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HANNIBAL AT THE GATE: BORDER KIDS, DRUGS, AND GUNS – AND THE MEXICAN CARTEL WAR GOES ON

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I. INTRODUCTION

The United States has been “at war” with Islamic fundamentalism for over 10 years. The wars in Iraq and now Afghanistan have been the tip of the spear in the national security realignment where we have lost nearly 7,000 men and women.² Yet a new threat is upon us – one that is a greater danger to the American way of life than the Mujahideen³ foot-soldier who is 7,500 miles from our borders. This threat exists at the very edges of our nation and our society – the Mexican Cartels.

Some have estimated Mexico, one of the United States’ closest allies, has lost more than 60,000 people in its drug war.⁴ That is approximately a murder every hour related to cartel violence.⁵ Some experts claim the death toll has been greatly soft-pedaled, with narcotic trafficking deaths underreported by half or more and with the government reducing violence by simply not reporting it.⁶ Indeed, *Borderland Beat*, a blog that uses open source media to help the public “understand how mayhem and ruthless

2. *Operation Iraqi Freedom and Operation Enduring Freedom Casualties*, ICASUALTIES.ORG, <http://icasualties.org> (last visited Aug. 18, 2014).

3. *Mujahideen*, ENCYCLOPAEDIA BRITANNICA ACADEMIC EDITION, <http://www.britannica.com/EBchecked/topic/1523091/mujahideen> (last visited Aug. 25, 2014). Mujahideen is Arabic for “Holy Warrior” and the common term used for the enemy in Iraq and Afghanistan. *Id.*

4. CNN Library, Damien Cave, *Mexico Updates Death Toll in Drug War to 47,515, but Critics Dispute the Data*, N.Y. TIMES (Jan. 11, 2012), <http://www.nytimes.com/2012/01/12/world/americas/mexico-updates-drug-war-death-toll-but-critics-dispute-data.html>; *Mexico Drug War Fast Facts*, CNN (Mar. 15, 2014, 9:29 AM), <http://www.cnn.com/2013/09/02/world/americas/mexico-drug-war-fast-facts/> (last updated Oct. 9, 2014, 1:30 PM) (citing Human Rights Watch) (“more than 60,000 people have been killed from 2006 to 2012”) [hereinafter CNN Library].

5. Roque Planas, *Mexico Releases Drug War Death Toll Estimate: One Killing Every Half Hour*, N.Y. DAILY NEWS (Jan. 13, 2012, 1:58 AM), http://articles.nydailynews.com/2012-01-13/news/30621243_1_drug-cartels-fight-drug-war-alejandro-poire.

6. Chris Covert, *Mexican Government Reduces Violence by Not Reporting it*, BORDERLAND BEAT (Jan. 28, 2013), <http://www.borderlandbeat.com/2013/01/mexican-government-reduces-violence-by.html> (citing the Mexican news site *Diario de Colima* that there is an unwritten agreement between the Mexican federal government and the states to reduce the reports of violent incidents).

violence from organized crime touches the people on the borderland,”⁷ reported that the drug war could be responsible for over 100,000 deaths since 2006.⁸ These numbers do not even include “the nearly 40,000 Americans who die each year from” illicit drug use and countless others who are killed in our own “war on drugs.”⁹

The cartels are now reported to be a prime factor in the recent rash of minors who have been crossing (or attempting to cross) the Mexican border;¹⁰ specifically, the “[d]rug cartels in Mexico have hijacked the multimillion dollar human-trafficking business on the U.S. border and are funneling thousands of unaccompanied children from Central America into . . . southwestern states.”¹¹ Moreover, although Central America has a long history of unrest, the cartels have created many of the problems that the border kids are running from.¹² Officials in Guatemala, Honduras, and El Salvador have been pleading for help to fight what is seen as a “state of siege” from the Mexican Cartels on their governments and people, and forcing these children to flee to the United States.¹³ More ominous, recent

7. *The Skinny*, BORDERLAND BEAT (Apr. 1, 2009), <http://www.borderlandbeat.com/2009/04/about.html>.

8. *Zeta Magazine Says True Drugwar Death Toll is 100K Plus*, BORDERLAND BEAT (Jun. 9, 2012), <http://www.borderlandbeat.com/2012/06/zeta-magazine-says-true-drugwar-death.html>; Luz del Carmen Sosa, *There were 83,000 Murders During the Last Six Years* (Aug. 5, 2012), <http://www.borderlandbeat.com/2012/08/there-were-83000-murders-during-last.html> (stating that as of 2011 there were 83,541 murders reported).

9. Carrie F. Cordero, *Breaking the Mexican Cartels: A Key Homeland Security Challenge for the Next Four Years*, 81 UMKC L. REV. 289, 289 (2012).

10. Drew MacKenzie, *Report: Mexican Drug Cartels to Blame for Border Kids Crisis*, NEWSMAX.COM (Jun. 23, 2014, 11:40 AM), <http://www.newsmax.com/US/border-immigration-cartels-drugs/2014/06/23/id/578693>.

11. *Id.*

12. *Id.*; Caitlin Dickson, *How Mexico's Cartels are Behind the Border Kid Crisis*, THE DAILY BEAST (July 9, 2014), <http://www.thedailybeast.com/articles/2014/06/23/how-mexico-s-cartels-are-behind-the-border-kid-crisis.html> (reporting that the murder rate in Guatemala, for instance, is partly due to an increase in drug trafficking).

13. *See Guatemala's President Declares 'State of Siege' After 'Massacre'*, CNN (May 17, 2011, 8:47 AM), <http://www.cnn.com/2011/WORLD/americas/05/17/guatemala.violence/index.html> (explaining former president Alvaro Colom of Guatemala declared a state of siege in Guatemala's northern state of Alta Verapaz, which runs along the Mexico-Guatemala border); *see also* Guardian Web, *Central American Leaders Criticize US Policies*, GOPUSA (July 26, 2014, 6:49 AM), <http://www.gopusa.com/news/2014/07/26/central-american-leaders-criticize-us-policies>.

The presidents of Guatemala, Honduras and El Salvador urged the US administration to do more to combat the armed gangs and drug cartels responsible for the violence driving emigration that has seen more than 57,000 unaccompanied children from their countries arrive at the Texas border in recent months. The three leaders – Juan Orlando Hernández of Honduras, Otto Pérez Molina of Guatemala and Salvador Sánchez Cerén of El Salvador – urged the Obama administration to do more to address the destabilization caused by cartels shipping narcotics to the American

reports suggest the cartels are in contact with the Islamic State in Iraq and Syria (ISIS), who could be attempting to use the cartels' human smuggling services to gain entry into the United States.¹⁴

Undeniably, 2006 was a watershed year for the Mexican Drug War. Following an extremely close and contested election, Felipe Calderón, a member of the National Action Party (the Partido Acción Nacional, "PAN"), became President of Mexico in December 2006.¹⁵ Not long after assuming office, President Calderón initiated an offensive against Mexican drug cartels and their narcotics distribution networks.¹⁶ The administration then deployed tens of thousands of military personnel and federal police to several states in an effort to end drug-related violence in Mexico.¹⁷ Although the deployment initially produced some positive results, the level of violence began to increase at an alarming rate.¹⁸ After eight years of fighting, a staggering number of people have died, not only from the conflict between Mexico's federal forces and the drug cartels, but also from fighting between and among cartels for control of narcotics distribution networks.¹⁹ Indeed, in the past two years, both leaders of the two major cartels, Joaquín "El Chapo" Guzmán from the Sinaloa Cartel,²⁰ and Miguel

market, and to invest in more rapid economic development to relieve widespread poverty.

Guardian Web, *supra*.

14. See Leah Barkoukis, *ISIS, Mexican Drug Cartels Teaming Up?*, TOWNHALL.COM (Aug. 21, 2014, 10:00 AM), <http://townhall.com/tipsheet/leahbarkoukis/2014/08/21/isis-mexican-drug-cartels-teaming-up-n1881302>; see also Perry Chiaramonte, *Border Crisis Could Provide Cover to ISIS Operatives, Say Experts*, FOX NEWS (July 7, 2014), <http://www.foxnews.com/us/2014/07/07/isis-could-take-advantage-weakened-us-border-for-terrorist-attack/>.

15. Brianna Lee, *Mexico's Drug War*, COUNCIL ON FOREIGN RELATIONS (Mar. 5, 2014), <http://www.cfr.org/mexico/mexicos-drug-war/p13689>; *Mexico's Presidential Election: The Closest of Victories*, ECONOMIST (July 6, 2006), <http://www.economist.com/node/7142078/print>.

16. See Tim Padgett, *Day of the Dead: The Drug War is Mexico's Tragedy*, TIME, July 11, 2011, at 27; see also Lee, *supra* note 15.

17. DAVID A. SHIRK, *THE DRUG WAR IN MEXICO: CONFRONTING A SHARED THREAT*, COUNCIL ON FOREIGN RELATIONS 9–10 (2011).

18. See *Mexico's Drug Wars*, GALE GROUP, [http://find.galegroup.com/gic/infomark.do?digest=b527955b5caccdb4b4a2d40e86fe061a&searchType=BasicSearchForm&type=portal&prodId=GIC&queryId=Locale\(en,US\):FQE=\(PI,None,5\)G1515&portalId=G1515&version=1.0&userGroupName=cant48040&source=gale](http://find.galegroup.com/gic/infomark.do?digest=b527955b5caccdb4b4a2d40e86fe061a&searchType=BasicSearchForm&type=portal&prodId=GIC&queryId=Locale(en,US):FQE=(PI,None,5)G1515&portalId=G1515&version=1.0&userGroupName=cant48040&source=gale) (last visited Nov. 3, 2014).

19. *Who is Behind Mexico's Drug-Related Violence?*, BBC NEWS (Feb. 10, 2014), <http://www.bbc.co.uk/news/world-latin-america-10681249>; see also Padgett, *supra* note 16, at 26–27.

20. See Alicia A. Caldwell, Elliot Spagat, & Mark Stevenson, *Mexico Captures Sinaloa Cartel Boss 'Chapo' Guzman*, GEORGIA NEWSDAY (Feb. 22, 2014, 6:49 PM), <http://www.georgianewsday.com/news/savannah/217728-mexico-captures-sinaloa-cartel-boss-chapo-guzman.html> (reporting that with the help of United States' intelligent services, Guzmán was captured on February 22, 2014); see also Richard Fausset & Tracy Wilkinson, *'El Chapo'*

Angel Trevino “Z-40” Morales from the Los Zetas Cartel²¹ have been captured. Yet there does not appear to be any end in sight to Mexico’s offensive and the cartels’ resistance, and the death toll continues to rise, mostly in the areas in and around border cities.²² Given the power and influence wielded by the cartels, it is questionable whether Mexican authorities will be able to effectively govern some geographic regions of the country. The inability of the Mexican government to subdue the cartels, the escalation of violence, and the increased death toll threatens Mexico’s national security. If the crisis worsens and Mexico’s security falters, some experts believe that the nation-state of Mexico or geographic areas within that country face the prospect of becoming a failed state.²³

Because Mexico and the United States not only share a common border, but also co-exist as international trade partners, the United States should be greatly concerned about the crisis in Mexico. Indeed, with the rising number of casualties in Mexico’s drug war, U.S. politicians and officials, journalists, writers, and pundits have begun to debate whether the crisis in Mexico threatens U.S. national security, and, if so, the extent to which U.S. national security is at risk. This article seeks to establish that the crisis in Mexico is a current threat to the national security of the United States for several reasons: the crisis could (1) adversely affect control over

Guzman: Life of the Cartel King of Sinaloa, L.A. TIMES (Feb. 22, 2014, 2:04 PM), <http://www.latimes.com/world/worldnow/la-fg-wn-guzman-arrest-20140222-story.html#page=1> (reporting that Guzman was captured in a joint operation by Mexican marines and U.S. federal agents in the Sinaloan coastal city of Mazatlan).

21. Tristan Reed, *Mexico’s Drug War: Los Zetas Lose Their Leader and Community Police Proliferate*, STRATFOR (July 18, 2013) (on file with author); see Chivis Martinez, *Z40: The Aftermath of Miguel Treviño’s Arrest and Looking at the Contenders*, BORDERLAND BEAT (July 17, 2013), <http://www.borderlandbeat.com/2013/07/z40-aftermath-of-miguel-trevinos-arrest.html> (reporting that it is unlikely that the capture of Z40 would destroy the cartel) (“Powerful cartels are big business. Sinaloa at the top and Zetas are in scores of countries around the globe. They plan for every eventuality, so it is way too soon to write the Zetas epitaph.”) *Id.*

22. See Randal C. Archibold, Damien Cave, & Elisabeth Malkin, *Mexico’s President Works to Lock in Drug War Tactics*, N.Y. TIMES (Oct. 15, 2011), http://www.nytimes.com/2011/10/16/world/americas/calderon-defends-militarized-response-to-mexicos-drug-war.html?pagewanted=all&_r=0; see also Reed, *supra* note 21 (“One reason behind the Zetas’ success has been the group’s ability to replace its leadership, even its most senior leaders, relatively easily.”). See generally Dawn Paley, *Z-40 Is a Product of the American Drug War: You’re Welcome, Mexico*, VICE (July 26, 2013), <http://www.vice.com/read/z-40-is-a-product-of-the-us-drug-war-youre-welcome-mexico> (claiming that the media report that Z-40’s capture would be a crossroad in the drug war is misinformed and unrealistic). Removing “Z-40 will create a traditional power vacuum as is known to happen when the heads of traditional drug cartels are murdered [or captured] and lower ranking members vie for power” but ultimately there will be a new leader. *Id.*

23. See *Dealing with Drugs: On the Trail of the Traffickers*, THE ECONOMIST, Mar. 7, 2009, at 30, <http://www.economist.com/node/13234157/print>.

the U.S.-Mexico border; (2) cause a humanitarian emergency, including the historic rush of unaccompanied children; (3) lead to the collapse of Mexico's economy, negatively impacting the economy of the United States; and (4) cause the destabilization of other Central American nations. However, the current threat is still reversible and there are still measures that can be taken to prevent further damage to the United States and Mexico. This paper recommends that the United States should take specific steps to prevent the crisis from breaching our own security.

To better analyze Mexico's situation and its impact on the United States, it is important to first know how Mexico's drug war developed and evolved into a crisis. The first two parts of this paper provide background on the Mexican drug cartels and Mexico's drug war. Part I is an overview of the evolution of the Mexican cartels, from their birth as criminal gangs, to their partnership with the Colombian drug cartels, to their present status as formidable adversaries of the Mexican state. In addition, Part I describes the historical relationship between the Mexican cartels and Mexico's government. Part I further explains how the United States has, in part, facilitated the rise of the cartels through the consumption of drugs and selling of firearms. Part II gives an account of Mexico's drug war, beginning with the commencement of President Calderón's offensive against the cartels and its progression to a national security crisis. Part III argues that the crisis in Mexico is a potential threat to the national security of the United States. Part IV recommends several ways to alleviate this threat to U.S. national security. Although the recommendations are not exhaustive, they are intended to contribute to the debate and to generate further discussions about how to approach the security problem.

II. A NEW BREED OF GANGSTERS: A HISTORY OF THE MEXICAN CARTELS' RISE TO POWER AND CURRENT DISPOSITION

To explain the government of Mexico's offensive against the Mexican drug cartels, the resulting crisis in Mexico, and how it represents a threat to U.S. national security, it is important to understand the development and evolution of the cartels. To be sure, even before Mr. Calderón was elected to the presidency in 2006 and set his sights on the cartels, Mexico experienced substantial drug-related violence.²⁴ Indeed, for decades, the cartels have competed with each other for territory and border transit points into the lucrative, illegal narcotics market of the United States.²⁵ By the

24. See SHIRK, *supra* note 17, at 8.

25. See Money, *Guns, and Drugs: Are U.S. Inputs Fueling Violence on the U.S.-Mexico*

mid-1990s, the cartels had begun to diversify their criminal portfolios to include activities such as kidnappings, robberies, human trafficking, and extortion.²⁶ At the same time, the cartels' power and influence began to rival the authority of Mexico's local, state, and federal governments.²⁷ Using that power and influence, they threatened the authority of the Mexican state and, consequently, the stability of the country.²⁸

A. THE COCAINE TRAIL: THE COLOMBIAN CARTEL ALLIANCE

During the late 1960s and into the 1970s, the people of the United States developed an even greater appetite for illicit narcotics; correspondingly, demand grew in the U.S. for marijuana, heroin, cocaine, and synthetic drugs.²⁹ Colombian drug cartels supplied the majority of these drugs to buyers in the United States, using transportation routes in South America, Central America, and the Caribbean.³⁰ Ultimately, the drugs reached South Florida for distribution on the streets of American cities.³¹

By the 1980s, the U.S. had joined forces with governments in South America, Central America, and the Caribbean to neutralize the Colombian cartels' trafficking network.³² In many respects, the joint interdiction efforts of the United States and its Latin American and Caribbean partners were successful.³³ But, those efforts had an unintended consequence: the formation of alliances between the Colombian cartels and Mexican criminal gangs.³⁴ The Colombian cartels partnered with Mexican gangs to ship cocaine from South America through Mexico and, finally, into the United States.³⁵

Long before the formation of this Colombian-Mexican cocaine trafficking alliance, criminals, shrewd businesses, and would-be entrepreneurs had developed and used certain routes and infrastructure for

Border?: Hearing Before the Subcomm. on Nat'l Sec. & Foreign Affairs of the Comm. on Oversight and Gov't Reform, 111th Cong. 32 (2009) [hereinafter *Hearing*] (statement of Michael A. Braun, managing partner of Spectre Group International, L.L.C.).

