

United States Senate

SENATE CAUCUS ON
INTERNATIONAL NARCOTICS CONTROL
HART SENATE OFFICE BUILDING, ROOM 818-C
WASHINGTON, DC 20510

June 22, 2022

Kenneth A. Polite
Assistant Attorney General
Criminal Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Polite:

We are pleased to invite you to testify at a Senate Caucus on International Narcotics Control hearing, entitled "The Role of the Federal Government in Attacking the Financial Networks of Cartels," on Tuesday, July 12, 2022 at 2:00 p.m. in Room 215 of the Dirksen Senate Office Building. This hearing will examine the financial techniques that drug cartels use to launder and protect their ill-gotten gains and actions federal agencies can take to stop them.

Specifically, we are interested in hearing from you about how the Department can strengthen investigations of narcotics-related illicit finance, including its efforts to hold accountable financial institutions and employees and executives who knowingly violate *Bank Secrecy Act* reporting requirements. We would also appreciate your insights into any gaps in the U.S. anti-money laundering framework that Congress should consider addressing and into how the U.S. can better assist allied nations in improving their investigations and prosecutions of drug trafficking organizations.

We request that you send your written testimony via e-mail by Friday, July 8th to sahil_chaudhary@whitehouse.senate.gov. We very much look forward to your testimony and to working with you on this important issue.

Sincerely,



Sheldon Whitehouse
Chairman



Charles E. Grassley
Co-Chairman



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

The Honorable Sheldon Whitehouse
Chairman
Senate Caucus on International
Narcotics Control
United States Senate
Washington, D.C. 20510

The Honorable Charles Grassley
Co-Chairman
Senate Caucus on International
Narcotics Control
United States Senate
Washington, D.C. 20510

Dear Chairman Whitehouse and Co-Chairman Grassley:

This letter is in response to your June 22, 2022, invitation for Kenneth A. Polite, Assistant Attorney General for the Criminal Division of the U.S. Department of Justice (“Department”) to testify at the Senate Caucus on International Narcotics Control’s (“Caucus”) July 12, 2022, hearing titled “The Role of the Federal Government in Attacking the Financial Networks of Cartels.”

We regret that the Department was not able to provide a witness to this hearing. The Department’s Criminal Division prepared the attached written statement that reflects the Department’s views on drug crimes and associated money laundering. We request that this statement be incorporated into the hearing record.

The Department has been pleased to assist the Caucus’ work this Congress, including by providing a witness at its November 17, 2021, hearing titled “The Nexus Between the Illicit Drug Trade and Corruption.” We are deeply committed to investigating and prosecuting narcotics traffickers and associated money laundering. Combatting drug trafficking is a long-term key Department objective, and illicit finance linked to narcotics trafficking is a critical element of this effort.

We look forward to working with the Caucus on these important issues going forward. Should you have draft legislation that might benefit from the Department’s input, for example, we would be happy to coordinate with your staff to provide those views.

The Honorable Sheldon Whitehouse
The Honorable Charles Grassley
Page Two

We hope this information is helpful and look forward to continuing to work with you on this matter.

Sincerely,

PETER

HYUN

Peter S. Hyun

Acting Assistant Attorney General

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PETER HYUN
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**STATEMENT OF
UNITED STATES DEPARTMENT OF JUSTICE
BEFORE THE
SENATE CAUCUS ON INTERNATIONAL NARCOTICS CONTROL
UNITED STATES SENATE
AT A HEARING TITLED
“THE ROLE OF THE FEDERAL GOVERNMENT IN ATTACHING THE FINANCIAL
NETWORKS OF CARTELS”
PRESENTED
JULY 12, 2022
* * * * ***

Chairman Whitehouse, Co-Chairman Grassley, and distinguished members of the Senate Caucus on International Narcotics Control, thank you for this opportunity to provide a statement on behalf of the Department of Justice. Combatting drug crimes and associated money laundering is of central importance to the Department of Justice (Department).

