

Cari's Legal Exchange: Regulatory Risks and Enforcement Realities — Part 2

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Stay ahead of global enforcement trends with this deep dive into sanctions, anti-terrorism laws, and cross-border trade risks. Part two of Cari's Legal Exchange covers the shift from civil forfeiture to criminal prosecution, the impact of U.S. sanctions on Mexican cartels, and the expanding risk for companies in various industries.

Find out why robust "know your customer" (KYC) policies are essential—even outside financial services—and how recent regulatory actions could affect your business.

Cari Stinebower

You and I have had experience together sitting opposite each other on a number of these types of cases involving illicit Iranian cargo.

In the early days, probably mid 2019-2020, in that era, there was a big push for the non-U.S. parties to come into the U.S. and engage in civil forfeiture as a way of staying off the sanctions list and as a way of avoiding prosecution. It seems like that trend is waning now and the department is more interested in deferred prosecution agreements or guilty pleas.

Is that something that you can provide some context for? Do you agree with the trend?

Matt Graves

So I mean, a couple things.

One, I think it's been the view across the administrations of the department that when it comes to enforcing these national security statutes, we have to use every tool in the toolbox.

And sometimes the appropriate tool might be civil forfeiture, based on the equities of that case, and other times it might be criminal prosecutions.

I would say one thing with respect to a trend is, you know, one analysis, one part of the analysis rather, is how clear was it to the individuals involved that this was a violation of U.S. law?

So something that always counts against actors who engage in conduct after there's already been highly publicized enforcement actions is, this should have put you on notice that you can't engage in this kind of conduct.

That doesn't mean that everybody who comes after the first prominent announcement is going to be criminally prosecuted, but it is a factor and why you might see a greater percentage not resulting in something like civil forfeiture.

Cari Stinebower

Got it Yep, that makes sense.

And so talking about trends, we've been talking about the Iranian cargo cases under the Anti-Terrorism and Effective Death Penalty Act where there's sort of this global jurisdictions the Department of Justice has for civil forfeitures, over FTO poor terrorist organization cargo, wherever it's located.

Would you see some applicability to the foreign terrorist organization designations of the Mexican cartels either in the civil forfeiture realm or in the prosecution realm from these Iranian cargo cases.

Matt Graves

Absolutely.

And I think what you see, what you've seen in the sanction space, the kind of historical traditional sanctions space of targeting foreign countries who are engaged in conduct that is detrimental to the United States or individuals that are promoting terrorism is the first focus was on cutting off their access to the U.S. financial system.

But I think the cargo actions are really good example of this, there's a growing recognition that there are other touch points where you can further restrict the activities of these entities that are really causing problems.

So, common shippers, I think you're going to you're going to see an expansion in the traditional space and that certainly is going to carry over now to cartels now that they've been designated as foreign terrorist organizations and they are, again, a material support charge that take a lot of different forms.

If you think about the operations cartel and all the support they need through traditional companies, there are a lot of companies that are now being potentially put at risk because they might have a cartel as a counterparty, which before wouldn't have prompted the same kinds of risk in terms of U.S. law as it does now at these designations.

Cari Stinebower

I do think we're seeing a lot of that crossover with FinCEN's authorities as well.

The special measures taken against the three financial institutions in Mexico was actually a fairly remarkable action, largely because in the Federal Register notices FinCEN often does, it spelled out a decade's worth of activities involving the Mexican financial institutions and the alleged cartel activity, which essentially puts a lot of businesses on notice that perhaps they also should be doing look backs to see if they've got inadvertent exposure to the cartels.

Do you have other suggestions for what the cross-border trade should be looking for with respect to potential cartel exposure where before it might have just been Kingpin Act or some form of IEPA exposure?

Matt Graves

Yeah, absolutely.

As I said earlier, given the breadth of industries that could potentially touch cartel related activity, I think you're talking about a lot of industries that are very far removed from financial services and the like, that are used to having robust anti-money laundering, Know Your Customer, type procedures in place.

The first step for a lot of these companies is going to be recognizing that we have to have a Know Your Customer, Know Your IR policy, in place and really understand who the counterparty is here.

If we're operating in parts of the world where the cartels are operating extensively.

Cari Stinebower

So taking what had happened with the financial institutions after 9/11 and evolving the KYC construct to other businesses as well.

Matt Graves

Absolutely, yes.

Cari Stinebower

So we've seen the first wave of sanctions cases focused mostly on the financial institutions, which we've talked about. It's now moved into the maritime space. We would expect because of the FTO actions, it could also be agriculture, real estate.

Any other particular areas where you think that the focus would be hot for criminal prosecution?

Matt Graves

Yeah.

Let's continue with the Iran example. The reason that the U.S. government has so aggressively targeted Iranian oil transactions is, from the U.S. government's perspective, that is the lifeblood of Iranian funding for terrorist activities abroad that negatively impact the United States.

We talked about financial institutions. Obviously, that's a touch point. But I think if you just want to look at and think of like what is the next industry for Iranian oil, look at all the industries that touched that, those shipments, and they're all at risk.

And you can do the same thing with North Korea, which is tobacco related, my office had enforcement action in that space.

You kind of go down the line, all of the sanction cavities. You can do the same thing with the cartels.

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