



The Hon. Pedro R. Pierluisi  
Statement As Prepared for Delivery  
In Support of H.R. 3380, the Transnational Drug Trafficking Act  
Markup, House Committee on the Judiciary  
*April 20, 2016*

Thank you.

I want to begin by thanking Congressman Marino for working with me on this bipartisan bill, which is designed to remove an unwarranted obstacle to the successful prosecution of leaders of international drug cartels based in foreign countries. I also want to thank Chairman Goodlatte for scheduling this bill for markup. I will briefly explain the problem we are trying to address with the bill, and then explain why I believe any amendment to the bill, however well intentioned, is unnecessary, based on unfounded concerns, and will complicate the effort to enact the bill into law.

**Procedural History**

Let me begin by noting that this bill has been approved by the Senate four times since 2011, three times by unanimous consent and once in the form of an amendment to another bill where the amendment was approved by a vote of 94 to zero. The Senate version of the bill, which is identical to this bill, is sponsored by Senator Feinstein of California and Senator Grassley of Iowa, who lead the Senate Caucus on International Narcotics Control. The bill was carefully vetted with Senator Leahy of

Vermont, Senator Durbin of Illinois, and other senators who care deeply about balancing public safety and due process for defendants. The bill has been endorsed by the Department of Justice.

### **Purpose of Bill**

The background of the bill is as follows. South America is the primary source of the cocaine, and a significant amount of the heroin, that is illegally imported into the United States. Often, drug trafficking organizations based in South America manufacture a controlled substance and transport it to Central America, Mexico and the Caribbean, where other trafficking organizations—based in Mexico or other countries—take possession of the controlled substance and then import it into the United States.

Under current federal law, in order to prosecute a cartel leader in federal court in the United States for his or her extraterritorial activities under the so-called “long arm” statute, 21 U.S.C. section 959, federal prosecutors must provide direct proof that the defendant manufactured or distributed a controlled substance, and “intended or knew” that the controlled substance would be illegally imported into the United States. In the past, when Colombian cartels controlled the entire transport route from South America to the United States, it was not difficult to obtain evidence that a defendant knew the ultimate destination of the drug. However, with the rise of Mexican and other cartels as intermediaries, it has become much more difficult to prove that leaders of South American drug trafficking organizations knew the ultimate destination of the drugs they sold to their Mexican and Caribbean customers. Indeed, sophisticated cartel leaders understand how cases are prosecuted in the United States, and often avoid discussion of the final destination of their drug shipments.

In order to facilitate the U.S. prosecution of high-level leaders of international DTOs, our bill amends 21 U.S.C. section 959 to impose penalties for extraterritorial drug trafficking when the prosecution can

prove that the defendant manufactured or distributed a controlled substance, and intended, knew, or—and this is the only change—had “reasonable cause to believe” that the controlled substance would be imported into the United States. For instance, if the drug transaction is financed using U.S. dollars, the package branding suggests a U.S. destination, or the drug route suggests that the ultimate destination is the United States, then DOJ would be able to present that evidence to demonstrate that the traffickers violated the drug trafficking long arm statute.

Likewise, our bill amends 21 U.S.C. section 959 to impose penalties on producers of precursor chemicals from other countries who intended or knew that these chemicals would be used to manufacture illegal drugs, and who intended, knew or—and, again, this is the only change—had “reasonable cause to believe” that the drug would be imported into the United States.

Finally, our bill rectifies an inadvertent omission in the *Counterfeit Drug Penalty Enhancement Act of 2012*, which makes the sale of a counterfeit drug a federal felony, regardless of whether or not the seller knew the drug was counterfeit. Our bill fixes this oversight, requiring the seller to know the drug is counterfeit in order to be charged with a federal felony.

### **Response to Two Concerns About This Bill**

I have heard two concerns expressed about the bill, but neither withstands scrutiny. The first concern is that this bill could make it easier to prosecute lower level offenders. This concern is completely misplaced. The long-arm statute is used by DOJ to extradite high-level leaders, not low-level functionaries. The costs of extradition, typically requiring the use of charter aircraft to transport defendants from a foreign country to the United States, are significant—and DOJ does not waste resources utilizing this process for, say, a drug mule transporting narcotics from Colombia to Mexico. And let me underscore—this bill does not change the *mens rea* requirement for the underlying

unlawful conduct, namely the manufacture or distribution of a controlled substance. It only changes the *mens rea* requirement as it pertains to knowledge of the ultimate destination of the drug shipment, which is an ancillary issue. The bill will give federal prosecutors a tool to ensure that leaders of international drug trafficking organizations cannot escape prosecution and punishment based on what amounts to a legal technicality—that is, the inability to prove that the defendant knew the drugs might end up in the U.S.

The second concern I have heard pertains to mandatory minimum sentences, but this concern also misses the mark. In general, like the Ranking Member, I have concerns about the application of mandatory minimum sentences. So, too, do many senators who have voted to approve the identical Senate version of this bill on multiple occasions. While individuals who violate 21 U.S.C. section 959 may be subject to mandatory minimum sentences, this bill does nothing to expand or convey express or implicit support for such sentences. It simply enables the DOJ, under this pre-existing statute, to prosecute individuals who manufacture or distribute a controlled substance, and who have reasonable cause to believe that the controlled substance will be transported to the United States. It does not criminalize, or subject to mandatory minimums, a new category of conduct. So, in short, even if you oppose mandatory minimum sentences, you should feel comfortable supporting this bill.