At the Department, we are deeply committed to investigating and prosecuting narcotics traffickers and combatting associated money laundering – which we do through our Organized Crime Drug Enforcement Task Forces (OCDETF), our Narcotic and Dangerous Drug Section, our Money Laundering and Asset Recovery Section, the Office of International Affairs, and our U.S. Attorneys’ Offices throughout the country, among others. In this regard, our prosecutors work closely with agents from all of the Department’s law enforcement agencies, including the Drug Enforcement Administration and Federal Bureau of Investigation. Our prosecutors also work with investigators from the Department of Homeland Security – including U.S. Immigration and Custom Enforcement’s Homeland Security Investigations – and with the U.S. Postal Inspection Service, the Internal Revenue Service - Criminal Investigation, and a wide range of other partners.

Combatting drug trafficking is a long-term key Department objective, reflected most recently in the Strategic Plan the Department published on July 1, 2022. This includes combatting transnational drug trafficking organizations. As noted in the Department’s Strategic Plan, issued this month, “[t]he Department will use all available resources to combat drug trafficking in the United States. We will simultaneously target the trafficking organizations, their financial infrastructure, and their distribution networks.”

Combatting illicit finance linked to narcotics trafficking is a critical element of this effort, as the Strategic Plan and this Caucus have recognized. The Department’s enforcement efforts involve not only targeting the drug trafficking organizations that cause widespread harm to the United States, but also taking the profit out of crime by investigating and prosecuting

professional money launderers and gatekeepers who provide their services to serious criminal organizations, including drug trafficking organizations. This includes those who threaten the integrity of financial institutions and the wider financial system by laundering drug proceeds through these institutions. As the 2022 National Strategy for Combating Terrorist and Other Illicit Financing states, drug trafficking organizations increasingly are turning to professional money launderers, who receive a fee or commission for their laundering services and often use their specialized expertise to launder proceeds generated by others, regardless of the predicate criminal activity. These professional money laundering networks are constantly evolving and adapting in response to law enforcement action, regulatory changes, and growing private sector awareness of their activities.

U.S. banks handle trillions of dollars of daily transaction volume. Those who do not have access to these institutions, or who choose not to use depository financial institutions, may conduct financial transactions using money services businesses (MSBs) such as money transmitters, check cashers, currency exchangers, or businesses that sell money orders, prepaid access devices, and traveler's checks. Some MSBs themselves may also engage the services of depository financial institutions to settle transactions. Banks may also hold accounts with other banks, including foreign banks, to facilitate domestic and cross-border transactions. For example, some banks establish correspondent relationships with other banks to enable them to conduct business and provide services to clients in foreign countries without the expense of establishing a presence in those foreign countries. The sheer volume of business that banks handle on a daily basis exposes them to significant money laundering risks. In fact, in most money laundering cases, criminals employ banks at some point to hold or move illicit funds. Financial transactions may also be conducted through informal networks like hawalas, black market peso exchanges, and others. These informal networks typically interface with MSBs and banks to funnel their transactions into the formal financial system.

Because they play such a significant role in the U.S. financial system, financial institutions are often the front line in anti-money-laundering (AML) efforts. Compliance with the Bank Secrecy Act (BSA), among other laws, is fundamental to protecting the security of financial institutions and the integrity of the financial system as a whole. These laws impose a range of obligations on financial institutions, including filing of transaction reports, reporting suspicious activity, performing customer due diligence, preventing transactions that involve the proceeds of crimes, and establishing effective AML programs.

The BSA's reporting and recordkeeping requirements are of particular importance to financial investigations. Financial intelligence generated by BSA reporting is critical to our law enforcement efforts to detect, deter, and disrupt criminal financial networks and to protect our financial system. Information generated from suspicious activity reports (SARs), currency transaction reports (CTRs), and other reports has contributed substantially to the investigation and prosecution of countless individuals and entities. This information is used to identify leads, "connect the dots," and otherwise advance investigations. BSA reporting is also critical to law enforcement's efforts to thwart illicit money flows because it enables law enforcement to develop more complete information about a criminal network. By reviewing information generated from SARs, CTRs, and other BSA reporting, for example, law enforcement is able to trace money flowing to different parts of the network – those that generate the illicit proceeds