26. See SHIRK, *supra* note 17, at 7–8.

27. See *Hearing*, *supra* note 25, at 32.

28. See *id.*

29. See generally IOAN GRILLO, *EL NARCO: INSIDE MEXICO'S CRIMINAL INSURGENCY* 38–54 (2011); see also SHIRK, *supra* note 17, at 7.

30. See *Hearing*, *supra* note 25, at 33; see also *Dealing with Drugs*, *supra* note 23, at 31.

31. See *Hearing*, *supra* note 25, at 33.

32. See *id.*; see also *Dealing with Drugs*, *supra* note 23, at 31.

33. See *Hearing*, *supra* note 25, at 33; see also *Dealing with Drugs*, *supra* note 23, at 31.

34. See *Hearing*, *supra* note 25, at 33; see also *Dealing with Drugs*, *supra* note 23, at 31.

35. See *Hearing*, *supra* note 25, at 33; *Dealing with Drugs*, *supra* note 23, at 31.

smuggling operations along the U.S.-Mexico border.³⁶ These earlier smuggling operations were responsible for transporting across the border both legal and illegal items and substances, including black market goods; weapons and munitions during the Mexican Revolution; alcohol during Prohibition; and opium during the First and Second World Wars.³⁷ By the end of the 1960s, Mexican criminal gangs had assumed control of the smuggling routes and infrastructure necessary to ship opium, marijuana, and domestically produced heroin to the Western United States.³⁸ As masters of these long-established routes and existing infrastructure, the Mexican gangs were able to move first, cocaine, and later, heroin, from their Colombian counterparts' distribution networks to the U.S. market.³⁹

At the beginning of the alliance, the Mexican gangs were relatively small, unsophisticated, and unorganized criminal bands.⁴⁰ They were willing to accept cash from their Colombian suppliers as compensation for shipping cocaine to the United States.⁴¹ With the closing of cocaine supply routes into South Florida—as a result of the American, South American, and Caribbean interdiction operations—the Colombian cartels became increasingly more reliant on the Mexican gangs' smuggling services.⁴²

Knowing that the Colombian cartels needed the Mexican distribution networks to move their product, and seeing a potential for increasing their revenue, the Mexican gangs began to demand that the Colombians make “in kind” payments for cocaine shipments.⁴³ By demanding such payments, the Mexican gangs received cocaine—in lieu of cash—as payment for their services.⁴⁴ In this way, approximately half of every cocaine shipment bound for Mexico for distribution in the United States was in reality payment to the Mexican gangs that they then directly sold to U.S. dealers.⁴⁵ In time, the percentage of “in kind” payment in each

36. See generally ED VULLIAMY, *AMERICA: WAR ALONG THE BORDERLINE* 23 (2010); see also *Hearing, supra* note 25, at 33.

37. See *Hearing, supra* note 25, at 33; MICHAEL J. GONZALES, *THE MEXICAN REVOLUTION, 1910-1940* 122 (2002); VULLIAMY, *supra* note 36, at 23. See generally GEORGE W. GRAYSON, *MEXICO: NARCO-VIOLENCE AND A FAILED STATE?* 19–26 (2010); DAVID DORADO ROMO, *RINGSIDE SEAT TO A REVOLUTION: AN UNDERGROUND CULTURAL HISTORY OF EL PASO AND JUÁREZ: 1893-1923* 108–111 (2005).

38. See *Hearing, supra* note 25, at 33; VULLIAMY, *supra* note 36, at 23.

39. See *Hearing, supra* note 25, at 33; VULLIAMY, *supra* note 36, at 24.

40. See *Dealing with Drugs, supra* note 23, at 31.

41. VULLIAMY, *supra* note 36, at 24; *Dealing with Drugs, supra* note 23; *Hearing, supra* note 25, at 33.

42. See VULLIAMY, *supra* note 36, at 24.

43. See *Hearing, supra* note 25, at 33; VULLIAMY, *supra* note 36, at 24.

44. See *Hearing, supra* note 25, at 33; VULLIAMY, *supra* note 36, at 24.

45. See *Hearing, supra* note 25, at 33.

shipment of cocaine increased in favor of the Mexican gangs.⁴⁶ With their increased revenue, the Mexican gangs created their own cocaine distribution networks in Mexico, along the U.S. Southwest Border, and on America's streets.⁴⁷

As a component of the distribution networks, the cartels established more trafficking corridors, commonly referred to as *plazas*.⁴⁸ While sending large drug loads north to the United States, the cartels simultaneously began to sell their product in Mexico.⁴⁹ As the cartels pushed more narcotics at home and moved larger amounts of drugs through the *plazas* into the United States, their profits grew exponentially, as did their power and influence.⁵⁰

With greater power and influence, the Mexican gangs transformed from criminal gangs into far more powerful and dangerous drug cartels. But the Mexican cartels did not become the criminal organizations they are today only through their alliance with the Colombian cartels. They received assistance and cooperation from within the Mexican government itself.

B. MEXICO'S INSTITUTIONAL REVOLUTIONARY PARTY AND THE POLITICS OF NARCOTICS

Following the end of the Mexican Revolution in 1917, the Institutional Revolutionary Party (the Partido Revolucionario Institucional "PRI") took control of the Mexican state.⁵¹ For more than seven decades in the twentieth century, the PRI was the dominant political party in Mexico.⁵² The PRI's authority and influence was pervasive; it ruled Mexico's local, state, and federal governments.⁵³ For its part, the PRI enjoyed a few successes during its long reign.⁵⁴ It is credited with ensuring the longest

46. See VULLIAMY, *supra* note 36, at 24.

47. See *Hearing*, *supra* note 25, at 33; *Dealing with Drugs*, *supra* note 23, at 31.

48. See GRILLO, *supra* note 29, at 53 ("The plaza in Mexico refers to the jurisdiction of a particular police authority, such as Tijuana or Ciudad Juárez. However, smugglers appropriated the term *plaza* to mean the valuable real estate of a particular trafficking corridor."); VULLIAMY, *supra* note 36, at 24–25.

49. *Hearing*, *supra* note 25, at 33; *Dealing with Drugs*, *supra* note 23, at 31.

50. See generally GRILLO, *supra* note 29, at 53; VULLIAMY, *supra* note 36, at 24–25.

51. *Dealing with Drugs*, *supra* note 23, at 31.

52. GRILLO, *supra* note 29, at 34 (noting that the PRI has been compared to the Soviet Communist Party because both parties held an iron grip on power for such a long time); VULLIAMY, *supra* note 36, at 37; *Mexico's Presidential Election*, *supra* note 15; Padgett, *supra* note 16, at 30.

53. See GRILLO, *supra* note 29, at 34–35; VULLIAMY, *supra* note 36, at 37.

54. See GRILLO, *supra* note 29, at 34; *Dealing with Drugs*, *supra* note 23, at 31.

period of peace in Mexico's history.⁵⁵ In addition, the PRI managed to protect the country from the types of civil unrest and conflict that plagued South America during the twentieth century.⁵⁶ The PRI also removed the army from the political sphere, making it a political arm of the federal government.⁵⁷ To achieve these successes, however, the PRI operated as a totalitarian and corrupt regime.⁵⁸

The PRI established a system of patronage in which it wielded political power and influence over nearly every aspect of Mexican government and society, including state and local law enforcement.⁵⁹ Relying on a Byzantine system of political bosses and politicians, the PRI capitalized on its position of dominance to maintain order.⁶⁰ In this system, *caciques* or chiefs were responsible for controlling local-level turf.⁶¹ In turn, *caciques* reported to the governors of their respective states, and the governors answered to the President of Mexico.⁶² Of particular importance to this system, the PRI officials and politicians controlled the police forces in each of the Mexican states.⁶³ Not long after the PRI assumed power, it transformed the police into a force responsible for maintaining political order.⁶⁴ With this transformation, the police no longer focused on investigating and solving crimes.⁶⁵ Instead, they were made responsible for ensuring that the PRI's patronage system ran smoothly.⁶⁶

To operate their drug trafficking networks without harassment from the police and government, the Mexican cartels used bribery and kickbacks.⁶⁷ The cartels paid bribes to the *caciques*⁶⁸ who then transferred the bribes to the state governors.⁶⁹ The cartels also directly paid off the police, including everyone from low-ranking officers to department chiefs.⁷⁰ Importantly, the cartels' *plaza* bosses worked with the police to coordinate and obtain protection for drugs shipped through trafficking

55. GRILLO, *supra* note 29, at 34.

56. *Id.*

57. *Dealing with Drugs*, *supra* note 23, at 31.

58. See GRILLO, *supra* note 29, at 34–35; *Dealing with Drugs*, *supra* note 23, at 31–32.

59. See GRILLO, *supra* note 29, at 34–35; VULLIAMY, *supra* note 36, at 36–37.

60. See GRILLO, *supra* note 29, at 34–35; VULLIAMY, *supra* note 36, at 35–37.

61. GRILLO, *supra* note 29, at 35.

62. *See id.*

63. See GRILLO, *supra* note 29, at 52; *Dealing with Drugs*, *supra* note 23, at 32.

64. See GRILLO, *supra* note 29, at 52–53; *Dealing with Drugs*, *supra* note 23, at 31.

65. *Dealing with Drugs*, *supra* note 23, at 31.

66. See GRILLO, *supra* note 29, at 52–53; *Dealing with Drugs*, *supra* note 23, at 31.

67. See GRILLO, *supra* note 29, at 35.

68. *See id.*

69. *See id.*

70. See GRILLO, *supra* note 29, at 52–53.

corridors.⁷¹ The police officers and department chiefs gave a percentage of the bribe money to the PRI local, state, and federal officials and politicians.⁷²

The police—operating as middlemen between the cartels and the PRI officials and politicians—benefited from this patchwork of corruption because the police were responsible, in part, for maintaining order in the geographic regions in which the *plazas* were located.⁷³ In this respect, the police and cartels had a symbiotic relationship. On one hand, so long as the *plaza* bosses paid bribes, the police would not interfere with the cartels' trafficking operations.⁷⁴ If a *plaza* boss or other cartel member failed to pay or otherwise submit to the will of the police, the police would coerce him into compliance or, if necessary, arrest or even kill him.⁷⁵ On the other hand, so long as the police did not threaten the overall existence of the cartels or their lucrative drug trafficking operations, the cartels permitted the police to profit and exert some control over the *plazas*.⁷⁶ In this manner, the cartels acquired *de facto* control over geographic areas in Mexico, particularly where the *plazas* are located along the U.S.-Mexico border.⁷⁷ The system worked well for all the players: PRI politicians, using the police, maintained control over the country; the cartels maintained control over the drug trade; and everyone made vast sums of money.

On July 1, 2012, Enrique Peña Nieto was elected the President of Mexico, marking the return of the PRI to the Presidential Mansion – the Los Pinos. Peña was sworn into office on December 1, 2012; but on July 7, 2012, before he was officially named the winner of the election, he started to shift the debate on the Cartel War. Peña Nieto stated that his administration would open a “new debate” on how to “wage war on drug trafficking.”⁷⁸ Specifically, the focus would be more “on reducing violence and less on catching cartel leaders and blocking drugs from reaching the United States.”⁷⁹ This policy is reminiscent of the past Mexican cartel

71. See *id.* at 53.

72. See *id.* at 52–53 (noting that this system of bribery and kickbacks allowed the Mexican government to receive funding from the cartels without having any direct knowledge of or contact with the specific source of the funds within the cartels).

73. See GRILLO, *supra* note 29, at 52–53, 83–85; VULLIAMY, *supra* note 36, at 20 (“It would have been almost impossible for the narco cartels to operate without the help of the PRI.”).

74. See GRILLO, *supra* note 29, at 53.

75. See *id.*

76. See *id.* at 52–53.

77. See *Dealing with Drugs*, *supra* note 23, at 31.

78. *Mexico's Peña Nieto Calls for 'New Debate' on the Drug War*, CNN (July 7, 2012, 6:38 PM), <http://www.cnn.com/2012/07/07/world/americas/mexico-elections/index.html>.

79. *Id.*

policy.

C. INSATIABLE APPETITE: AMERICAS FUNDING THE CARTELS

Although the political and legal environment in Mexico greatly contributed to the Mexican cartels' development and acquisition of power, the cartels ultimately would not have realized the increased revenue and achieved the level of control that they enjoy today without the involvement of the United States and its drug appetite.

Despite its enactment of laws and implementation of policies that prohibit the purchase, possession, and use of illicit drugs, the United States has the highest level of narcotics use in the world.⁸⁰ After more than 100 years of drug prohibition in the United States, the demand for narcotics has only increased. Although the popularity of different types of drugs has changed during the last four decades, the overall demand for drugs in America has grown.⁸¹ Since America's contemporary war on drugs began in the 1970s, the United States has experienced greater demand for marijuana, cocaine, heroin, methamphetamine, and other synthetic drugs.⁸² Tellingly, over the last 30 years, an increasing number of U.S. adults admit to using drugs during their lifetime.⁸³ Presently, it is estimated that on an annual basis, the United States is a \$65 billion narcotics market, where an estimated 25 million people consume some type of illegal drug.⁸⁴

The Mexican cartels are responsible for smuggling across the U.S.-Mexico border the vast majority of marijuana, cocaine, and, in recent years,

80. See GRILLO, *supra* note 29, at 280; SHIRK, *supra* note 17, at 13.

81. See SHIRK, *supra* note 17, at 13 ("According to the 2009 National Survey on Drug Use and Health, roughly 8.7 percent of U.S. residents over the age of twelve—some 21.8 million people—had used drugs within the previous month.").

82. See SHIRK, *supra* note 17, at 13; GRILLO, *supra* note 29, at 280 (noting that, at times over the last 40 years, Americans have exhibited an appetite for certain drugs rather than others. For example, cocaine became popular in the 1970s; crack cocaine gained fame (and infamy) in the 1980s; the demand for ecstasy rose in the 1990s; and methamphetamine became a drug of choice at the beginning of the twenty-first century).

83. See SHIRK, *supra* note 17, at 13 ("[O]ver the past three decades, a growing number of U.S. adults, including nearly half of individuals over the age of thirty-five, admit to some drug use during their lifetime.").

84. Alejandro Escalona, *U.S. Bears Blame for Mexico Drug Violence*, CHICAGO SUN-TIMES (Aug. 31, 2011, 7:44 PM), http://www.suntimes.com/news/escalona/7388893-417/us-bears-blame-for-mexico-drug-violence.html#_U_0rghakWmQ ("The U.S. represents a yearly \$39 billion market for the drug cartels because an estimated 25 million Americans – 12 and older – consume some type of illegal drug, according to the Justice Department."); Padgett, *supra* note 16, at 27 ("According to the White House Office of National Drug Control Policy, Americans consume \$65 billion worth of illegal drugs annually, roughly what they spend on higher education, and most of those drugs are either produced in Mexico or transit through it.").

methamphetamine consumed in the United States.⁸⁵ Overall, the cartels provide approximately 90 percent of the illegal narcotics consumed in this country.⁸⁶ The demand for narcotics in the U.S. coupled with the total volume of drugs that the cartels pour into it explains why the Mexican drug trafficking networks have proved so lucrative for the cartels.⁸⁷ In addition to the demand and volume of drugs smuggled into the United States, the purchase prices of the drugs are artificially inflated as a result of the prohibitory laws and policies.⁸⁸ Adding all the factors together, it is easy to understand how the Mexican cartels realize substantial gross revenues.⁸⁹ Some estimates indicate that the cartels' gross earnings from the United States market range somewhere between \$6 billion and \$7 billion each year.⁹⁰ Other estimates claim that \$8 billion to \$24 billion from drug sales flow back to the cartels from buyers in America on an annual basis.⁹¹ To put this in perspective, in 2013, Apple, one of the world's most successful companies, reported quarterly profits of \$37.5 billion.⁹²

Using the large fortunes amassed from selling drugs in the United States, the cartels fund their operations, manage their trafficking networks, compensate their members, and replenish their narcotics inventories. The cartels also use the money to bribe and influence politicians, government officials, and police. Further, the cartels use the profits that they earn from the U.S. drug market to purchase firearms in the United States.

