

Boston College International and Comparative Law Review

Volume 38 | Issue 1

Article 6


4-1-2015

Mexico's Catch-22: How the Necessary Extradition of Drug Cartel Leaders Undermines Long-Term Criminal Justice Reforms

Walter Rodriguez

Boston College Law School, walter.rodriquez@bc.edu

Follow this and additional works at: <http://lawdigitalcommons.bc.edu/iclr>

 Part of the [Comparative and Foreign Law Commons](#), [Criminal Law Commons](#), [Criminal Procedure Commons](#), [International Law Commons](#), [Jurisdiction Commons](#), and the [Law Enforcement and Corrections Commons](#)

Recommended Citation

Walter Rodriguez, *Mexico's Catch-22: How the Necessary Extradition of Drug Cartel Leaders Undermines Long-Term Criminal Justice Reforms*, 38 B.C. Int'l & Comp. L. Rev. 159 (2015), <http://lawdigitalcommons.bc.edu/iclr/vol38/iss1/6>

This Notes is brought to you for free and open access by the Law Journals at Digital Commons @ Boston College Law School. It has been accepted for inclusion in Boston College International and Comparative Law Review by an authorized administrator of Digital Commons @ Boston College Law School. For more information, please contact nick.szydowski@bc.edu.

MEXICO'S CATCH-22: HOW THE NECESSARY EXTRADITION OF DRUG CARTEL LEADERS UNDERMINES LONG-TERM CRIMINAL JUSTICE REFORMS

WALTER RODRIGUEZ*

Abstract: Grisly cartel violence has plagued Mexico in recent decades, effectively destabilizing its government and encasing its citizenry in trepidation and fear. A joint operation between Mexican Marines and the U.S. Drug Enforcement Administration in February 2014, however, finally penetrated the myth of invulnerability for drug trafficking organizations with the arrest of that world's most powerful leader, Joaquin "El Chapo" Guzmán. Although this development is evidence of Mexican law enforcement's newfound ability to track and capture the most dominant of drug bosses, Mexico's criminal justice system continues to lack the requisite structure, political will, and expertise to mount such a high-profile prosecution successfully. Mexico, therefore, must extradite Guzmán to the United States to ensure that he receives immediate and adequate justice. A failed prosecution in Mexico would undermine public trust and subvert implementation of Mexico's recent criminal justice reforms before they are realized, ultimately stunting its conversion to an accusatorial, public trial system and maintaining the violent status quo.

INTRODUCTION

In 2012, the bodies of fourteen men and women were hung from meat hooks in the northeast Mexican border town of Nuevo Laredo.¹ A note accompanying the victims was signed, "Attentively, Chapo. Remember I am your real daddy."² Such gruesome artistry is characteristic of the Mexican drug kingpin, Joaquín "El Chapo" Guzmán, notorious leader of the Sinaloa Cartel.³ The Sinaloa Cartel has been responsible for an estimated 25 percent of illegal drugs enter-

* Walter Rodriguez is an Executive Articles Editor for the *Boston College International & Comparative Law Review*.

¹ Whitney Eulich, *Why 'El Chapo' Capture Could Intensify Mexico's Drug Wars*, CHRISTIAN SCIENCE MONITOR (Feb. 24, 2014), <http://www.csmonitor.com/World/Americas/Latin-America-Monitor/2014/0224/Why-El-Chapo-capture-could-intensify-Mexico-s-drug-wars-video>, archived at <http://perma.cc/ZZM5-5TF3>.

² Ioan Grillo, *What the Arrest of 'El Chapo' Means for Mexico*, TIME (Feb. 23, 2014), <http://time.com/9283/what-the-arrest-of-el-chapo-means-for-mexico/>, archived at <http://perma.cc/V2KC-UCWB>.

³ *See id.*

ing the United States through Mexico, with an approximated annual revenue exceeding three billion dollars.⁴ A 2001 escape from prison via a laundry truck fed into Guzmán's larger than life persona, resulting in his title as Chicago's Public Enemy No. 1 and his ranking in Forbes magazine as one of the "World's Most Powerful People."⁵ In some locales, Guzmán's legend rivaled the likes of Pablo Escobar or Al Capone, where his Robin Hood persona was celebrated with rap and folk songs.⁶ Guzmán's cruelty culminated in 2010, when Sinaloa Cartel members kidnapped thirty-six-year-old Hugo Hernandez from the Mexican state of Sonora.⁷ Authorities soon discovered his corpse chopped to pieces, with his arms, legs, and skull placed in separate boxes and his torso in a plastic container.⁸ In a grotesque public display of brutality, Sinaloa Cartel members skinned Hernandez's face, stitched it to a soccer ball, and left a similar note reading, "Happy New Years, because this will be your last."⁹