and those used to redistribute them. The Department uses information generated from SARs, CTRs, and other BSA reporting on both a proactive and reactive basis in investigations of individuals and entities, and offers extensive training on financial investigations to both agents and prosecutors that covers the use of BSA reporting. Domestic collection of BSA information also improves the United States' ability (subject to certain limitations) to respond to similar requests from foreign law enforcement for investigative assistance—and to make reciprocal requests to our foreign counterparts for key information to assist us in our investigations—thus increasing the United States' ability to fight financial crime on the global stage and assist our international partners in their enforcement efforts. This information is also critical to the Department's ability to identify broader trends and risks in illicit finance, as well as to identify, freeze, seize, and forfeit assets, where appropriate. The confidentiality of SAR reporting is essential to using that reporting successfully to further criminal investigations. The unauthorized disclosure of a SAR or information that would reveal the existence of a SAR could jeopardize the security of the U.S. financial system, threaten the safety of those who file SARs, and compromise national security. Financial institutions and law enforcement are required to keep SAR information confidential; this requirement ensures that subjects of SARs are not tipped off and given an opportunity to flee or dissipate assets and allows law enforcement to covertly pursue investigative leads.

Given the importance of this reporting, compliance with the BSA is fundamental to protecting the security of financial institutions and the integrity of the financial system as a whole. As this Caucus knows, criminals frequently seek to thwart or evade BSA requirements. For example, criminals may structure transactions to avoid threshold reporting requirements, or seek out complicit merchants who will accept their illicit proceeds without reporting the transactions. Criminals may also misuse banking services to further their illicit purposes. While many MSBs engage in legitimate business activities, they, too, can serve as a means for criminals to move money. Although MSBs have customer verification requirements above certain thresholds and other BSA obligations, individuals who use MSBs may do so in a “one-off” fashion, without establishing the ongoing relationship that banks maintain with their customers, which can make it more difficult to identify money laundering and other criminal activity. Some MSBs also fail to register with the proper authorities, making it more likely that AML violations at those MSBs go undetected.

The Department has had some notable recent successes in prosecuting those who help drug traffickers launder their ill-gotten gains. OCDETF Operation Dark Castle, for example, was the result of a nearly four-year investigation into the relationship between foreign drug trafficking organizations and Asian money laundering networks in the United States, China, and elsewhere. This case culminated in the successful prosecution of multiple members of a criminal organization that laundered drug proceeds for Mexican cartels. This organization used a foreign casino, foreign and domestic front companies, foreign and domestic bank accounts (some of which were opened under fictitious identities), encrypted communications platforms, and false identification documents to launder drug money. The leader of the organization, Xizhi Li, often dealt directly with members of the drug trafficking organizations or their representatives to obtain “contracts” to move their drug proceeds. Once Li and his co-conspirators obtained a “contract” to launder drug proceeds, they would engage in financial transactions that were designed to conceal the illicit source of the original proceeds in return for the payment of

commissions. Li was sentenced to 15 years of imprisonment following his guilty plea to conspiracy to launder money.

The Department also recently prosecuted Bianca Acedo-Ojeda, a money launderer for the Sinaloa drug cartel, based in Sinaloa, Mexico, following her extradition to the United States. Acedo-Ojeda arranged for drug proceeds, in the form of bulk U.S. currency, to be smuggled into Mexico through ports of entry in Southern California in vehicles with hidden compartments. She also arranged for much of the bulk U.S. currency to be converted to Mexican pesos and transferred to drug traffickers. She was sentenced to ten years of imprisonment following her guilty plea to conspiracy to launder money.

The Department is also targeting drug trafficking that seeks to exploit emerging technologies. The online trafficking of opioids, particularly fentanyl, poses a lethal threat to not only the United States, but also to our European and Australian counterparts and beyond. One recent example of our efforts to combat this threat is Operation Dark HunTor, which resulted in the seizure of over \$31.6 million in both cash and virtual currencies; approximately 234 kilograms of drugs worldwide, including 152.1 kilograms of amphetamine, 21.6 kilograms of cocaine, 26.9 kilograms of opioids, 32.5 kilograms of MDMA, in addition to more than 200,000 ecstasy, fentanyl, oxycodone, hydrocodone, and methamphetamine pills and counterfeit medicine; and 45 firearms. Darknet vendor accounts were also identified and attributed to real individuals selling illicit goods on active marketplaces as well as inactive Darknet marketplaces. Operation Dark HunTor resulted in 65 arrests in the United States, and additional arrests by our foreign partners, totaling 150 arrests for this global operation. This effort highlights both the magnitude of this lethal threat, and the significant efforts we are taking at the Department of Justice to address it.

