

## MEXICO'S CRISIS: WHEN THERE'S A WILL, THERE'S A WAY

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*Ladies and gentlemen, I believe that this process of collaboration under the Mérida Initiative will eventually succeed because of a very simple reason for Mexico as well as for the United States: We cannot lose, because if we lose we will say to the generations that come after us "you are condemned to live in a disgusting and repulsive world," and that's a conversation I do not want to have with my children or grandchildren in years to come.*

—William R. Brownfield, Assistant Secretary, U.S. Bureau of International Narcotics and Law Enforcement Affairs, U.S. State Department, on August 17, 2011 in Ciudad Juarez, Mexico.<sup>1</sup>

### I. INTRODUCTION

U.S. citizens once thought of Mexico as a country rich in culture and economic opportunity, as well as a wonderful vacation destination with beautiful beaches and luxurious resorts. The stark reality is that Mexico is now thought of as a country filled with fear, violence, and drug trafficking. Mexico has become the Colombia of the 1980s and 90s. The United States is complicit; its constant demand for drugs is the root cause of Mexican drug trafficking. President Obama stated, during a March 2011 visit to Mexico,

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1. *Transcript of William R. Brownfield's Remarks on the Merida Initiative*, EL PASO TIMES (Aug. 17, 2011, 4:40 PM), [http://www.elpasotimes.com/ci\\_18700828](http://www.elpasotimes.com/ci_18700828).

as part of our new drug control strategy, we are focused on reducing the demand for drugs through education, prevention and treatment... We are very mindful that the battle President Calderón is fighting inside of Mexico is not just his battle; it's also ours. We have to take responsibility just as he's taking responsibility.<sup>2</sup>

Everyone is asking what can be done about the current situation in Mexico and how the United States, both as neighbor and contributor to the drug trafficking dilemma, can assist Mexico in efforts to curb this scourge.<sup>3</sup>

In past years, the U.S. has taken two approaches to assist Mexico: first, provide Mexico with equipment and training for Mexican prosecutors and law enforcement via the Mérida Initiative, which began in 2007; second, request extraditions of high level drug traffickers for prosecution in the U.S. This Article raises the issue of whether these

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2. U.S. NAT'L SEC. COUNCIL, STRATEGY TO COMBAT TRANSNATIONAL ORGANIZED CRIME: ADDRESSING CONVERGING THREATS TO NATIONAL SECURITY 15 (2011) (quoting Barack Obama, President, U.S., Joint Press Conference with Felipe Calderón, President, Mexico (Mar. 3, 2011)), available at [http://www.whitehouse.gov/sites/default/files/Strategy\\_to\\_Combat\\_Transnational\\_Organized\\_Crime\\_July\\_2011.pdf](http://www.whitehouse.gov/sites/default/files/Strategy_to_Combat_Transnational_Organized_Crime_July_2011.pdf).

3. Scholars and law enforcement have banded together in attempting to put forward concrete proposals to assist the Obama and Calderón administrations. For example,

[Harvard Law Professor Philip] Heymann and Mathea Falco, president of the . . . nonprofit research institute Drug Strategies, organized a working group on "Transnational Organized Crime" at Harvard Law School on April 7[, 2010,] to dissect the Mexican drug trade from past to present.

The daylong conference brought together about 20 investigators, prosecutors, enforcement officials, legal scholars, and anti-drug activists to take a hard look at the Mexican narcotics industry and to develop effective counterstrategies.

*Combating Mexico's Drug Cartels*, HARV. L. TODAY, June 2010, at 1. Professor Heymann also organized a second working group on April 14 and 15, 2011, to discuss the dangers, potential solutions, and obstacles Mexico is currently facing. Dick Dahl, *HLS Conference Focuses on Mexican Drug Cartels*, HARV. L. SCH. (May 6, 2011), <http://www.law.harvard.edu/news/spotlight/criminal-law/hls-conference-focuses-on-mexican-drug-cartels.html>. Clearly, these issues are at the forefront of everyone's mind as Calderón steps down due to a six year term limit, and presidential elections ramp up in Mexico. As recently as February 2012, U.S. Secretary of State Hillary Clinton met with G-20 ministers of foreign affairs in Mexico. *Clinton to Attend G-20 Foreign Ministers' Meet in Mexico*, SIASAT DAILY (Feb. 16, 2012), <http://www.siasat.com/english/news/clinton-attend-g-20-foreign-ministers-meet-mexico>. "According to the US State Department, Clinton's visit [was] 'an opportunity to reinforce close relations among nations and to identify common objectives and strategies to address global challenges and ensure global prosperity.'" *Id.* The future of Mexico is on everyone's mind.

foreign policies are working and explores what can be done to improve the United States' efforts in Mexico.<sup>4</sup>

Part II of this Article lays out the United States' Mérida Initiative policy and critiques its effectiveness. The Beyond Mérida Initiative, announced in 2010, revamped the prior 2007 initiatives and provided more emphasis on additional training rather than equipment or direct financial aid to Mexico. Neither initiative corrects problems endemic to Mexico, which limits the possibility of success. Corruption, anti-American resentment, and a drastically different legal system in Mexico hinder our efforts to become an effective ally in Mexico's war on the drug cartels. Part III of this Article discusses the United States' strategy of extraditing and prosecuting high level Mexican cartel members by utilizing the federal narcotics trafficking statute, 21 U.S.C. § 959. While these § 959 prosecutions have some merit, the devil-behind-the-details reveals weaknesses in these prosecutions; additional tools need to be adopted before these prosecutions can be fully effective and more regularly utilized. Part IV details the success Colombia had in the 1990s in combating its drug trafficking cartels and how its success story could translate into enormous benefits for Mexico as Mexico grapples with a similar landscape. Part V identifies the positive steps the United States and Mexico have taken so far, including an all-time-high level of bilateral cooperation and working relationships. The Article concludes with several proposals for consideration: improve upon the Mérida Initiative and press ahead; overcome legal and procedural difficulties

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4. This Article focuses on the law enforcement efforts in Mexico to counter drug trafficking. As Mexico clamps down on drug trafficking, traffickers are adjusting and moving operations to Central America. *Emerging Threats and Security in the Western Hemisphere: Next Steps for U.S. Policy Before the H. Comm. on Foreign Affairs*, 112th Cong. 4 (2011) (statement of William R. Brownfield, Assistant Secretary for International Narcotics & Law Enforcement Affairs, U.S. Dep't of State), available at <http://www.foreignaffairs.house.gov/112/bro101311.pdf>. "Although 90–95 percent of the cocaine from South America now transits the Central America/Mexico corridor, it is likely that the combined efforts of Merida and CARSI [(Central American Regional Security Initiative)] will force the traffickers to once again use the Caribbean as a conduit to the U.S. market." *Hearing on the U.S. - Caribbean Shared Security Partnership: Responding to the Growth of Trafficking Narcotics in the Caribbean Before the S. Foreign Relations Subcomm. on W. Hemisphere, Peace Corps, and Global Narcotics Affairs*, 112th Cong. 2 (2011) (statement of William R. Brownfield, Assistant Secretary of State for International Narcotics & Law Enforcement Affairs, U.S. Dep't of State), available at [http://www.foreign.senate.gov/imo/media/doc/William\\_Brownfield\\_Testimony.pdf](http://www.foreign.senate.gov/imo/media/doc/William_Brownfield_Testimony.pdf). The Mérida Initiative lends support to Central American governments as well, though on a smaller scale. More attention must be paid to Central America as Mexico improves.

when using Mexico's wiretap evidence for U.S. prosecutions; improve the Mexican prison system; encourage Mexico to readjust its federal judicial system to catch up with some of the state reformed judicial systems using the adversarial, oral trial method; use primarily Colombian and U.S. prosecutors and law enforcement to train attorneys on the new criminal procedural reforms; revamp Mexico-U.S. extradition procedures; prosecute and extradite corrupt Mexican politicians; foster working relationships with Mexican officials and law enforcement; and lastly, expand the United States' reach by prosecuting high-level targets that are involved not only in drug trafficking and money laundering but also transnational organized crime.

The primary concerns that may undermine the Beyond Mérida Initiative which Mexico faces today are twofold: political changes after the recent presidential elections may slow or actually reverse any progress made by the Calderón administration and the resistance to change or potential apathy felt by the Mexican people who may accept the current levels of crime and violence rather than confronting the traffickers head on, as the Colombian people did twenty years ago. In the words of a former member of the Cali cartel, "[t]he Mexican public needs to express its outrage. And, then, Mexican leaders need to sweep out officials at all levels who have sold their souls to organized crime."<sup>5</sup>

## II. THE MÉRIDA INITIATIVE

After the joint Colombia-U.S. crackdown on the Cali and Medellín drug cartels in the nineties, Colombian traffickers were wary of attempting to smuggle narcotics into the United States. These traffickers slowly began to turn their transportation routes over to Mexican traffickers, who gladly picked up the profits and the risks. Currently, up to 90% of all cocaine bound for the United States goes through Mexico.<sup>6</sup> Not only have the Mexican cartels taken over the cocaine smuggling routes into the United States, but now they also produce and supply heroin, methamphetamine, and marijuana.<sup>7</sup>

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5. Jorge Salcedo, *What I Saw Inside the Cali Drug Cartel*, CNN, <http://www.cnn.com/2012/01/18/opinion/salcedo-first-person-account-drug-corruption/index.html> (last updated Jan. 18, 2012, 7:18 PM).

6. CLARE RIBANDO SEELKE, CONG. RESEARCH SERV., RL 32724, MEXICO-U.S. RELATIONS: ISSUES FOR CONGRESS 3 (2011).

7. U.S. DEP'T OF STATE, INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT, VOLUME 1: DRUG AND CHEMICAL CONTROL 383 (2011) [hereinafter INCSR VOLUME 1].

In an effort to combat drug production, transportation, and the ensuing violence, former Mexican President Felipe Calderón has utilized a holistic approach and has focused on:

- (1) carrying out joint police-military operations to support local authorities and citizens;
- (2) increasing the operational and technological capacities of the state (such as the Federal Police);
- (3) initiating legal and institutional reforms;
- (4) strengthening crime prevention and social programs;
- and (5) strengthening international cooperation (such as the Mérida Initiative).<sup>8</sup>

These joint police-military operations approved by Calderón have successfully taken down some of the leaders of the major drug trafficking organizations (DTOs) either through arrest or killings.<sup>9</sup> However, as one cartel leader is captured or killed, another stronger, more violent member takes his place.

The United States has a firm grasp and commitment to many of the tools being advocated in Calderón's holistic approach to combat drug trafficking. United States' law enforcement consults with Mexican law enforcement on a regular basis; provides training to prosecutors, judges, and law enforcement alike to assist in initiating legal and institutional reforms; and uses its foreign aid to assist in strengthening crime prevention and social programs within Mexico. And the Mérida Initiative is the mechanism for this assistance.