Drug violence prompted former Mexican President Felipe Calderón to launch a "War on Drugs" in 2006.¹⁰ During his six years in office, Calderón invested billions of dollars on training and equipment, attempted to reform the police and judicial systems, and sent more than 50,000 heavily armed, masked soldiers to patrol Mexican streets and battle the cartels.¹¹ Homicides, however, whether barroom brawls or cartel feuds, increased steadily under Calderón from nearly nine thousand in 2007 to more than twenty-seven thousand in 2011.¹²

⁴ See Dolia Estevez, *Should Mexican Drug Lord Joaquín "El Chapo" Guzmán Be Extradited to the U.S.?*, FORBES (Feb. 25, 2014), <http://www.forbes.com/sites/doliaestevez/2014/02/25/should-mexican-drug-lord-joaquin-el-chapo-guzman-be-extradited-to-the-u-s/>, archived at <http://perma.cc/7FP8-MZU7>; Christopher Helman, *Drug Lord 'El Chapo' Guzmán Captured in Mexico*, FORBES (Feb. 22, 2014), <http://www.forbes.com/sites/christopherhelman/2014/02/22/billionaire-drug-lord-el-chapo-guzman-captured-in-mexico/>, archived at <http://perma.cc/28RG-UMUJ>.

⁵ See Helman, *supra* note 4.

⁶ See Estevez, *supra* note 4; Helman, *supra* note 4; Carrie Kahn, *Ruthless Mexican Drug Trafficker Was a Robin Hood in Home State*, NPR (Feb. 24, 2014), <http://www.npr.org/2014/02/24/282123622/ruthless-mexican-drug-trafficker-was-a-robin-hood-in-home-state>; William R. Long, *Billionaire Drug Trafficker Rules: Powerful Medellín Cartel Safe in Its Colombia Base*, L.A. TIMES (Feb. 21, 1988), http://articles.latimes.com/1988-02-21/news/mn-44055_1_gentle-green-mountains-barrio-pablo-escobar-mayor-william-jaramillo, archived at <http://perma.cc/97T9-2CER>.

⁷ See Olga R. Rodriguez, *Hugo Hernandez: Mexico Cartel Stitches Rival's Face on Soccer Ball*, HUFFINGTON POST (Jan. 8, 2010), http://www.huffingtonpost.com/2010/01/09/mexico-cartel-stitches-ri_n_417326.html, archived at <http://perma.cc/82D6-KG74>.

⁸ See *id.*

⁹ See *id.*

¹⁰ See Brianna Lee, *Backgrounders: Mexico's Drug War*, COUNCIL ON FOREIGN REL., Jan. 2013, available at <http://www.cfr.org/mexico/mexicos-drug-war/p13689> (last updated Mar. 5, 2014), archived at <http://perma.cc/R746-5TM6>.

¹¹ See Nick Miroff & William Booth, *Mexico's Drug War Is at a Stalemate as Calderón's Presidency Ends*, WASH. POST (Nov. 27, 2012), http://www.washingtonpost.com/world/the_americas/calderon-finishes-his-six-year-drug-war-at-stalemate/2012/11/26/82c90a94-31eb-11e2-92f0-496af208bf23_story.html, archived at <http://perma.cc/88VV-4B5R>.

¹² *Id.*

Mexican Drug Trafficking Organizations (DTOs) also expanded their operations from simple drug trafficking to kidnapping, robbery, and extortion through the use of unprecedented acts of cruelty.¹³

Recently, Guzmán's reign of terror realized an appropriate end in Mazatlán, a Pacific port city in his home state of Sinaloa.¹⁴ Circumstances surrounding Guzmán's arrest contradict his romanticized, untouchable aura of narco-folklore.¹⁵ Mexican and American law enforcement tracked Guzmán through putrid black water, dead rats, and garbage as he journeyed from one safe house to another in a series of connecting tunnels and sewers.¹⁶ Such a muted end, with no "heroic" last stand, or even a single shot fired, has punctured the untouchable image of cartel leaders throughout the country.¹⁷ This has shifted perceptions of cartel power relative to the Mexican state.¹⁸ The Mexican government has now proven an ability to hunt down and overpower even the most powerful of enemies using new methods of law enforcement.¹⁹ Given that federal prosecutors in various U.S. cities are vying to prosecute Guzmán, Mexico should extradite Guzmán to the United States immediately, so as to bring swift justice amounting to a victory for an evolving Mexican criminal justice system in dire need of public trust and support.²⁰

While Mexico is overhauling its criminal justice system, it currently does not have the legal machinery in place to transform this iconic arrest into a symbolic prosecution.²¹ A successful prosecution of Guzmán could parallel the paradigmatic conviction of Al Capone in the United States, signifying both judicial ability and a downfall of DTOs in Mexico.²² Failure, however, in the form of a second escape from prison, prolonged detention, or an unsuccessful conviction,

¹³ See *id.*; *Criminal Cartels Drive Defense Expenditure in Mexico*, ADS REPORTS (Aug. 19, 2013), https://www.asdreports.com/news.asp?pr_id=1752, archived at <https://perma.cc/C4JN-7PMA>.

