

House Committee on Foreign Affairs
Subcommittee on the Western Hemisphere

“Examining the Effectiveness of the Kingpin Designation Act in the Western Hemisphere”

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Introduction

Chairman Cook, Ranking Member Sires, and distinguished members of the House of Representatives, Subcommittee on the Western Hemisphere, thank you for allowing me to appear before you today to discuss the effectiveness of the Kingpin Act. I believe this law has had been tremendously effective in protecting the United States from the scourge of illegal drugs by allowing Federal law enforcement authorities to impact foreign Kingpin drug traffickers and money launderers, many times in situations where these criminals have insulated themselves from traditional law enforcement processes.

I must preface my remarks today by stating that I am appearing as a citizen, and not as a representative of the Drug Enforcement Administration (DEA), and my testimony should not be construed as the position of the agency. I am a retired Chief of Financial Operations with the DEA; and, during my tenure in that position, and since as a consultant to DEA, have had the opportunity to work very closely with the Office of Foreign Assets Control (OFAC), to include serving on the OFAC Kingpin Committee. I have also witnessed how this sanctions authority has grown into one of the most effective enforcement tools that the Drug Enforcement Administration has at its disposal in dealing with international sources of drug supply.

Background

On October 21, 1995 President Clinton signed Executive Order 12978, entitled Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers. This list specifically targeted the Cali (Drug) Cartel, but was eventually expanded to include all Colombian-based cartel leaders. Under this Executive Order these designees were called “Specially Designated Narcotics Traffickers (SDNT). This list became known, and is still known in Colombia as *La Lista Clinton*, i.e. The Clinton List.

Based on the success of the SDNT Program, Congress passed The Foreign Narcotics Kingpin Designation Act, also known as the Kingpin Act, as part of the Intelligence Authorization Act for Fiscal Year 2000. The Kingpin Act was signed into law by President Clinton on December 3, 1999.

Since 2010, all OFAC designations of narcotics traffickers and drug money launderers have been done under the authority of the Kingpin Act. As part of this enforcement effort, OFAC publishes a list of individuals and companies owned or controlled by, or acting for or on behalf of, targeted individuals and organizations. The assets of these designated individuals, organizations and

legal entities that are within the jurisdiction of the United States are blocked; and, U.S. persons are generally prohibited from dealing with them.

OFAC has two sides within its infrastructure, an investigative/enforcement side that investigates and puts together the reports justifying the designation, and a compliance side that works with the financial services industry, individuals and businesses within the U.S. and around the world in giving guidance on the various sanctions programs, and investigating possible violations of the sanctions programs.

The Designation Process

In October and March of each year the Crime/Narcotics & Western Hemisphere Division at the U.S. Treasury Department's Office of Foreign Assets Control meets with officials from law enforcement, the Department of Defense, and the Intelligence Community to discuss identified targets and solicit additional targets. All identified potential targets are then scrubbed by each agency in its own database for additional information that could possibly be shared for use in the designation process. Each agency is also able to state an objection to a particular designation, if it is felt that the timing of the designation could negatively impact an ongoing operation. Since May 2015, the Treasury Department, through OFAC, has had the authority to designate Kingpins and associated entities on its own. Kingpins are generally referred to as Tier One designees, and associated individuals and legal entities are referred to as Tier Two designees.

OFAC also works with the law enforcement interagency on a real time, case by case basis in order to coordinate the designation process and announcement with law enforcement operations.