The Department has also emphasized the importance of corporate compliance programs in addressing crimes and creating a culture of compliance. Strong AML compliance programs at financial institutions play a critical role in the fight against transnational criminal activity and specifically drug trafficking and associated money laundering. In general, financial institutions seek to implement effective AML programs to detect and prevent money laundering through the U.S. financial system. Implementing BSA requirements and preventing and addressing other potential illicit financial and criminal activity through financial institutions protects the institutions themselves and the integrity of the U.S. financial system.

For the last ten years, the Department has focused on policing financial institutions that violate the BSA and other laws, working closely, in parallel, with Federal regulators and supervisors, namely Treasury's Financial Crimes Enforcement Network (FinCEN), the Board of Governors of the Federal Reserve, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency (OCC). In 2012, HSBC entered into a five-year deferred prosecution agreement admitting that it violated the BSA and willfully failed to maintain an effective AML program, including conducting due diligence on its foreign correspondent affiliates, which allowed hundreds of millions in drug-trafficking proceeds and sanctions-evasion proceeds to be laundered through HSBC Bank USA. HSBC forfeited \$1.2 billion as a result of its conduct.

In 2017, the Department resolved criminal investigations into Western Union and Banamex USA for violations of the BSA. Banamex USA entered into a non-prosecution agreement and admitted that it violated the BSA by failing to monitor transactions processed to Mexico in partnerships with MSBs, provide appropriate resources to ensure its BSA department could appropriately monitor, and failed to file SARs on transactions that fit typologies consistent with illegal conduct including drug trafficking, human smuggling, and fraud. Banamex forfeited nearly \$100 million as a result of its conduct. Western Union, meanwhile, entered into a deferred prosecution agreement and admitted that it aided and abetted wire fraud and violated the BSA by processing hundreds of millions of dollars of fraud transactions and failing to take corrective action against Western Union agents involved in or facilitating fraud-related transactions. Western Union also failed to discipline or terminate agents engaged in structuring transactions to avoid BSA reporting requirements. Additionally, Western Union admitted that it failed to file SARs identifying its agents as suspicious actors. Western Union forfeited \$586 million as a result of its conduct.

In 2018, Rabobank NA pleaded guilty to conspiracy to obstruct its regulator and supervisor, the Office of the Comptroller of the Currency, and to defraud the United States. Rabobank executives hid deficiencies in its AML program from its regulator and obstructed its regulator in investigating those deficiencies. Those deficiencies included failing to monitor high-risk customers, including customers whose transactions were indicative of international narcotics trafficking, organized crime, and money laundering; failing to file SARs on transactions associated with money laundering and drug trafficking; and failing to close accounts suspected of money laundering associated with drug trafficking. Former Rabobank vice president George Martin entered into a deferred prosecution agreement for aiding and abetting criminal violations of the BSA. Rabobank forfeited \$360 million as part of its guilty plea.

Last year, former bank branch manager Carlos Antonio Vasquez was sentenced to 30 months in prison for a money laundering conspiracy related to drug trafficking. Between February 2017 and August 2019, Vasquez conspired to launder money for a group of individuals who brought Mexican citizens into the bank to open funnel accounts used to send illegal proceeds back to Mexico. Vasquez opened the funnel accounts for these individuals knowing that the funds moving through the accounts were proceeds of illegal conduct.

At the global level, the United States has also long advocated for other jurisdictions to similarly identify and address AML/counter-financing-of-terrorism (CFT) risks, including by fully implementing the Recommendations of the Financial Action Task Force (FATF), the global inter-governmental body that sets international standards to prevent and address money laundering and other illicit financing. Consistent international legal and regulatory frameworks, supervision, and enforcement can prevent criminals from “forum shopping” for weak or non-existent statutory and regulatory regimes. Moreover, we can better cooperate with international partners in enforcement efforts when they have similar access to financial transaction information and other legal tools to allow for financial investigations and asset recovery. We continue to see this as an important area for future efforts, particularly as regulators work to address emerging technologies that provide alternatives to traditional banking and money transmission networks worldwide.