85. See VULLIAMY, *supra* note 36, at 37.

86. *Hearing, supra* note 25, at 33; *see also Who is Behind Mexico's Drug-Related Violence?*, *supra* note 19 ("A US state department report estimated that as much as 90% of all cocaine consumed in the US comes via Mexico.").

87. See SHIRK, *supra* note 17, at 13.

88. *See id.*

89. *See id.*

90. *See id.* ("Because of the size of the U.S. black market for drugs and the inflationary effect of prohibition on prices, Mexican suppliers enjoy enormous gross revenues, estimated at \$6 billion to \$7 billion annually, at least 70 percent coming from hard drugs like cocaine, heroin, methamphetamine, and other synthetics.").

91. *Hearing, supra* note 25, at 33. In a statement submitted to the House of Representatives' Subcommittee on National Security and Foreign Affairs, Michael A. Braun, former Assistant Administrator and Chief of Operations for the U.S. Drug Enforcement Administration and current managing partner of Spectre Group International, L.L.C., indicated that "[t]he National Drug Intelligence Center estimates that somewhere between \$8 - \$24 billion dollars in 'bulk currency' alone transits our Country each year destined for the cartels' coffers in Mexico—ultimately smuggled across our Southwest Border." *Id.*

92. Press Release, Apple, Apple Reports Fourth Quarter Results (Oct. 28, 2013), <http://www.apple.com/pr/library/2013/10/28Apple-Reports-Fourth-Quarter-Results.html>.

D. THE UNITED STATES FIREARMS MARKET ARMING THE MEXICAN DRUG CARTELS

To maintain control of their trafficking networks and wage their current campaign of violence both against government forces and against each other, the Mexican cartels have become increasingly dependent on military-style weapons.⁹³ Seeking greater numbers of higher quality, reliable, powerful types of these weapons, the cartels rely primarily on the firearms market in the United States.⁹⁴

1. Surrogate Buyers and “Straw” Purchasers

In general, the cartels use a diverse array of military-style weapons, including machine guns, hand grenades, rocket-propelled grenades, and grenade launchers, as well as explosive devices.⁹⁵ More frequently, however, the cartels employ semi-automatic assault weapons such as AK-47 and AR-15 rifles and their variant models.⁹⁶ Typically, the cartels convert these semi-automatic AK-47 and AR-15 models into select-fire versions, making the weapons capable of automatic fire.⁹⁷ The cartels also use .22 caliber and 9 millimeter handguns.⁹⁸ And, in recent years, the cartels have acquired the Barrett .50 caliber sniper rifle and the Belgian-made FN Herstal Five-Seven, a 5.7 millimeter handgun known for its body armor piercing capability and commonly referred to in Mexico as the “*mata policia*” or “cop killer.”⁹⁹

Because these types of weapons are abundantly available for sale in the United States, they are easily purchased in the U.S. and then smuggled

93. See *Hearing*, *supra* note 25, at 43 (statement of Tom Diaz, Senior Policy Analyst, Violence Policy Center).

94. See *id.* at 44 (“Recently, the weapons sought by drug trafficking organizations have become increasingly higher quality and more powerful.”); see also SHIRK, *supra* note 17, at 13; Padgett, *supra* note 16, at 27.

95. See DIANE FEINSTEIN ET AL., HALTING U.S. FIREARMS TRAFFICKING TO MEXICO 8 (2011) [hereinafter *Senate Report*]; *Hearing*, *supra* note 25, at 1–2; SHIRK *supra* note 17, at 13; *Dealing with Drugs*, *supra* note 23; Mark Stevenson, *Mexico Says US Man Smuggled Grenade Parts*, EL PASO TIMES (Sept. 6, 2011, 6:33 PM), http://www.elpasotimes.com/ci_18835024?source=pkg; Diana Washington Valdez, *Report: Mexican Drug Cartels Adopting Military Tactics*, EL PASO TIMES (Aug. 7, 2011, 03:39 PM), http://www.elpasotimes.com/ci_18632455.

96. See *Senate Report*, *supra* note 95, at 8; *Hearing*, *supra* note 25, at 44; Shirk, *supra* note 17, at 13.

97. SHIRK, *supra* note 17, at 13; Chris McGreal, *How Mexico’s Drug Cartels Profit From Flow of Guns Across the Border*, THE GUARDIAN (Dec. 8, 2011, 09:40 AM), www.guardian.co.uk/world/2011/dec/08/us-guns-mexico-drug-cartels.

98. See *Senate Report*, *supra* note 95, at 6.

99. See *id.*; *Hearing*, *supra* note 25, at 44; *Dealing with Drugs*, *supra* note 23.

to the cartels in Mexico.¹⁰⁰ Using tracing data from the United States Department of Justice's Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF"), U.S. and Mexico law enforcement officials have estimated that the cartels obtain between 90 and 95 percent of their firearms from U.S. sources.¹⁰¹ Significantly, more than 107,000 federally licensed firearms retailers are located in the United States.¹⁰² Of those 107,000 retailers, an estimated 10 percent or approximately 12,000 retailers are located within close proximity to the U.S.-Mexico border.¹⁰³ In most instances, the cartels' weapons can be traced back to firearms retailers located along the U.S.'s southwest border.¹⁰⁴ The Government Accountability Office determined that approximately 70 percent of firearms recovered in Mexico between Fiscal Years 2004 and 2008 came from Texas, California, and Arizona.¹⁰⁵

In addition, while U.S. manufacturers produce many of the firearms sought by the cartels, a percentage of these weapons is legally imported by U.S.-based firearms distributors and retailer gun dealers to the United States from European gun manufacturers, many of which are located in the former Eastern Bloc countries.¹⁰⁶ In this respect, of the 87 percent of firearms that have been traced from Mexico to the United States, approximately 68 percent of those firearms were produced by U.S. manufacturers.¹⁰⁷ The remaining weapons were imported to the United States from foreign manufactures.¹⁰⁸

100. *Hearing, supra* note 25, at 43 ("If one set out to design a 'legal' market conducive to the business of funneling guns to criminals, one would be hard-pressed to come up with a 'better' system than the U.S. civilian gun market – short of simply and openly selling guns directly to criminals from manufacturer and importer inventories.")

101. *Hearing, supra* note 25, at 46.

102. *Dealing with Drugs, supra* note 23.

103. *Id.*; see also SHIRK, *supra* note 17, at 13 ("The United States is a convenient point of purchase for Mexican [drug trafficking organizations], given that an estimated 10 percent of U.S. gun dealers are located along the U.S.-Mexico border.")

104. See *Senate Report, supra* note 95, at 5–6.

105. *Id.* at 6 ("The Government Accountability Office found that between Fiscal Year 2004 and 2008, approximately 70 percent of firearms traced in Mexico to an original owner in the United States came from Texas (39 percent), California (20 percent), and Arizona (10 percent)."); see also Jessica A. Eby, *Fast and Furious, or Slow and Steady? The Flow of Guns from the United States to Mexico*, 61 UCLA L. REV. 1082, 1084 (2014); Padgett, *supra* note 16 ("The U.S. is . . . a primary source of the weapons the cartels use to unleash their mayhem: [ATF] estimates that 70% of the guns seized in Mexico in the past two years were smuggled from north of the border.")

106. *Senate Report, supra* note 95, at 12–13; see also Shirk, *supra* note 17, at 13 ("[Firearms] are often imported legally to the United States from Europe, then sold illegally and in large numbers to surrogate or 'straw' purchasers in the United States.")

107. *Senate Report, supra* note 95, at 13.

108. *Id.*

Surrogate buyers and “straw” purchasers obtain firearms on behalf of the cartels from U.S.-based retailers.¹⁰⁹ In some cases, a single purchaser buys weapons in bulk from a retailer in the United States.¹¹⁰ Often, however, individual buyers each buy a small number of firearms from several retailers.¹¹¹ In doing so, surrogate buyers and straw purchasers avoid attracting the attention of U.S. law enforcement agencies like the ATF. This can be done efficiently considering that in three of the four border states—Arizona, New Mexico, and Texas—a straw buyer has no limits on the number of weapons he or she can purchase, the gun show background check loophole still exists, and the assault weapon ban law has lapsed.¹¹²

2. The Gap in Federal Firearms License and Background Check Laws

Surrogate buyers and straw purchasers also buy firearms in the United States in the “secondary market.”¹¹³ Under the Gun Control Act of 1968, U.S.-based gun retailers must obtain a federal firearms license to buy and sell firearms.¹¹⁴ As a prerequisite to all retail sales of firearms through federally licensed retailers, buyers must submit to a background check as required by the Brady Handgun Control Act.¹¹⁵ Thus, at least theoretically, even when a surrogate or straw purchaser buys firearms from a U.S.-based retailer, a background check is performed.¹¹⁶ With this background check, it is at least possible to trace firearms purchased on behalf of the cartels

109. *Id.* at 3; *see also* Shirk, *supra* note 17, at 13; Chris McGreal, *The US Gun Smugglers Recruited by One of Mexico's Most Brutal Cartels*, THE GUARDIAN (Dec. 8, 2011, 11:12 AM), www.guardian.co.uk/world/2011/dec/08/us-gun-smugglers-mexico-cartel?newsfeed=true.

110. *See Hearing, supra* note 25, at 46.

111. *See id.*; McGreal, *supra* note 109.

112. Eby, *supra* note 105 at 1085 (citing *Arizona State Law Summary*, LAW CENTER TO PREVENT GUN VIOLENCE (Jan. 3, 2012), <http://smartgunlaws.org/arizona-state-law-summary>; *New Mexico State Law Summary*, LAW CENTER TO PREVENT GUN VIOLENCE (Jan. 1, 2012), <http://smartgunlaws.org/new-mexico-state-law-summary>; *Texas State Law Summary*, LAW CENTER TO PREVENT GUN VIOLENCE (Jan. 3, 2012), <http://smartgunlaws.org/texas-state-law-summary>). *See generally* U.S. DEP'T OF JUSTICE, A REVIEW OF ATF'S OPERATION FAST AND FURIOUS AND RELATED MATTERS 17 (2012). Because there is no federal statute specifically prohibiting firearms trafficking or straw purchasing, straw purchasing can only be prosecuted as such if prohibited by state and by local laws. *See* U.S. DEP'T OF JUSTICE, *supra*.

113. *See Hearing, supra* note 25, at 48.

114. Federal Gun Control Act of 1968, 18 U.S.C. § 923(a) (2014); *see also* *Hearing, supra* note 25, at 48 (“Domestic firearm manufacturers, importers, dealers, and ammunition manufacturers are required to obtain a Federal Firearms License . . .”).

115. 18 U.S.C. § 922(t); *see also* *Hearing, supra* note 25, at 48; *Senate Report, supra* note 95, at 11 (“Federal firearms licensees are required to conduct background checks on every buyer in the [NICS] to prevent sales to felons . . . or other federal categories of prohibited purchasers.”).

116. *See Senate Report, supra* note 95, at 11; *Hearing, supra* note 25, at 48.

back to the buyers.¹¹⁷

But once a firearm is sold through a federally licensed retailer, the buyer in turn may resell or transfer the same firearm to another purchaser.¹¹⁸ In this “secondary market,” firearms may be sold or transferred through multiple buyers and sellers any number of times.¹¹⁹ Further, firearms are sold or transferred in the secondary market using a variety of informal and unregulated channels, including classified advertisements in newspapers and newsletters, on websites, and at gun shows.¹²⁰ Critically, regardless of the method of sale or transfer, the original buyer does not need a federal firearms license to resell a weapon and the new secondary market purchaser is not required to submit to a background check.¹²¹ Not surprisingly, surrogates and straw purchasers take advantage of this gap in federal firearms licensing and background check laws to avoid identifying themselves and disclosing their weapons transactions to U.S. law enforcement agencies.¹²²

Whether the firearms are purchased directly from U.S.-based retailers or in the secondary market, the surrogate buyers and straw purchasers subsequently transfer the weapons to the cartels in Mexico.¹²³ The firearms are smuggled to the cartels in a variety of ways.¹²⁴ Most often, the weapons are simply wrapped in plastic, stowed in the panels, compartments, and undercarriages of motor vehicles then driven across the border.¹²⁵

Further, with the defeat of the Manchin/Toomey amendment to Senate bill 649 that would have expanded background checks to cover all firearm sales at gun shows and via the internet, it does not appear that the loophole exploited by the cartels will be closed anytime soon.¹²⁶ It is also noteworthy that even the Manchin/Toomey amendment would not have fully thwarted the cartel’s ability to acquire weapons—specifically because the defeated amendment exempted sales between “friends” or other

117. See *Senate Report*, *supra* note 95, at 11; *Hearing*, *supra* note 25, at 48.

118. *Hearing*, *supra* note 25, at 48.

119. *Id.*

120. *Id.*

121. See *Hearing*, *supra* note 25, at 48; *Senate Report*, *supra* note 95, at 11.

122. See *Hearing*, *supra* note 25, at 48–49; *Senate Report*, *supra* note 95, at 11.

123. See *Hearing*, *supra* note 25, at 49; *Senate Report*, *supra* note 95, at 3; SHIRK, *supra* note 17, at 13.

124. *Hearing*, *supra* note 25, at 46.

125. *Id.*

126. Alexander Bolton, *Senate Rejects Background Checks On Gun Purchases in 54-46 Vote*, THE HILL (Apr. 17, 2013 8:27 PM), <http://thehill.com/homenews/senate/294571-senate-rejects-tougher-background-checks-on-gun-purchases>; *Senate Vote 97 - Defeats Manchin-Toomey Background Checks Proposal*, N.Y. TIMES, <http://politics.nytimes.com/congress/votes/113/senate/1/97> (last visited Nov. 2, 2014).

individuals outside normal commercial transactions.¹²⁷ Thus, the surrogate purchaser tactic employed by the cartels could have continued.

E. THE CURRENT PLAYERS



The composition of the Mexican drug cartels can be difficult to accurately describe because of their inherently elusive and secretive nature. Moreover, the structural hierarchy of the cartels is ever changing not only as a result of shifting alliances, the formation of affiliate criminal enterprises, and bloody feuds between and among the cartels, but also due to their ongoing conflict with Mexican government forces. In short, the composition and status of each cartel is fluid. Nevertheless, at least at this time, some of the major Mexican drug cartels are (1) the Sinaloa Cartel¹²⁸ (2) Los Zetas,¹²⁹ (3) the Gulf Cartel,¹³⁰ (4) the Arellano Félix

127. Bolton, *supra* note 126.

128. See GRAYSON, *supra* note 37, at 55–66, 86; *Mexican Drug War Update: The Polarization Continues*, STRATFOR (October 26, 2011), <http://www.stratfor.com/print/203781>; *Mexico's Major Drug Cartels*, TELEGRAPH (Jan. 15, 2014, 8:07 PM), <http://www.telegraph.co.uk/news/worldnews/centralamericaandthecaribbean/mexico/10575135/Mexicos-major-drug-cartels.html>. See generally Fausset & Wilkinson, *supra* note 20. The Sinaloa Cartel is considered by many to be the most powerful of the Mexican cartels. *Mexico's Major Drug Cartels*, *supra*. The Sinaloa Cartel was founded in the 1970's. GRAYSON, *supra* at 86. Presently, it operates in Baja California, virtually the entire state of Sinaloa, the majority of the border region in the Mexican state of Sonora, and the majority of the states of Chihuahua and Durango. *Id.* Using *plazas* that it

Organization (Tijuana cartel),¹³¹ (5) the Vicente Carrillo Fuentes Organization (Juarez Cartel),¹³² and (6) the Knights Templar.¹³³

controls in those Mexican states, the Sinaloa Cartel ships marijuana, methamphetamine, cocaine, and domestically produced heroin into Columbus and Santa Teresa, New Mexico, and parts of Texas. *Id.* For several years, the Sinaloa Cartel has been engaged in an extremely violent conflict with the Juárez Cartel for control of the *plazas* in the northern region of Chihuahua and the El Paso area. *Id.* Chapo Guzman was captured by Mexican authorities. Fausset & Wilkinson, *supra* note 20.

129. See GRAYSON, *supra* note 37, at 89; *Mexican Drug War Update*, *supra* note 128. Employing military tactics and using extreme brutality, Los Zetas is considered to be the most dangerous Mexican drug cartel). Founded by former members of the Mexican army's Special Forces Airmobile Group in the late 1990s, Los Zetas initially worked as a protector and enforcer wing of the Gulf Cartel. GRAYSON, *supra* note 37, at 89. After breaking away from the Gulf Cartel, it became an independent drug trafficking organization. *Mexican Drug War Update: The Polarization Continues*, *supra* note 128. Los Zetas now transports drugs into the United States via *plazas* in Zacatecas, Mexico, and has turned on its one-time employer—the Gulf Cartel. *Mexican Drug War Update: The Polarization Continues*, *supra* note 128. It also is fighting both the Mexican government forces and assisting the Juárez Cartel with its ongoing battle with the Sinaloa Cartel. *Mexican Drug War Update: The Polarization Continues*, *supra* note 128. In addition to narcotics trafficking, members of Los Zetas are involved in other criminal rackets such as murder contracts, kidnapping, extortion, and human smuggling. GRAYSON, *supra* note 37, at 89.