The OFAC/DEA Relationship

In 2004 the Office of Foreign Assets Control, an agency of the U.S. Treasury Department, and the Drug Enforcement Administration, an agency of the Department of Justice, entered into a Memorandum of Understanding (MOU) that laid out the process for access to and use of information from DEA's database in its Specially Designated Narcotics Traffickers and Kingpin sanctions programs. Under the MOU, designated OFAC investigators are given permanent certification for entry into DEA headquarters space, and access to the DEA database. The DEA Headquarters office that serves as the point of contact for OFAC is the Office of Global Enforcement, Financial Investigations Section (previously it was the Office of Financial Operations). The process under which DEA information may be disseminated for use in OFAC's investigative reports justifying designation of Kingpins and associated individuals and legal entities is dictated by a Standard Operating Procedure that is overseen and managed by the Financial Investigations Section in DEA Headquarters. Once DEA reports have been thoroughly vetted through this process, the information is disclosed to OFAC by a DEA Senior Executive level official for use in its reports of investigation.

OFAC now also has a permanently assigned investigator at the DEA-led Special Operations Division (SOD). This assignment allows OFAC to have real time access to ongoing investigations of high level foreign narcotics traffickers and money launderers in order to coordinate designation and law enforcement actions against particular targets. DEA also works

closely with the OFAC investigators who are permanently assigned to the U.S. embassies in Bogota, Colombia and Mexico City, Mexico, as well as the investigator assigned to the United States Southern Command (U.S. SOUTHCOM) and the High Intensity Drug Trafficking Area (HIDTA) in Miami, Florida.

OFAC Interaction with U.S. and Foreign Counterparts in the Foreign Arena

Historically, most Specially Designated Narcotics Trafficker (SDNT) and Kingpin Act designations by OFAC have been against Colombian and Mexican cartel leaders, although the numbers of designees outside of these countries have continued to grow, especially in Central and South America. This makes perfect sense, since the cartels in Colombia and Mexico represent the biggest threats to the United States as far as the production and importation of illegal drugs into the American market. OFAC's presence in the U.S. embassies in Bogota, Colombia and Mexico City, Mexico have facilitated the relationships with its U.S. and foreign counterparts in these areas of operation, and the following of the SDNT and Kingpin list of designations by those countries. It also enables the U.S. Ambassadors in those countries to receive real time briefings on impending designations which enables them to stay ahead of and deal with the impact of the political and financial ramifications that those actions will have on their host country.

During my time working for the Organized Crime Section of the Mexican Attorney General's Office in 2009, I witnessed the close working relationship and reliance that that office placed on the OFAC representative assigned to Mexico City in assisting them with their investigations that were initiated as a result of an individual or legal entity being designated by OFAC. I have attended many financial sector conferences in both Mexico and Colombia; and, without reservation, can say that the presentations by the OFAC representatives from the respective embassies and their Washington, DC bosses, were always the most sought after and well attended. I have also attended meetings with financial and business sector leaders in these countries where the impact of OFAC designations was one of the foremost topics of conversation.

Almost all of the countries in the Western Hemisphere now follow the SDNT/Kingpin list. As mentioned previously, the countries that cooperate the most with OFAC are Colombia and Mexico; however, most of the Central and South American countries, cooperate with OFAC.

The Threat of Illicit Drug Proceeds

The Office of National Drug Control Policy (ONDCP), in its February 2014 publication entitled, *What America's Users Spend on Illegal Drugs – 2000-2010*, estimated that the illegal drug industry generated in excess of \$100 billion per year during the years contained in the study. I doubt that the number has gone down; except for perhaps being replaced to a small degree by revenues generated by State legalized sales of marijuana. Although the exact amount is unknown, a large portion of these proceeds are expatriated each year to foreign sources of drug supply, particularly those located in Latin America. With the ever-increasing presence of Latin American drug cells operating in the U.S. at the wholesale and, at times, retail, distribution levels, I believe that the amount of drug proceeds leaving the U.S. each year is escalating. The

cumulative effect of these drug proceeds to negatively impact the stability of democratic states in Latin America and throughout the world, cannot, and should not, be underestimated. These illegal proceeds enable criminal organizations to threaten the stability of governments through corruption, business and financial industries through corruption and unfair competitive advantage, and communities through the violence inherent in the pursuit of control of trafficking routes and safe havens in which to operate.

