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The Designation of Brazilian Criminal Organizations as Foreign Terrorist Organizations (FTOs) by the U.S. Government: Legal Consequences in Brazil.

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This article outlines the critical aspects surrounding the potential classification of Brazilian criminal organizations as Foreign Terrorist Organizations (FTOs), emphasizing the need for new and enhanced preventive and compliance measures within companies to mitigate criminal and civil liability in both Brazil and the United States, particularly concerning anti-money laundering initiatives within the financial sector.

Introduction

In the context of increasingly complex and strained international relations, the focus of criminal law and law enforcement authorities is rapidly shifting. Over the past decade, anti-corruption enforcement and anti-money laundering (AML) efforts have developed in parallel as pillars of international criminal policy – the former significantly propelled by the U.S. Foreign Corrupt Practices Act (FCPA) and the related anti-corruption laws enacted globally in its wake, the latter anchored in the Financial Action Task Force (FATF) recommendations and successive waves of national AML legislation. The coming years, however, herald the intensification of enforcement of AML on the financial dimension of predicate offences to money laundering, with particular emphasis on the flow of funds originating from drug and arms trafficking, which frequently finance abhorrent terrorist activities.

As the focus of international criminal policy transitions from traditional crime, such as drug trafficking and terrorism, to the financial flows that underpin and emerge from these activities, and the interactions between illegal and legal economic activities, this issue must take center stage in discussions regarding the criminal, regulatory, and reputational risks faced by major multinational corporations. The convergence of these risks is now being given a sharper legal edge through the more aggressive use of Foreign Terrorist Organizations (FTOs) designations targeting transnational criminal groups.

Brazil offers a particularly compelling case study of this evolving paradigm. The country's two largest criminal organizations – the *Primeiro Comando da Capital* (PCC) and the *Comando Vermelho* (CV) – have long transcended their origins as prison-based groups, developing sophisticated transnational networks deeply embedded in international drug trafficking routes and, increasingly, in legitimate economic sectors such as fuel distribution,

gambling, and financial services. As the United States expands its use of FTO designations beyond ideologically motivated groups to encompass transnational criminal organizations operating in Latin America, the potential classification of the PCC and the CV has emerged as a focal point of legal, political, and diplomatic debate – with far-reaching ramifications for companies operating in or with exposure to the Brazilian market.

UNDERSTANDING FOREIGN TERRORIST ORGANIZATIONS (FTOS).

The designation of FTOs is governed by the U.S. Department of State under Section 219 of the Immigration and Nationality Act (INA). To qualify as an FTO, an organization must meet three criteria: it must be a foreign organization, it must engage in premeditated, politically motivated violence against non-combatant targets, and it must pose a threat to the security of U.S. nationals or national security. This classification carries profound implications, allowing the U.S. government to impose a range of sanctions on the target, including asset freezes, travel bans for members, and restrictions on financial transactions.

The designation of organizations as FTOs is not a new instrument: the U.S. Department of State has maintained an FTO list since 1997, initially targeting politically and ideologically motivated groups, in Latin America and elsewhere. Beginning in early 2025, coinciding with the suspension of FCPA enforcement efforts by the Trump administration, the United States adopted a materially different enforcement posture by, pursuant to Executive Order 14157, extending terrorism-designation tools to drug cartels and transnational criminal organizations (TCOs), such as the classification of various criminal groups operating in Latin American countries as FTOs.

The policy was further operationalized by the Department of Justice's "Total Elimination of Cartels and Transnational Criminal Organizations" memorandum, which specifically directed the FCPA Unit to prioritize foreign-bribery investigations that facilitate Cartels and TCOs operations, and directed the Money Laundering and Asset Recovery Section (MLARS) to prioritize money laundering investigations, prosecutions, and asset forfeiture

actions – highlighting a shift away from traditional FCPA enforcement toward FTO-related matters.