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The most dominant drug trafficking organizations currently include the Tijuana cartel, the Sinaloa cartel, the Beltrán Leyva organization, Los Zetas, the Juarez cartel, the Gulf cartel, and La Familia. Farhana Hossain & Xaquín G.V., *The Reach of Mexico's Drug Cartels*, N.Y. TIMES (Sept. 11, 2011), <http://www.nytimes.com/interactive/2009/03/22/us/BORDER.html>.

8. CLARE RIBANDO SEELKE & KRISTIN M. FINKLEA, CONG. RESEARCH SERV., R 41349, U.S.-MEXICAN SECURITY COOPERATION: THE MÉRIDA INITIATIVE AND BEYOND 4 (2011) (footnote omitted).

9. According to the 2011 International Narcotics Control Strategy Report:

2010 was the [Government of Mexico's] most successful year in terms of the arrests of high-profile drug traffickers in Mexico. Mexican military and police forces exhibited an unprecedented commitment to combating organized crime, and bilateral cooperation in several fields, including the sharing of intelligence and resources between U.S. and Mexican law enforcement, has been key to disrupting and dismantling Mexican DTOs.

INCSR VOLUME 1, *supra* note 7, at 386.

Between 2008 and 2010, “Congress provided \$1.5 billion for Mérida Initiative programs in Mexico.”<sup>10</sup> The Mérida Initiative was first proposed in October 2007 between then-President George W. Bush and then-President Calderón and “initially focused on training and equipping Mexican” military and law enforcement officials engaged in counterdrug efforts, improving border security, and reforming Mexico’s police and judicial institutions.<sup>11</sup> In March 2010, the *Beyond Mérida* strategy announced by Presidents Obama and Calderón reviewed the initiative and focused on four goals: “(1) disrupting organized criminal groups; (2) institutionalizing the rule of law; (3) building a 21st century border; and (4) building strong and resilient communities.”<sup>12</sup> The new initiatives did not seem to change much from those outlined by former President Bush in 2007, except this second phase favored additional training (a.k.a. “institution building”) rather than simply providing the Mexican military and police with more equipment.<sup>13</sup>

Early in 2011, “Congress provided \$143.0 million in Mérida assistance to Mexico,” and the Obama administration “requested \$282 million in Mérida assistance” for 2012.<sup>14</sup> The *Beyond Mérida* Initiative does not appear to be going away any time soon. So far, the State Department has sent “Black Hawk helicopters,” “maritime surveillance aircraft,” “inspection equipment for scanning containers,” and “a \$13 million secure communications system for use by [Mexican] law enforcement.”<sup>15</sup> As for training, approximately “6,885 federal police investigators, 2,014 penitentiary staff, and 4,312 judicial sector personnel [from Mexico] have completed U.S.-funded courses.”<sup>16</sup> United States’ federal law enforcement personnel are also assisting at Mexican law enforcement academies “established for customs personnel, corrections staff, canine teams, and police (federal, state, and local).”<sup>17</sup> Moreover,

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10. SEELKE & FINKLEA, *supra* note 8, at 2.

11. *Id.*; U.S. S. CAUCUS ON INT’L NARCOTICS CONTROL, 112TH CONG., U.S. & MEXICAN RESPONSES TO MEXICAN DRUG TRAFFICKING ORGANIZATIONS 35 (2011).

12. SEELKE & FINKLEA, *supra* note 8, at 2. Originally, the Mérida Initiative “sought to: (1) break the power and impunity of criminal organizations; (2) strengthen border, air, and maritime controls; (3) improve the capacity of justice systems in the region; and (4) curtail gang activity and diminish local drug demand.” *Id.* at 8.

13. U.S. S. CAUCUS ON INT’L NARCOTICS CONTROL, *supra* note 11, at 35–36.

14. SEELKE & FINKLEA, *supra* note 8, at 2; *see* Department of Defense and Full-Year Continuing Appropriations Act, 2011, Pub. L. No. 112-10, 125 Stat. 38.

15. SEELKE & FINKLEA, *supra* note 8, at 11.

16. *Id.*

17. *Id.*

there has been an increase in “intelligence-sharing and cross-border law enforcement operations and investigations.”<sup>18</sup>

Some question whether all this aid in U.S. equipment and training is paying off. Clearly, the war against the Mexican cartels will only be effective and ultimately successful if the Mexican authorities are up to the task. Mexican officers with the valor to stand up to the drug cartels deserve a medal and need our support and training. But the problems are daunting. Most Mexican law enforcement officers have limited education and are paid little for what they are asked to do. Turnover, even in higher levels of government, is rampant.

The legal system is currently broken due to corruption, case backlogs, high pre-trial detention rates, an inability to secure convictions, and the fact that only approximately 2% of all criminals are eventually charged with a crime.<sup>19</sup> The Mexican legal system followed its Spanish roots and has been based on a civil code system in which the code controls the contested issue, and the judge is the trier of fact and law rather than a jury.<sup>20</sup> The judge has more control over gathering the evidence and selecting the witnesses, and formal, written declarations are preferred over oral hearings.<sup>21</sup> In Mexico, the mindset is that the defendant is guilty until proven innocent. The U.S. Federal Rules of Evidence do not apply in Mexico; there is no concept of *stare decisis*, nor is there much discovery that is not completely governed by the judge.<sup>22</sup> Case law is irrelevant. Mexican attorneys are not regulated and do not have to take a bar exam.<sup>23</sup> Their legal background derives from a decision to study law along with other liberal arts courses at the undergraduate level for five years.<sup>24</sup> When American instructors arrive in Mexico to discuss jury trials, evidentiary procedures, case law, or even

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18. *Id.* at 20.

19. *See id.* at 21. “[E]xtensive detention but few convictions . . . causes serious legitimacy problems.” Dahl, *supra* note 3. “It is telling . . . that very few judges and prosecutors have been killed in Mexico because there are low expectations that cartel leaders will ever be tried. In Colombia, on the other hand, judges and prosecutors are in far greater danger.” *Id.*

20. Allegra M. McLeod, *Exporting U.S. Criminal Justice*, 29 YALE L. & POL’Y REV. 83, 116–17 (2010).

21. *Id.*

22. *See* William Hine-Ramsberger, Note, *Drug Violence and Constitutional Revisions: Mexico’s 2008 Criminal Justice Reform and the Formation of the Rule of Law*, 37 BROOK. J. INT’L L. 291, 298–304 (2011).

23. *Mexican Legal System Overview*, MEXONLINE.COM, <http://www.mexonline.com/lawreview.htm> (last visited Dec. 5, 2012).

24. *Id.*

basic concepts of the U.S. criminal justice system, they must seem quite foreign to these Mexican attorneys.

Mexico recently passed judicial reforms in the summer of 2008 that required the transition from a closed-door, inquisitorial process based on written arguments to an accusatorial or public trial system with oral trials and opportunity for plea bargains by 2016.<sup>25</sup> These changes also included basic concepts such as the presumption of innocence until proven guilty<sup>26</sup> and prosecutorial discretion “to hold organized-crime suspects without charges for up to 80 days.”<sup>27</sup> Prior to the change, suspects were held for much longer periods of time.<sup>28</sup> Open trials will allow “recorded phone calls [to be] admitted into evidence if one of the participants” of the conversation agreed to the recording; the defendant now has the right to face his accuser, and there is a “greater emphasis on forensics and [investigative] fact-gathering.”<sup>29</sup> These changes needed to occur because Mexico’s “centuries-old Napoleonic [system] of closed-door, written inquisitions . . . had long been criticized as rife with corruption, opaque decisions, abuse of defendants and red tape that bogged down cases for years.”<sup>30</sup> According to human rights lawyer Santiago Aguirre Espinoza, “Here, statements made to prosecutors *are* facts. There is no cross-examination or right to confront accusers. If a person in Mexico confesses to a prosecutor, that is considered sufficient evidence for a detention – so there is an incentive to get confessions.”<sup>31</sup> According to one survey, “71[%] of convicted defendants [in Mexico] said they never saw a judge before they were sentenced.”<sup>32</sup>

Predictably, change is slow. Mexican prosecutors, judges, and law enforcement agents are already deeply entrenched in the old judicial system. Because these judicial reforms are dramatic and different, an argument could be made that U.S.-funded judicial training programs should be significantly expanded. If Mexico intends to introduce jury

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25. Hine-Ramsberger, *supra* note 22, at 292, 302.

26. *Id.* at 304.

27. GEORGE W. GRAYSON, MEXICO: NARCO-VIOLENCE AND A FAILED STATE? 147 (4th prtg. 2011).

28. *Id.*

29. *Id.* at 146–47.

30. *Id.* at 147 (quoting Randal C. Archibold, *Mexican Prosecutors Train in U.S. for Changes in Their Legal System*, N.Y. TIMES, Apr. 24, 2009, at A12, available at <http://www.nytimes.com/2009/04/25/us/25prosecute.html>).

31. Guy Lawson, *The Making of a Narco State*, ROLLING STONE, Mar. 19, 2009, at 59, 66; see also GRAYSON, *supra* note 27, at 147.

32. GRAYSON, *supra* note 27, at 147.



trials, its lawyers need to familiarize themselves with evidentiary basics, witness preparation, opening and closing statements, direct and cross examinations, objections, discovery obligations, and other legal skills. However, instructors from the United States may not be the best role models for this sort of on-the-job training. Why? Mexico and its people have a love/hate relationship with the United States and may resent abandoning the familiar for ideas and concepts from our judicial system.

While some Mexican citizens may want to live the American dream, listen to American music, and drive American cars, the resentment built up from centuries of tension and hostility feeds a certain amount of bitterness. What the United States considers neighborly aid and support, Mexico may interpret as infringement on its national sovereignty. This historical and stereotypical resentment began years ago between 1819 and 1821, when a series of “hot wars” between the two countries led to Mexico selling off parts of California, New Mexico, Colorado, Arizona, and Nevada to the United States. In the 1820s, the Monroe Doctrine ensured that other European countries would not encroach on Mexico without reprisals and the possibility of war with the United States. In 1915, Mexican bandits began to cross the border in Arizona, New Mexico, and Texas to plunder border towns.<sup>33</sup> In March 1916, Mexican revolutionary Pancho Villa and several hundred men attacked an American garrison at Columbus, New Mexico, and both Mexicans and Americans were killed.<sup>34</sup> In response, “President [Woodrow] Wilson . . . sent cavalry, infantry and artillery, under the command of Gen. John Pershing, across the border to capture Villa and bring him back to the U.S. for trial on murder charges.”<sup>35</sup> In response, “the Mexican government formally protested the unauthorized invasion of Mexican territory” and asked that the United States withdraw its forces and return across the border.<sup>36</sup> Wilson refused and argued that the expedition was defending its frontier against future intrusions.<sup>37</sup> While American forces pursued Villa over 450 miles south of the border, “the pursuit was halted several months” later as Mexican civilians became “protectors of Villa and his band,” and Villa subsequently escaped.<sup>38</sup> Historically, Mexico

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33. VINCENT T. BUGLIOSI, *DRUGS IN AMERICA: THE CASE FOR VICTORY: A CITIZEN'S CALL TO ACTION* 80 (1991).

34. *Id.* at 80–81.

35. *Id.* at 81.