130. See GRAYSON, *supra* note 37, at 71–73, 89; *Mexican Drug War Update*, *supra* note 128; *Major Drug Cartels*, *supra* note 128. Since its inception as a criminal gang in Tamaulipas, Mexico, in the 1930s, the Gulf Cartel has been smuggling contraband and narcotics to the United States. GRAYSON, *supra* note 37, at 71–73, 89. The Gulf Cartel was one of the first Mexican gangs to become involved in the cocaine trade with the Colombian cartels. *Mexican Drug War Update: The Polarization Continues*, *supra* note 128. While still operating in its home state of Tamaulipas, the Gulf Cartel also is present in Nuevo León and along the gulf coast. GRAYSON, *supra* note 37, at 71–73, 89. It uses *plazas* in those regions of Mexico to ship cocaine into Texas. *Mexican Drug War Update: The Polarization Continues*, *supra* note 128. In addition to contending with Mexican government forces, the Gulf Cartel has experienced internal rifts in recent years, and it has been fighting its former ally and ultra-violent enforcement wing – Los Zetas. GRAYSON, *supra* note 37, at 71–73, 89. While still a major player in the drug war, the Gulf cartel “has been in steady decline since its bloody break-up with Los Zetas in 2009, leading to intense fighting between the two groups across northern and eastern Mexico.” *Major Drug Cartels*, *supra* note 128. The decline was accelerated in November 2010 when “the organization’s then-leader, Antonio ‘Tony the Storm’ Ezequiel Cardenas was killed during an intense battle with Mexican marines. Since then, the group has been plagued by infighting between rival factions.” *Id.*

131. See GRAYSON, *supra* note 37, at 81–85, 90–91 (noting that the Arellano Félix Organization, which also is commonly referred to as the Tijuana Cartel, was created in the 1980’s); *Mexican Drug War Update: The Polarization Continues*, *supra* note 128. See also *Major Drug Cartels*, *supra* note 127. See generally Hunter Stuart, *Francisco Arellano Felix, Mexican Drug Lord, Killed by Assassin in Clown Costume*, HUFFINGTON POST (Oct. 20, 2013, 12:04 PM), http://www.huffingtonpost.com/2013/10/20/francisco-rafael-arellano-felix-killed-assassin-clown_n_4132174.html; Harries Alexander, *Francisco Rafael Arellano Felix: Head of the Tijuana Cartel Shot Dead by a Clown*, TELEGRAPH (Oct. 20, 2013, 6:13 PM), available at <http://www.telegraph.co.uk/news/worldnews/centralamericaandthecaribbean/mexico/10392239/Francisco-Rafael-Arellano-Felix-Head-of-Tijuana-Cartel-shot-dead-by-clown-gunmen.html> (“Francisco Rafael Arellano Felix, 63, from the family that inspired the Oscar-winning film

Although alliances may shift between and among the cartels as they fight each other for control of lucrative drug trafficking networks, they share a common enemy: the Mexican federal police and military forces.

F. THE MEXICAN GOVERNMENT'S OFFENSIVE AGAINST THE CARTELS AND THE SECURITY CRISIS IN MEXICO

President Calderón was not the first Mexican president to recognize the threat posed by the cartels.¹³⁴ In 2000, Vicente Fox, a

Traffic, was gunned down by three men at a children's party in the Mexican tourist resort of Cabo San Lucas.""). The Tijuana Cartel operates in Tijuana, Baja California, and portions of the states of Sinaloa, Sonora, Jalisco, and Tamaulipas. See GRAYSON, *supra* note 37, at 90. Currently, it appears to be working with the Sinaloa Cartel. See GRAYSON, *supra* note 37, at 90; *Mexican Drug War Update: The Polarization Continues*, *supra* note 128. The Tijuana Cartel transports marijuana and methamphetamine, as well as relatively small loads of cocaine, into southern California and parts of Texas. GRAYSON, *supra* note 37, at 81–85, 90–91; *Mexican Drug War Update*, *supra* note 128. "In October 2013, Francisco Rafael Arellano Felix, a former high-ranking member of the organization, was gunned down by assassins disguised as clowns at a children's party." *Major Drug Cartels*, *supra* note 128. According to reports, Arellano Felix, was shot both in his head and chest "at a rental house at the Cabo San Lucas resort on the Baja California peninsula, multiple outlets reported. The killer's disguise included a wig and a round, red nose." Hunter Stuart, *supra* note 131;

132. See GRAYSON, *supra* note 37, at 73–79, 90; *Mexican Drug War Update*, *supra* note 128. See also *Major Drug Cartels*, *supra* note 128. Founded in the mid-1970s, the Vicente Carrillo Fuentes Organization, which is also known as the Juárez Cartel, operates in and around Ciudad Juárez, Chihuahua, Mexico. GRAYSON, *supra* note 37, at 90. The current whereabouts of its namesake are unknown. GRAYSON, *supra* note 37, at 90. Despite its ongoing bloody struggle with the Sinaloa Cartel and Mexican government forces, the Juárez Cartel still maintains control over the Bridge of the Americas, Paso Del Norte Bridge, Stanton Street Bridge, and Ysleta International Bridge--the primary ports of entry into El Paso, Texas. See GRAYSON, *supra* note 37, at 73–75. Using these entry points, the Juárez Cartel moves large quantities of narcotics, including marijuana and cocaine, through the *plazas* in the northern region of Chihuahua state to the U.S.-Mexico border and into the El Paso area. See GRAYSON, *supra* note 37, at 73–75; *Mexican Drug War Update*, *supra* note 128. To bolster its ranks, the Juárez Cartel calls upon Los Zetas and the 8,000-member Barrio Azteca street gang in El Paso. See GRAYSON, *supra* note 37, at 76; *Mexican Drug War Update*, *supra* note 128. "Once one of Mexico's most powerful criminal organizations, the Juarez Cartel was decimated by a bloody turf war over Ciudad Juarez with the Sinaloa Cartel and is thought to have been largely defeated." *Major Drug Cartels*, *supra* note 128.

133. See *Major Drug Cartels*, *supra* note 128. The Knights Templars were formed by a former school teacher, Servando Gomez Martinez, who was a lieutenant under Nazario Moreno Gonzalez in the La Familia Michoacana cartel. *Id.* After the death of Gonzalez, Martinez broke off from La Familia in December 2010. *Id.* The Templars operate mostly in "the state of Michoacán – particularly the city of Apatzingan - but also has a presence in other central Mexican states." *Id.* The Templars are heavy methamphetamine traffickers but also deal in cocaine and marijuana. *Id.* The group is still battling the remnants of La Familia Michoacana, which is all but defeated. *Id.*

134. See Lee, *supra* note 15; Mary Jordan & Kevin Sullivan, *Border Police Chief Only Latest Casualty In Mexico Drug War*, WASH. POST (June 16, 2005), <http://www.washingtonpost.com/wp-dyn/content/article/2005/06/15/AR2005061502553.html>.

member of PAN, was elected president and upset seventy-one consecutive years of PRI government domination.¹³⁵ Although President Fox's administration attempted to reform the government and investigate corruption, Mexico, under his leadership, did not directly confront the cartels.¹³⁶

When President Calderón was elected and took office in December 2006 and pledged to confront the cartels, he was well aware of the decades-long partnership between the cartels and local and state politicians and police departments.¹³⁷ He recognized and openly admitted that as a result of the great power and wealth the cartels had amassed during years of PRI rule and their control over entire geographic regions of the country, the cartels were operating with impunity and were threatening the sovereignty of the government and the stability of the nation.¹³⁸

Believing that the Mexican government could not rely on the predominantly corrupt local and state police to investigate and apprehend the cartels, President Calderón deployed federal police and more than 50,000 federal troops in a military-style offensive against the cartels.¹³⁹ The first few years of the offensive produced a series of positive results.¹⁴⁰ For example, the Mexican government seized record quantities of narcotics bound for the United States.¹⁴¹ In addition, Mexican authorities claimed to have arrested over 60,000 people allegedly involved in drug-related crimes.¹⁴² Mexican law enforcement and military forces also captured or killed a number of senior cartel leaders, and dozens of reputed cartel members were extradited to the United States for prosecution.¹⁴³ Feeling

135. See SHIRK, *supra* note 17, at 8.

136. See *id.*; Lee, *supra* note 15; *Mexico's Drug Wars*, *supra* note 18.

137. See Ronald F. Wright, *Mexican Drug Violence and Adversarial Experiments*, 35 N.C. J. INT'L L. & COM. REG. 363, 365–66 (2010); Marc Lacey, *In Drug War, Mexico Fights Cartel and Itself*, N.Y. TIMES, Mar. 29, 2009, <http://www.nytimes.com/2009/03/30/world/americas/30mexico.html?pagewanted=all>; see also *Dealing with Drugs*, *supra* note 23.

138. See *Hearing*, *supra* note 25, at 32; *Dealing with Drugs*, *supra* note 23.

139. See *Hearing*, *supra* note 25, at 32; Lee, *supra* note 15; Wright, *supra* note 137, at 366; *Dealing with Drugs*, *supra* note 23; *Who is Behind Mexico's Drug-Related Violence*, *supra* note 19.

140. Wright, *supra* note 137, at 366; see Lee, *supra* note 15.

141. See Wright, *supra* note 137, at 366; Lee, *supra* note 15.

142. Wright, *supra* note 137, at 366.

143. See Randal C. Archibold, *In Mexico, Massacres and Claims of Progress*, N.Y. TIMES, Feb. 1, 2011, http://www.nytimes.com/2011/02/02/world/americas/02mexico.html?pagewanted=all&_r=0 (“Mexican and American officials . . . point out that more than half of the 37 most wanted crime bosses announced [in 2010] have been captured or killed.”); *Mexico's Drug Wars*, *supra* note 18; Padgett, *supra* note 16, at 27; *Who is Behind Mexico's Drug-Related Violence*, *supra* note 19; *Mexico's Drug War: Falling Kingpins, Rising Violence*, THE ECONOMIST (Dec. 16, 2010), <http://www.economist.com/node/17733279/print>.

pressure from the government's offensive, members of the same cartels began to fight each other for internal control of the cartels, and cartels started to battle other cartels for control of drug trafficking networks and *plazas*.¹⁴⁴

Despite the initial positive results, the offensive has stalled in recent years. And, as a result both of the cartel-on-cartel fighting and the cartels' conflict with government forces, violence has increased at an alarming rate in Mexico.¹⁴⁵ Remarkably, in the first four years of fighting, the annual mortality rate from the drug war has increased each year since the offensive began in 2006.¹⁴⁶ The rate reached a record high in 2010, when 15,237 people died in drug-related violence.¹⁴⁷ As of the end of 2010, the total number of people killed in Mexico's drug war was 760 percent higher than the total number of drug-related homicides in 2005, the year before the offensive commenced.¹⁴⁸ While the death toll stopped doubling in 2010—it has not stopped. Indeed, in 2011 there were over 13,000 people killed and the murder of women increased along with gruesome beheadings.¹⁴⁹ Some have estimated that the total number of people killed due to cartel violence in 2012 is over 18,000.¹⁵⁰

144. See *Mexico's Drug Wars*, *supra* note 18; *Who is Behind Mexico's Drug-Related Violence*, *supra* note 19.

145. See *Hearing*, *supra* note 25, at 32; *Lee*, *supra* note 15; *Mexico's Drug Wars*, *supra* note 18.

146. See *Hearing*, *supra* note 25, at 32; *SHIRK*, *supra* note 17, at 8; *Cave*, *supra* note 4; *Padgett*, *supra* note 16, at 26; *Mexico's Drug Wars*, *supra* note 18; *Who is Behind Mexico's Drug-Related Violence*, *supra* note 19; *Mexico Drug War Fast Facts*, *supra* note 4.

147. See Alejandro Martínez-Cabrera, *U.S. Warns Mexican Cartels on Cross-Border Violence*, REUTERS (Jan. 31, 2011), <http://www.reuters.com/article/2011/01/31/us-usa-mexico-napolitano-idUSTRE70U5TB20110131>; *Mexican Drug Trafficking*, *supra* note 136; *83 Mil Muertos del Narco en Sexenio de Calderón: Semanario Zeta*, ANIMAL POLITICO (Nov. 27, 2012), <http://www.animalpolitico.com/2012/11/83-mil-muertos-por-el-narco-en-sexenio-de-calderon-semanario-zeta/#axzz2DZYOZYer> [hereinafter ANIMAL POLITICO] (Mex.). This number has been reported to be as high at 19,546. ANIMAL POLITICO, *supra*.

148. *Padgett*, *supra* note 16, at 30 (depicting a chart of the drug-related murders in Mexico from 2005 through 2010); see also *SHIRK*, *supra* note 17, at 8 (“The annual number of drug-related homicides has increased more than sixfold since 2005.”).

149. Mariano Castillo, *2011 Drug Violence Kills Nearly 13,000 in Mexico, New Figures Show*, CNN (Jan. 11, 2012, 9:19 PM), http://edition.cnn.com/2012/01/11/world/americas/mexico-death-toll/index.html?hpt=hp_t2 (citing a Mexican Government report that holds the death rate at 12,903 from January to September of 2011 and estimated that 2011 could have a total number of 17,000); see also William Booth, *In Mexico 12,000 Killed in Drug Violence in 2011*, WASH. POST, Jan. 2, 2012, http://www.washingtonpost.com/world/in-mexico-12000-killed-in-drug-violence-in-2011/2012/01/02/gIQAUGUdWP_story.html. One Mexican news source reported the total deaths in 2011 at 24,068. ANIMAL POLITICO, *supra* note 147.

150. ANIMAL POLITICO, *supra* note 147 (reporting that as of October 31, 2012, 18,161 people have been killed due to cartel violence). See *Covert*, *supra* note 6. It should be noted that after 2010 the ability to find accurate numbers as it relates to cartel violence and murders becomes increasingly difficult. *Id.* This is most likely due to the Mexican Government not reporting these

The majority of the deaths have occurred in Mexican cities located along the U.S.-Mexico border.¹⁵¹ A full two-thirds of the killings linked to Mexico's drug war have occurred in just five of the thirty-two states in Mexico.¹⁵²

Of particular concern to Mexico's national security, the offensive has failed to break the cartels' control over many of the regions of Mexico in which they operate their drug trafficking networks and *plazas*.¹⁵³ In these regions, the cartels have created their own local governments and established what are, in effect, states within a state in which they levy their own taxes and enforce codes of conduct against the citizenry.¹⁵⁴ In one instance, they imposed a toll to cross a bridge between two states in eastern Mexico.¹⁵⁵ Further, the cartels' overall strength has not decreased.¹⁵⁶ Instead, the cartels have a seemingly endless stream of replacements for every cartel member arrested or killed.¹⁵⁷

Another disconcerting fact is that in recent years, the cartels have engaged in a counter-offensive against Mexican government forces. As part of this counter-offensive, the cartels are using weapons and tactics normally used by insurgents and terrorists.¹⁵⁸ Employing military-style weapons, tactics, and brutal acts such as beheadings, the cartels have

statistics in an attempt to quell discontent over the war. *Id.*

151. See *Hearing*, *supra* note 25, at 17; SHIRK, *supra* note 17, at 3, 8; *Who is Behind Mexico's Drug-Related Violence?*, *supra* note 19. See generally *U.S. Relations with Mexico*, U.S. DEP'T OF STATE, <http://www.state.gov/r/pa/ei/bgn/35749.htm> (Sept. 10, 2014) (describing Mexico's national security).

152. SHIRK, *supra* note 17, at 8 ("Two-thirds of drug-related homicides occur in just five of the thirty-two Mexican states and roughly 80 percent in just 168 of the 2,456 municipalities.").

153. See *id.* at 3; *Mexico's Drug Wars*, *supra* note 18; *Who is Behind Mexico's Drug-Related Violence?*, *supra* note 19.

154. See *Mexico's Drug Wars*, *supra* note 18 ("While Mr. Calderón dismisses suggestions that Mexico is a failed state, he and his aides have spoken frankly of the cartels' attempts to set up a state within a state, levying taxes, throwing up roadblocks and enforcing their own perverse codes of behavior."); Archibold, *supra* note 22; Lacey, *supra* note 137.

155. Charles Parkinson, *Gulf Cartel and Zetas Run 'Narco-Toll Bridge' in East Mexico*, INSIGHTCRIME.ORG (Oct. 30, 2013), <http://www.insightcrime.org/news-briefs/gulf-cartel-and-zetas-turn-east-mexico-bridge-into-toll> ("[The two cartels] are charging motorists around \$39 per week, or \$232 per month, to cross the Moralillo Bridge Charges are based on the vehicle type and can be as high as \$389, with those who refuse to pay liable to have their vehicle stolen or be kidnapped.").