Initial efforts have primarily targeted organizations operating in countries traditionally associated with U.S. foreign policy interventions, such as Mexico, Venezuela, and Colombia. The first eight designations of criminal organizations as FTOs occurred in the first half of 2025, served as a legal predicate for a series of aggressive unilateral measures, including the bombing of Colombian vessels in international waters of the Pacific Ocean, and the January 2026 capture - without congressional approval—of the then-President of Venezuela, Nicolás Maduro, to face narco-terrorism charges in the Southern District of New York.

As a matter of U.S. law, FTO designations have broad compounding effects: they authorize the extraterritorial application of U.S. law; they expand the definition of material support for criminal conduct; they attract the jurisdiction of national security agencies; they facilitate multi-lateral financial sanctions; and allow the executive branch to impose unilateral measures, including asset freezes, without the necessity of prolonged judicial processes in the U.S. or international courts. This intersection of criminal policy efforts with economic interests, extraterritorial political measures, and regional influence efforts is becoming increasingly visible.

FTO DESIGNATIONS OF BRAZILIAN CRIMINAL ORGANIZATIONS.

Brazil, a country of continental scale with a more robust institutional framework than most of its Latin American neighbors, would not appear to be an immediate candidate for U.S. foreign action of the kind recently employed in Venezuela. However, there have been growing discussions surrounding the potential designation of the primary two criminal organizations operating in the country, the *Primeiro Comando da Capital* (PCC) and the *Comando Vermelho* (CV). This move, opposed by the current government, but favored by the opposition – the son of former president Jair Bolsonaro, currently imprisoned and barred from running - raise questions as to whether U.S. extraterritorial action could serve as a tool for interference in the presidential elections of October 2026.

The PCC and CV are long-established Brazilian criminal organizations. The former, larger in size (approximately 40,000 members), was founded in São Paulo in 1993 and is known for its significant international drug trafficking operations, particularly cocaine, to Europe, Asia, and Africa. The latter, slightly smaller (about 25,000 members), originated in Rio de Janeiro in 1979 and has a more limited international footprint, concentrated primarily along the border with Paraguay. Both groups share a common origin in the Brazilian prison system, where they initially emerged to advocate for better prison conditions. Their economic objectives expanded with the high profitability of drug trafficking and, more recently, have shifted to activities involving infiltration of legitimate sectors, including gambling and fuel distribution.

Although Brazil has had a law combating criminal organizations such as the PCC and CV since 2013 (Law No. 12,850/2013), facilitating more invasive investigative measures, international cooperation, and plea bargains, alongside an anti-terrorism law in force since 2016 (Law No. 13.260/2016), neither group can be classified as a terrorist organization as they lack ideological or partisan motivations and do not maintain territorial control comparable to that seen in Mexico or Colombia, for example. This is evidenced by the fact that, despite intense pressure from the U.S. government and Brazilian far-right legislators, the Brazilian Congress rejected the definition of these two groups as terrorist organizations in 2025.

This does not mean that Brazil is inactive in combating organized crime and particularly these two criminal organizations. Quite the contrary, the recent police operation *Carbono Oculto*, launched in August 2025, and resulting in BRL 1.4 billion (USD 280 million) blocked by Brazilian courts, represents the latest of these efforts: it exposed the PCC's involvement in legitimate fuel commerce and the role of financial institutions and investment funds in supporting the complex money laundering structure of these criminal groups.

WHY DOES THIS MATTER?

FTO designations, whether domestic classifications or U.S. led, are unlikely on their own to weaken organized crime in Brazil or hinder international drug trafficking. Both the PCC and CV have repeatedly adapted to pressure

by fragmenting operations, expanding front companies, and moving into opaque financial channels. Other countries where drug gangs have been designated as FTOs – including Mexico, Colombia, and Haiti – have not seen a material decline in violence. The classification, along with its implications, may even accelerate the financial sophistication of these criminal groups, driving transactions through cryptocurrency and trade-based laundering and deepening penetration of legitimate sectors.