36. *Id.*

37. *Id.*

38. *Id.* at 82.

has repeatedly accused the United States of violating its national sovereignty.

A more recent example of tension between the two countries arose during the U.S.-sponsored kidnapping in 1985 of Dr. Humberto Alvarez-Machain, who was taken from Mexico and delivered to U.S. authorities.<sup>39</sup> Enrique Camarena-Salazar, a U.S. Drug Enforcement Administration (DEA) agent, had been tortured by cartel members under the supervision and medical care of Dr. Alvarez-Machain, who repeatedly revived Camarena during interrogation. Camarena was eventually assassinated in Mexico.<sup>40</sup> The Mexican government refused to extradite those citizens responsible for this heinous crime to the United States. The Mexican cartel doctor implicated in this crime, Alvarez-Machain, was forcibly abducted from Mexico, flown by private plane to Texas, and then arrested by DEA agents in the United States. The abduction was done without the express permission of the Mexican government.<sup>41</sup> Mexico felt that, once again, the United States had violated its national sovereignty, and relations between the two countries were strained for a period of time. While relations between the two countries have obviously improved, it would be naïve to think no anti-American sentiment exists today at some level within Mexico. Therefore, U.S. instructors may not be as welcome in Mexico as, for example, instructors from other Latin American or European countries who are unburdened by feelings of mutual mistrust.

Moreover, Mexico needs to remain concerned that the leaders being trained today do not become the drug traffickers of tomorrow. The United States can supply weapons, customs scanning equipment, and necessary training, but if corruption is not eradicated and continues to plague federal, state, and municipal police forces, then this new training makes no difference and in fact emboldens the traffickers. In the United States there are consequences for running a red traffic light. The driver receives a ticket, pays a fine, and his or her insurance premium may rise in order to discourage poor driving. In Mexico, citizens are taught that money can fix anything—if the scofflaw bribes the traffic cop with money, the infraction is ignored.

Examples of corruption are plentiful. In October 2008, thirty-five members of the Mexican Attorney General's Office for Special

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39. *United States v. Alvarez-Machain*, 504 U.S. 655, 657 (1992).

40. *Id.*

41. *Id.* at 657–59.

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Investigations of Organized Crime (SIEDO) were either fired or arrested after officials learned that the members had been providing drug traffickers with sensitive law enforcement information in return for significant sums of money.<sup>42</sup> “In November 2008, the former head of SIEDO was arrested and accused of accepting bribes from a DTO.”<sup>43</sup> Bribery scandals hit the Federal Agency of Investigations (AFI) as well, and AFI was “largely disbanded in June 2009.”<sup>44</sup> All the training in the world cannot solve this grave problem.<sup>45</sup>

Corruption will cause the state, local, and federal agencies to remain ineffective and disconnected. U.S. federal law enforcement agents cannot fully trust their counterparts for fear the Mexican authorities are being paid by the enemy. In acknowledgement and response to this reality, former President Calderón sought “to have all 375,000 municipal and state police officers go through vetting processes, including polygraph tests” by 2012.<sup>46</sup> “[M]any new police recruits are now going through background checks, drug testing, and polygraph tests.”<sup>47</sup> These new recruits are extremely young; the government is attempting to indoctrinate them before the cartels can tempt them to the “dark side” and fill their pockets with drug money. “[T]he Mexican government is [also] working to establish a vetting center for police and has developed a National Police Registry so that corrupt police from one state will not be hired in another jurisdiction.”<sup>48</sup>

While “[t]he Mérida Initiative has resulted in increased bilateral communication and cooperation,”<sup>49</sup> the question remains whether the

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42. SEELKE & FINKLEA, *supra* note 8, at 21.

43. *Id.* (after allegedly receiving \$400,000 from the Beltrán Leyva organization).

44. *Id.*

45. Two federal laws did pass in 2009, which “created a Federal Police (FP) force under the [Secretariat for Public Security (SSP)] and a Federal Ministerial Police (PFM) force under the [Attorney General’s Office (PGR)] to replace the discredited AFI.” *Id.* at 22. Both police forces have investigative functions; however, it is unclear how they will collaborate in “investigating and developing cases with prosecutors from the PGR.” *Id.* “Mérida funding will support specialized training courses to improve federal police investigations, intelligence collection and analysis, and anti-money laundering capacity, as well as the construction of regional command and control centers.” *Id.* “U.S. and Mexican governments are expanding the training programs developed for the SSP training institute at San Luis Potosi to support a new national police academy that is now under construction in Puebla.” *Id.* at 23. There are “roughly 2,022 municipal police forces.” *Id.* at 22.

46. U.S. S. CAUCUS ON INT’L NARCOTICS CONTROL, *supra* note 11, at 33.

47. *Id.*

48. *Id.*

49. SEELKE & FINKLEA, *supra* note 8, at 10. “[L]aw enforcement officials engag[e] in

training and equipment are helpful and worthwhile.<sup>50</sup> Until the corruption is cleaned up, it is possible the training and equipment may fall into the traffickers' hands. More importantly, the United States needs to be more sensitive to the underlying hostilities and resentments that Mexicans may feel about "arrogant" Americans who do not speak their language but want to change or reform Mexico's judicial system.

### III. EXTRADITIONS AND U.S. PROSECUTIONS

Beginning in the early 1990s, U.S. law enforcement agents and federal prosecutors were successful in elevating the deterrent factor through fear, as many Colombian drug traffickers found themselves indicted in U.S. federal courts and subsequently extradited to stand trial on American soil.<sup>51</sup> Traffickers would no longer be able to hide behind money and influence within their own country—they could now envision harsh sentences and a lifetime spent in an American jail far away from their friends and family.<sup>52</sup> Colombian authorities bravely began to send their drug trafficking citizens to the United States for trial.<sup>53</sup>

This strategy sounds simple, effective, and easily transferrable to the drug trafficking organizations in Mexico. Not so. Mexican traffickers do not seem to fear extradition as much as their Colombian counterparts, mainly because it does not occur that often. Between 1995 and 2000, a

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joint operations on the U.S.-Mexico border[, and] cabinet-level officials meet[] regularly to discuss bilateral security efforts." *Id.*

50. The Government Accountability Office (GAO) found that the Mérida Initiative needed better performance measures. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-10-837, MÉRIDA INITIATIVE: THE UNITED STATES HAS PROVIDED COUNTERNARCOTICS AND ANTICRIME SUPPORT BUT NEEDS BETTER PERFORMANCE MEASURES 15 (2010). There has also been a great deal of concern as to the slow delivery of U.S. financial assistance via the Initiative. The GAO cites to statutory conditions on the funds, challenges in fulfilling administrative procedures, and the need to enhance institutional capacity on the part of both Mexico and the United States to implement the assistance. *Id.* at 15–21, 40. For example, approximately \$670 million in Mérida funding had been obligated by March 2010 and only \$121 million had been expended. *Id.* at 11.

51. Pablo Escobar "famously insisted that he preferred 'the grave in Colombia' to a prison cell in the States. But when his demands were unheeded, Escobar launched a terror campaign of political assassination, socialite kidnappings, and deadly bombings." William C. Rempel, *How Colombia is Busting Drug Cartels*, CNN, <http://www.cnn.com/2012/01/18/opinion/rempe-colombia-extradite-cartels/index.html> (last updated Jan. 18, 2012).

52. MARK BOWDEN, *KILLING PABLO: THE HUNT FOR THE WORLD'S GREATEST OUTLAW* 51–52 (2001).

53. *See id.*

grand total of 68 individuals were extradited to the United States from Mexico.<sup>54</sup> Until 2006, Mexico refused to extradite to the United States any criminal who, if tried and convicted, would face the possibility of life without parole.<sup>55</sup> This posed a problem for U.S. federal prosecutors as most drug statutes, including 21 U.S.C. §§ 841, 860, 951, and 959,<sup>56</sup> all carry a maximum punishment of life imprisonment. Another long-standing issue was Mexico's unwillingness to allow extradition of its citizens to the United States—again, the issue of national sovereignty being violated through the extradition process. However, two decisions by the Mexican Supreme Court began to facilitate extraditions to the United States. In November 2005, the Court found that life imprisonment without the possibility of parole was not cruel and unusual punishment.<sup>57</sup> And in January 2006, the Court ruled that “U.S. extradition requests only need to meet the requirements of the 1978 bilateral extradition treaty, not Mexico's general law on international extradition that was promulgated in 1975.”<sup>58</sup> While those decisions clearly made the extradition process much easier,<sup>59</sup> Mexico only extradited 63 individuals to the United States in 2006, 83 in 2007, 95 in 2008, 107 in 2009, and 94 in 2010.<sup>60</sup> This is only a handful compared to similar statistics of extraditions from Colombia to the United States.<sup>61</sup> The Mexican government clearly appears to be more receptive to granting extraditions than it has been in the past. What remains unclear is whether this recent increase will become a passing trend or a continuing tradition.

If extraditions are to become a consistent thorn in the side of Mexican drug traffickers, it is imperative that the United States introduce only the strongest, evidence-laden cases for prosecution. Nothing looks worse than requesting extradition of a foreign national from a

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54. SEELKE & FINKLEA, *supra* note 8, at 32.

55. Hugh Dellios, *Mexico Court Opens Extradition Pipeline: Ruling Lifts Barrier for U.S. Prosecutors*, CHI. TRIB., Dec. 18, 2005, § 1, at 4.

56. 21 U.S.C. §§ 841, 860, 951, 959 (2006).

57. Dellios, *supra* note 55, at 4.

58. SEELKE, *supra* note 6, at 12.

59. *Id.*

60. SEELKE & FINKLEA, *supra* note 8, at 32.

61. “During 2009, there were 186 extraditions to the United States. Since December 1997, when Colombia revised its domestic law to permit the extradition of Colombian nationals, 1,041 individuals have been extradited to the United States, including 975 since President Uribe assumed office in 2002.” U.S. DEP'T OF STATE, INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT, VOLUME 1: DRUG AND CHEMICAL CONTROL 206 (2010).

cooperative ally, having the foreign country grant extradition, and then having the case fall apart when the defendant arrives in the United States for prosecution.

U.S. prosecution teams face significant hurdles when working with foreign law enforcement entities to bring a foreign trafficker to justice in the United States. A significant concern lies with the effectiveness of the U.S. federal criminal statutes when applied to international narcotics trafficking cases.<sup>62</sup> The United States has come a long way since its first anti-drug law was passed at the city level in San Francisco, California, in 1875. The law “prohibited the smoking or possession of opium, the operation of opium dens, or the possession of opium pipes.”<sup>63</sup> Fast forward to 1970, when the Controlled Substances Act, “Title II of the Comprehensive Drug Abuse Prevention and Control Act . . . , consolidated many laws regulating the manufacture and distribution of narcotics, stimulants, depressants, hallucinogens, steroids and chemicals used in the illicit production of controlled substances.”<sup>64</sup> Yet it was only with the introduction of 21 U.S.C. § 959 that Congress created a statute that specifically targeted drug traffickers living and working in foreign countries. Most Title 21 drug statutes require that the government prove that the offense took place within the trial district.<sup>65</sup> In a drug conspiracy case, venue is proper in any district where an overt act was committed to further the conspiracy<sup>66</sup> or where a co-conspirator traveled while committing an overt act (even if the act does not involve transporting the drugs).<sup>67</sup> Therefore, it is critical to identify some activity connected to the

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62. Money laundering statutes, such as 18 U.S.C. §§ 1956 and 1957, are occasionally used, but the focus of this Article is on the drug trafficking statutes. Bulk cash and firearms smuggling may also be statutes that could be used to combat the illegal drug trade. See 18 U.S.C. §§ 1956–1957 (2006).

