

HOLD THEM ACCOUNTABLE: MEXICAN ELITES AND THE CARTELS



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Table of Contents

Executive Summary 3
The Growing Impetus for Action 3
Entry Denial 5
A Texas Version of the Engel List Focused
Solely on Mexico. 5
Strengthening Texan Authority Over Organized
Crime 7
Country-Specific Policies 7
The Limits of Sanctions. 8
Conclusion 8
References. 9

Hold Them Accountable: Mexican Elites and the Cartels

Joshua Treviño

Executive Summary

This paper will examine actions, within constitutional bounds, that Texas may take—such as penalties—in order to hold Mexican elites under credible suspicion of corruption accountable, deter future wrongdoing, enhance the moral integrity of the Texas–Mexico relationship, and most important, contribute directly to the safety and security of Texas communities.

The Growing Impetus for Action

In an increasingly global economy, economic sanctions have been the instrument of choice for U.S. lawmakers seeking to change the behavior of foreign governments, entities, and individuals. Since the mid-2000s, the U.S. has used sanctions to combat endemic corruption in a handful of countries, including Russia, Iran, Nicaragua, Honduras, El Salvador, Guatemala, and North Korea, as well as federally designated terrorist organizations operating in Middle East countries ([Princeton University, 2022](#)). These countries suffer from weak or failed judiciary and law enforcement institutions that are crippled by rampant political corruption, sclerotic party systems, organized crime, or a combination of all three. The weakened state of these countries' institutions allows corrupt actors to thrive.

Such is the case with Mexico, where many business and political elites have become increasingly embroiled in serious allegations of corruption and cartel ties. In 2019, for instance, a key witness during the trial of Joaquín “El Chapo” Guzmán told U.S. prosecutors that former Mexican President Enrique Peña Nieto (2012–2018) had accepted a \$100 million bribe from El Chapo in 2012 ([Agren, 2019](#); [Feuer, 2019](#)). In 2020, U.S. prosecutors dropped charges against former Mexican Secretary of Defense Salvador “El Padrino” Cienfuegos in order to enable his investigation in Mexico, but officials in the administration of Andrés Manuel López Obrador announced in early 2021 that they would not bring any charges against him ([Verza & Balsamo, 2020](#); [Brewer, 2021](#)). And Mexico's former Secretary of Public Security Genaro García Luna, who was arrested in Texas in December 2019, had accrued a personal fortune that was, in the words of prosecutors handling the case, “inconsistent with the salary of a civil servant in Mexico” ([Woody, 2019](#); [Feuer, 2019](#)). It should come as no surprise, then, that Transparency International has ranked Mexico 124 out of 180 countries (tied with Gabon and Niger) on its Corruption Perceptions Index ([Transparency International, 2022](#)). This assessment measures how corrupt a country's public sector is perceived to be by experts and business leaders. Indeed, Mexico often does not enforce its own anti-corruption laws ([Archibold & Zabudovsky, 2013](#); [Brewer, 2021](#)).

Key Points

- Illegal activity that harms the U.S. is coming from Mexico in much the same way as it does from other corrupt individuals in other countries the U.S. currently sanctions.
- The Texas–Mexico trade relationship should motivate Texas policymakers to adopt punitive measures against corrupt Mexican elites who have property or profit from business interests in the Lone Star State.
- The Texas Legislature should adopt policies that enable Texas to seize the property of Mexican elites in Texas if they are convicted of crimes that involve the use of such property as proceeds, instrumentality, or evidence.
- Texas should compile a list of corrupt Mexican elites and request the federal government to deny them entry to the U.S. or revoke their visas.

Although many of the most high-level allegations of corruption have yet to be proven, it has become increasingly difficult for observers of the country—particularly as it currently stands under President López Obrador’s conciliatory policies toward criminal organizations—to deny that cartel-driven corruption has penetrated deep into the heart of the business and political elite of Mexico. This reality directly affects the safety and security of Texas communities and families that must endure criminality emanating from Mexico.