In Brazil, the disruptive potential of an FTO designation lies less in its direct impact on the PCC or CV and more in the tools it unlocks against the enabling environment. The PCC alone has been linked to an estimated 52 billion reais ($10 billion) in assets across agribusiness, construction, logistics, and real estate. This designation paired with Office of Foreign Assets Control (OFAC) sanctions would expose any company transacting with a PCC-linked intermediary to U.S. investigations and asset-blocking risk wherever there is a U.S. nexus.

The FTO designation of these criminal organizations, which, at the time of writing, appears to be imminent, may increase litigation and regulatory risks for firms operating in Brazil and in the broader Latin American region. If strategic economic sectors critical to organized crime (e.g., financial institutions, logistics companies, fuel industries, ports, etc.) do not swiftly prepare for this shift in the international law enforcement landscape by implementing effective preventive measures, they may endure significant legal and reputational consequences stemming from the transformation of the PCC and CV into FTOs.

Criminal organizations of the size and economic significance of the PCC and CV do not operate dissociated from the financial system or isolated from legitimate economic activities. Criminal groups—whether classified as FTOs or not—engage through or in concert with formally established companies, including those that may be part of supply chains for inputs or services, logistics, technology, or the marketing of various products unrelated to narcotics, such as the fuel trade in Brazil. Companies across all sectors—including retail and digital platforms—may inadvertently maintain direct or indirect relationships with structures linked to organized crime, facilitating or even enabling their activities. The FTO designation would amplify the legal exposure of any company – domestic or foreign – found to have even an indirect nexus with

the designated organization. Under 18 U.S.C. § 2339B, it is a federal crime to knowingly provide "material support or resources" to a designated FTO – a prohibition carrying penalties of up to twenty years of imprisonment per count, or life imprisonment if a death results from the conduct.

The statute defines "material support" in extraordinarily broad terms: it encompasses not only funds and financial services, but also lodging, transportation, personnel, training, expert advice or assistance, communications equipment, and any other tangible or intangible property. This means that routine commercial transactions – payments to suppliers in territories where FTO-designated groups exert influence, the engagement of logistics providers with ties to designated organizations, or even the unwitting provision of financial services that benefit an FTO – could trigger federal criminal liability in the U.S.

This scenario may also prompt investigations in Brazil for involvement in criminal organizations (Section 2nd, Law No. 12.850/2013) or for money laundering (Section 1st, Law No. 9.613/1998). Since Brazilian law does not impose criminal liability on legal entities (except for environmental crimes), criminal responsibility will fall on individuals who participated in or permitted the potentially criminal activity within the company's operations. However, criminal investigations related to money laundering and involvement in organized crime are generally associated with the imposition of precautionary measures against companies, such as searches and seizures and assets or fund freezes, alongside severe reputational consequences.

Depending on the nature of the relationship, the crime of corruption may also be present. Companies interacting with third parties (i.e., distributors, business partners, suppliers, payment institutions, etc.) must exercise heightened vigilance in their activities, as integrity risk should be treated as a core business risk, not confined to sectors traditionally associated with illegalities. Companies are held accountable for harmful acts committed in their interest or benefit, even if perpetrated by third parties, and failures in this regard may result in serious liability under the Brazilian Anti-Corruption Law (Law No. 12,846/2013), with financial sanctions potentially reaching 20% of the company's gross revenue from the year preceding the misconduct, forfeiture of assets, rights, or values representing advantages or benefits obtained directly or indirectly from the violation, and prohibition from

receiving incentives, subsidies, grants, or public loans—regardless of the company's knowledge or consent.

In cases of interaction—direct or indirect—with FTOs, the consequences for financial institutions or companies may be even more severe. A legal entity present in a territory dominated by an FTO, or that hires a security company with ties to an FTO, or that make a payment to expedite cargo release at a FTO-controlled port, or even that have subcontractors with such kind of interactions may face repercussions such as asset freezes, suspension of SWIFT access, embargos, and other substantial consequences.

CONCLUSION

The extraterritorial application of U.S. jurisdiction to address criminal organizations unilaterally designated as Foreign Terrorist Organizations (FTOs) appears to be a growing trend. Consequently, business groups that proactively strengthen preventive measures to mitigate interactions with these organizations will gain a competitive edge in safeguarding their operations and reputations.