¹⁴ See Estevez, *supra* note 4.

¹⁵ Andrés Martínez, *Don't Extradite El Chapo: The Mexican Government Won't Win Against the Cartels Unless It Can Prove It Can Lock Them Away*, SLATE (Feb. 27, 2014) http://www.slate.com/articles/news_and_politics/foreigners/2014/02/el_chapo_shouldn_t_be_extradited_the_mexican_government_must_prosecute_him.html, archived at <http://perma.cc/63XE-BPQP>.

¹⁶ See Estevez, *supra* note 4.

¹⁷ See Martínez, *supra* note 15.

¹⁸ See *id.*

¹⁹ See *id.*

²⁰ See Editorial, *Time to Extradite Mexico Drug Kingpin 'El Chapo' Guzmán*, DALL. NEWS (Feb. 24, 2014), <http://www.dallasnews.com/opinion/editorials/20140224-editorial-time-to-extradite-mexico-guzman.ece>, archived at <http://perma.cc/4LP9-D22H>.

²¹ See *id.*; James C. McKinley Jr., *Mexico's Congress Passes Overhaul of Justice Laws*, N.Y. TIMES (Mar. 7, 2008), <http://www.nytimes.com/2008/03/07/world/americas/07mexico.html>, archived at <https://perma.cc/43D3-UY5J?type=pdf>.

²² See Helman, *supra* note 4; see Martínez, *supra* note 15.

would effectively condemn Mexico's criminal justice overhaul to failure before it has a chance to take effect.²³

This Note argues that Mexico must extradite cartel leaders to the United States until it can prosecute such *capos* within its own borders. Part I of this Note provides background on the political condition of Mexico that has fostered the rise of such an engrained DTO influence within the country. This section further outlines the response to increasing violence by former President Felipe Calderón and the consequences of his militarized war on drugs. Part II details Mexico's practice of extraditing its high-profile DTO kingpins, and its current mixed-inquisitorial criminal justice system, which has prevented successful prosecution of major cartel leaders. Part III argues that Mexico should continue to extradite cartel leaders like Joaquín "El Chapo" Guzmán until it can effectively transition to a functioning, transparent criminal justice system through implementation of its 2008 criminal justice reforms. Part III further contends that it is in Mexico's long-term interest to equip itself with these strategies to avoid further flirtation with failed statehood and to permit a more significant and pervasive dismantling of DTO structures in the future.

I. BACKGROUND

A. Mexican Drug Cartels in Context

1. The Mexican Political Dynamic

Drug trafficking organizations have utilized Mexico's entrenched political system to construct a systematic network of corruption that has ensured market access, distribution rights, and official government protection for decades.²⁴ Although Mexican gangs initially served as "mere couriers" for Colombian cartels, they eventually evolved into wholesalers of narcotics due, in part, to the success of efforts to dismantle Colombian narcotics organizations through operations such as "Plan Colombia."²⁵ The emergence of a multi-party political system in Colombia further decreased the power of its cartels due to newfound incentives to maintain political credibility and obtain political capital.²⁶ Mexico, in contrast,

²³ See Editorial, *supra* note 20; Helman, *supra* note 4; Martinez, *supra* note 15.

²⁴ See Lee, *supra* note 10.

²⁵ *Id.*; see Daniel Mejia, *The War on Drugs Under Plan Colombia*, in RETHINKING THE "WAR ON DRUGS" THROUGH THE US-MEXICO PRISM 19, 20 (Ernesto Zedillo & Haynie Wheeler eds., 2012), available at <http://www.ycsg.yale.edu/center/forms/plan-colombia19-32.pdf>, archived at <http://perma.cc/8HXR-399Y> (defining "Plan Colombia" as a joint-effort between the United States and Colombia to dismantle Colombian drug trafficking organizations through interdiction, targeting of organization leaders, and eradication of production centers).

²⁶ See Randall Collins, *Drug Business Is Not the Key to Gangs and Organized Crime: With a Prognosis for the Mexican Cartel Wars*, SOC. EYE (May 29, 2012), <http://sociological-eye.blogspot.com/2012/05/drug-business-is-not-key-to-gangs-and.html>, archived at <https://perma.cc/8UDQ-FRX>

has historically been ruled by only one party.²⁷ The Institutional Revolutionary Party (PRI) ruled Mexico for seventy years prior to the election of 2000.²⁸ PRI party members supplied numerous public-sector jobs to party backers and provided monopolies to private-sector allies in an effort to allay criticism and silence opposition.²⁹ PRI party members correspondingly maintained a “patron-client relationship” with drug cartels.³⁰

The election of the National Action Party (PAN) candidate, Vicente Fox, in 2000 marked an abrupt end to the established single party system of the PRI.³¹ Newfound confidence in the more democratic, multi-party system forced the PRI to re-evaluate and reinvent itself to stay competitive with the PAN and to appeal to a more politically engaged citizenry.³² Immediately after his victory, Fox established the structural framework for Felipe Calderón’s eventual war on drugs when the Sinaloa and Juárez cartels first clashed publicly in a series of familial killings in Sinaloa and Mexico City in 2004.³³