63. MATTHEW B. ROBINSON & RENEE G. SCHERLEN, LIES, DAMNED LIES, AND DRUG WAR STATISTICS: A CRITICAL ANALYSIS OF CLAIMS MADE BY THE OFFICE OF NATIONAL DRUG CONTROL POLICY 19 (2007) (quoting Eric L. Jensen & Jurg Gerber, *The Social Construction of Drug Problems: An Historical Overview*, in *THE NEW WAR ON DRUGS: SYMBOLIC POLITICS AND CRIMINAL JUSTICE POLICY* 1, 6 (Eric L. Jensen & Jurg Gerber eds., 1998)).

64. *Id.* at 26.

65. See U.S. CONST. art. III, § 2; U.S. CONST. amend. VI; FED. R. CRIM. P. 18; *United States v. Rodriguez-Moreno*, 526 U.S. 275, 278 (1999); 21 U.S.C. §§ 952, 963, 841, 846 (2006) (discussing importation, conspiracy to import, possession with intent to distribute, and conspiracy to possess with intent to distribute, respectively).

66. See, e.g., *Hyde v. United States*, 225 U.S. 347, 356–57, 365 (1912); *United States v. Gilliam*, 975 F.2d 1050, 1057 (4th Cir. 1992); *United States v. Schlei*, 122 F.3d 944, 975 (11th Cir. 1997).

67. *United States v. Shearer*, 794 F.2d 1545, 1550–51 (11th Cir. 1986).

conspiracy that took place in the district where the defendant is being charged.

Under 21 U.S.C. § 959, the requirements are different.<sup>68</sup> The basic three elements of § 959 are: (1) an agreement between two or more people (2) with the intent or knowledge that narcotics will be unlawfully imported (3) into the United States. Now, the district prosecuting the defendant no longer needs to worry about any jurisdictional issues or whether any co-conspirator visited the district as long as the prosecution can prove a conspiracy existed to import drugs into the United States. It would appear that the three elements of § 959 greatly simplify matters for U.S. prosecutors. However, the U.S. nexus requirement has been a constant source of concern for many prosecutions. Prosecutors can no longer rely on an expert witness to testify that most drugs coming out of Mexico are headed for the United States because many drug trafficking organizations do not want to take that risk (a testament to U.S. counter-trafficking efforts) and prefer instead to move into the European market.<sup>69</sup> This has proven to be a stumbling block for some prosecutions

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68. 21 U.S.C. § 959 is

intended to reach acts of manufacture or distribution committed outside the territorial jurisdiction of the United States. Any person who violates this section shall be tried in the United States district court at the point of entry where such person enters the United States, or in the United States District Court for the District of Columbia.

21 U.S.C. § 959(c).

69. *Statement at the Gen. Assemb. Third Comm. Debate on Crime Prevention & Criminal Justice & Int'l Drug Control*, 112th Cong. (2011) (statement of William R. Brownfield, Assistant Secretary, Bureau of International Narcotics & Law Enforcement Affairs, U.S. Dep't of State). *But see* *United States v. Mejia*, 448 F.3d 436 (D.C. Cir. 2006). The *Mejia* court held that a DEA agent, offered as an expert in drug trafficking routes, did not contravene Fed. R. Evid. 704(b) when he testified that drug traffickers "don't know the ultimate destination per city, per street, per warehouse, but they know it's going to the United States." *Id.* at 449. The court also upheld the sufficiency of the evidence that the defendants knew the cocaine was coming to the United States based on expert testimony about routes and general statements by defendants. *Id.* at 451–52. In *Mejia*, a former DEA agent testified that "the principal market for drugs produced in Central and South America is the United States, and that the considerations relevant to determining the destination of Central or South American cocaine were the amount of cocaine, the markings on the cocaine, and the method of concealment." *Id.* at 441. Along with the expert testimony, a cooperating witness testified that he was involved in drug trafficking with the defendant, *Mejia*, and that *Mejia* told him that the drugs were "destined for the United States." *Id.* Another cooperating witness testified that he was involved in overseeing *Mejia's* financial matters, that he went to Houston at least three times to assist in counting and transferring money, and "Mejia told him that a 1,400 kilogram shipment was going to California, to Houston, Texas, and to the towers in New

of top leaders of drug trafficking organizations. Nexus will have to be proven through evidence specific to the case, such as informant testimony or a recorded conversation during which the trafficker indicates he or she wants the narcotics sent to the United States, or a drug shipment seized in the U.S. that can be tied back to the drug trafficking organization.

In order to cast a wider net and increase the chances of successfully convicting drug cartel members, the Obama administration shifted its focus beyond drug trafficking and began combating transnational organized crime (TOC). According to Obama's Strategy to Combat Transnational Organized Crime, issued in July 2011, TOC networks are involved in kidnapping for ransom, extortion, drug trafficking, human smuggling, weapons trafficking, intellectual property theft, and cybercrime.<sup>70</sup> The new TOC investigations "will use an integrated approach that incorporates financial, weapons, and TOC-related corruption investigations into a comprehensive attack on the entire criminal organization. Interdiction efforts will focus on depriving TOC networks of their products, proceeds, infrastructure, and enabling means."<sup>71</sup> Perhaps this expansive view of drug trafficking organizations will prove effective in prosecuting Mexican criminals in the United States.<sup>72</sup>

#### IV. COLOMBIA: HOW IT AVOIDED BECOMING A FAILED STATE

One of Mexico's greatest allies in its battle to eliminate drug trafficking may be just around the corner: Colombia. A major concern for Mexico and the success of the Calderón administration's efforts to take the war directly to its drug traffickers is that limiting the supply of drugs could result in more violence against innocent civilian targets and increased inter-cartel warfare as cartels fight over control of a diminishing supply of illicit narcotics. This is the same problem Colombia had to overcome in the 1990s when the Cali and Medellín cartels terrorized the nation. The cartels had to be completely disrupted

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York." *Id.* at 440.

70. See U.S. NAT'L SEC. COUNCIL, *supra* note 2, at 6-7.

71. *Id.* at 22.

72. Bruce Ohr, chief of DOJ's Organized Crime and Racketeering Section, argued at the TOC working group at Harvard Law School that the U.S. anti-mob model could be effective in Mexico and that the focus should be on the enterprise and not the individuals. *Combating Mexico's Drug Cartels*, *supra* note 3, at 6.



and dismantled before the situation truly improved.

In the 1980s and 90s, corruption in Colombia was rampant. The Medellín cartel was so strong that they either bribed or killed law enforcement officials including soldiers and police, journalists who published strong anti-cartel articles, public officials, judges, lower-level judicial employees, and twelve Colombian Supreme Court justices.<sup>73</sup> In this violent political climate, “many judges [went] into hiding or [left] the country.”<sup>74</sup> Newspaper offices were blown up, the homes and offices of public officials were protected like fortresses, and government leaders rode around in armored cars, had bodyguards, and carried guns.<sup>75</sup> Many Colombians began to feel as if their lives and economic survival were being threatened by the cartels. The country spun out of control as the cartels began killing civilians and anyone standing in their way.<sup>76</sup> When it became clear the government was considering extraditing its nationals to the United States for prosecution, the cartels “mounted a constitutional challenge and a campaign of fear against the legislation implementing the extradition treaty.”<sup>77</sup> “The 24 justices of the Colombian Supreme Court, the majority of whom were believed to be in favor of upholding the treaty, were scheduled to vote in the near future.”<sup>78</sup> “On November 6, 1985, . . . [a] busload of heavily armed leftist guerillas (called M-19) entered the Palace of Justice and . . . murdered 11 of the justices [who were] known to be . . . supporter[s] of the treaty.”<sup>79</sup> Many argue that it was the cartel’s assassination of Senator Luis Carlos Galan, a popular presidential candidate and declared enemy of the drug cartels, that turned the tide in 1990 and led to a major crackdown against the drug cartels.<sup>80</sup> Then-President Virgilio Barco Vargas “reinstated the extradition treaty previously struck down by the Colombian Supreme Court” and launched a nationwide “dragnet” to apprehend cartel leaders and confiscate their profits and property.<sup>81</sup>

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73. BUGLIOSI, *supra* note 33, at 57.

74. *Id.* at 58.

75. *Id.* at 60–61.

76. Medellín had the “highest homicide rate in the world (4,637 in 1990 for a city of 2.4 million).” *Id.* at 60.

77. *Id.* at 110.

78. *Id.*

79. *Id.* In response to the murders, “the Colombian law implementing the extradition treaty was held to be unconstitutional by only one vote.” *Id.* at 111.

80. *Id.* at 111–12.

81. *Id.* at 112.

Extradition was now a possibility, but the Cali cartel had learned from Pablo Escobar's "campaign of fear and violence" and opted to keep a low profile.<sup>82</sup> Cali cartel bosses, Gilberto and Miguel Rodríguez Orejuela and José Santacruz Londoño, relied on independent contractors and money managers with MBAs living in the United States to smuggle their product into the U.S. and get their cash out.<sup>83</sup> At the same time, the Department of Justice began to change the way it approached the drug war—instead of targeting lower-level distributors or mid-level employees, law enforcement and prosecutors chose to take down entire drug networks.<sup>84</sup> The Criminal Division encouraged "a mix of proactive investigations—using wiretaps and undercover agents—with historical conspiracy investigations that pieced together years of incriminating evidence."<sup>85</sup> Prosecutors first indicted mid-level cartel members in charge of the business side of the organization and convinced them to cooperate and conspire against their bosses, which allowed the government to break the cartels' codes and methods of communication.<sup>86</sup> The eventual indictment of high-level Cali cartel members included Racketeer Influenced and Corrupt Organizations Act (RICO) charges that allowed the government to introduce several years of evidence, collected against the drug organization since the inception of the investigation.<sup>87</sup>

Mexico should increase the pressure on the cartels, increase the number of extraditions to the United States, increase drug trafficking

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82. JIM MCGEE & BRIAN DUFFY, MAIN JUSTICE: THE MEN AND WOMEN WHO ENFORCE THE NATION'S CRIMINAL LAWS AND GUARD ITS LIBERTIES 53 (1996).

83. *Id.*

84. *Id.* at 48. As Janet Reno, then U.S. Attorney General, stated in December 1993,

People ask about the drug policy of this nation . . . I not only want to maintain our efforts at drug enforcement, I want to see those efforts enhanced. I want to go after the kingpins, but I want to do more. . . . We have to make sure that we not only go after the kingpins, who too often can be easily replaced, but that we go after the entire network. And after getting rid of the network in a neighborhood, we come in with positive prevention . . . initiatives that fill the vacuum with positive forces rather than the guy down the street who steps into the vacuum and increases the network.