In the absence of federal leadership, Texas has strong incentives to hold corrupt Mexican elites accountable and is in a position to do so. For one, Texas is especially harmed by the corruption of Mexican business and political elites because Mexico is by far its leading foreign trade partner ([Texas Economic Development & Tourism Office, 2022](#)). In 2019, for example, about 33% of the value of Texas exports went to Mexico, a far larger share than for any other major country to which Texas exports ([Green & Halbrook, 2020](#)). It behooves Texas, then, for moral as well as long-term economic reasons, to ensure that its most important foreign trade relationship is not mired in cartel-driven corruption and does not continue to profit Mexican elites who turn a blind eye to human rights violations in their country. Moreover, the consideration of punitive measures against corrupt Mexican elites who live or have property in Texas is particularly important at a time when human smuggling and trafficking ([Office of the Texas Governor, 2022](#); U.S. Customs and Border Protection, [n.d., 2022a, 2022b](#)) and an especially lethal drug crisis ([Dudley et. al, 2019](#)) continue to overwhelm U.S. law enforcement and harm American citizens.

Fortunately, there are already laws at both the federal and state levels that serve as models for the kinds of policies that would enable Texas to hold corrupt Mexican elites accountable.

Existing federal authority includes:

- **Blocking Property:** Congress enables the Treasury Department to administer and enforce economic and trade sanctions. The Treasury Department, for its part, tasks the Office of Foreign Assets Control (OFAC) with designating sanctions based on U.S. foreign policy and national security goals. OFAC issues regulations against targeted foreign countries or “regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of

mass destruction, and other threats to the national security, foreign policy or economy of the United States” ([Department of the Treasury, n.d.](#)). OFAC is also responsible for compiling the Specially Designated Nationals and Blocked Persons List. If blocked persons engage in transactions within the United States, the property they are trying to transact is frozen, that is, held by the bank under direction from OFAC. In its current state, the OFAC list of blocked persons already includes several Mexican-cartel figures ([Office of Foreign Asset Control, 2022](#)).

- **Global Magnitsky Act and Executive Order 13818:** In 2017, President Trump signed Executive Order 13818, directing the Treasury Department (in consultation with the secretary of state and the attorney general) to sanction the property of persons “who commit serious human rights abuse or engage in corruption, as well as to protect the financial system of the United States from abuse by these same persons” ([Exec. Order No. 13818, 2017](#)). In issuing the order, the president invoked the 2016 Global Magnitsky Act, which requires the president to sanction the property and/or suspend the entry into the U.S. of foreign government officials responsible for acts of significant corruption ([S.284, 2016](#)). The president’s executive order, however, broadened the scope of the Magnitsky Act: Whereas the latter applies only in the case of “gross violations of internationally recognized human rights,” the former applies to those who are “responsible for or complicit in ... serious human rights abuse,” and whereas the latter applies only in the case of “significant acts of corruption,” the former applies in cases of mere “corruption” ([Exec. Order No. 13818, 2017, p. 60839](#)).
- **Executive Order 14059:** In early 2022, President Biden directed the Treasury Department (in consultation with the secretary of state, the attorney general, and the secretary of homeland security) to sanction Mexican national Sergio Armando Orozco Rodríguez (also known as “Chocho”) pursuant to Executive Order 14059 ([Department of Treasury, 2022](#); [Exec. Order No. 14059, 2021](#)). Orozco Rodríguez is a known operative for the Cartel de Jalisco Nueva Generación (CJNG) who facilitates illicit drug trade activity in Mexico. His designation was the result of a collaborative effort between OFAC, the U.S. Drug Enforcement Administration (DEA), and the government of Mexico. Previously, OFAC had taken punitive actions against the same cartel under the so-called Kingpin Act

([H.R.1555, 1999](#)). Pursuant to Executive Order 14059, the secretary of the treasury may take the following actions as necessary to implement the aforementioned sanctions:

(i) block all property and interests in property of the sanctioned person that are in the United States and provide that such property and interests in property may not be transferred, paid, exported, withdrawn, or otherwise dealt in; (ii) prohibit any transfers of credit or payments between financial institutions, or by, through, or to any financial institution; (iii) prohibit any United States financial institution from making loans or providing credit to the sanctioned person; (iv) prohibit any transactions in foreign exchange that are subject to the jurisdiction of the United States and in which the sanctioned person has any interest; (v) prohibit any United States person from investing in or purchasing significant amounts of equity or debt instruments of the sanctioned person. ([Exec. Order No. 14059, 2021, p. 71550](#))