Companies must extend their tracking of financial flows related to goods and services, meticulously mapping and monitoring supply chains from origin and importation through processing, distribution, and delivery to the end consumer. It is vital for companies to enhance financial systems and high-risk payment channels, enforcing robust Know Your Customer (KYC) procedures for intermediaries and monitoring transaction patterns (e.g., excessive cash usage, unusual transaction linkages). Companies must also ensure absolute clarity when transactions are conducted in U.S. dollars or in any manner that intersects with the U.S. financial system.

Moreover, companies need to guarantee transparency in their investment and ownership structures by verifying ultimate beneficial owners, requiring independent assessments, and maintaining ongoing monitoring for sanctions and negative media exposure. Additionally, businesses should reinforce anti-corruption controls in their interactions with government entities, implement rigorous due diligence on third parties, establish clear policies on gifts and hospitality, require conflict of interest disclosures, and maintain accurate books and records.

Furthermore, companies must conduct real-time screening of counterparts and intermediaries against U.S. Office of Foreign Assets Control (OFAC) lists and other relevant lists, incorporating contractual clauses that allow for termination if entities become sanctioned or linked to criminal organizations. Finally, but equally importantly, businesses should be prepared for investigations of irregularities, ensuring protection for whistleblowers (e.g., anonymous reporting channels and effective retaliation safeguards), establishing clear processes for addressing warning signs, preserving evidence, and conducting independent reviews.

The era when criminal organizations solely engaged in illicit activities, thus remaining distant from the daily operations of legitimate businesses, is long gone. Criminal groups, whether classified as FTOs or not, are increasingly embedded within regular economic activities, posing criminal, regulatory, and reputational risks to companies that inadvertently engage with them, especially for the financial system. This reality necessitates heightened attention and vigilance from corporate legal teams.

The central concern raised by the potential FTO designation of Brazilian criminal organizations is twofold. First, it represents the deployment of a foreign policy instrument – originally designed for ideologically-motivated terrorist groups – as a tool of extraterritorial criminal enforcement against transnational organized crime. This shift is not merely technical: it expands the jurisdictional reach of U.S. authorities, activates national security apparatus and resources, and creates a legal predicate for unilateral executive action that bypasses traditional judicial and diplomatic channels. In the Brazilian context, the timing of these discussions – coinciding with the October 2026 presidential elections and supported primarily by opposition figures aligned with former President Bolsonaro – raises legitimate questions about whether criminal enforcement objectives are being instrumentalized to serve geopolitical and domestic political interests.

Second, and of more immediate practical consequence for the private sector, the FTO designation fundamentally alters the liability landscape for companies operating in or connected to Brazil. Under existing frameworks, firms are already subject to anti-money laundering obligations and must conduct due diligence to avoid facilitating the proceeds of organized crime. However, this classification introduces an additional and distinct layer of exposure: the

prohibition on material support under 18 U.S.C. § 2339B, which carries criminal penalties of up to 20 years' imprisonment and applies extraterritorially to any transaction with a U.S. nexus. Unlike traditional AML obligations, which require knowledge or willful blindness regarding the illicit origin of funds, the material support prohibition attaches strict liability to any provision of resources to a designated organization, irrespective of the provider's knowledge of the organization's involvement. This expansion of liability means that companies with even attenuated connections to FTO-linked entities through supply chains, payment systems, or commercial relationships may face criminal exposure in U.S. courts, asset freezes under OFAC regulations, and exclusion from the U.S. financial system – consequences that far exceed those associated with conventional AML enforcement.

The potential designation of Brazilian criminal organizations as Foreign Terrorist Organizations by the U.S. government raises intricate legal and political questions. While the implications for U.S. law enforcement and international relations are significant, the consequences within Brazil could be equally profound, impacting legal frameworks, public perception, and the overall security landscape. As these discussions evolve, it is crucial to adopt a nuanced approach that acknowledges the socio-economic factors contributing to the rise of these organizations while navigating the complexities of international law and cooperation.

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