*Id.* (omissions in original).

85. *Id.* at 160. The wiretaps in the Cornerstone case included a request for an open-ended roving wiretap for any public telephone cartel members used to contact their bosses back in Cali. *See id.* at 71.

86. *Id.* at 54–55. Harold Ackerman and Raúl Martí were indicted in the Southern District of Florida and later decided to cooperate. *See id.* at 201–03.

87. *Id.* at 201–02.

penalties in the Mexican judicial system, and target higher-level cartel members. However, Mexico lacks the public outrage Colombia had. As the Colombian government reformed its laws and authorized more extraditions, the cartels declared total war in an attempt to intimidate Colombian society and thereby pressure the government to back down and end the extraditions.<sup>88</sup> The ensuing fear and terror caused millions of Colombians to stay home, and business slowed dramatically. At this point, rather than succumb to the cartels' demands, a short-lived citizen-based vigilante group, *Los Pepes*, formed in the early 1990s and began attacking known Medellín cartel members.<sup>89</sup> At the same time, extraditions increased, training and cooperation with the United States continued, and Colombia changed its laws, making it easier to prosecute drug trafficking cases locally. The Colombian people, at their breaking point, did not submit but rather backed their government's campaign to fight the drug cartels.

The same scenario is currently playing out in Mexico today. Drug trafficking violence in Mexico increased more than 70% between 2009 and 2010.<sup>90</sup> "[T]here are roughly 1,200 murders in Mexico each month."<sup>91</sup> Targets of the drug trafficking related violence in Mexico have included rival criminal organizations or affiliated gang members, Mexican security forces and public officials, U.S. law enforcement and customs agents, journalists, and civilians (Mexican and American<sup>92</sup>). Kidnapping, robbery, extortion, and alien smuggling are also on the rise.

Public displays of violence are commonplace—Cardinal Juan Jesús Posadas Ocampo was assassinated at a Guadalajara airport parking lot;<sup>93</sup>

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88. Hundreds of explosions at "banks, newspapers, radio stations, schools, supermarkets," and other public places were set off. BUGLIOSI, *supra* note 33, at 112. "Two other presidential candidates . . . , Carlos Pizarro and Bernardo Jaramillo, were assassinated." *Id.*

89. BOWDEN, *supra* note 52, at 188.

As the murders and fearful surrenders mounted [in 1993], *Los Pepes* publicly offered cash rewards for information on Pablo and his key associates, and began broadcasting threats against the drug lord's family. Just a few weeks after surfacing, the vigilante group had spooked Pablo more than anything the government had been able to do.

*Id.*

90. SEELKE & FINKLEA, *supra* note 8, at 4–5.

91. U.S. S. CAUCUS ON INT'L NARCOTICS CONTROL, *supra* note 11, at 17.

92. "In 2010, there were 111 homicides of U.S. citizens in Mexico" compared to "37 Americans . . . killed in Mexico in 2007, 57 in 2008, and 80 in 2009." *Id.*

93. Tim Golden, *Cardinal in Mexico Killed in a Shooting Tied to Drug Battle*, N.Y. TIMES, May 25, 1993, <http://www.nytimes.com/1993/05/25/world/cardinal-in-mexico->

cartel members captured and tortured Mexican law enforcement, leaving their bodies in the road for other law enforcement to find them;<sup>94</sup> the heads of rival cartel members were rolled out onto a Michoacan discoteque;<sup>95</sup> and numerous videos posted on YouTube glorify the violence.<sup>96</sup> It is psychological warfare, and the cartels appear to be winning.

Under Calderón's leadership, Mexico has attempted to set up "culture of lawfulness" courses that are being taught to Federal Police and state police in five northern border states," as well as at various schools.<sup>97</sup> A "culture of lawfulness" is defined as "a culture in which the overwhelming majority of the population is convinced that the rule of law offers the best long term chance of securing their rights and attaining their goals."<sup>98</sup> These courses attempt "to educate all sectors of society on the importance of upholding the rule of law."<sup>99</sup> On paper this sounds like a great idea. However, a course on lawfulness will not shift the mindset of the average Mexican citizen. It is only through the will of the people, the majority of Mexico's citizenry, that the country can right itself and change course.

In 2011, mass protests occurred in Cuernavaca, Morelos, when seven young individuals were murdered by traffickers.<sup>100</sup> Mexican poet and author Javier Sicilia's son was one of those murdered, and Sicilia called for nationwide demonstrations, declaring to Mexico's "politicians and criminals" that the people would "go out into the street: because we do not want one more child, one more son, assassinated."<sup>101</sup> Further,

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killed-in-a-shooting-tied-to-drug-battle, at A1.

94. *At Least 12 Bodies Found Along Remote Mexican Highway*, CNN WORLD (July 14, 2009), [http://articles.cnn.com/2009-07-14/world/mexico.slayings\\_1\\_drug-gangs-bodies-torture?\\_s=PM:WORLD](http://articles.cnn.com/2009-07-14/world/mexico.slayings_1_drug-gangs-bodies-torture?_s=PM:WORLD).

95. Dudley Althaus, *Mexico Puts 'The Monkey' Behind Bars*, HOUS. CHRON., June 22, 2011, at A1.

96. Rick Jervis, *YouTube Riddled with Drug Cartel Videos, Messages*, USA TODAY, [http://www.usatoday.com/tech/webguide/internetlife/2009-04-09-cartelonline\\_N.htm](http://www.usatoday.com/tech/webguide/internetlife/2009-04-09-cartelonline_N.htm) (last updated Apr. 13, 2009, 1:14 PM).

97. SEELKE & FINKLEA, *supra* note 8, at 28.

98. *Id.*

99. *Id.* at 28, n.146.

100. LISA HAUGAARD, ADAM ISACSON & JENNIFER JOHNSON, A CAUTIONARY TALE: PLAN COLOMBIA'S LESSONS FOR U.S. POLICY TOWARD MEXICO AND BEYOND 4 (2011), available at [http://justf.org/files/pubs/11110\\_cautionary.pdf](http://justf.org/files/pubs/11110_cautionary.pdf).

101. *Id.* (quoting open letter from Javier Sicilia). Sicilia said it best when he wrote:

We have had it up to here with you, politicians... because in your fight for power you have torn apart the fabric of the nation. Because in the middle of this

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[a] growing movement of Mexican civil society, ranging from business leaders to intellectuals, youth and women's organizations to religious leaders, called for *No Mas Sangre* (No More Bloodshed). Victims groups, frustrated because their loved ones are too often framed by authorities as mere statistics or collateral damage, or blamed for being involved in drug trafficking themselves, are playing a pivotal role in this movement.

This anger was given an even more public stage when Javier Sicilia and other leaders from the Movement for Peace with Justice and Dignity (*Movimiento por la Paz con Justicia y Dignidad*) participated in a televised meeting with President Calderón in June 2011. Leaders and victims' family members shared their personal stories of loss, anger and frustration—and urged the administration to shift its offensive on organized crime away from showy captures and dramatic actions towards a focus on protecting citizens.<sup>102</sup>

The Colombians had several things in their favor: their pride (they did not want to be known any longer as the drug-trafficking capital of the world); the fact that the violence had reached incredible levels; their willingness to accept U.S. assistance; the Colombian traffickers' fear of extradition; a large number of informants who existed to augment prosecutions; the significant in-fighting amongst the cartels; the Revolutionary Armed Forces of Colombia (FARC) and United Self-Defense Forces of Colombia (AUC) beginning to disintegrate and playing diminished roles in protecting and providing drugs to the traffickers; and the traffickers' own dislike of these terrorist groups. After the violence had decreased and *Los Pepes* had disbanded, "Plan Colombia" was put in effect some years later. The United States granted

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poorly designed, poorly managed, poorly led war that has put the country in a state of emergency, you have been incapable... of creating the consensus that the nation needs to find unity... We have had it up to here because the corruption of the judicial institutions generates the complicity with crime and the impunity to commit it... We have had it up to here because you only have imagination for violence, for weapons, for insults... We have had it up to here because the citizenry has lost confidence in its governors, its police, its army, and is afraid and in pain.

*Id.* at 4.

102. *Id.* at 4–5.

Colombia and its neighbors \$1.3 billion in “emergency” aid in July 2000 under Plan Colombia.<sup>103</sup> Over the next ten years, Colombia was given an additional \$6.5 billion, with “three-quarters going to Colombia’s army, navy, air force and police.”<sup>104</sup> U.S. funds also

paid for a massive campaign to eradicate coca by spraying herbicides from aircraft, as well as cocaine interdiction programs, an effort to protect an oil pipeline from guerrilla bombings, the creation of mobile military units, adjustments to Colombian doctrine and strategy, and—by the mid-2000s—accompaniment of large-scale anti-guerrilla military offensives. This aid included the delivery of about 90 helicopters, the spraying of 3.2 million acres of Colombian territory with herbicides, and the training of over 70,000 Colombian military and police personnel.<sup>105</sup>

Some scholars have criticized Plan Colombia, arguing that while joint military operations might have reduced violent crime, the human rights abuses and extrajudicial killings by armed forces significantly increased and outweighed the benefits of the “plan.”<sup>106</sup> Scholars argue that Plan Colombia did not reduce drug supplies or levels of violence, but rather it was “specialized police units, intelligence improvements, efforts to increase police and judicial capacities, and a minimal military role” that toppled the Medellín and Cali cartels in 1995.<sup>107</sup>

Regardless of what caused the top Colombian cartels to topple and reduce the violent crime throughout the country, it cannot be denied that Colombia is a success story<sup>108</sup> and creating a strong alliance with

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103. *Id.* at 6.

104. *Id.*

105. *Id.* at 7.

106. *Id.* at 6–9.

107. *Id.* at 12.

108. See U.S. NAT’L SEC. COUNCIL, *supra* note 2, at 9 (“Colombia now is an exporter of law enforcement and justice sector capabilities, providing assistance and advice for police, prosecutors, protection programs, and judiciary, criminal law, and procedure development. This reality is the result of the success of U.S. assistance in Colombian capacity building, a success the United States aims to replicate with other partner states.”). While the GAO admitted that “Plan Colombia has not curbed the production of coca and the transportation of cocaine[,] . . . the program has diminished violence in major cities and strengthened the Bogota regime’s capacity to strike against insurgents, notably the National Liberation Army, the Colombian Revolutionary Armed Forces, and the United Self-Defense Forces.” GRAYSON, *supra* note 27, at 228. “Colombia, which

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Colombia might be Mexico's best solution to the current crisis.<sup>109</sup> Let us also not forget that Colombia and Mexico remain linked through the supply chain, since Colombian drugs still flow through Mexico into the United States. Plan Colombia is not necessarily a model that should be identical or 100% replicated in Mexico. Mexico is not Colombia. But the lessons learned from Colombia and the actions taken by its government, the citizens, and the military, in partnership with the United States, should be examined as a model for Mexico to follow. Colombia's past failures and successes in fighting drug cartels may provide many valuable lessons for Mexico in its own quest to stem the violence and end the scourge of drug trafficking at home and along the Mexican-U.S. border.