2. United States Involvement: The Mérida Initiative

The counter-narcotics initiative in Colombia, Plan Colombia, was constructed along a drug war model of enforcement and interdiction through the use of military forces and close U.S. participation.³⁴ The initial name for the Mérida Initiative, “Plan Mexico,” was changed to the “Mérida Initiative” after it was determined that the moniker elicited too direct a comparison to the Plan Colombia model, which riled Mexican nationalistic sentiment at the very thought of a U.S. military incursion into its sovereignty.³⁵ The objective of this three-year \$1.4 billion U.S. assistance package, agreed to in 2007, was to “maximize the

8?type=source; Natalia Cote-Munoz, *Mexico’s Drug War: Not Another Colombia*, COUNCIL ON HEMISPHERIC AFF. (Jan. 17, 2012), <http://www.coha.org/mexicos-drug-war-not-another-colombia/>, archived at <https://perma.cc/Z3KE-BN7L?type=source>.

²⁷ See *Mexico Election Sees Old Guard PRI Reclaim Power with Enrique Peña Nieto at Helm*, CBS NEWS (July 2, 2012), <http://www.cbsnews.com/news/mexico-election-sees-old-guard-pri-reclaim-power-with-enrique-pena-nieto-at-helm/>, archived at <http://perma.cc/AS9V-CJ7K> [hereinafter *Old Guard*].

²⁸ See *id.*

²⁹ Andrea Nill Sanchez, Mexico’s Drug “War”: Drawing a Line Between Rhetoric and Reality, 38 *YALE J. INT’L L.* 470, 470–71 (2013).

³⁰ *Id.*

³¹ See *id.*; *Opposition Wins Mexican Elections*, ABC NEWS (July 3, 2000), <http://www.abcnews.go.com/international/story?id=83273>, archived at <https://perma.cc/ZN5K-P4A3?type=pdf> [hereinafter *Opposition Wins*].

³² See *Old Guard*, *supra* note 27; *Opposition Wins*, *supra* note 31.

³³ See Michel Marizco, *Mexican President Calderón Leaves Office Under Wave of Criticism*, FRONTERAS (Nov. 22, 2012), <http://www.fronterasdesk.org/content/mexican-president-calderon-leaves-office-under-wave-criticism>, archived at <https://perma.cc/5YQD-GUXK?type=pdf>.

³⁴ See Mejia, *supra* note 25.

³⁵ See Laura Carlsen, *A Plan Colombia for Mexico*, FOREIGN POL’Y IN FOCUS (Sept. 10, 2010), http://fpif.org/a_plan_colombia_for_mexico/, archived at <http://perma.cc/6UJN-DPLB>.

effectiveness of efforts to fight criminal organizations.”³⁶ This goal detailed four pillars, including “(1) [d]isrupting the operational capacity of organized criminal groups, (2) [i]nstitutionalizing reforms to sustain the rule of law and respect for human rights, (3) [c]reating a 21st century border, [and] (4) [b]uilding strong and resilient communities.”³⁷ Interagency disagreements, however, slowed implementation and delivery of actual aid to Mexico.³⁸ According to a report by the Government Accountability Office, only 46 percent of the \$1.32 billion promised to Mérida programs in Mexico had been obligated and a mere 9 percent had been expended as of 2010.³⁹ Deliveries of equipment, training, and technical assistance accelerated in 2011, and a total of \$1.1 billion worth of assistance had been provided as of November 2012.⁴⁰ By May 2013, approximately 19,000 law enforcement personnel and 8,500 federal and 22,500 state justice workers had either completed U.S. training programs or received instruction on their new responsibilities within the emerging accusatorial system.⁴¹

3. Calderón’s War on Drugs

In six years, Calderón sent more than fifty thousand soldiers to safeguard Mexican streets and battle the cartels.⁴² By the end of his term, the war had claimed upwards of sixty thousand lives, including 532 soldiers and 3,500 police officers.⁴³ Civilians, from mayors and lawyers to journalists and oil workers, were not immune and were often targeted.⁴⁴ This extreme violence was both psychologically and emotionally grueling for the average citizen, causing a culture of fear to settle over the Mexican population.⁴⁵

Such unmitigated violence led then-Secretary of State Hillary Clinton in an address the Council on Foreign Relations to state that traffickers “in some cases,

³⁶ Sanchez, *supra* note 29, at 472.

³⁷ See CLARE RIBANDO SEELKE & KRISTIN M. FINKLEA, CONG. RESEARCH SERV., R41349, U.S.-MEXICAN SECURITY COOPERATION: THE MÉRIDA INITIATIVE AND BEYOND 6 (2013), available at <https://fas.org/sgp/crs/row/R41349.pdf>, archived at <https://perma.cc/ZAC8-9YEE>.