156. See *Migrating Violence in Mexico: Herding Cockroaches*, THE ECONOMIST (Sept. 29, 2011, 5:17 PM), <http://www.economist.com/blogs/americasview/2011/09/migrating-violence-mexico/print>; Padgett, *supra* note 16, at 27–30; *Mexican Drug War Update: The Polarization Continues*, *supra* note 128.

157. See generally *Mexican Drug War Update*, *supra* note 128; Valdez, *supra* note 95.

158. See *Hearing*, *supra* note 25, at 32–33; GRILLO, *supra* note 29, at 203–09; Padgett, *supra* note 16, at 27 ("Secretary of State Hillary Rodham Clinton has gone so far as to describe the cartels as a criminal 'insurgency' that seeks not to overthrow the Mexican government but rather to keep it under its blood-soaked thumb."); Valdez, *supra* note 95.

targeted Mexican army commanders and federal, state, and local police chiefs, politicians, government officials, news organizations, journalists, and the civilian population.¹⁵⁹ For instance, to unseat the police chief of Juárez in 2009, the cartel threatened to kill one police officer every 48 hours until the chief resigned.¹⁶⁰ The chief resigned a few days later and fled Juárez after the cartel killed his deputy chief, a police officer, and a prison guard.¹⁶¹ More recently, on August 25, 2011, members of Los Zetas used hand grenades and incendiary devices to set fire to the crowded Casino Royale in Monterrey, Mexico.¹⁶² The attack killed fifty-two civilians.¹⁶³

Public support for the war has eroded in recent years.¹⁶⁴ The people of Mexico—particularly in the border cities—have grown weary of the brutality.¹⁶⁵ Even more troubling, the will to continue the fight against the cartels appears to be dwindling within the ranks of the police and military.¹⁶⁶ Police officers have resigned and military personnel have

159. See Wright, *supra* note 137, at 367; Lee, *supra* note 15 (“While initially the majority of violence was between cartel members, in the past two years [(since 2006)], police officers, journalists and politicians have become frequent targets of drug killings.”); SHIRK, *supra* note 17, at 3; Mark Stevenson & Gustavo Ruiz, *Mexican Mayors Slayings Raises Question of Whether Drug Violence Threatens Democratic Process*, WASH. POST (Nov. 3, 2011), [https://mexicoinstitute.wordpress.com/tag/gubernatorial-elections/](http://www.washingtonpost.com/world/americas/mexican-mayors-slayings-raises-question-dealing-with-drugs-on-the-trail-of-the-traffickers-supra-note-23-mexico-s-drug-war-and-the-internet-the-spider-and-the-web-the-fog-of-war-descends-on-cyberspace-the-economist-sept-24-2011-http://www.economist.com/node/21530146; Carina Bergfeldt, Mexican Journalist's Political Asylum Case Could Be Start of New Trend, EL PASO TIMES (Sept. 2, 2011, 12:00 AM), http://www.elpasotimes.com/ci_18808771; Marisela Ortega Lozano, Mexico's President Calderón Honors Chihuahua Police Officers Killed Wednesday, EL PASO TIMES (Oct. 14, 2011, 12:00AM), http://www.elpasotimes.com/ci_19107881; Alejandro Martínez-Cabrera, Count of Police Slain in Juárez Hits 36 in '11, EL PASO TIMES (Sept. 9, 2011, 12:00 AM), http://www.elpasotimes.com/ci_18856227; Mexican Mayor's Slayings Raises Question of Whether Drug Violence Threatens Democratic Process, MEXICO INSTITUTE (Nov. 4, 2011), <a href=).

160. See Wright, *supra* note 137, at 367; Marc Lacey, *With Force, Mexican Drug Cartels Get Their Way*, N.Y. TIMES (Feb. 28, 2009), http://www.nytimes.com/2009/03/01/world/americas/01juarez.html?_r=0.

161. Lacey, *supra* note 160.

162. Escalona, *supra* note 84; *Security in Mexico: Raising the stakes*, THE ECONOMIST, Aug. 26, 2011, <http://www.economist.com/blogs/americasview/2011/08/security-mexico/print>.

163. Escalona, *supra* note 84.

164. See SHIRK, *supra* note 17, at 3 (“Nationally, support for the war on drugs is rapidly dwindling. Most Mexicans believe that the government is outmatched by the narco-traffickers, who enjoy at least some complicity, support, and even sympathy from other members of society.”); Archibold, *supra* note 22; *Who is Behind Mexico's Drug-Related Violence*, *supra* note 19.

165. See *Who is Behind Mexico's Drug-Related Violence*, *supra* note 19; Padgett, *supra* note 16, at 26–30.

166. See generally SHIRK, *supra* note 17, at 10; Lacey, *supra* note 137.

deserted.¹⁶⁷ In some cases, former police officers and military deserters have joined the ranks of the cartels because—given their law enforcement and police training and experience—they can make more money working as training advisors and enforcers for drug traffickers.¹⁶⁸ In addition, there have been numerous documented incidents of human rights abuses committed by police and military forces against civilians.¹⁶⁹ And, just as before the offensive, the potential for widespread corruption exists, with the cartels bribing and intimidating to prevent police, politicians, and government officials from interfering with drug trafficking operations.¹⁷⁰

The inability of the Mexican government to subdue the cartels, the brutal nature of the fighting, and the rising death toll are signs that the situation in Mexico is a crisis that threatens its national security.

III. SPILL OVER: THE NATIONAL SECURITY THREAT OF THE CARTEL WAR

In April 2009, the U.S. Joint Forces Command published a security assessment that identified Pakistan and Mexico as two countries most at risk of experiencing a rapid collapse.¹⁷¹ Contemporaneous with the Joint Forces Command's prognosis, retired U.S. Army general Barry McCaffrey, Drug Czar during the Clinton Administration, issued a paper in which he claimed that the crisis in Mexico is a "dangerous and worsening situation that fundamentally threatens the [national security of the United States]."¹⁷² Arguably, at this time, the crisis in Mexico is a potential threat to U.S. national security because the crisis (1) adversely affects control over the U.S.-Mexico border; (2) could cause a humanitarian emergency; (3) could lead to the collapse of Mexico's economy and thus negatively impact the already troubled economic recovery in the United States; and (4) could further destabilize other nations in the region.

167. See SHIRK, *supra* note 17, at 10; Lee, *supra* note 15; *Mexican Drug War Update*, *supra* note 128.

168. See SHIRK, *supra* note 17, at 10; Lee, *supra* note 15; *Mexican Drug War Update*, *supra* note 128.

169. See SHIRK, *supra* note 17, at 10 ("[T]he militarization of public security in Mexico has contributed to greater military corruption and led to a sixfold increase from 2006 to 2009 in accusations of serious human rights abuses by members of the military."); *Mexican Panel Finds Law Enforcement Violations in Drug War*, N.Y. TIMES, Aug. 12, 2011, <http://www.nytimes.com/2011/08/13/world/americas/13mexico.html>.

170. See Lacey, *supra* note 137; Lee, *supra* note 15.

171. See *Hearing*, *supra* note 25, at 2–3; *Dealing with Drugs*, *supra* note 23.

172. See *Hearing*, *supra* note 25, at 2; *Dealing with Drugs*, *supra* note 23.

A. BORDER CONTROL IS A LINCHPIN OF SECURITY

Even with the cooperation of the Mexican government, the United States already faces a daunting task with respect to securing the 2,000-mile U.S.-Mexico border.¹⁷³ Today, Mexico and the United States are partners on border security initiatives.¹⁷⁴ Border security will greatly suffer, however, if the Mexican government is weakened to a point that it is not able to restore order in what now are largely cartel-controlled regions along the countries' shared border.¹⁷⁵ A weak or failed Mexico will not be able to field police and military forces to counter the cartels' drug trafficking networks on its side of the border.¹⁷⁶ If that occurs, the United States will have to watch over the border without any help from its southern neighbor.¹⁷⁷ This could have tragic results. For instance, in one weekend in June 2014, "the U.S. Border Patrol prevented murder suspects, multiple sex offenders, and an MS-13 gang member from entering the interior of Texas after they illegally entered into the U.S. from Mexico. The arrests occurred in the Rio Grande Valley sector, ground zero of the current border crisis."¹⁷⁸

Presently, Mexican drug cartels represent the single greatest domestic organized crime threat to the United States.¹⁷⁹ If Mexico's government is rendered too weak to govern certain geographic areas within its borders, the cartels' operations will be unchecked on the southern side of the U.S.-Mexico border, and, as a consequence, they will be better positioned to send an even higher volume of illicit drugs into the United States.¹⁸⁰ Already having the highest level of illegal narcotics use in the world, the United States cannot afford to experience increases in consumption because of the attendant negative impacts on the health and safety of its citizens.¹⁸¹

173. See SHIRK, *supra* note 17, at 4; Martinez-Cabrera, *supra* note 147.

174. See generally Martinez-Cabrera, *supra* note 147.

175. See SHIRK, *supra* note 17, at 4.

176. See *id.* ("A weak Mexican government increases the flow of both illegal immigrants and contraband (such as drugs, money, and weapons) into the United States.")

177. See *id.*

178. Brandon Darby, *Murder Suspects, Sex Offenders, and MS-13 Gangster Caught at Texas Border*, BREITBART (June 24, 2014), <http://www.breitbart.com/Breitbart-Texas/2014/06/24/Murder-Suspects-Sex-Offenders-and-MS-13-gangster>.

179. See *Hearing*, *supra* note 25, at 2 ("The U.S. Justice Department called Mexican gangs the 'biggest organized crime threat to the United States,' noting that they operate in at least 230 U.S. cities and towns."); SHIRK, *supra* note 17, at 4.

180. See SHIRK, *supra* note 17, at 4.

181. See SHIRK, *supra* note 17, at 4; see also Cordero, *supra* note 9, at 289 (noting that there are approximately 40,000 deaths in the United States related to drug use).

Furthermore, although the majority of the publicity about the cartels centers on their activities in Mexico, the cartels also operate in U.S. cities.¹⁸² They operate in U.S. border cities like El Paso, Texas; Columbus, New Mexico; Tucson, Arizona; and San Diego, California.¹⁸³ Also, today the cartels operate in more than 230 U.S. cities, including Atlanta, Chicago, Los Angeles, Phoenix, Washington, DC, and New York City.¹⁸⁴ Most troubling, U.S. law enforcement has encountered a larger presence of Los Zetas members in the United States.¹⁸⁵ For example, in 2008, a Los Zetas training camp was uncovered in South Texas.¹⁸⁶ More recently, U.S. law enforcement discovered that Los Zetas was stockpiling assault weapons in El Paso, Texas and Columbus, New Mexico.¹⁸⁷

So far, the U.S.-based arms of the cartels have refrained from using the type of extreme violence they employ in Mexico.¹⁸⁸ If, however, the cartels grow stronger at home as a result of a failing Mexican government, they may deploy more members to the United States in an effort to exercise greater control over drug distribution here.¹⁸⁹ Although the United States is unlikely to become embroiled in a full-scale battle with the cartels like the one in Mexico, the cartels may fight each other for control of drug distribution in American cities. In such a scenario, U.S. law enforcement officers and agents and other government officials, as well as ordinary citizens, may become caught in the crossfire that has taken place in Mexico over the past eight years.¹⁹⁰ Indeed, some argue that this “battle” has already begun with the cartels openly threatening to kill U.S. police

182. See Escalona, *supra* note 84; *Who is Behind Mexico's Drug-Related Violence?*, *supra* note 19; Valdez, *supra* note 95.

183. See generally Daniel Borunda & Adriana M. Chávez, *Federal case linked to consulate deaths yields racketeering pleas*, EL PASO TIMES (Sept. 23, 2011), http://www.elpasotimes.com/ci_18953735.

184. See *Hearing*, *supra* note 25, at 2, 35 (noting that “Phoenix is now the U.S. capital of kidnappings with more than 370 cases [in 2008.]”); Escalona, *supra* note 84; Carpenter, *supra* note 13, at 11.

185. See generally Valdez, *supra* note 95.

186. *Id.*

187. *Id.*

188. See Escalona, *supra* note 84 (“It is ironic that the extreme drug violence that routinely stuns Mexico does not happen in our country despite the fact that the Mexican drug cartels operate in more than 230 cities across the U.S., according to the Justice Department.”).

189. See generally Sevil Omer, *‘More Will Die’: Mexico Drug Wars Claim U.S. Lives*, NBC NEWS (Apr. 22, 2011, 10:29 AM), http://msnbc.msn.com/id/42232161/ns/us_news_crime_and_courts/t/more-will-die-mexico-drug-wars-claim-us-lives.

190. See Sean Alfano, *Mexican Drug Cartel Threatens to Harm U.S. Police Officers Who Bust Drug Shipments While Off-Duty*, N.Y. DAILY NEWS (June 22, 2010, 10:40 AM), <http://www.nydailynews.com/news/national/mexican-drug-cartel-threatens-harm-u-s-police-officers-bust-drug-shipments-off-duty-article-1.181411>.

officers, and many U.S. law enforcement and citizens already being killed.¹⁹¹

In addition to the threat posed by the cartels, a weak Mexican state means that foreign agents of terrorist states and organizations could use Mexico as a safe haven or as an access to the United States. Without the Mexican government to assist U.S. law enforcement with the detection and apprehension of foreign agents, those agents could remain undetected until after they have attacked targets in the United States. Further, assuming the cartels were willing to aid foreign agents, the likelihood is even greater that those agents would be able to infiltrate the U.S.¹⁹² One development shows that this situation is not merely hypothetical. In October 2011, the United States uncovered a plot to assassinate the Saudi Arabian Ambassador in Washington, DC.¹⁹³ The investigation of the plot revealed that an Iranian-American in Texas had been working with Iranian intelligence agents to hire members of Los Zetas to travel to the U.S. to kill the Saudi Ambassador.¹⁹⁴ More recently, reports have emerged that the extreme organization “The ISIS” could be using the crisis on the Mexican-United States border to cross into the United States to commit terrorist attacks.¹⁹⁵

More than just ties with other nation-states that are hostile to American interests, in recent years, the cartels have begun to conduct their business much like hostile foreign nations engaged in a kinetic war—and these “nations” are not separated from the United States by large bodies of water. For instance, cartels fight for territory much like traditional wars,¹⁹⁶ commit sabotage against rival “nations,”¹⁹⁷ and kill each other’s soldiers

191. *See id.*; *see also* Verna Gates, *Drug Cartel Debt Collector Proud of Killing 30: Alabama Police*, REUTERS (June 14, 2013, 9:38 PM), <http://www.reuters.com/article/2013/06/15/us-usa-alabama-killer-idUSBRE95E02E20130615>; Jana Winter, *Suspects in Murder of Border Patrol Agent Arrested and Deported Numerous Times*, FOX NEWS (Aug. 5, 2014), <http://www.foxnews.com/us/2014/08/05/suspects-in-murder-border-patrol-agent-arrested-and-deported-numerous-times>.

192. *See generally* *Hearing*, *supra* note 25, at 35 (statement of Michael A. Braun) (“Mexican cartel operatives, in places like Guinea-Bissau, [one of many other countries in which they now operate], are provided with opportunities to rub shoulders with the likes of Al Qaeda, Hezbollah and Hamas operatives, who also thrive in these permissive environments.”).

193. *See Mexico’s Drug Wars*, *supra* note 18.

194. *See id.*

195. *See* Barkoukis, *supra* note 14; *see also* Chiamonte, *supra* note 14. The cartels have also linked themselves with other organizations across the world and some closer to the United States than many realize. James Bargenet, *Drug Investigation Links Sinaloa Cartel to Canadian, US Mafias*, INSIGHTCRIME.ORG (Jan. 16, 2013). Indeed, the cartels are vested with both Canadian drug trafficking organizations and U.S. home-grown organized crime. *Id.*

196. *See generally* Dudley Althaus, *Durango Becoming Ground Zero for Zetas-Sinaloa Cartel Battle*, INSIGHT CRIME (Jan. 18, 2013), <http://www.insightcrime.org/news-analysis/durango-ground-zero-for-zetas-sinaloa-cartel-battle>.