U.S. law enforcement working with its foreign counterparts cannot always impact the organizations that operate in foreign arenas with traditional methods due to security concerns, weak or corrupt government and legal regimes and processes, inability to operate in certain countries, poor recordkeeping or business practices in tracking financial transactions, and/or lack of extradition agreements. However, these criminal organizations do need access to the financial system and business infrastructure to carry on their operations and hide their wealth. OFAC, through its SDNT/Kingpin sanctions program can reach these otherwise untouchable organizations by crippling them financially and making it impossible to obtain needed services.

The Convergence of Foreign Drug Trafficking Organizations with Foreign Terrorist Organizations

In its 2015 World Drug Report, the United Nations Office of Drugs and Crime stated, *“The nexus between organized crime and terrorism in which illicit drug trafficking appears to play a role poses a serious threat, as emphasized by recent Security Council resolutions calling for redoubled efforts to prevent terrorists from benefiting from transnational organized crime.”* DEA investigations and intelligence have linked many of the State Department’s designated Foreign Terrorist Organizations (FTOs) to Foreign Drug Trafficking Organizations, at times, as in the cases of the Revolutionary Armed Forces of Colombia, known as the FARC, and Hizbollah, they become, to some extent, one and the same. OFAC, through the Kingpin Act and other sanctions programs which it administers, as well as its close working relationships with DEA and other law enforcement agencies, uses its designation authorities to help strip these FTOs of their ability to earn revenues and purchase operational materials in the international marketplace. In a recent operation, DEA was able to indict and extradite Kassim Tajideen, a fund raiser and money launderer for Hizbollah, for violations relating to a 2009 designation by OFAC under Executive Order 13224, which targets terrorists and those providing support to terrorists or acts of terrorism.

OFAC Sanctions as an Enforcement Tool and Its Impact on Major Foreign Drug Trafficking Organizations

As I mentioned previously, coordinated OFAC sanctions coupled with enforcement takedowns has become a major weapon in DEA’s ability to disrupt and dismantle major foreign drug trafficking organizations responsible for the importation of illegal drugs into the United States.

Many successes can be attributed to the designation of individuals and entities since 1995. The most success occurs when a foreign country follows the OFAC designation with economic sanctions and criminal investigations of its own. Colombia is the best example of this. In Colombia, any entity placed on the list is completely shut out from the country’s financial system. In Colombia being placed on the “Clinton List” is called “civil death”.

The following are but a few of the examples of the impact of the SDNT/Kingpin Act designations by OFAC:

- Perhaps the most notable example of the impact of being placed on the list, is the voluntary surrender and waivers of extradition to the U.S. of Gilberto and Miguel Rodrigez Orejuela, founders and leaders of the Cali (Colombia) Drug Cartel, in 2004 and 2005. The motivation for the Rodrigez Orejuela brothers to voluntarily place themselves in U.S. custody for what could be the remainder of their lives was to have their families removed from the OFAC List.
- The 2004 Kingpin designation of Peruvian Kingpin drug trafficker Fernando Zevallos resulted in the seizure of the US assets belonging to his Peruvian airline and the denial of maintenance services in the US, which put his national airline out of business. The Government of Peru and DEA had been investigating the drug trafficking and money laundering activities of Zevallos in both Peru and the U.S. for more than a decade without success. In support of the OFAC sanctions, DEA and its Peruvian counterparts reinvigorated their investigations; and, Zevallos was subsequently arrested and convicted for drug trafficking in Peru.
- In July 2014, in a coordinated sanctions/enforcement effort with DEA, OFAC designated drug money launderer, Pedro Claver Mejia Salazar and his narcotics money laundering network based in Medellin, Colombia pursuant to the Kingpin Act. OFAC also designated Fredy Alonso Mira Perez, an important underboss in the criminal organization known as La Oficina de Envigado, as well as 10 additional individuals and 14 legal entities, all based in Colombia. OFAC's designation was based on evidence generated by a DEA money laundering investigation. As a direct result of their OFAC designation, both Mejia Salazar and Mira Perez negotiated their voluntary surrender and extradition to the United States, and have since pled guilty to criminal charges in the District of Massachusetts.
- In October 2015, in a coordinated sanctions/enforcement action with DEA, OFAC designated three Honduran businessmen and seven businesses as Specially Designated Narcotics Traffickers pursuant to the Foreign Narcotics Kingpin Designation Act (Kingpin Act) for playing a significant role in international narcotics trafficking. Jaime Rolando Rosenthal Oliva; along with his son, Yani Benjamin Rosenthal Hidalgo; and his nephew, Yankel Antonio Rosenthal Coello, provided money laundering and other services that supported the international narcotics trafficking activities of multiple Central American drug traffickers and their criminal organizations. OFAC's Compliance section coordinated with the US banking sector to freeze the assets of The Rosenthal's Honduran-based bank domiciled in correspondent accounts in the US. In coordination with OFAC's designation, DEA and the U.S. Attorney's Office for the Southern District of New York indicted Jaime Rolando Rosenthal Oliva, Yani Benjamin Rosenthal Hidalgo, and Yankel Antonio Rosenthal Coello, along with a fourth individual, with money laundering in violation of Title 18, United States Code, Section 1956. The Rosenthals were subsequently extradited to the U.S., and all have pled guilty to charges in U.S. District Court in the Southern District of New York. Their multi-billion-dollar

business empire that facilitated the laundering of billions of drug dollars has been completely dismantled. Just as important, the dismantlement of the Rosenthal financial empire has sent shock waves through Central and South America, especially to the wealthy families and businesses that have, to date, aligned themselves with Kingpin drug traffickers in order to cash in on the wealth of these organizations by providing needed financial services.

OFAC Resources

While I cannot speak to the current state of OFAC's resources, I have heard that they are woefully understaffed. This lack of staffing would have an debilitating effect on the availability of OFAC investigators to service the ever-growing request for coordinated investigations. Given the impact that SDNT/Kingpin sanctions have on major foreign drug trafficking organizations and their ability to operate, the return on investment for additional resources for OFAC would be well worth the expenditure.

Suggested Legislative Fixes

Once individuals are placed on the SDNT/Kingpin list, many of them will take steps to conceal their financial dealings and wealth. These transactions, when discovered can form the basis of criminal money laundering violations, and criminal or civil asset forfeiture against the assets involved in the transactions. Depending on where and the manner in which the transactions were conducted, evidence of the source of the funds involved in the transaction may not be obtainable. In these cases, where the individual or legal entity has been designated under a sanction program that draws its authority on the International Emergency Economic Powers Act (IEEPA), the criminal money laundering offense and subsequent forfeiture of the assets can be based on an IEEPA violation. The Kingpin Act (codified as Title 21 United States Code, Sections 1901-1908) does not draw its authority on IEEPA; and, has not, to date, been added to the list of Specified Unlawful Activities (SUAs) listed in the Federal Money Laundering Statute at Title 18 United States Code, Section 1956(c)(7). It would be very helpful to law enforcement if the list of offenses constituting Specified Unlawful Activities under the Federal money laundering statute could be amended to include violations of the Kingpin Act.

Conclusion

Money is the lifeblood of major foreign drug trafficking organizations, and the international financial, business and trade markets are the veins in which this money has to run in order for these organizations to thrive. The Kingpin Act designation authority granted by Congress to the Office of Foreign Assets Control has proven to be an effective and important tool in the toolbox of U.S. law enforcement and regulatory authorities. OFAC has been a vigilant administrator of this authority, as well as a great partner to U.S. law enforcement. The Kingpin Act has had significant impact against the major, foreign drug trafficking organizations as intended by Congress when it passed the initial legislation in 1999.