- **Racketeer Influenced and Corrupt Organizations Act (RICO):** The federal law (18 U.S.C. §§1961–1968) known as RICO was passed in 1970 to combat organized crime in the United States by providing additional civil and criminal penalties for racketeering activities such as illegal gambling, bribery, kidnapping, murder, money laundering, counterfeiting, embezzlement, drug trafficking, slavery, performed as part of an organized crime enterprise. The intent of the legislation, as stated in the bill, was the

eradication of organized crime in the United States by strengthening the legal tools in the evidence-gathering process, by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime. ([Pub. L. 91-452](#))

Entry Denial

The 2022 Appropriations Act for the Department of State, foreign operations, and related programs ([H.R.4373, 2022](#)) is the most recent piece of legislation reiterating the responsibility of the U.S. State Department to use immigration policy as a tool to protect the United States and deter corruption abroad. Section 7031(c) of the act provides the secretary with broad authority to impose entry denials. The criteria under this provision state that,

Officials of foreign governments and their immediate family members about whom the Secretary of State has credible information have been involved, directly or indirectly, in significant corruption, including corruption related to the extraction of natural resources, or a gross violation of human rights, including the wrongful detention of locally employed staff of a United States diplomatic mission or a United States citizen or national, shall be ineligible for entry into the United States. ([H.R.4373, 2022](#))

Texas, of course, does not have the authority to bar foreign nationals from entry into the U.S., whether or not they are government officials. Only the federal government has the authority to do so. But what Texas *can* do is collect credible information on Mexican business and political elites suspected of corruption or cartel ties and use this information to pressure the federal government to bar such people from entry into the United States.

A Texas Version of the Engel List Focused Solely on Mexico

There is also precedent in U.S. law for sanctions that use entry denial and property blocking to target corruption specifically in Latin American countries. The most important example of such legislation is the Northern Triangle Enhanced Engagement Act of 2020 ([134 Stat. 3127](#)). This act requires the president to release an annual report of corrupt and undemocratic actors in El Salvador, Guatemala, and Honduras—the so-called Engel list ([Department of State, 2021](#)), named after U.S. Rep. Eliot L. Engel, chairman of the House Committee on Foreign Affairs and author of the original bill ([U.S. House Committee on Foreign Affairs, 2020](#)). The report, along with a requisite annual progress update, is submitted by the Department of State to the House Foreign Affairs Committee, Senate Foreign Relations Committee, House Committee on the Judiciary, and the Senate Committee on the Judiciary. The criteria for inclusion on the list are as follows:

- (1) *Corruption related to government contracts.*
- (2) *Bribery and extortion.*
- (3) *The facilitation or transfer of the proceeds of corruption, including through money laundering.*
- (4) *Acts of violence, harassment, or intimidation directed at governmental and nongovernmental corruption investigators.* ([134 Stat. 3130](#))

Several of the individuals on the most recent iteration of the Engel list were added because they are suspected of

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misappropriating public funds ([Department of State, 2021](#)). Accounts of corruption of Mexican officials with profiles similar to those already on the Engel list exist. In 2021, for example, a report was released detailing how César Horacio Duarte Jáquez, governor of Chihuahua from 2010 to 2016, fled to El Paso after a corruption investigation into his administration revealed his multi-million-dollar embezzlement of public funds ([Martinez, 2020](#)). He lived as a fugitive in the U.S. until 2020 when, following his 2017 arrest in Miami, he was extradited to Mexico. Had he been from El Salvador, Guatemala, or Honduras, he would have fit the criteria for targeted sanctions under Section 353 of the Northern Triangle Enhanced Engagement Act ([134 Stat. 3130](#)). Duarte is only one example.

Texas can and should fashion its own version of the Northern Triangle Enhanced Engagement Act, which would focus solely on Mexico and include a Mexico-specific version of the Engel list. As we have noted, Texas does not have the authority to bar aliens from entry into the U.S. But the Texas Legislature could still impose other penalties on those added to the list. Such persons, or businesses affiliated with them, could be subject to divestment by Texas affiliated entities, just as businesses in Texas are currently subject to state divestment—being barred from entering into contracts worth \$100,000 or more with a state agency—if they do not give contractually binding assurances that they will not boycott fossil fuel companies during the contract term ([SB 13, 2021](#)). Another statutory model for this divestment policy may be found in Texas legislation barring state agencies from entering into contracts worth \$100,000 or more with businesses that have 10 or more full-time employees (sole proprietorships excepted) if they do not give contractually binding assurances that they do not and will not boycott the state of Israel during the contract term ([HB 793, 2019](#)).

