FTO therefore has no bearing on a petitioner’s claim that he was persecuted or that he has a well-founded fear of persecution. See 8 U.S.C. § 1101(a)(42)(A) (to be eligible for asylum, a petitioner must demonstrate “persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion”). This would be even more true with respect to a request for deferral of removal under the Convention Against Torture (CAT), as the CAT standard “is narrower than the asylum standard, because an applicant must show that it is ‘more likely than not’ that he will be tortured.” *Khup v. Ashcroft*, 376 F.3d 898, 906 (9th Cir. 2004).

cartels as foreign terrorist organizations under 8 U.S.C. § 1189. The moment you choose to do so, my office will work with the U.S. Attorneys of Virginia's Eastern and Western Districts to bring material-support prosecutions at the state and federal level wherever they may be appropriate.

Sincerely,



Jason S. Miyares
Attorney General of Virginia



Steve Marshall
Attorney General
State of Alabama



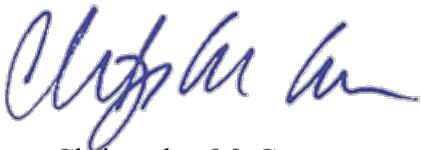
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