## V. CONCLUSION

### A. *The Positives*

For all the criticisms of the Mérida Initiative and the lack of successful extraditions and prosecutions of Mexican traffickers, one cannot ignore the unprecedented cooperation and progress that has been made under the Calderón and the Bush and Obama administrations.<sup>110</sup> While it is unclear whether the Mexican people are on the verge of

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until recently possessed an underdeveloped military, has come a long way in eight years, and the central government's presence around the country's territory is stronger than ever." Francisco E. González, *Mexico's Drug Wars Get Brutal*, 108 CURRENT HIST. 72, 73 (2009); see also GRAYSON, *supra* note 27, at 228.

109. See SEELKE, *supra* note 6, at 7 ("President Calderón has sought to pursue an independent foreign policy with even closer ties to Latin America. Calderón regularly met with former Colombian President Álvaro Uribe, with whom he formed a partnership, along with the leaders of Guatemala and Panama, to combat drug trafficking and organized crime. In 2009, the Colombian government sent dozens of police trainers to teach courses at Mexico's federal police training institute. Calderón is likely to continue close collaboration with Colombia under the new government of Juan Manuel Santos.").

110. In the words of William R. Brownfield:

[I]f I could make a video of the situation today compared to a year or two years ago and with the perspective of what it will be in a year or two from now, the truth would be much more positive because I see institutions that are improving.

I see progress in decreasing and dismantling criminal organizations. I see more communication, more collaboration, more sharing of intelligence between Mexico and the U.S.

*Transcript of William R. Brownfield's Remarks on the Merida Initiative, supra* note 1.

cleaning house, it is clear that there has been political will in the past—Calderón understood the problem his country faced when he took office in 2006. And Calderón took huge personal and political risks to be aggressive and fight the traffickers head on.<sup>111</sup> An unprecedented number of “high-value target” cartel members were killed, arrested, or extradited under his watch.<sup>112</sup> Moreover, looking beyond extradition numbers, an unprecedented number of deportations and expulsions occurred under Calderón’s administration (even more than Colombia). Simply put, the United States has seen an unprecedented level of cooperation from the

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111. Prior to Calderón,

Mexico’s drug trafficking organizations operated with relatively little violence due in part to a “working relationship” that existed between the drug trafficking organizations and the Institutional Revolutionary Party (“PRI”), which maintained a one party system in Mexico for over seventy years. During this period, drug trafficking organizations were said to have operated with little resistance from the Mexican government. Accordingly, this “live and let live” approach . . . kept relative public peace and a semblance of law and order through the containment (rather than the destruction) of drug syndicates.”

Hine-Ramsberger, *supra* note 22, at 301 (omission in original) (citations omitted) (quoting González, *supra* note 108, at 73).

112. Since Calderón’s inauguration, the government of Mexico

has achieved unprecedented success in apprehending high value targets (HVT) based in Mexico. For example, in March 2009, DEA fugitive Vicente Zambada-Niebla, mentioned previously as a recently-extradited leader of the Sinaloa Cartel, was arrested in Mexico City. In October 2009, another Sinaloa Cartel leader and DEA fugitive, Oscar Nava-Valencia (known as “El Lobo”) was apprehended near Guadalajara, Mexico. Nava is currently incarcerated in Mexico, pending extradition to the U.S. In December 2009, the “Boss of Bosses” Arturo Beltran-Leyva was killed in Cuernavaca, Mexico during an arrest operation after a two-hour gun battle with Mexican military forces. Beltran was considered one of the most powerful drug lords in Mexico. And finally, on January 12, 2010, DEA and the U.S. Marshals Service identified the residence of one of Mexico’s most wanted fugitives and co-leader of the Tijuana Cartel, Eduardo Garcia-Simental (known as “El Teo”), who was responsible for many of the homicides, kidnappings, and tortures in Tijuana. El Teo’s brother, Manuel, and their chief lieutenant Raydel Lopez-Uriarte, were arrested less than one month later, on February 8. All these high-impact actions – seizures, arrests and extraditions – serve to make one important point: drug traffickers are inherently violent – but desperate, vulnerable drug traffickers operating under unprecedented stress are exceedingly violent.

*Drug Trafficking Violence in Mexico: Implications for the United States Before the S. Caucus on Int’l Narcotics Control*, 111th Cong. 8 (2010) (statement of Anthony P. Placido, Assistant Administrator for Intelligence, DEA, and Kevin L. Perkins, Assistant Director, Criminal Investigative Division, FBI), available at <http://drugcaucus.senate.gov/Joint-DEA-FBI-Placido-Perkins-5-5-10.pdf>.



Mexican government.<sup>113</sup> For example, there was significant law-enforcement-to-law-enforcement cooperation in February 2011 during the capture and extradition of Julian Zapata Espinoza, also known as “El Piolin” or “Tweety Bird.”<sup>114</sup> Espinoza was one of the men responsible for the killing of U.S. Immigration and Customs Enforcement Agent Jaime Zapata and wounding of Agent Victor Avila.<sup>115</sup> The Mexican capture and arrest of Espinoza occurred quickly, approximately one week after the murder.<sup>116</sup> In October 2011, Mansour J. Arbabsiar, a known officer of the Quds Force, which is a component of Iran’s Islamic Revolutionary Guards Corps, was named in a criminal complaint in the Southern District of New York for attempting to hire Los Zetas cartel members to kill the Saudi Arabian ambassador, Adel al-Jubeir, in Washington, D.C.<sup>117</sup> In late September 2011, Mr. Arbabsiar flew to Mexico City to ensure that Los Zetas would be paid in full after the assassination.<sup>118</sup> At the request of the United States’ government, Mexico denied Mr. Arbabsiar entry and sent him to the U.S., where he was eventually arrested.<sup>119</sup>

Wiretapping capabilities in Mexico are improving.<sup>120</sup> The Secretariat of Public Security (SSP) has authority to wiretap for preventative

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113. See *Combating Mexico's Drug Cartels*, *supra* note 3, at 6 (“Susan Snyder of the U.S. Bureau of International Narcotics and Law Enforcement Affairs observed that U.S.-Mexico relations are at an all-time high point, and Mexico now has the political will to confront drug traffickers.”).

114. *Mexican Army Arrests 'Tweety Bird' over Killing of U.S. Immigration Official*, DAILY MAIL ONLINE, <http://www.dailymail.co.uk/news/article-1360190/Mexican-army-arrests-Tweety-Bird-killing-U-S-immigration-official.html> (last updated Feb. 24, 2011, 6:09 AM).

115. *Id.* President Obama thanked President Calderón ““for Mexican efforts to bring to justice the murderers.”” David Jackson, *Obama, Mexico President to Discuss Drug and Border Violence*, USA TODAY, <http://content.usatoday.com/communities/theoval/post/2011/02/obama-mexico-president-to-discuss-drug-and-border-violence/1> (last updated Feb. 24, 2011, 12:43 PM).

116. Richard A. Serrano, *Charge in Agent's Death*, L.A. TIMES, Dec. 22, 2011, at A22; *Suspected ICE Agent Killer Held in U.S.*, CBS NEWS (Dec. 21, 2011, 12:46 PM), [http://www.cbsnews.com/2102-201\\_162-57346183.html?tag=contentMain;contentBody](http://www.cbsnews.com/2102-201_162-57346183.html?tag=contentMain;contentBody).

117. Charlie Savage & Scott Shane, *Iranians Accused of a Plot to Kill Saudis' U.S. Envoy*, N.Y. TIMES, Oct. 12, 2011, at A1.

118. *Id.* at A9.

119. *Id.*

120. The new Mexican wiretap system allows law enforcement to intercept “any landline, cellular or voice over IP telephone call made anywhere in Mexico,” as well as e-mail, chat messages, and file transfers. Jacob Goodwin, *State Department Funds Mexican Wiretap System*, GOV'T SECURITY NEWS (Mar. 8, 2007, 7:08 PM), <http://www.gsnmagazine.com/node/16557>.

purposes, and the Attorney General of Mexico (PGR) has a more expansive role, authorized to conduct a variety of wiretap investigations. Administrative efforts to eliminate corruption improved under Calderón. “More than 30 officials [were] arrested [in 2008] in connection with the [ongoing] anti-corruption” investigation, code named Operation Limpieza, which targeted Mexican police who were identified as having leaked sensitive law enforcement information to the drug cartels.<sup>121</sup> This investigation led to the arrest of “Ricardo Gutierrez Vargas, director for International Police Affairs at Mexico’s Federal Investigative Agency” and the arrest of the Director for Mexico’s Interpol office.<sup>122</sup> Another target of Operation Limpieza was Noe Ramirez Mandujano, who was in charge of the Attorney General’s office from 2006 until August 2008; he was accused of meeting with cartel members and “agreeing to provide information on investigations in exchange for . . . bribes.”<sup>123</sup> Operation Limpieza should be the model rather than the exception; the arrest and conviction of corrupt police officers should be the norm. Merely firing corrupt law enforcement officials does not send a strong enough message.

### B. The Proposals

Despite this positive spike in cooperation and the progress made on the counter-trafficking front, there is room for improvement. Most importantly, the United States should continue its support for the Mérida Initiative. This initiative is a major reason why so much has been accomplished. The politicians who form the future post-Calderón administration under the leadership of the newly elected President

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121. *Arrest of Interpol Official Sparks Security Breach Concerns*, CNN, <http://www.cnn.com/2008/WORLD/americas/11/19/mexico.arrest/index.html> (last visited Dec. 5, 2012).

122. *Id.* Mariano Francisco Herran Salvatti, who “served as [the] drug czar for President Ernesto Zedillo from 1997 to 2000” and “was the attorney general in Chiapas for more than six years, [was] charged with embezzlement, criminal association and other acts of corruption.” *Former Mexican Drug Czar Arrested on Corruption Charges*, CNN, <http://www.cnn.com/2009/WORLD/americas/01/26/mexico.drug.czar/index.html> (last visited Dec. 5, 2012). The previous drug czar, Jose de Jesus Gutierrez Rebollo, “was fired in 1997 after an investigation revealed [that] he had received payments from the Juarez drug cartel.” *Id.*

123. *Mexico Suspects Ex-Drug Czar Took Huge Bribes from Traffickers*, CNN (Nov. 21, 2008), [http://articles.cnn.com/2008-11-21/world/mexico.arrest\\_1\\_traffickers-drug-cartels-noe-ramirez-mandujano](http://articles.cnn.com/2008-11-21/world/mexico.arrest_1_traffickers-drug-cartels-noe-ramirez-mandujano).