197. Agence France-Presse, *Mexico Towns Lose Power in Suspected Cartel Sabotage*,

and leaders en masse¹⁹⁸ with increasingly ugly methods, including decapitation and killing children to harvest their organs,¹⁹⁹ reminiscent of the Nazis in World War II.²⁰⁰ Moreover, the cartels are conducting their business with increasing sophistication. For example, numerous tunnels equipped with electricity rail systems have been discovered,²⁰¹ traffickers

GLOBALPOST.COM (Oct. 28, 2013, 3:04 PM), <http://www.globalpost.com/dispatch/news/afp/131028/mexico-towns-lose-power-suspected-cartel-sabotage-1> (reporting that “[u]nidentified assailants armed with guns and Molotov cocktails attacked power stations [A] government official [reported] that authorities suspect that the Knights Templar drug cartel launched the . . . assault to send a message to the population and self-defense forces that have formed in the state.”); see also Alfredo Estrella, *In Mexico, Rumors Surround the Premex Explosion*, STRATFOR.COM (Feb. 3, 2013), <http://www.stratfor.com/sample/analysis/mexico-rumors-surround-pemex-explosion>; *Mexico Security Memo: Fuel Stations Attacked in Guanajuato*, STRATFOR (Aug. 15, 2012), <http://www.stratfor.com/sample/analysis/mexico-security-memo-fuel-stations-attacked-guanajuato>).

198. See CNN Library, *supra* note 4 (reporting more than 60,000 deaths in Mexico due to cartel violence); see also *Mexico’s navy vice admiral killed in ambush*, USA TODAY (July 29, 2013, 12:03 AM), <http://www.usatoday.com/story/news/world/2013/07/28/mexico-drug-war/2594953/> (reporting that cartel “[g]unmen ambushed and killed one of Mexico’s highest ranking navy officials and the officer escorting him”); Agence France-Presse, *Mexican Mayors Admit Paying Cartels to Stay Alive*, GLOBALPOST (Feb. 8, 2013, 1:15 AM), <http://www.globalpost.com/dispatch/news/afp/130208/mexican-mayors-admit-paying-cartels-stay-alive> (“A Mexican mayor was having breakfast with his wife in a restaurant when he was gunned down this week.”); Julia Symmes Cobb, *Nine Dead After Attackers Dressed as Police Enter Mexican Prison*, REUTERS (Jan. 3, 2014), <http://www.reuters.com/article/2014/01/03/us-mexico-prison-idUSBREA020YA20140103> (reporting that nine people were killed during a gunfight at a prison in Mexico’s violent Guerrero state, after a gang dressed as police officers gained entry). Even the leadership of the Mexican military is not exempt from the cartel soldiers. USA TODAY, *supra*.

199. See, e.g., *Mexican Drug Cartels in Fight Over Drug Route, 49 Decapitated Bodies Found*, FOX NEWS (May 14, 2012), FOX NEWS (May 14, 2012), <http://www.foxnews.com/world/2012/05/14/mexican-drug-cartels-in-fight-over-drug-route-4-decapitated-bodies-found/> (reporting that law enforcement officials in Mexico “found 49 mutilated bodies scattered in a pool of blood near the border with the U.S., a region where Mexico’s two dominant drug cartels are trying to outdo each other in bloodshed while warring over smuggling routes.”); see also, e.g., Deborah Hastings, *Mexican Cartel Henchman Arrested for Killing Children to Harvest Their Organs*, NY DAILY NEWS (Mar. 18, 2014, 12:38 PM), available at <http://www.nydailynews.com/news/world/mexican-cartel-leader-accused-killing-children-harvest-organs-article-1.1725522> (“Atrocities committed by Mexican narcotics syndicates have reached a new low with the announcement that a henchman for the vicious Knights Templar has been arrested on suspicion of killing children by removing their internal organs.”).

200. See, e.g., Allan Hall, *Darkest Atrocities of the Nazis Laid Bare in the Secretly Recorded Conversations of German Prisoners of War*, DAILY MAIL (Sep. 16, 2012, 1:09 PM), available at <http://www.dailymail.co.uk/news/article-2204160/Darkest-atrocities-Nazis-laid-bare-secretly-recorded-conversations-German-prisoners-war.html>, MAILONLINE (Sept. 16, 2012, 1:09 PM), <http://www.dailymail.co.uk/news/article-2204160/Darkest-atrocities-Nazis-laid-bare-secretly-recorded-conversations-German-prisoners-war.html>.

201. *Two Drug Tunnels with Rail Systems Found at U.S.-Mexico Border*, AOL NEWS (Apr. 6, 2014, 7:31 AM), <http://www.aol.com/article/2014/04/06/two-drug-tunnels-with-rail-systems-found-at-u-s-mexico-border/20863814/>; *Secret Border ‘Super Tunnel’ Discovered; Tunnel had*

use high-powered cannons to literally shoot drugs into the United States,²⁰² evidence that cartels are using drones for reconnaissance and even delivery of drugs,²⁰³ and even infiltration attempts by the cartels into U.S. law enforcement agencies have been discovered.²⁰⁴

B. THE HUMANITARIAN CRISIS CAUSED BY A CIVIL WAR IN MEXICO

In the past, many Mexican citizens sought to enter the United States illegally in search of better employment opportunities, but now they are also turning to this country as a refuge from the intense violence resulting from Mexico's drug war.²⁰⁵ By one estimate, overall job-related illegal immigration to the United States has declined by roughly 80 percent since the mid-2000s, mostly as a result of stricter immigration enforcement measures and a lack of employment opportunities caused by the recent economic downturn in the United States.²⁰⁶ Instead, an increasing number of Mexicans now are fleeing their home country for the safety of U.S. cities

Electricity, Rail System, ABC NEWS (Oct. 30, 2013, 9:37 PM), <http://www.10news.com/news/major-drug-tunnel-found-on-us-mexico-border-10302013>; *Secret Border Secret Border 'Super Tunnel' Discovered; Tunnel had Electricity, Rail System*, ABC 10 NEWS (Oct. 30, 2013, 9:37 PM), <http://www.10news.com/news/major-drug-tunnel-found-on-us-mexico-border-10302013>.

202. Taylor Hom, *Drug Smuggles Shoot Drugs Across Border with Cannon*, ABC NEWS (Dec. 12, 2012), <http://abcnews.go.com/Blotter/drug-smugglers-shoot-drugs-border-cannon/story?id=17943989> (reporting that the cartels "continue to show creativity in inventing new ways of getting drugs across the U.S. border from Mexico. Border Patrol agents say they believe a pneumatic cannon was used to launch dozens of containers of marijuana over the border and 500 feet into Arizona . . .").

203. John McKay, *Mexican Drug Cartels Using Drones to Scout Border Crossings?*, NEWSTALK (Aug. 7, 2012, 1:30 PM), <http://newstalk870.am/mexican-drug-cartels-using-drones-to-scout-border-crossings>; see also Oscar Lopez, *Mexican Drug Wars News: DEA Reveals Cartels Use Drones to Transport Drugs from Mexico Into US*, LATIN TIMES (July 10, 2014, 1:09 PM), <http://www.latintimes.com/mexican-drug-war-news-dea-reveals-cartels-use-drones-transport-drugs-mexico-us-190217> (discussing how the Drug Enforcement Agency, also known as the DEA, has discovered drug trafficking organization in Mexico utilizing drones to transport shipments more quickly and with less risk, which ultimately leads to the organizations funding their own development projects to create their own drones).

204. See *Watchdogs Today: Secret Government Study Exposes Infiltration Attempts by Mexican Drug Cartels*, WASH. EXAMINER (Jan. 29, 2013, 12:00 AM), <http://washingtonexaminer.com/watchdogs-today-secret-government-study-exposes-infiltration-attempts-by-mexican-drug-cartels/article/2519960> (discussing how the U.S. Department of Homeland Security has discovered various attempts by Mexican drug cartels to infiltrate the US border). The U.S. Department of Homeland Security reported that 15 different incidents where members of the cartel tried to infiltrate the U.S. Customs and Border Protection Agency. *Id.*

205. See Andrew Rice, *Life on the Line*, N.Y. TIMES, July 28, 2011, http://www.nytimes.com/2011/07/31/magazine/life-on-the-line-between-el-paso-and-juarez.html?pagewanted=all&_r=0.

206. See *id.*

because they fear that they will become casualties of the hostilities.²⁰⁷ Many of these individuals are Mexican citizens who have moved in with relatives on the U.S. side of the border.²⁰⁸ In addition, higher profile Mexican citizens such as government officials, politicians, and journalists have sought political asylum in the United States.²⁰⁹

Although it is difficult to estimate accurately the total number of people who have fled to the United States because most of them do not want to be documented, the Norwegian Refugee Council's Internal Displacement Monitoring Centre has surmised that approximately 230,000 Mexican citizens have migrated to other countries since the offensive against the cartels began in 2006.²¹⁰ It is estimated that, of the 230,000 people who have left Mexico, about 115,000 have moved to the United States.²¹¹ Cities located along the U.S.-Mexico border have experienced the largest increases in displaced Mexican citizens.²¹² For example, since 2009, the population of El Paso has increased by 50,000 to a total of 800,000 people.²¹³ It is believed that a significant percentage of those 50,000 people are displaced persons from Juárez.²¹⁴

This trend of forced migration that has resulted from people fleeing the violence in Mexico could reach alarming levels if Mexico's government is rendered too weak to govern certain geographic areas due to cartel violence.²¹⁵ The United States may witness an unmanageable number of persons streaming across its Southwest Border.²¹⁶ If such an exodus occurs, the U.S. government would face a humanitarian emergency unlike anything it has experienced in its history.²¹⁷ In a worst-case scenario, the U.S. might have to create displaced-persons camps to house the growing

207. *See id.*; *see also* Lee Stranahan, *Sudden Flood of Asylum Requests at U.S./Mexico Border* BREITBART.COM (Aug. 11, 2013), <http://www.breitbart.com/Big-Government/2013/08/11/Sudden-Flood-of-Asylum-Requests-At-U-S-Mexico-Border> (reporting that on August 5, 2013 at the Otay port of entry near the San Diego border last Monday, about 200 people coming from Mexico gained entry to the United States all using the same key phrase; they claimed they had a 'credible fear' of drug cartels).

208. Rice, *supra* note 205.

209. *See* SHIRK, *supra* note 17, at 5; *see also* Bergfeldt, *supra* note 159 (reporting on a Mexican journalist who received political asylum).

210. Rice, *supra* note 205.

211. *Id.*

212. *Id.*

213. *Id.*

214. *Id.*

215. *See* SHIRK, *supra* note 17, at 5.

216. *See id.*

217. *See id.* If the crisis in Mexico worsens, "a humanitarian emergency might lead to an unmanageable flow of people into the United States." *Id.*

number of refugees. Indeed, such camps already have been established in relatively safer areas on the Mexico side of the border.²¹⁸

A humanitarian emergency caused by an unmanageable number of displaced people fleeing the violence in Mexico would threaten national security in the United States for several reasons. First, the U.S. would be hard pressed to accurately document and track all the people who arrive here in an exodus. Thus, anyone with nefarious intentions would be better able to breach U.S. security merely by interspersing with what could become an overwhelming stream of refugees. Second, the United States government would be obligated to protect the safety and security of the refugees. The reallocation of resources and funds to protect large numbers of displaced persons would place a considerable strain on U.S. law enforcement agencies that already are committed to the demanding task of securing the U.S.-Mexico border. Third, the United States government would also be obligated to provide health care to the refugees. Here again, the reallocation of resources and funds to care for a large number of refugees would put additional strains on U.S. medical and emergency services, and it would distract hospitals and health care professionals from providing care in the event of other medical emergencies. All of these would severally affect the United States' ability to project power in other parts of the world.

C. OUR WAY OF LIFE

A nation's security depends in part on the strength of its economy. The national security of the United States is no exception. Currently, many believe the United States is still recovering from one of its worst economic downturns.²¹⁹ In the long term, U.S. national security could suffer as the country finds that it is unable to meet its financial obligations. Simply stated, it will be more difficult for the United States to allocate funds to security and defense budgets, if it must allocate money to satisfy debt and to implement austerity measures. To recover from the economic downturn

218. *Organized Crime in Mexico: The Drug War's First Displaced-Persons Camp*, THE ECONOMIST (Nov. 15, 2010), available at http://www.economist.com/blogs/americasview/2010/11/organized_crime (describing a displaced-persons camp established in Ciudad Miguel Alemán).

219. JOSH BIVINS, ANDREW FIELDHOUSE, & HEIDI SHIERHOLZ, ECON. POLICY INST., PAPER NO. 355, FROM FREE-FALL TO STAGNATION FIVE YEARS AFTER THE START OF THE GREAT RECESSION, EXTRAORDINARY POLICY MEASURES ARE STILL NEEDED, BUT ARE NOT FORTHCOMING 1 (2013), available at <http://s3.epi.org/files/2013/bp355-five-years-after-start-of-great-recession.pdf>; Andrew Fieldhouse, *5 Years After the Great Recession, Our Economy Still Far from Recovered*, HUFFINGTON POST (June 26, 2014, 12:38 PM), http://www.huffingtonpost.com/andrew-fieldhouse/five-years-after-the-grea_b_5530597.html.

and address the growing deficit, the United States must, among other things, maintain existing and develop new partnerships with other economic markets.

Mexico has the twelfth largest economy in the world.²²⁰ In the aggregate, Mexico's market plays an important role in the overall economic strength of the United States.²²¹ In this respect, the U.S. economy benefits from trade with Mexico.²²² As a member of the North American Free Trade Agreement, Mexico is the United States' third-largest trade partner.²²³ Mexico is the third largest source of exports to the United States, and the second largest importer of U.S. goods and services.²²⁴ Further, Mexico's market is important for U.S. businesses and investors.²²⁵ In recent years, the United States has injected roughly \$100 billion of foreign direct investment into Mexico.²²⁶

Mexico's economy is in jeopardy due to the ongoing war with the cartels.²²⁷ If Mexico's economy falters, the United States will lose one of its most important trade partners and a vital economic market in the Western Hemisphere. A collapse of Mexico's economy would further hamper the economic recovery and the national security of the United States.²²⁸ Thus, the United States has a vested economic and security interest in the health of the Mexican state.

D. CANCER SPREADING: THE DESTABILIZATION OF OTHER CENTRAL AND SOUTH AMERICAN COUNTRIES

Although experts debate on whether Mexico is at risk of becoming a failed state, what is more clear is that the Mexican Cartel War is spreading to other countries in the region.²²⁹ As discussed, the scope of the

220. *Hearing*, *supra* note 25, at 2; *Dealing with Drugs*, *supra* note 23. *But see* George Freidman, *Mexico's Strategy*, STRATFOR (Aug. 21, 2012), <http://www.stratfor.com/weekly/mexicos-strategy#axzz3BaUIRNSZ> (stating that Mexico has the fourteenth largest economy).

221. *See* SHIRK, *supra* note 17, at 4.

222. *Hearing*, *supra* note 25, at 2; SHIRK, *supra* note 17, at 4–5; *Dealing with Drugs*, *supra* note 23.

223. SHIRK, *supra* note 17, at 4–5 (noting that Mexico is the third-largest trading partner of the United States, and that “[m]ore than ever, Mexico and the United States are deeply interdependent: they are connected by more than \$300 billion in annual cross-border trade.”).

224. *Id.* at 4; *see also* U.S. DEP'T. OF STATE, *supra* note 151 (describing Mexico's economic statistics).

225. *See generally* SHIRK, *supra* note 17, at 4.

226. *Id.*

227. *See id.*

228. *See id.*

229. *Compare* GRAYSON, *supra* note 37, at 267 (“The U.S. Joint Forces Command recommended that Mexico be monitored alongside Pakistan as a ‘weak and failing’ state that

carnage in Mexico can lead one to believe the nation is on the verge of failure, however it still has powerful institutions such as the military and the business class that have enormous incentives to avert the nation's total collapse.²³⁰ Thus, while "Mexico faces a serious threat from the drug cartels—and there are a few areas of the country in which the government's writ has become precariously weak—it is still a long way from becoming a failed state."²³¹

However, the same cannot be said about many states to the south of Mexico.²³² Today the Mexican drug cartels operate practically unrestrained in their Central America backyard.²³³ This is due in large part to the successes the Mexican and Colombian militaries have had in their respective drug wars. These crackdowns have "pushed traffickers into a region where corruption is rampant, borders lack even minimal immigration control and local gangs provide a ready-made infrastructure for organized crime."²³⁴ Moreover, although Mexico has years of reasonable political stabilization, its neighbors, with the exception of Costa Rica, have been plagued with decades of instability.²³⁵ Although Mexico has had its share of police corruption and a dysfunctional court system, these problems are magnified in other Central American nations.²³⁶

The governments of these nations are not sitting idly by while their national institutions crumble.²³⁷ Former President Alvaro Colom of Guatemala "declared a state of siege in Guatemala's mountainous northern state of Alta Verapaz, near the border with Mexico."²³⁸ Alta Verapaz has become a trafficking corridor for cocaine from South America to Mexico and ultimately the United States.²³⁹ The Guatemalan federal prosecutor for narcotics crimes, Leonel Ruiz, went further, stating that the Zetas controlled four other provinces—nearly half of the country of

could crumble swiftly under relentless assault by violent drug cartels."), with Ted Galen Carpenter, *Drug Mayhem Moves South*, THE NATIONAL INTEREST, Jan/Feb 2012, at 6, 32–33, <http://nationalinterest.org/article/drug-mayhem-moves-south-6279> (stating that there has been speculation regarding violence in Mexico, which could lead to a failed state situation). "Mexico still maintains powerful institutions that serve to keep the country relatively stable . . . [for instance,] the Catholic Church [and] . . . the influential business community." Carpenter, *supra* at 32.