³⁸ See *Assessing the Mérida Initiative: A Report from the Government Accountability Office (GAO): Hearing Before the Subcomm. on the W. Hemisphere of the Comm. on Foreign Aff.* 111th Cong. 10 (2010) (statement of Mr. Jess T. Ford, Dir., Int’l Aff. & Trade Team).

³⁹ *Id.* at 25.

⁴⁰ SEELKE & FINKLEA, *supra* note 37, at 8.

⁴¹ *Id.* at 9.

⁴² See Ioan Grillo, *Mexico: Calderón’s Legacy of Blood and Busts*, GLOBAL POST, (Nov. 30, 2012), <http://www.globalpost.com/dispatch/news/regions/americas/mexico/121129/mexican-president-felipe-calderon-drug-war-legacy>, archived at <https://perma.cc/3YW2-2SLR?type=source>.

⁴³ *See id.*

⁴⁴ Daniel Hernandez, *Calderón’s War on Drug Cartels: A Legacy of Blood and Tragedy*, L.A. TIMES (Dec. 1, 2012), <http://articles.latimes.com/2012/dec/01/world/la-fg-wn-mexico-calderon-cartels-20121130>, archived at <https://perma.cc/593Q-2JBE?type=source>.

⁴⁵ *See id.*

[were] morphing into or making common cause with what we would consider an insurgency in Mexico,” with insurgent groups controlling some 40 percent of the country.⁴⁶ These remarks have prompted many academics and government officials to consider redefining the Mexican drug trafficking issue as a “non-international armed conflict” by characterizing DTOs as Foreign Terrorist Organizations (FTOs), which would subject cartel members to laws controlling “non-international armed conflicts” (NIACs).⁴⁷

An NIAC designation would permit the Mexican government to label cartel members as unlawful enemy combatants and hold them in more secure military quarters for the duration of the conflict or until the Mexican government determines that the cartels cease to be a threat.⁴⁸ DTOs characterized as unlawful enemy combatants would not be afforded the Geneva Convention protections.⁴⁹ Rather than designating cartels as FTOs, Calderón instead utilized a “kingpin strategy” of targeting DTO bosses as conventional criminals, which proved instrumental in arresting many powerful leaders.⁵⁰ These leaders have either been extradited to the United States or held for years without a trial in Mexico.⁵¹

4. Traditional Use of Extradition

Extradition has traditionally been utilized in both Colombia and Mexico as a means of removing drug traffickers to the United States to stand trial on American soil.⁵² To traffickers, imprisonment in the United States has meant losing touch with their families and their ability to direct their criminal organizations.⁵³

⁴⁶ See *Clinton Says Mexico Drug Crime Like an Insurgency*, BBC NEWS (Sept. 9, 2010), <http://www.bbc.co.uk/news/world-us-canada-11234058>, archived at <https://perma.cc/PX7A-CVJV?type=source>.

⁴⁷ See Major Nagesh Chelluri, *A New War on America's Old Frontier: Mexico's Drug Cartel Insurgency*, 210 MIL. L. REV. 51, 58 (2011) (asserting that Mexico is engaged in a non-international armed conflict); Sanchez, *supra* note 29, at 476–77.

⁴⁸ See Chelluri, *supra* note 47, at 86–90, 94–95.

⁴⁹ See *id.*

⁵⁰ See Miroff & Booth, *supra* note 11; Havana Pura, *Kingpin Strategy*, BORDERLAND BEAT (Oct. 28, 2012), <http://www.borderlandbeat.com/2012/10/kingpin-strategy.html> archived at <http://perma.cc/PE3T-B6ZT>. A “kingpin strategy” is a DEA methodology of targeting the command-and-control elements of DTOs. Pura, *supra* note 50.

⁵¹ See Miroff & Booth, *supra* note 11.

⁵² See Melanie M. Reid, *Mexico's Crisis: When There's a Will, There's a Way*, 37 OKLA. CITY U. L. REV. 397, 408–09 (2012); Mimi Yagoub, *Mexico Unlikely to Grant U.S. Extradition Request for El Chapo*, INSIGHT CRIME (Feb. 24, 2014), <http://www.insightcrime.org/news-briefs/will-mexico-grant-the-us-extradition-request-for-el-chapo>, archived at <https://perma.cc/6ZUV-UF5P?type=source>.

⁵³ Geoffrey Ramsey, *Colombia Reassesses Policy of Drug Traffickers to US*, CHRISTIAN SCIENCE MONITOR (Apr. 9, 2012), <http://www.csmonitor.com/World/Americas/Latin-America-Monitor/2012/0409/Colombia-to-reassess-policy-of-extraditing-drug-traffickers-to-US>, archived at <https://perma.cc/52KT-QD4Z?type=source>.