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Enrique Peña Nieto<sup>124</sup> need to maintain the positive impetus, the current momentum. The seeds have been planted; now is not the time for complacency.<sup>125</sup>

Mexico should increase the use of wiretaps and share its wiretap evidence with the United States. Mexican law enforcement, especially

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124. Enrique Peña Nieto, of the Institutional Revolutionary Party (PRI), was elected president of Mexico on July 1, 2012. The concern is that Nieto, as part of the PRI (a party that previously had made pacts with organized crime in Mexico before Calderón, a leader in the National Action Party (PAN), took office in 2006) will return the country to old PRI politics-as-usual. Randal C. Archibold & Karla Zabłudovsky, *For Mexico's President-Elect, A Strategic Journey*, N.Y. TIMES (July 2, 2012), <http://www.nytimes.com/2012/07/03/world/americas/pena-nieto-savors-long-plotted-victory-in-mexico.html?ref=enriquepenanieto>.

125. Upon his presidential win, Nieto wrote an op-ed piece for the New York Times:

There may be considerable hand-wringing in the international community that my election somehow signifies a return to the old ways of my party, the Institutional Revolutionary Party or PRI, or a diminished commitment in Mexico's efforts against organized crime and drugs. Let's put such worries to rest.

....

I want to address the issue of organized crime and drug trafficking head-on. There can be neither negotiation nor a truce with criminals. I respect President Felipe Calderón for his commitment to ending this scourge; I will continue the fight, but the strategy must change. With over 60,000 deaths in the past six years, considerable criticism from human-rights groups and debatable progress in stemming the flow of drugs, current policies must be re-examined.

Indeed, I've proposed initiatives that will result in a marked increase in security spending and have set as a public goal slashing violent crime significantly.

What must be improved is coordination among federal, state and municipal crime-fighting authorities. I will create a 40,000-person National Gendarmerie, a police force similar to those in countries like Colombia, Italy and France, to focus on the most violent rural areas. I will expand the federal police by at least 35,000 officers and bolster intelligence-gathering and analysis. I will consolidate the state and municipal police forces and provide greater federal oversight, to crack down on corruption within their ranks. I will propose comprehensive criminal law reform. I have already sought out the advice of Gen. Óscar Naranjo, who recently retired as Colombia's national police chief and is one of the world's top crime fighters.

But for these security measures to have a long-term impact, the international community must understand two things. First, these efforts must be married with strong economic and social reforms. You can't have security without stability. Second, other nations, particularly the United States, must do more to curtail demand for drugs.

Enrique Peña Nieto, *Mexico's Next Chapter*, N.Y. TIMES (July 2, 2012), [http://www.nytimes.com/2012/07/03/opinion/mexicos-next-chapter.html?ref=enriquepenanieto&\\_r=0](http://www.nytimes.com/2012/07/03/opinion/mexicos-next-chapter.html?ref=enriquepenanieto&_r=0).

Sensitive Investigative Unit (SIU) members trained by U.S. law enforcement agents, should expand the use of wiretaps. This is one area where extensive U.S. training can be the most effective tool, since money alone will never result in the widespread acceptance and use of this vital technique. Wiretaps are an essential tool to combat both drug cartels and corrupt Mexican officials. If corrupt politicians accept a bribe, and this is captured on a wiretap, the guilty parties may face extradition and prosecution in the U.S.; at a minimum, this is added insurance that the traffickers will be extradited to the United States.

Mexico must improve its current prison system, which is rife with corruption and poor security. Incarcerated criminals routinely break out of jail, hire prison guards to be their employees, and use smuggled cell phones to conduct criminal activities from behind bars.<sup>126</sup> “[Mexico’s] largest federal prison is the penitentiary for the Federal District. . . . There are, in addition, more than 2,000 municipal jails.”<sup>127</sup> In contrast, Colombia has national prisons, including three maximum security prisons. Mexico needs national, maximum security prisons. “Mexico’s only maximum security facility, Almoloya de Juárez, was completed” in 1991.<sup>128</sup>

The Mexican federal judicial system should follow the lead of its local state counterparts and convert to an adversarial system. Many states have already implemented an accusatory-style adversarial system.<sup>129</sup> The Mexican states of Oaxaca and Chihuahua adopted new criminal procedure codes based on the U.S.-style adversarial model in 2006.<sup>130</sup> Under this system, pretrial detentions decreased while convictions increased at the local level, so it seems only logical that the federal system should follow this example. Mexico can indeed learn from itself.

It is critical that the United States remain committed to Mexico. Although Mexican prosecutors can learn from other countries such as Argentina, Germany, Chile, and Spain, which all have different but effective judicial systems, the U.S. should not relinquish Mexico’s legal

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126. Marc Lacey, *Mexico’s Drug Traffickers Continue Trade in Prison*, N.Y. TIMES, Aug. 11, 2009, at A1.

127. *Mexican Prisons*, FOREIGN PRISONER SUPPORT SERVICE, <http://www.usp.com.au/fpps/prison-mexico.html> (last visited Dec. 5, 2012).

128. *Id.*

129. See Hine-Ramsberger, *supra* note 22, at 307 (“Marco Adame, governor of Morelos, cited a lack of political will and support on the part of the federal government in aiding in the implementation [of the procedural reforms] in his state.”).

130. McLeod, *supra* note 20, at 119–20.

training to other countries. The United States has the most successful adversarial-type judicial system in the world, and therefore is the country best equipped to assist Mexico in its transition to a trial-by-jury construct. Despite perceived injustices or historical anti-American resentment harbored by some Mexican authorities, a prosecutor from Texas who has convicted a Mexican trafficker under § 959 or the RICO statute would be a far better selection than counterparts from other countries who have no experience working with or training Mexican prosecutors. By discussing our proven methods and success stories with our Mexican counterparts, the U.S. gains a certain amount of credibility and respect. Colombia should also play a role. A team of Colombian and U.S. prosecutors can explain how the Norte Valle cartel was brought down in the 1990s. A panel discussion among prosecutors from various countries would be preferable to a mandated U.S.-only training regimen where Mexican prosecutors may resent being told how to be more like an American. Even U.S. Department of Justice officials have commented in the past that “DOJ pushed the U.S. model on everybody and was very insensitive culturally” when it came to exporting the U.S. criminal procedure code.<sup>131</sup> Most importantly, fostering these types of multinational working relationships is important to sustaining bilateral cooperation. The more trust between neighbors, the more each country will empathize and understand the viewpoints of the other on issues of mutual concern or disagreement.

Adding more prosecutors, law enforcement, judges, and prisons are beneficial steps, but together they represent only a partial solution to the drug problem. Throwing resources at the problem has been America's answer to fighting the drug war for the past hundred years. What needs to change is where we apply these resources, namely to the people who are being targeted for prosecution. If U.S.-Mexico relations continue to improve, the number of extraditions of Mexican drug traffickers to the U.S. increases, and the focus of these cases remains fixed on the “big fish” rather than the local drug dealer or smuggler, then the leaders of these Mexican drug cartels will realize that there is an incredible risk to conducting business as usual. The top echelon of any drug cartel has high visibility, so it is only a matter of time before the leaders are identified and arrested. Their punishment will be severe—incarceration for a long period of time in a foreign country.<sup>132</sup> If the Mexican government is

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131. *Id.* at 127 (citation omitted) (internal quotation marks omitted).

132. In fact, Vincent Bugliosi in his book, *Drugs in America: The Case for Victory: A*

unable to severely punish the drug cartel leaders, then the United States should do so through extradition and prosecutions in this country. The U.S. has recently demonstrated that its prosecutorial reach is not limited to drug trafficking laws under statutes such as § 959, but it extends to other laws pertaining to organized crime, such as RICO issues. The United States views drug trafficking organizations as transnational crime organizations; this allows for the indictment of conspirators under different criminal statutes. An international drug trafficker can be charged with multiple crimes including those under § 959 and RICO. The U.S. has had recent success in prosecuting drug traffickers via an organized crime indictment rather than using the traditional drug trafficking statutes. Miguel Angel Nevarez, a member of the Barrio Azteca gang, was extradited in late August 2011 for his participation in the “March 13, 2010, murders in Juarez, Mexico, of U.S. Consulate employee Leslie Ann Enriquez Catton, her husband Arthur Redelfs and Jorge Alberto Salcido Cenicerros, the husband of a U.S. Consulate employee.”<sup>133</sup> He faced charges for “drug distribution, drug importation and money laundering.”<sup>134</sup> Nevarez was also charged with “conspiracy to commit murder in a foreign country, murder in aid of racketeering activity and federal firearm charges.”<sup>135</sup> This is just one example of how the United States is expanding its drug-prosecutions net by utilizing other statutes to prosecute drug-trafficking subjects.

Extradition procedures between the U.S. and Mexico must be revamped. The Mexican extradition system currently requires an extraordinary amount of paperwork, including extremely detailed affidavits that essentially disclose every piece of evidence collected from the investigation.<sup>136</sup> The affidavits cannot include hearsay statements;

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*Citizen's Call to Action*, argued back in the early nineties that the only way to win the drug war was to search and find the top drug traffickers in Colombia, bring them to the United States for criminal prosecution, charge them with the death penalty, and place them in special, fast-track courts for quicker adjudication, all while simultaneously taking away all the money-laundering options previously available to them. BUGLIOSI, *supra* note 33, at 49, 119–22, 125. While some of this may sound drastic, it is not outrageous to think this would work.

133. *Barrio Azteca Gang Member Extradited from Mexico to the United States to Face Charges Related to U.S. Consulate Murders in Juarez, Mexico*, JUSTICE.GOV (Aug. 26, 2011), <http://www.justice.gov/opa/pr/2011/August/11-crm-1101.html>.

134. *Id.*

135. *Id.*

136. Bruce Zagaris & Julia Padierna Peralta, *Mexico-United States Extradition and Alternatives: From Fugitive Slaves to Drug Traffickers—150 Years and Beyond the Rio Grande's Winding Courses*, 12 AM. U. J. INT'L L. & POL'Y 519, 541–44 (1997).

therefore, witnesses willing to testify against the defendant must be disclosed and provide their own statements at the extradition stage.<sup>137</sup> The extradition package is sent to the district court level first, which delays things even further.<sup>138</sup> If the district court judge approves extradition, the defendant can challenge the decision through an “amparo” appeal in either the Mexican Supreme Court or an appellate circuit court.<sup>139</sup> Double jeopardy also bars the ability to extradite many defendants.<sup>140</sup> If a trafficker is tried in a Mexican court first and is acquitted, Mexico will not then send the defendant to the U.S. to answer to similar charges. U.S. extradition requests remain unanswered until the Mexican charges are dealt with or dropped years later. Mexico will not defer its prosecution of a defendant, even if the same defendant is in the United States on a similar offense.<sup>141</sup> Thus, if a defendant indicted in Mexico serves a prison sentence in the U.S. for a similar crime, Mexico will not prosecute the defendant a second time when this individual returns to Mexico. The trafficker can live with impunity in Mexico after his U.S. sentence is completed. The U.S. does not view someone serving time in two different countries for the same crime as double jeopardy; for example, Gabe Watson, who was accused of murdering his wife for insurance money, was put on trial in the U.S. after serving 18 months in an Australian jail for the same crime.<sup>142</sup>

U.S. prosecutors need Mexican authorities to comply with international requests for evidence. Even if Mexico agrees to extradite a

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137. *Id.* at 557; Rempel, *supra* note 51.