230. Carpenter, *supra* note 229, at 32–33.

231. *Id.* at 33.

232. *See id.*

233. *Id.* at 2.

234. *Id.*

235. *Id.*

236. Carpenter, *supra* note 229, at 33.

237. *See id.* at 33–34.

238. *Id.* at 34.

239. *See id.*

Guatemala.²⁴⁰ In Honduras, it was estimated that the cartel employed more gang members than police officers and soldiers combined.²⁴¹ The governments of these nations are being obscenely outspent as well. For example, Guatemala authorities seized almost \$12 billion in property, drugs, and cash from anti-drug operations in the past four years.²⁴² “The comparable figure for the previous eight years was approximately \$1.1 billion. That \$12 billion . . . is equal to almost two years of Guatemala’s [national] budget.”²⁴³

Unfortunately, instability is not the only threat the “cartel creep” is causing. It was reported in September 2012 that Hezbollah had established a training base in northern Nicaragua.²⁴⁴ The report went on to claim that thirty members of the internationally recognized terrorist organization resided inside the training base and received all of their supplies from Iran.²⁴⁵ Although there is no reported connection between this claimed training site and the Mexican cartels, it was reported that the base “also serve[d] as a meeting point with organized crime and drug cartels”²⁴⁶ More recently, the cartels in these Central American countries have forced many to flee to the United States, not only causing the humanitarian crisis discussed above,²⁴⁷ but also a human rights issue over which the world should be concerned.²⁴⁸ Indeed, some estimate that more than 70,000

240. *Id.* at 4.

241. *Id.* at 35.

242. Carpenter, *supra* note 229, at 36.

243. *Id.* at 5.

244. Philip Podolsky, *Iran, Hezbollah establish training base in Nicaragua*, TIMES OF ISRAEL (Sept. 6, 2012, 9:33 AM), available at <http://www.timesofisrael.com/iran-hezbollah-establish-training-base-in-nicaragua/>.

245. *Id.*

246. *Id.*

247. See *supra* Section III.B and accompanying notes; Josh Voorhees, *Obama’s Border Bet*, SLATE (July 7, 2014, 4:50 PM), http://www.slate.com/articles/news_and_politics/politics/2014/07/child_migrant_crisis_obama_says_there_s_a_humanitarian_crisis_at_our_border.html (quoting President Obama as calling the increase of immigrant children at the border a “humanitarian crisis”).

248. See Carpenter, *supra* note 13, at 11. Former President Alvaro Colom of Guatemala declared a state of siege in Guatemala’s northern state of Alta Verapaz, which runs along the Mexico-Guatemala border. Carpenter, *supra* note 13, at 11. Web, *supra* note 13.

The presidents of Guatemala, Honduras and El Salvador urged the US administration to do more to combat the armed gangs and drug cartels responsible for the violence driving emigration that has seen more than 57,000 unaccompanied children from their countries arrive at the Texas border in recent months. The three leaders – Juan Orlando Hernández of Honduras, Otto Pérez Molina of Guatemala and Salvador Sánchez Cerén of El Salvador – urged the Obama administration to do more to address the destabilisation caused by cartels shipping narcotics to the American market, and to invest in more rapid economic development to relieve widespread poverty.

children may make their way to the U.S.-Mexican border in 2014 alone.²⁴⁹ Many of these children are forced into the drug trade by the cartels.²⁵⁰ Take for example a young Guatemalan boy, Adrian, who was asked by narcotics traffickers if he would take a load of narcotics across the border.²⁵¹ As Adrian explains it, his choices were death or to try and make it to America—which he did.²⁵² As unfortunate as Adrian’s story is, many individuals do not make the treacherous journey.

The cartels in Mexico operate much like the bridge-trolls from fairy-tales, eating travelers who are unable to pay the toll to cross their bridge. Some of these individuals are sold into the work or sex slave trade,²⁵³ commonly known as human trafficking; others are simply killed if they are unable to pay the “crossing debt.”²⁵⁴

The question remains, what should the United States do? “Clearly, Washington does not want to see Central America become a region of narco-states in which the drug cartels are the political power that really matters.”²⁵⁵ This issue is not one of politics or morality but rather the fundamentals of economics.²⁵⁶ So long as there is an insatiable hunger for

Id.

249. Ian Gordon, *Children Crossing*, MOTHERJONES, July/Aug. 2014, at 50, 52, available at <http://www.motherjones.com/politics/2014/06/child-migrants-surge-unaccompanied-central-america>.

250. *See id.* at 50.

251. *See id.*

252. *See id.*

253. Ioan Grillo, *The Mexican Drug Cartels’ Other Business: Sex Trafficking*, TIME.COM, July 31, 2013, <http://world.time.com/2013/07/31/the-mexican-drug-cartels-other-business-sex-trafficking/>.

Like many victims of human trafficking, Marcela was tricked into the sex trade by a man she thought she could trust. She met him in her small hometown in Veracruz state when she was 16. Posing as a wealthy businessman, he asked for her hand in marriage, promising a comfortable lifestyle. Instead he took her to the Merced neighborhood of Mexico City, a hotbed for prostitution. She was kept under duress in a hotel room and forced to have sex with up to 40 men a day, who paid \$15 each to her so-called boyfriend and his accomplices.

Id.

254. *See* Ashley Fantz, *The Mexico Drug War: Bodies for Billions*, CNN (Jan. 20, 2012), <http://www.cnn.com/2012/01/15/world/mexico-drug-war-essay/>; Harriet Alexander, *Crimes of the Zetas – Mexico’s Most Notorious Cartel*, THE TELEGRAPH (July 16, 2013, 1:03 PM), <http://www.telegraph.co.uk/news/worldnews/centralamericaandthecaribbean/mexico/10182412/Crimes-of-the-Zetas-Mexicos-most-notorious-cartel.html>.

A group of migrants from Central America, crossing Mexico in an attempt to make it to the United States, crossed the path of the Zetas in August 2010. Miguel Treviño Morales personally supervised and took part in the torture and murder of the passengers. All 72 were later found dead, having been unable to pay their kidnapping ransom and refusing to work for the cartel.

Alexander, *supra*.

255. Carpenter, *supra* note 229, at 36.

256. *See id.*

drugs in the United States and Europe alike, it is an economic certainty that profit-seeking organizations will try to meet that demand.²⁵⁷ Some commentators argue that “[p]rohibiting commerce of a product does not negate the dynamic, it merely perverts it Often, that means the most ruthless, violent individuals come to dominate the trade.”²⁵⁸ The United States has to weigh the turmoil in Mexico and the cliff the other Central America nations are facing and ask if clinging to the current policy is worth the risk. At the same time, is the answer really to legalize drugs in the United States – to allow children to acquire cocaine as easily as they find an adult to buy them alcohol? This question will be addressed below.

IV. ANALYSIS AND RECOMMENDATIONS

To prevent the crisis in Mexico from becoming a threat to the national security of the United States, the U.S. government should (1) reevaluate and reform its drug laws, policies, and strategies; (2) take aggressive action to prevent arms trafficking to Mexico; and (3) provide additional direct assistance to the Mexican and other Central American governments.

A. REFORMING THE POLICY, REVALUATING THE MISSION, AND RETHINKING THE TABOOS OF U.S. DRUG POLICY

Despite having prohibitory laws and policies against the purchase, possession, and use of illicit narcotics, the United States is no closer to slowing the demand for drugs within its borders.²⁵⁹ Given that the U.S. narcotics market funds the Mexican drug cartels, it is time for the United States government to reevaluate and reform its current anti-drug laws, policies, and strategies to take a more realistic approach with respect to the market for narcotics.²⁶⁰ Maybe most importantly, the United States, to make meaningful progress, must have a candid conversation about the war on drugs and the national drug policy. Indicative of this problem are statements such as the one from R. Gil Kerlikowske, who is the current Commissioner of U.S. Customs and Border Protection and the former Director of the Office of National Drug Control Policy - generally referred to as the “Drug Czar”: “[m]arijuana legalization for any purpose, remains a *non-starter* in the Obama Administration. It is not something that the President and I discuss; it isn’t even on the agenda.”²⁶¹ When the nation’s

257. *Id.* at 37.

258. *Id.*

259. *See supra* notes 65–72 and accompanying text.

260. *See SHIRK, supra* note 17, at 17–19; Carpenter, *supra* note 229, at 11.

261. Memorandum from Director R. Gil Kerlikowske of the Office of Nat’l Drug Control

leaders are not even willing to discuss potential solutions to major problems, the country is on a road to nowhere. It is true that in the past year, President Obama has softened his language on drug policy, particularly marijuana, but “soft language” is not policy making.²⁶²

This position of legalization being a “non-starter” is not a new concept; every President since Nixon has had a similar policy. These past administrations undoubtedly believed that legalization could harm the social fabric of the United States. In addition, each president weighed the political capital that would be needed to actually address the war on drugs by being labeled “weak on crime” and being attacked from the national prison lobby. But the nation has faced similar political pressures before. For instance, during the first Bush and Clinton Administrations, the Department of Defense decided that many military installations were wasteful and duplicative.²⁶³ Because of immense political pressures not only from Congress, whose members were desperately trying to save the bases and jobs in their home states, but also from the defense lobby, the Department of Defense was unable to make progress on base closures. The solution was to take the politics out of the equation, and the Base Realignment Commission (BRAC) was developed.²⁶⁴ BRAC gave real power to non-politicians to make decisions on base closures that were best for the national security and not weighted against the clout of a particular Senator who might hold a powerful committee seat.

The position of this article is not to advocate the legalization of drugs in the United States. However, the discourse must include all options, including politically deadly ones. With that said, the United States government should devote the time and effort needed to conduct a careful cost-benefit analysis of the legalization and decriminalization of the possession and use of less harmful and more socially acceptable drugs.²⁶⁵ If that analysis shows that the legalization of marijuana, for example, would be a beneficial alternative approach to the current prohibitory laws and policies, then the United States needs a paradigm shift when it comes to marijuana. The U.S. government could license and strictly regulate marijuana producers, while also taxing purchases of the product. With

Policy to the press (Oct. 23, 2009) (emphasis added), available at http://www.whitehouse.gov/sites/default/files/ondcp/issues-content/marijuana_legalization_directors_statement.pdf.

262. See generally Sabrina Siddiqui, *White House: Obama Still Opposed to Marijuana Legalization*, THE HUFFINGTON POST (Jan. 23, 2014, 11:59 AM), http://www.huffingtonpost.com/2014/01/22/obama-marijuana-legalization_n_4647523.html.

263. See *Base Realignment and Closure (BRAC)*, GLOBALSECURITY.ORG, <http://www.globalsecurity.org/military/facility/brac.htm> (last visited Aug. 26, 2014).

264. *Id.*

265. See SHIRK, *supra* note 17, at 18–19.

Washington State and Colorado already legalizing recreational marijuana usage, the nation, as a whole, must get serious about getting ahead of the issue.²⁶⁶ There is already fear that the cartels are trying to take advantage of the federal/state split on marijuana policy and set up dispensaries in Colorado.²⁶⁷

Moreover, targeting drug users has not been proven to lower drug consumption in the United States.²⁶⁸ One solution to decrease the demand for narcotics in the United States could be a policy where users are treated rather than prosecuted.²⁶⁹ Although the United States has implemented drug prevention programs in the past—some of which have achieved a degree of success—it has not done enough to shrink the U.S. drug market.²⁷⁰ Currently, the United States budgets far more money to apprehend, prosecute, and incarcerate drug users than to cure them of their addictions.²⁷¹ Of the roughly \$15.5 billion budgeted to U.S. law enforcement anti-drug operations in 2011, only slightly more than \$5.6 billion was allocated to treatment and prevention.²⁷² Rather than continue to throw vast amounts of taxpayer money at law enforcement efforts to arrest and incarcerate users, the same money could be reallocated to public health services to treat addicts and prevent future drug use.²⁷³ Law enforcement resources then could be focused on the drug distributors in the United States. By lessening the demand for drugs and eliminating distributors, the United States will be reducing the cartels' revenues.

In addition, the decriminalization of the use of less damaging drugs would allow U.S. law enforcement to concentrate their resources and efforts on reinforcing border security and targeting the distributors of cocaine, crack cocaine, heroin, methamphetamine, and other more dangerous drugs. It has also been suggested that legalizing marijuana

266. See generally Mary Emily O'Hara, *Legal Pot in US is Crippling Mexican Cartels*, VICE NEWS (May 8, 2014), <https://news.vice.com/article/legal-pot-in-the-us-is-crippling-mexican-cartels>.

267. See Will Ripley, *Feds Worry that Drug Cartels are Moving into Colorado*, USA TODAY (Feb. 14, 2014, 2:08 PM), <http://www.usatoday.com/story/news/nation/2014/02/14/colorado-pot-drug-cartels/5485421/>.

268. See SHIRK, *supra* note 17, at 18 (“A state-driven, supply-side, and penalty-based approach has failed to curb market production, distribution, and consumption of drugs. The assumption that punishing suppliers and users can effectively combat a large market for illicit drugs has been proven utterly false.”).

269. See *Hearing*, *supra* note 25, at 26 (statement of Andrew Selee, Ph.D., Director of the Mexico Institute, Woodrow Wilson Center); SHIRK, *supra* note 17, at 19.

270. See *id.*

271. See Martha Mendoza, *U.S. Drug War Has Met None of Its Goals*, NBCNEWS.COM (May 13, 2010, 4:06 PM), http://www.msnbc.msn.com/id/37134751/ns/us_news-security/t/us-drug-war-has-met-none-its-goals.

272. See *id.*

273. See GRILLO, *supra* note 29, at 280–81.

would reduce the cartels' annual profits by \$1 billion to \$2 billion—which represents as much as a third of their annual revenue—because they would have to contend with an outside source of the product.²⁷⁴ Thus, the legalization of marijuana would curb the cartels' market with respect to one drug, thereby reducing their total revenues and, consequently, the funds they allocate to fight Mexican government forces.²⁷⁵

B. PREVENTING THE TRAFFICKING OF FIREARMS TO MEXICO

The Mexican drug cartels' weapons of choice are easily obtained in and smuggled from the United States.²⁷⁶ For this reason, the U.S. government should take swift and decisive action to prevent further trafficking of firearms to the cartels. Without military-style weapons, the cartels will doubtlessly have a harder time fighting with the Mexican federal police and military.

First, the United States government should avoid conducting any more international anti-trafficking operations like the ill-conceived and poorly executed "Operation Fast and Furious," the objective of which was to track straw purchases of firearms.²⁷⁷ Tracking firearms purchased by straw buyers is sufficiently difficult when they remain on the U.S. side of the border; it becomes infinitely more complex once those firearms are smuggled into Mexico.²⁷⁸ "Fast and Furious" succeeded in placing more firearms in the hands of criminals, who have used them to kill, among many others, U.S. Border Patrol Agent Brian Terry in December 2010 and Mario Gonzalez Rodriguez, an attorney in Mexico and brother of a former Attorney General of Chihuahua, in late 2010.²⁷⁹

Instead, U.S. law enforcement must do more to focus their resources and efforts on preventing weapons from crossing the U.S.-Mexico border.²⁸⁰ In particular, the ATF should enforce existing laws on the sale or transfer of assault weapons, including AK-47s, AR-15s, and Barrett .50 caliber sniper rifles.²⁸¹

274. See SHIRK, *supra* note 17, at 18; *Crossing the Line*, THE ECONOMIST, Sept. 24, 2011, at 38, <http://www.economist.com/node/21530158>.

275. See SHIRK, *supra* note 17, at 18; *Crossing the Line*, *supra* note 274.

276. See *supra* notes 82–92 and accompanying text.

277. See, e.g., *Arms Trafficking: How to Make Congressmen Furious — Fast*, THE ECONOMIST, July 28, 2011, <http://www.economist.com/blogs/americasview/2011/07/arms-trafficking/print>.

278. See *id.*

279. See *id.*; Kim Murphy, *U.S. AK-47s Linked to Mexican Attorney's Slaying*, L.A. TIMES (June 23, 2011), available at <http://articles.latimes.com/print/2011/jun/23/nation/la-na-gunrunner-20110623>.