Texas could also bar the dependents of corrupt Mexican elites from attending public institutions of higher learning in Texas. A precedent for this policy at the federal level exists in a bill introduced in 2022 by Rep. Vicky Hartzler and called “Protecting Higher Education from the Chinese Communist Party Act of 2022” ([H.R.6730](#)). It is not difficult to envision a Texas version of such a bill called “Protecting Texas Higher Education from Cartel-Driven Corruption Act of 2022.” The law would empower Texas to make formal requests to the federal government to deny or revoke the student visas of the dependents of corrupt Mexican elites who attend or are planning to attend a public institution of higher learning in Texas. Even in the absence of assistance from the federal government, Texas lawmakers could still consider adopting a law that bars the dependents of corrupt Mexican elites from attending public institutions of higher learning in Texas, regardless of their visa status.

The Texas Legislature could also appeal to [Chapter 9 of the Business Organizations Code](#), which requires that various kinds of “foreign entities” register under said chapter in order to lawfully transact business in Texas. For the registration to be valid, Texas’ secretary of state must issue an acknowledgment of such registration. The Texas Legislature is therefore well positioned to consider vesting the secretary with the authority to revoke the registration, or reject the application for registration, of any foreign entity operating or intending to operate in Texas, which is owned totally or in part by foreign individuals whom a U.S. court has convicted of corrupt dealings or of cooperating with or aiding Mexican cartels in the commission of crimes. If such entities continue to transact business in Texas, they would be subject to civil penalties (fees and taxes) already stipulated in Chapter 9.

Furthermore, it should be noted that if Texas effectively publicized and stigmatized the names of persons who appeared on its version of the Engel list, then merely being on the list would carry the penalty of public shame in the state. This shame could, in turn, act as a deterrent against corrupt behavior among Mexican elites who need regular access to the Texas economy to increase their wealth and who need regular access to Texas society to enjoy it. Public shame is effective in that it works on the level of civil society rather than on the level of law. Gov. Abbott’s request to “the members of the Texas Restaurant Association, Texas Package Stores Association & all Texas retailers to *voluntarily* [emphasis added] remove all Russian products from their shelves”—in response to Russia’s invasion of

Ukraine—is an example of how politics can help affect civil society without coercing it ([Burke, 2022](#)).

In tandem with or in lieu of the preceding, Texas could compile and submit its list of corrupt Mexican elites to the federal government, with a view to having the federal government seize their property and suspend their entry into the U.S. To this end, Texas could push for Congress to add Mexico to the list of countries covered by the Northern Triangle Enhanced Engagement Act, thereby turning it into a Northern Square.

Strengthening Texan Authority Over Organized Crime

Considering the degree of involvement of drug cartels in Mexican life, some Mexican elites may be complicit in the cartels' activities.

The Texas Legislature should allow for the aggressive prosecution of Mexican cartels–related organized crime in the state. Texas already has in statutes provisions similar to the federal RICO. Texas Penal Code [Section 71.02](#) establishes what constitutes “engaging in organized criminal activity” (EOCA) and creates an offense for “conspir[ing] to commit one of more” of a number of crimes listed, such as murder, kidnapping, gambling, promotion of prostitution, unlawful manufacture or sale of firearms and controlled substances (Sec. 71.02(a)(1)–(19)), “with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang.”

The Texas statute has the same goal as the federal statute, was codified after RICO, and functions as sentencing enhancements that Texas prosecutors may pursue. It allows charges to be brought in a single case in Texas.

Currently, local law enforcement and prosecutors tend to approach these crimes individually instead of leveraging the statute. In order to give better tools to local prosecutors to go after Mexican cartels–related organized crime, the Texas Legislature could strengthen Texas' Engaging in Organized Criminal Activity statute by making the following changes:

- Require the involvement of two people instead of three.
- Allow predicate offenses to be concurrently charged, when possible.