138. See Zagaris & Peralta, *supra* note 136, at 543. Compare this practice with that of Colombia, where the Ministry of the Interior sends the extradition package directly to the Supreme Court of Justice to begin extradition proceedings. *Colombia*, ORG. AM. STATES, INFO. EXCHANGE NETWORK FOR MUTUAL ASSISTANCE CRIM. MATTERS & EXTRADITION, <http://www.oas.org/juridico/mla/en/col/> (follow “Extradition System” link under “Extradition”) (last visited Dec. 5, 2012).

139. Zagaris & Peralta, *supra* note 136, at 546–47. “Amparo” means “protection, favor, or aid.” *Id.* at 547. See also *Mexico*, ORG. AM. STATES, INFO. EXCHANGE NETWORK FOR MUTUAL ASSISTANCE CRIM. MATTERS & EXTRADITION, <http://www.oas.org/juridico/mla/en/mex/> (follow “Simplified Explanation of Extradition and Related Procedures” link under “Extradition”) (last visited Dec. 5, 2012).

140. Zagaris & Peralta, *supra* note 136, at 580.

141. *Id.*

142. Jay Reeves, *Gabe Watson to Face US Trial over Wife's Death*, NEWS.COM.AU (Feb. 14, 2012, 12:00 AM), <http://www.news.com.au/world-old/gabe-watson-to-face-us-trial-over-wifes-death/story-e6frfkyi-1226269084427>; *Watson Acquitted of Honeymoon Dive Death*, NEWS.COM.AU (Feb. 24, 2012, 7:23 AM), <http://www.news.com.au/breaking-news/watson-acquitted-of-honeymoon-dive-death/story-e6frfku0-1226280117051>.

defendant to the U.S., they typically do not send any locally gathered evidence along with the defendant. U.S. prosecutions of Columbian subjects were usually successful because Colombia included boxes of evidence to assist U.S. prosecutors in convicting the defendant.<sup>143</sup> The more evidence available to use at trial, the more likely the defendant will plead guilty. In Mexico, wiretap evidence is typically provided only through a formal request via the mutual legal assistance treaty (MLAT) or letters rogatory process. Mexico needs to simplify its extradition process and requirements and allow for the transmittal of local evidence to the U.S. On this side of the border, U.S. prosecutors need to keep indicting high-level traffickers regardless of whether or not they think the target is “extraditable.” Once the subject is indicted in the U.S., even if the Mexican authorities refuse to extradite the individual, there will be an outstanding warrant, which will allow for the instant arrest of the subject if he crosses the Mexico-U.S. border or travels to another extradition-friendly country.

Like Colombia, Mexico should consider expanding its extradition laws to allow for the extradition of corrupt politicians and businessmen who were associated with the drug cartels. When drug kingpins are replaced one after another the vicious cycle continues unabated. However, once Mexico begins to arrest, prosecute, and extradite politicians to the United States (as Colombia did), then everyone associated with the illicit drug trade will realize they have no place to hide. AUC and FARC members in Colombia who profited from the drug trade finally began to be extradited once the politicians who shielded them for so long were no longer there to save them.<sup>144</sup> In Mexico, most traffickers simply buy protection from corrupt politicians who line their pockets with drug money. According to some reports, the drug cartels are paying some Mexican politicians bribes of \$150,000 to \$450,000 a month in a country where the per capita income is \$12,500 a year.<sup>145</sup> In the United States, the traffickers are unable to buy blanket immunity or protection, so extradition is greatly feared—this is an effective mitigating

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143. U.S. prosecutors usually send, via DOJ’s Office of International Affairs, a letter rogatory which are “requests for judicial assistance directed to foreign judicial authorities to obtain information or evidence or to take legal action.” *Colombia*, ORG. AM. STATES, INFO. EXCHANGE NETWORK FOR MUTUAL ASSISTANCE CRIM. MATTERS & EXTRADITION, <http://www.oas.org/juridico/mla/en/col/> (follow “International Legal Cooperation” link under “Mutual Legal Assistance in Criminal Matters”) (last visited Dec. 5, 2012).

144. *Arrest of Interpol Official Sparks Security Breach Concerns*, *supra* note 121.

145. *Former Mexican Drug Czar Arrested on Corruption Charges*, *supra* note 122.



strategy. Therefore, Mexico should focus its efforts on the extradition of both high-level traffickers and high-level politicians. Through money laundering investigations, Mexico and the United States can identify and target corrupt politicians and businessmen who are assisting traffickers. Businessmen in Mexico who assist the traffickers by managing money laundering operations or investing the drug money should be placed on the U.S. Office of Foreign Assets Control (OFAC) list and face economic sanctions. OFAC publishes a list of individuals and companies associated with terrorists and narcotics traffickers.<sup>146</sup> As part of the U.S. Treasury's enforcement efforts, these companies' assets are blocked and U.S. individuals are prohibited from dealing with them. This is an extremely effective tool, hitting these organizations where it hurts: their profits.

The United States must continue to foster relationships at every level of Mexican government—local, state, and national—to engender a bond of trust so that U.S. agents can begin to operate freely within Mexico's borders alongside their trusted Mexican counterparts. U.S. agents should have access to Mexican intelligence concerning smugglers and possible routes taken to illegally enter the U.S. In time, the U.S. will be able to share its intelligence more fully with Mexican authorities. Unfortunately, situations continue to arise where U.S. agents have shared information with their Mexican counterparts, and the intelligence was passed on to the drug cartels, which led to the deaths of informants and the compromise of U.S. operations. Again, corruption at all levels, especially within the ranks of Mexico's law enforcement community, must be dealt with swiftly and effectively before the scourge of drug trafficking can be blunted.

The proposals in the Beyond Mérida Initiative and the suggestions in this Article are long-term solutions to a persistent problem. The drug cartels, violence, and corruption will not disappear overnight. The Mexican national elections will certainly impact the long-term prospects for continued progress of the Mérida Initiative and our mutual goal of combating drug trafficking. Mérida has had some successes already, but the underlying problems still exist. Mérida is not an all-encompassing solution. Nothing can be solved by simply adding to the pile of money and training already provided by the United States. What is clear is that

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146. *Resource Center: Specially Designated Nationals List (SDN)*, U.S. DEP'T OF THE TREASURY (Aug. 15, 2012), <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>.

the people impacted by this problem are no longer willing to be complacent. They want a solution, as evidenced by the actions taken by the extremely brave Calderón administration. However, it appears as if the people in Mexico City are disconnected from the rest of Mexico, where drug-war violence is commonplace; some who are not personally impacted where they live do not see or comprehend the extreme violence taking place in other parts of the country.<sup>147</sup> For some Mexicans, the noticeable but low level of violence in their particular neighborhood is tolerable, so they do not make waves or confront the criminal element in their own town.<sup>148</sup> Others are extremely timid because of the threats and fear of reprisals.<sup>149</sup> There is no honor in the drug war—the traffickers are

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147. See Carlin Christy, Moravia de la O, Tony Macias & Claudia Ana Rodriguez, *Statement: Delegate Security in Mexico*, WITNESSFORPEACE.ORG (Sept. 13, 2011), <http://www.witnessforpeace.org/article.php?id=948> (“Daily life in Mexico City has not been affected by the drug-war related violence. This violence is largely confined to the northern border region, a thousand miles from us, but has also occurred in Acapulco and Cuernavaca.”); Randal C. Archibold, *Mexico Drug War Bloodies Areas Thought Safe*, N.Y. TIMES, Jan. 19, 2012, at A1, available at <http://www.nytimes.com/2012/01/19/world/americas/mexico-drug-war-bloodies-areas-thought-safe.html> (“At the mall in Mexico City, in the high-end Santa Fe district, known for its financial buildings and apartment towers, shoppers said they were worried but growing accustomed to gruesome violence in the country. ‘We are living in a terrible situation,’ said Jasia Grinberg, 65, who runs a hair salon at the mall, Centro Santa Fe, ‘and meanwhile, we are getting used to it.’”); Ricardo Alday, *Letter to the Editor: Violence in Mexico*, N.Y. TIMES, Feb. 3, 2012, <http://www.nytimes.com/2012/02/04/opinion/violence-in-mexico.html> (“We simply do not agree that violence is spreading to more cities: 91.6 percent of the country’s 2,441 municipalities do not experience a serious public security problem, defined by the benchmark of more than 10 organized crime-related homicides a year.”).

148. See GRAYSON, *supra* note 27, at 271 (“Citizens can stage huge marches, swarm into the Zócalo central plaza to vent their spleens, taunt deputies and senators as they enter their legislative precincts, but the survey [done by the author, George Grayson,] shows that most people feel impotent with respect to influencing policy and policy makers.”).

149. See Mariana Alvarado, *Violence-Torn Sonora Town Issues Cry for Help*, ARIZ. DAILY STAR, June 29, 2011, [http://azstarnet.com/news/local/border/violence-torn-sonora-town-issues-cry-for-help/article\\_32bba697-de3c-5f5a-ba60-8205d2c243b8.html](http://azstarnet.com/news/local/border/violence-torn-sonora-town-issues-cry-for-help/article_32bba697-de3c-5f5a-ba60-8205d2c243b8.html) (“‘There’s bad stuff going on here, but nobody wants to talk,’ says a woman from Hermosillo, who’s in Tubutama trying to persuade her mother and two sisters to leave with her. ‘I’m afraid of reprisal against my family.’”). Alvarado states that “Tubutama residents don’t just hesitate to speak out—they hesitate to speak at all. Some women sitting with their children in the plaza avoid eye contact with strangers and ignore the visiting reporters.” *Id.* Sonoran legislators held a session last year in Tubutama’s plaza, “guarded by 250 state policemen, 60 trucks and two helicopters,” as well as dozens of state investigative policemen and the Mexican soldiers guarding the roads for the armed convoy. *Id.* The legislators approved a new law that would eventually bring police resources to Tubutama. *Id.* No local residents were “invited to speak [at the session] and drug violence [was] not addressed.” *Id.*

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indiscriminately attacking innocent families and children. They retaliate against anyone who represents a possible threat to their money-making business. But the Mexican people rose up in 1911. They can do it again.<sup>150</sup> A determined and unyielding political will from the government, coupled with a civil uprising by the people, may just be the answer to winning the war against Mexico's formidable drug cartels.

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150. GRAYSON, *supra* note 27, at 271 ("So bad is the situation that, after the mid-2009 torture and slaying of its leader, the Mormon community in Galeana, Chihuahua, prepared to field an armed self-defense force of seventy-seven volunteers. After vacillating, the PRI governor sought to prevent vigilantism—a reaction to profound insecurity—by inviting the young Mormons to train to become state preventative policemen. PAN state legislator Fernando Álvarez Monje rejected this idea, indicating that formation of a community force would mean that citizens were taking justice into their own hands. Meanwhile, continued violence in Monterrey—accentuated by a machine gun-killing in the city's Macroplaza commercial center on July 12—has prompted one citizens' group to organize and defend themselves. Such efforts are likely to spread.").