The United States and Colombia approved a bilateral extradition treaty in 1979.⁵⁴ The prospect of extradition quickly became the greatest fear of Colombian cartel leaders and of Pablo Escobar, in particular.⁵⁵ As a result, the Medellín Cartel waged a campaign of fear against the Colombian government and the citizenry.⁵⁶ Colombia extradited its first four drug traffickers to Miami in 1985.⁵⁷ Days after the extradition, the United States became aware of a Medellín cartel hit list that included embassy members and their families, U.S. journalists, and businessmen.⁵⁸ Later that year, the Medellín Cartel attacked the Colombian Palace of Justice, where at least ninety-five people were killed, including eleven Supreme Court Justices in a twenty-six hour siege that destroyed all pending extradition requests by fire.⁵⁹ In response to multiple threats from traffickers, the Colombian Supreme Court annulled the extradition treaty with the United States in May of 1987.⁶⁰ In 1989, after presidential candidate Luis Carlos Galán spoke in favor of extradition, he was assassinated in Bogotá.⁶¹ In response, then-President Virgilio Barco Vargas issued an emergency decree re-establishing the policy of extradition.⁶² A subset of the Medellín Cartel called “the Extraditables” subsequently declared a bombing and murder campaign against the Colombian government that would last for two years.⁶³ In a secret vote, the Colombian as-

⁵⁴ See *Thirty Years of America's Drug War: A Chronology*, FRONTLINE, <http://www.pbs.org/wgbh/pages/frontline/shows/drugs/cron/>, archived at <https://perma.cc/742X-TGKV?type=source> [hereinafter *Thirty Years*].

⁵⁵ See Karl Penhaul, *2nd Drug Suspect Extradited: Colombia Gives U.S. a Reputed Associate of Cali Kingpins*, WASH. POST (Nov. 26, 1999), <http://www.washingtonpost.com/wp-srv/WPcap/1999-11/26/061r-112699-idx.html>, archived at <https://perma.cc/Z7LR-TJHE?type=source>; *Thirty Years*, *supra* note 54. Pablo Escobar waged a bloody campaign in response to the prospect of extradition of Colombian citizens to the United States. See Penhaul, *supra* note 55; *infra* note 54–62 and accompanying text.

⁵⁶ See Penhaul, *supra* note 55.

⁵⁷ *Thirty Years*, *supra* note 54.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ See Kevin Noblet, *Drug Lords Start 'War' in Colombia*, PHILLY.COM (Aug. 25, 1989), http://articles.philly.com/1989-08-25/news/26148906_1_finance-minister-edgard-gutierrez-drug-lords-bomb-attacks, archived at <https://perma.cc/64QU-FB63?type=source>. In their communiqué, The Extraditables state:

We declare total and absolute war on the government, on the industrial and political oligarchy, on the journalists that have attacked and ravaged us, on the judges that have sold out to the government, on the extraditing magistrates, on the presidents of the unions and all those who persecuted and attacked us . . . We won't respect the families of those who have not respected our families . . . We will burn and destroy the industries, the properties and the mansions of the oligarchies.

Id.

sembly banned extradition in a new constitution.⁶⁴ Colombia reinstated extradition in 1995.⁶⁵ President Álvaro Uribe extradited more than 1,100 Colombians to the United States during his two terms in office.⁶⁶

Extradition from Mexico to the United States remains uneven and unpredictable.⁶⁷ Under Calderón, extraditions reached historic levels with 115 suspects being sent to the United States in 2012.⁶⁸ Extraditions from Mexico decreased to a total of fifty-four in 2013.⁶⁹ Eduardo Arellano-Félix, of the Arellano-Félix Organization, was extradited to the United States in 2010 and sentenced to fifteen years in a U.S. prison for conspiracy to launder money and to use and invest illicit drug profits.⁷⁰ His two brothers, Benjamín and Francisco Javier, are also in U.S. prisons for racketeering, drug trafficking, and money laundering.⁷¹ Tension surrounding extradition between the United States and Mexico increased in August of 2013 as a result of a Mexican judge's grant of early release to former Guadalajara Cartel leader Rafael Caro Quintero—the man thought to have directed the torture and murder of U.S. Drug Enforcement Administration (DEA) agent Enrique Camarena.⁷²

DISCUSSION

A. Mexico's Mixed Inquisitorial System

Mexico's constitution originally provided for provisions resembling an accusatory model, including the incorporation of jury trials and the presumption of innocence, but the legislature failed to pass the requisite implementing laws to effectuate these provisions at the federal level.⁷³ As a result, Mexico continues to operate under a closed-door hybrid inquisitorial system lacking many of the pro-

⁶⁴ See *Thirty Years*, *supra* note 54.

⁶⁵ See Ramsey, *supra* note 53.

⁶⁶ Marguerite Cawley, *Early Release for Colombian Paramilitary in US Raises Questions About Extradition*, INSIGHT CRIME (Mar. 21, 2013), <http://www.insightcrime.org/news-briefs/early-release-colombian-paramilitary-us-raises-extradition-questions>, archived at <https://perma.cc/N7AN-MHXP?type=source>.

⁶⁷ See Yagoub, *supra* note 52.