The Administration is currently reviewing statutory and regulatory regimes in broad ways that can encompass drug trafficking and associated money laundering. As noted in the United States Strategy on Countering Corruption, published in late 2021, deficiencies in the U.S. regulatory framework mean various professionals and service providers – including lawyers, accountants, trust and company service providers, incorporators, and others willing to be hired as registered agents or who act as nominees to open and move funds through bank accounts – are not required to understand the nature or source of income of their clients or prospective clients. Yet, they help raise funds, provide advice on investments, structure transactions, and can serve as an access point to the U.S. and international financial systems, including by facilitating the creation of opaque corporate vehicles. Additionally, complicit professionals are often sought by criminal organizations to facilitate their illicit activities. While U.S. law enforcement has increased its focus on such facilitators, it is both difficult to prove “intent and knowledge” that a facilitator was dealing with illicit funds or bad actors, or that they should have known the same. Cognizant of such constraints, the Strategy noted, the Administration will consider additional authorities to cover key gatekeepers, working with the Congress as necessary to secure additional authorities. Departments and agencies will also consider ways to increase penalties on gatekeepers who facilitate corruption and money laundering, including by working with states to levy professional sanctions. The United States will consider expanded engagement with key gatekeepers including, as appropriate, information and other data sharing.

Moreover, the National Defense Authorization Act for FY2021 contained significant money-laundering provisions, which the government is implementing. This included directing the Department of the Treasury to review a number of aspects of BSA reporting requirements, and those reviews are underway. The same legislation separately required that Treasury issue national AML/CFT Priorities, and we note that the Priorities published in June 2021 specifically included drug trafficking. In addition, the Administration is examining digital assets and whether to recommend legislative changes to address, among other things, the risks they may pose for criminal misuse as part of its work on the March 2022 Executive Order on Ensuring Responsible Development of Digital Assets.

United States Senate

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INTERNATIONAL NARCOTICS CONTROL
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WASHINGTON, DC 20510

July 19, 2022

Peter Hyun
Acting Assistant Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Acting Assistant Attorney General Hyun,

This letter acknowledges receipt of the Department of Justice's (DOJ) letter and written statement for the record for the July 12, 2022 Senate Caucus on International Narcotics Control hearing entitled "The Role of the Federal Government in Attacking the Financial Networks of Cartels."

As you are aware, my staff tried in earnest, and well in advance, to get DOJ to send a witness to participate in this hearing via a formal invitation on June 22, 2022.¹ Despite this, DOJ, unlike other invited agencies, including the Departments of Treasury and State, refused to participate. Moreover, DOJ did not provide a formal, written response to the Caucus' invitation until two days after the hearing's conclusion, on July 14, 2022.²

As the sole prosecuting agency involved in narcotics and money laundering crimes, DOJ is uniquely positioned to provide this Caucus with information regarding how narcotics-related illicit finance investigations and prosecutions against drug trafficking organizations can be strengthened, both in the United States and abroad, as well as any gaps in the U.S. anti-money laundering framework that Congress should consider addressing. A written statement is, unfortunately, a poor substitute.

Regrettably, DOJ's refusal to participate in this hearing appears to be part of a larger pattern. This unacceptably interferes with the Senate's ability to perform its Article I functions with respect to oversight of DOJ and related legislation. In this regard, let me be clear that DOJ's submission of a statement for the record in lieu of its active participation in hearings to which it has been invited is by no means a precedent this Caucus is willing to accept in the future.

I remain disappointed in DOJ's refusal to participate in the July 12th hearing. Moving forward, however, I sincerely hope that DOJ will make a concerted effort to better engage with this Caucus, and to participate in oversight and legislative hearings which it convenes.

Sincerely,



Sheldon Whitehouse
Chairman

¹ Senators Sheldon Whitehouse and Chuck Grassley to Assistant Attorney General Polite. U.S. Department of Justice, Washington, DC, June 22, 2022. Available on p. 1 of this document.

² Acting Assistant Attorney General Peter Hyun to Senators Sheldon Whitehouse and Chuck Grassley, United States Senate, Senate Caucus on International Narcotics Control, Washington, DC, July 14, 2022. Available on p. 2 of this document.