280. See *Hearing*, *supra* note 25, at 27–28.

281. See *id.* at 53; SHIRK, *supra* note 17, at 22.

The Gun Control Act of 1968 already includes a myriad of prohibitions that can be used to prevent surrogates and straw buyers from purchasing weapons for the cartels.²⁸² For instance, it is unlawful “for any importer, manufacturer, dealer, or collector licensed under [the Gun Control Act of 1968] to ship or transport in interstate or foreign commerce any firearm to any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector”²⁸³ In addition, it is unlawful “for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, who does not reside in any State to receive any firearms unless such receipt is for lawful sporting purposes.”²⁸⁴ The Gun Control Act also makes it unlawful “for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person,” *inter alia*, “(A) is illegally or unlawfully in the United States; or (B) . . . has been admitted to the United States under a nonimmigrant visa.”²⁸⁵ Using this existing statutory authority, the ATF should more aggressively inspect federally licensed firearms retailers to ensure their compliance with the provisions of the Gun Control Act.²⁸⁶ The ATF also should exercise its authority to revoke licenses and to fine or imprison retailers who violate the provisions.²⁸⁷

Second, the United States should enforce existing laws that prohibit the importation of foreign-made assault weapons.²⁸⁸ The Gun Control Act already prohibits the importation of firearms and ammunition that are not “generally recognized as particularly suitable for or readily adaptable to sporting purposes.”²⁸⁹ President George H.W. Bush initially implemented the policy of banning the importation of non-sporting firearms under the Gun Control Act, and President Bill Clinton strengthened the policy when foreign weapons manufacturers attempted to circumvent the statute by modifying the designs of their firearms to include “sporting” features.²⁹⁰ President George W. Bush’s Administration failed to adapt the policy to the foreign manufacturers’ strategies for circumventing the statute.²⁹¹ President Barack Obama should update the policy to keep pace with the foreign

282. See generally 18 U.S.C. § 922.

283. See *id.* at § 922(a)(2).

284. See *id.* at § 922(a)(9).

285. See *id.* at § 922(d)(5)(A)–(B).

286. See *id.* at § 923(g)(1)(A)(D); *Hearing, supra* note 25, at 53; SHIRK, *supra* note 17, at 22.

287. See 18 U.S.C. § 923(e); *Hearing, supra* note 25, at 53; SHIRK, *supra* note 17, at 22.

288. See 18 U.S.C. § 925(d)(3); *Hearing, supra* note 25, at 53; *Senate Report, supra* note 95, at 3, 12–13; SHIRK, *supra* note 17, at 22.

289. See *Senate Report, supra* note 95, at 13.

290. See *Hearing, supra* note 25, at 53; *Senate Report, supra* note 95, at 3, 13.

291. See *Hearing, supra* note 25, at 53; *Senate Report, supra* note 95, at 13.

manufacturers' modifications.²⁹² With an updated policy, the ATF could use the Gun Control Act to deny applications for the importation of foreign-manufactured AK-47 and AR-15 assault weapons and handguns like the Belgian-made "cop killer" FN Herstal Five-Seven that are not suitable for or readily adaptable to sporting purposes.²⁹³

Third, the United States must enact laws to regulate sales and transfers of firearms in the "secondary market." Presently, there is no regulation of secondary sales and transfers by gun owners, and secondary market buyers are able to purchase firearms without a background check.²⁹⁴ Consequently, the secondary market presents a ripe opportunity for surrogates and straw purchasers to buy weapons for the cartels.²⁹⁵ Accordingly, Congress should devise and enact legislation to regulate the secondary market.²⁹⁶ This legislation should include amendments to the Brady Handgun Control Act that require mandatory background checks for secondary market purchasers, including persons buying firearms through classified advertisements in newspapers and newsletters, on websites, and at gun shows.²⁹⁷ Although the Manchin/Toomey amendment to Senate bill 649, that would have expanded background checks, has failed,²⁹⁸ Congress has every ability to draft a bill that is more narrowly tailored to close the loophole most used by the cartels, whether that be gun shows on the border or a simple registry of buyers so the federal government can try and track these straw buyers.

Finally, the United States should ratify the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials ("CIFTA").²⁹⁹ President Clinton signed CIFTA in 1997, and it was sent to the U.S. Senate for advice and consent in 1998.³⁰⁰ The Senate has not acted, most likely, to avoid antagonizing anti-gun control advocates.³⁰¹ For its part, Mexico ratified the treaty in May 1998.³⁰² The states that are party

292. See *Senate Report*, *supra* note 95, app. (a copy of a letter, dated January 31, 2011, from Senator Dianne Feinstein to President Barack H. Obama is included in the report's appendix).

293. See *Hearing*, *supra* note 25, at 53; *Senate Report*, *supra* note 95, at 13.

294. See *supra* notes 99–108 and accompanying text.

295. See *id.*

296. See *Hearing*, *supra* note 25, at 54; *Senate Report*, *supra* note 95, at 3, 12–14.

297. See 18 U.S.C. § 922(t)(1); *Senate Report*, *supra* note 95, at 3, 11–12.

298. See *Inside Congress*, *supra* note 126; Bolton, *supra* note 126.

299. See *Senate Report*, *supra* note 95, at 4, 16; see also SHIRK, *supra* note 17, at 14. See generally Inter-American Convention Against the Illicit Manufacturing of and Trafficking of Firearms, Ammunition, Explosives, and Other Related Materials (CIFTA), U.S. DEP'T OF STATE (Jan. 1, 1997), available at <http://www.state.gov/p/wha/rls/49907.htm> [hereinafter CIFTA].

300. *Senate Report*, *supra* note 95, at 4.

301. See SHIRK, *supra* note 17, at 13–14.

302. *General Information of the Treaty: A-63*, DEP'T OF INT'L LAW,

to CIFTA pledge their commitment to prevent, combat, and eradicate the illicit manufacturing of and trafficking in firearms, ammunition, explosives, and other related materials.³⁰³ Although the United States already is compliant with the articles of CIFTA, U.S. ratification of the treaty might encourage other countries to adopt it.³⁰⁴ Because states party to CIFTA are required to enact laws to prohibit the illicit manufacturing and trafficking of firearms, the treaty could act as a bulwark against the cartels' arms purchases should they decide to look for weapons outside the U.S. market.³⁰⁵ In this regard, CIFTA provides for cooperation and the exchange of arms manufacturing and trafficking information among the signing parties.³⁰⁶ CIFTA also permits the extradition of persons who violate signing parties' laws against the illicit manufacturing and trafficking of firearms.³⁰⁷

C. PROVIDING ADDITIONAL ASSISTANCE TO THE MEXICAN AND OTHER CENTRAL AMERICA GOVERNMENTS

Although the United States has been cooperating with the Mexican government in the drug war, the U.S. should provide more assistance and expand its role in the fight against the cartels. The truth of this is self-evident. In recent years, Mexican and U.S. law enforcement agencies have been working together to disrupt the cartels and their drug trafficking networks.³⁰⁸ The United States and Mexico have made significant progress with respect to collaborative efforts to combat drug trafficking, money laundering, and the transfer of bulk cash to the cartels' coffers.³⁰⁹ With the assistance of the Mexican government, the U.S. Drug Enforcement Administration has established intelligence outposts on military bases in Mexico.³¹⁰ In February 2011, the U.S. Department of Defense began to fly unarmed drones in Mexico's airspace to collect video imagery on cartel

<http://www.oas.org/juridico/english/signs/a-63.html> (last visited Oct. 28, 2014) (identifying the signatories and ratifications for CIFTA).

303. See CIFTA, *supra* note 299.

304. *Senate Report*, *supra* note 95, at 16.

305. See CIFTA, *supra* note 299, art. IV.

306. *Id.* at arts. VI, XI, XIII, XIV.

307. *Id.* at art. XIX; *Senate Report*, *supra* note 95, at 16.

308. *Hearing*, *supra* note 25, at 20 (statement of Andrew Selee); SHIRK, *supra* note 17, at 14–15; Escalona, *supra* note 84; *Mexico's Drug Wars*, *supra* note 18; Martinez-Cabrera, *supra* note 147.

309. See *Hearing*, *supra* note 25, at 20; SHIRK, *supra* note 17, at 14–15; *Mexico's Drug Wars*, *supra* note 18.

310. See *Mexico's Drug Wars*, *supra* note 18; Mark Mazzetti & Ginger Thompson, *U.S. Widens Role in Mexican Fight*, N.Y. TIMES (Aug. 15, 2011), <http://nytimes.com/2011/08/26/world/americas/26drugs.html>.

facilities and trafficking routes.³¹¹ The United States must continue and expand these and similar multinational efforts.

In addition, the United States should provide more financial assistance to the Mexican government to bolster the roughly \$4.3 billion that Mexico already spends to wage the drug war.³¹² Under the Mérida Initiative, the United States is committed to a partnership with the Mexican government, as well as the nations of Central America, the Dominican Republic and Haiti, to confront criminal organizations whose illicit actions undermine public safety, erode the rule of law, and threaten the national security of the United States.³¹³ As part of this initiative, the U.S. promised to allocate approximately \$1.6 billion over three years to the Mexican government for equipment, training, counter-narcotics trafficking intelligence sharing, and rule of law promotion programs to help reform Mexico's flawed criminal justice system.³¹⁴ In 2008, the U.S. gave an initial \$400 million to Mexico in accordance with the terms of the initiative.³¹⁵ Although this \$1.6 billion aid package is helpful, the United States must increase the amount of its financial assistance to ensure that the Mexican government is not outmatched by the cartels' multi-billion dollar fortunes.³¹⁶

D. RE-IDENTIFY THE TARGETS: CLASSIFYING THE CARTELS AS TERRORIST ORGANIZATIONS

As discussed, the Mexican cartels³¹⁷ are well organized and have widespread influence; they have access to military weapons and technology and have demonstrated a willingness to use them with deadly force against

311. Escalona, *supra* note 84; Mazzetti & Thompson, *supra* note 310; see *Mexico's Drug Wars*, *supra* note 18.

312. See SHIRK, *supra* note 17, at 15.

313. See SHIRK, *supra* note 17, at 6; Lee, *supra* note 15; *Mexico's Drug Wars*, *supra* note 18; Bureau of Int'l Narcotics and Law Enforcement Affairs, *Mérida Initiative: Myth vs. Fact*, U.S. DEP'T OF STATE (June 23, 2009), <http://www.state.gov/j/inl/rls/fs/122395.htm>.

314. See SHIRK, *supra* note 17, at 6; U.S. DEP'T OF STATE, *The Mérida Initiative: Expanding the U.S./Mexico Partnership*, (2012), available at <http://www.state.gov/documents/organization/187329.pdf>; Lee, *supra* note 15.

315. See Lee, *supra* note 15.

316. See *Hearing*, *supra* note 25, at 37; SHIRK, *supra* note 17, at 24–25. In Mr. Braun's statement submitted to the House of Representative's Subcommittee on National Security and Foreign Affairs, he remarked:

[the United States has] spent over \$700 billion dollars [*sic*] in Iraq and Afghanistan, and that should serve as a clear indication that the \$1.5 billion dollars [*sic*] in Mérida Initiative funding that our Country has promised to Mexico and Central America to fight the drug cartels over the next three years falls woefully short.

Hearing, *supra* at 37.

317. See *Who is Behind Mexico's Drug Related Violence*, *supra* note 19.

all those who threaten their operation or challenge their power, including public officials, law enforcement, other cartels, news organizations, and civilians.³¹⁸ That Mexican drug cartels constitute a threat to U.S. national security should hardly be controversial, considering the violence and instability that has been documented along the Southwest border.³¹⁹ One might justifiably wonder then why these groups that have controlled and operated a large-scale distribution network of illegal substances for years, with increasingly sophisticated means of evading detection, and an endless rap-sheet of crimes and acts of violence committed against civilians, businesses, and public officials, are and have been conspicuously missing from our government's official Foreign Terrorist Organizations ("FTO") list.³²⁰ The problem is that the federal government has mischaracterized the threat represented by the cartels as merely the threat of the substances themselves and "spillover" violence from Mexico, and therefore the problem has been largely misinterpreted and inappropriately addressed. It is imperative that to comprehensively address and resolve this threat, we first must accurately identify the threat before we confront it.

What we have is a major national security problem that involves the proliferation of violence and other terrorist acts committed by powerful criminal organizations operating in Mexico, along the Southwest border, and within our own country—the fight for capital control of the illegal drug

318. See Oscar Hidalgo, *Mexican Drug Trafficking*, N.Y. TIMES (Sep. 3, 2011), http://topics.nytimes.com/top/news/international/countriesandterritories/mexico/drug_trafficking/index.html.

319. See, e.g., *The U.S. Homeland Security Role in the Mexican War Against Drug Cartels: Hearing Before the Subcomm. on Oversight, Investigations and Management of the Comm. on Homeland Security*, 112th Cong. at 59 (2011) (statement of Thomas M. Harrigan, Asst. Adm'r and Chief of Operations, Drug Enforcement Admin.); OFFICE OF NAT'L DRUG CONTROL POLICY, EXEC. OFFICE OF THE PRESIDENT, NAT'L SOUTHWEST COUNTERNARCOTICS STRATEGY 1 (2013), available at http://www.whitehouse.gov/sites/default/files/ondcp/policy-and-research/southwest_border_strategy_2013.pdf; Seth Harp, *Globalization of the U.S. Black Market: Prohibition, the War on Drugs, and the Case of Mexico*, 85 N.Y.U. L. REV. 1661, 1676 (2010); Mark Lacey & Ginger Thompson, *Two Drug Slayings in Mexico Rock U.S. Consulate*, N.Y. TIMES, Mar. 14, 2010, <http://www.nytimes.com/2010/03/15/world/americas/15juarez.html>; Ben Leiter & Jenny Johnson, *Mexican People Take to the Streets against the Drug War*, LATIN AM. WORKING GRP. (Apr. 15, 2011), <http://www.lawg.org/action-center/lawg-blog/69/854>; Edwin Mora, *Napolitano to McCain: Yes, Mexican Cartels Pose Terror Threat to U.S.*, CNSNEWS.COM (Sep. 24, 2010, 3:47 PM), <http://www.cnsnews.com/node/75789>.

320. See generally U.S. DEP'T OF STATE, *Bureau of Counterterrorism, Foreign Terrorist Organizations* (last updated May 19, 2011), available at <http://www.state.gov/j/ct/rls/other/des/123085.htm> (listing the foreign organizations that have been deemed to be Foreign Terrorist Organizations). *Contra* Henry Schuster, *Domestic Terror: Who's most dangerous?*, CNN (Aug. 24, 2005, 2:14 PM), http://articles.cnn.com/2005-08-24/us/schuster.column_1_domestic-terrorism-animal-rights-jerry-vlasak?_s=PM:US (explaining that the eco-terrorism and the animal-rights movement were rated in 2005 as the top domestic terrorism threat by top officials).

black-market. These drug trafficking organizations undoubtedly deserve the label of terrorist organizations—as they are politically motivated organizations that have threatened to commit violence and actually have committed violence in their pursuits for power.³²¹ They represent a threat to democracy and to the safety and well-being of the people of the United States. There should be little doubt that this constitutes a threat to our national security and that we need an immediate and innovative solution.

V. CONCLUSION

The Mexican cartel war has been ongoing for over eight years, and the Mexican government is not any closer to subduing the Mexican drug cartels. On the contrary, the cartels have proved to be formidable foes to the Mexican federal forces. The cartels still maintain control over geographic regions of the country in which they ship drugs through the *plazas* and into the United States. The violence has become protracted and reached an astonishing level, producing a death toll of more than 60,000 so far and creating a crisis for the Mexican state. The crisis may become worse, and Mexico's security may falter. In a worst-case scenario, Mexico could face the prospect of becoming a failed state. If that happens, the United States not only risks losing effective control of the U.S.-Mexico border, but also could face a humanitarian emergency as a result of people fleeing Mexico and could experience more economic problems due to the collapse of Mexico's economy. If England, our closest ally, were in the midst of a war where 50,000 to 100,000 of its citizens were murdered, would the United States respond in the same manner?

Fortunately, at this point, although the crisis in Mexico is dire, it is not irreversible. The United States can help alleviate Mexico's cartel problems, which would make both Mexico and the United States safer, but to do so it will have to make difficult and challenging decisions. As a practical matter, the United States must rethink its current long-standing anti-drug laws, policies, and strategies. If the United States is willing to take a more realistic approach to drug use and treatment, it may be able to reduce America's overall demand for drugs. Correspondingly, by reducing the demand for drugs, the U.S. may reduce the cartels' revenue. Furthermore, the United States must aggressively counter arms trafficking from American sources to the cartels. In this respect, the existing provisions of the Gun Control Act of 1968 should be more strictly enforced. In addition, Congress should enact statutes to regulate sales and transfers of firearms in the secondary market, and the United States should

321. See generally Antiterrorism Act of 1990, 18 U.S.C. § 2331 (2010) for U.S. Code definition of "terrorism."

ratify CIFTA. The U.S. must provide additional direct assistance to the Mexican government in the form of multinational law enforcement operations and the allocation of more funding for the offensive against the cartels. Lastly, the U.S. must formally identify the Mexican cartels as a clear and present danger to the nation's national security and allocate the resources to that threat accordingly.