⁶⁸ See *id.*

⁶⁹ *Id.*

⁷⁰ Erica Henry, *Eduardo Arellano-Félix, Last of 4 Brothers in Mexican Cartel, Gets 15 Years in Prison*, CNN (Aug. 20, 2013), <http://www.cnn.com/2013/08/19/justice/arellano-felix-drug-cartel-sentence/>, archived at <https://perma.cc/W7HD-23L3?type=source>.

⁷¹ See *id.*

⁷² See *U.S. Furious over Freeing of Mexican Drugs Baron Rafael Caro Quintero*, GUARDIAN, (Aug. 10, 2013), <http://www.theguardian.com/world/2013/aug/10/rafael-caro-quintero-mexico-drugs-baron>, archived at <https://perma.cc/YS5D-BAG5?type=source>.

⁷³ Gillian Reed Horton, *Cartels in the Courtroom: Criminal Justice Reform and Its Role in the Mexican Drug War*, 3 MEX. L. REV. 229, 241 (2010).

tections offered in other criminal justice systems.⁷⁴ The inconsistency between Mexico's constitutional principles and its criminal procedures continues to plague its criminal justice system as a result of this hybrid system.⁷⁵

The 1917 constitution empowered public prosecutors by investing in them complete authority for criminal proceedings.⁷⁶ Public prosecutors were thus tasked with not only bringing criminal charges, but also overseeing both the investigatory police agencies and individual investigations.⁷⁷ In making a decision, the judge would rely on a written report (a "dossier") created by the public prosecutor.⁷⁸ Evidence pertaining to the accused, like most other aspects of a case, was sealed to the public until the end of the case.⁷⁹ This unchecked power included the ability to disregard exculpatory evidence at will, with little to no external accountability.⁸⁰ Such a weakened judiciary made it difficult to question the quality of investigations in court, oftentimes eliminating the incentive to adhere to legality, and producing jurisprudential atrophy as a result.⁸¹

Although prosecutors enjoyed such unchecked power in certain respects, they lacked one vital function: prosecutorial discretion.⁸² Mexico's "principle of legality" required that, aside from rare exceptions, a prosecution would be carried out in full, to its final conclusion, once it entered the "highway" of traditional criminal procedure.⁸³ Moreover, Mexican courts did not observe a presumption of innocence in practice, despite its 1917 constitutional guarantee.⁸⁴ This presumption of guilt is applied almost exclusively to the poor, whereas the *amparo*, Mexico's habeas corpus equivalent, is often extended only to those who can afford it, such as narcotics traffickers, kidnapers, and other criminals.⁸⁵

⁷⁴ See *id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ See Zachary J. Lee, Comment, *Wrestling with Mexican Criminal Procedure: How Law Schools in the United States and Mexico Can Team Up to Rebuild Mexico's Criminal Trial*, 33 HOUS. J. INT'L L. 53, 61 (2010).

⁷⁹ See *id.* at 61.

⁸⁰ See Horton, *supra* note 73, at 242.

⁸¹ See Lee, *supra* note 78, at 61–62 (quoting Carlos Rios Espinoza, *Redesigning Mexico's Criminal Procedure: The States' Turning Point*, 15 SW. J. INT'L LAW 53, 56 (2008)).

⁸² See Matthew C. Ingram, *Criminal Procedure Reform in Mexico: Where Things Stand Now*, Woodrow Wilson Int'l Ctr. for Scholars, Mex. Inst., Jan. 2013, at 3–4, available at http://www.wilsoncenter.org/sites/default/files/Ingram_CrimProReformMexico_Jan_2013.pdf, archived at <https://perma.cc/M99T-D285?type=pdf>.

⁸³ *Id.*

⁸⁴ See Lee, *supra* note 78, at 62–63.

⁸⁵ See *id.*

B. Mexico's Constitutional Reforms

On June 18, 2008, Mexico passed judicial reforms mandating a package of changes covering all thirty-two states and the federal justice system that would effectively transition the closed-door, mixed inquisitorial process based on written arguments to an accusatorial, public trial system with oral advocacy by 2016.⁸⁶ The United States and Mexico view the implementation of these 2008 reforms as vital to their bilateral efforts under the Mérida Initiative.⁸⁷ Effectuating such judicial reforms has brought challenges, including the need to revise federal and state criminal procedure codes, to build new courtrooms, to retrain legal professionals, to update law school curricula, and to improve forensic technology.⁸⁸ Limited prosecutorial aptitude in gathering the type of evidence required to build strong cases has kept conviction rates low.⁸⁹ Survey data gathered from the Mexican public and relevant justice sector actors has provided insight as to the sentiment surrounding the reforms.⁹⁰ For example, Mexico's failure to communicate the goals of the new system to its citizenry and prepare them for new concepts such as plea-bargaining has led to a public belief that the new system is too "soft" on crime.⁹¹