In order to prevent the abuse of executive power, the preceding changes must be in harmony with the civil asset

forfeiture reforms proposed by the Texas Public Policy Foundation (Cohen, [2015](#), [2016](#)). This means, among other things, that property may only be seized with probable cause, and seized property must be returned if the prosecutor has not brought criminal charges by a stipulated deadline. The prosecutor must, in other words, fish or cut bait. The seized property, moreover, must be returned *automatically*, that is, without the property owner having to pursue a cause of action for the same. Finally, seized property may not be forfeited in the absence of a conviction connecting the property to the crime as either proceeds, instrumentality, or evidence.

Country-Specific Policies

The preceding are general policies aimed at deterring elite corruption in any country that meets certain criteria (with the qualified exception of the Northern Triangle Enhanced Engagement Act). At the federal level, country-specific policies also exist. The following are examples of such policies.

- **Iran:** The Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 allows the U.S. to impose sanctions on any person in Iran determined to have engaged in corruption or to have diverted or misappropriated humanitarian goods or funds intended for the Iranian people ([124 Stat. 1312](#)). The measure targets Iranian profiteers who use government connections to corner the market for vital medicines.
- **Nicaragua:** In 2018, President Trump signed an executive order sanctioning Daniel Ortega's Sandinista regime in Nicaragua, setting an important precedent for targeting individuals who actively try to undermine democratic processes ([Exec. Order No. 13851, 2018](#)). The order was issued in response to government officials who had had a role in “directing entities engaged in human rights abuses, election fraud, and corruption” ([Department of the Treasury, 2019, para. 1](#)). Pursuant to the order, all property owned by these individuals in the U.S. was promptly reported to the OFAC and blocked.
- **Russia:** In 2021, President Biden signed an executive order “Blocking Property With Respect to Specified Harmful Foreign Activities of the Government of the Russian Federation”:

All property and interests in property that are in the United States ... are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt

Texas could leverage its relationships with Mexico specifically to put pressure on the country to fight corruption and collusion between government officials and criminal organizations such as drug cartels.

in [due to] actions or policies that undermine democratic processes or institutions in the United States or abroad ... or transnational corruption. (Exec. Order No. 14024, 2021, Section 1)

In 2022, the Department of State and the Department of the Treasury targeted some of the most powerful Russian oligarchs in President Putin's inner circle. The OFAC sanctioned Alisher Usmanov, Boris Arkady, and Igor Rotenberg, among others, because they were enriching themselves at the expense of the Russian people and because they supported Putin's war against Ukraine ([Blinken, 2022](#)).

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The Limits of Sanctions

It should be kept in mind that economic sanctions do not always achieve their aim or do not always achieve it without causing other, unintended ills. According to some studies, targeted sanctions are only effective 22% of the time ([Biersteker et al., 2018](#)). The Center for a New American Security suggests that, in order to elicit the intended response from a targeted individual or entity, the sanction

must wreak immediate economic damage to the target and must be part of a policy with modest objectives ([Pesken, 2019](#)). The disposition of the government under which the individual targeted by sanctions operates also affects the likelihood of the sanction's success. If that government has an incentive to cooperate with the U.S., the likelihood that the sanction will succeed increases ([Pesken, 2019](#); Hufbauer et al., 2008; Drezner, 1999).

Nevertheless, the strong trade relationship between Mexico and Texas ([Texas Economic Development Corporation, n.d.](#)) should give Texas policymakers reason to hope that policies aimed at holding corrupt Mexican elites accountable have a good chance of changing that elite's behavior, provided they are carefully designed. More importantly, the longstanding predilection of certain members of Mexico's elite—including López Obrador's son—for lives of luxury in Texas should provide Texas policymakers with some modest degree of economic leverage over them (see [Vincent, 2019](#); [Holley et al., 2021](#); and [Olmos et al., 2022](#)).

Conclusion

The U.S.–Mexico trade relationship has a long history, though one frequently marked by tensions connected with the incidence of cartel operations, government corruption, and human smuggling and trafficking. Since holding corrupt Mexican elites accountable entails the delicate task of identifying specific individuals close to or even within the government of one of the United States' most important foreign trading partners, it naturally entails the risk of upsetting that relationship. Texas policymakers must therefore proceed with caution in designing and implementing the accountability policy recommended here. As a rule of thumb, punitive measures applied as part of the corruption accountability policy described here should be designed in such a way as to avoid harming the economic well-being of the general population of both countries. The aim, after all, is to send a message to Mexican elites, not the ordinary Mexican or American citizen. Though lacking the powers of the federal government, Texas, as we have seen, is still in a position to send that message. ★

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