The difficulty has been the ability for those trained in the inquisitorial model to learn the new procedure quickly.⁹² Victims now also have the ability to challenge, before a judicial authority, any public prosecutor who decides not to prosecute, fails to present certain evidence, or drops a criminal proceeding.⁹³ This is important because of how few crimes are ever investigated or prosecuted; even though approximately 85–90 percent of crimes brought to trial result in conviction, less than 25 percent of crimes in Mexico are actually reported.⁹⁴ The constitutional reforms also introduce a new system of rehabilitation with an em-

⁸⁶ See MAJORITY STAFF OF S. COMM. ON FOREIGN REL., 112TH CONG., REP. ON JUDICIAL AND POLICE REFORMS IN MEXICO: ESSENTIAL BUILDING BLOCKS FOR A LAWFUL SOCIETY 9 (Comm. Print 2012) [hereinafter BUILDING BLOCKS]; CLARE RIBANDO SEELKE, CONG. RESEARCH SERV., R43001, SUPPORTING CRIMINAL JUSTICE REFORM IN MEXICO: THE U.S. ROLE 10 (2013); Reid, *supra* note 52, at 397.

⁸⁷ See SEELKE, *supra* note 86, at 4.

⁸⁸ *Id.* at 16; David A. Shirk, *Drug Violence and State Responses in Mexico* 16 (Oct. 1, 2011) (paper presented at Stanford Univ., Violence, Drugs, and Governance: Mexican Security in Comparative Perspective Conference), available at http://iis-db.stanford.edu/evnts/6716/Shirk-Drug_Violence_and_State_Responses_in_Mexico.pdf, archived at <https://perma.cc/EA9C-ZBQ6?type=pdf>.

⁸⁹ See SEELKE, *supra* note 86, at 11.

⁹⁰ See *id.*

⁹¹ See *id.* at 10.

⁹² See Horton, *supra* note 73, at 246–47; *Congress Approves New Unified Criminal Code in Mexico*, JUSTICE IN MEX. PROJECT (Feb. 19, 2014), <http://justiceinmexico.org/mexican-congress-approves-new-unified-criminal-code/>, archived at <https://perma.cc/LY7T-B5NK?type=source> [hereinafter *Congress Approves*].

⁹³ See Horton, *supra* note 73, at 249.

⁹⁴ See SEELKE, *supra* note 86, at 92.

phasis on juvenile offenders.⁹⁵ Such an approach is especially significant for Mexico, because the youth serve as an interminable supply of recruits for DTOs.⁹⁶ Mexican youth often have little education and fewer employment prospects, and therefore, have no choice but to turn to DTOs.⁹⁷

Mexico's Chamber of Deputies approved a new *Código Nacional de Procedimientos Penales* (National Penal Procedures Code) on February 5, 2014.⁹⁸ The new code establishes uniformity in the application of criminal laws across Mexico's thirty-one states and Federal District.⁹⁹ Prior to the passage of this new uniform criminal code, each state had its own procedures, which served as one of the largest impediments to implementation of the 2008 reforms.¹⁰⁰ This new code standardizes procedures regarding investigations, arrests, charges, hearings, and sentencing.¹⁰¹ The professionalization of the investigative process will set clearer guidelines for granting warrants, conducting home searches, and monitoring individual communications.¹⁰² Furthermore, all procedures will be either written down or audio- or video-recorded to ensure that the chain of custody is preserved and that trials are carried out in a fair and transparent manner.¹⁰³

In 2012, the Technical Secretariat of the Interior Ministry, the body charged with overseeing the reform implementation, provided Mexican states with thirty-four million dollars in subsidies to support their efforts and catalyze reforms, which stands in stark contrast to the lack of reform implementation at the federal level.¹⁰⁴ The Mexican state of Chihuahua is the prototype for what the government hopes will become the norm across the country.¹⁰⁵ While only about twelve states, or roughly 36 percent, had begun operating under the new system as of December 2012, most of those states are on track to follow Chihuahua's lead to reach implementation.¹⁰⁶

Shortcomings in the reforms, including reluctance to use plea-bargaining and unwillingness to cooperate across law agencies, have kept conviction rates

⁹⁵ Horton, *supra* note 73, at 251.

⁹⁶ See William Booth & Steve Fainaru, *Mexican Drug Cartels Increasingly Recruit the Young*, WASH. POST (Nov. 3, 2009), <http://www.washingtonpost.com/wp-dyn/content/article/2009/11/02/AR2009110203492.html>, archived at <https://perma.cc/FS6E-YGGK?type=source>.

⁹⁷ *See id.*

⁹⁸ *Congress Approves*, *supra* note 92.

⁹⁹ *Id.*

¹⁰⁰ *See id.*

¹⁰¹ *See id.*

¹⁰² *See id.*

¹⁰³ *See id.*

¹⁰⁴ *See* SEELKE, *supra* note 86, at 8.

¹⁰⁵ *See id.*

¹⁰⁶ *Id.*

low.¹⁰⁷ Furthermore, reports indicate that because there is no re-election in Mexico at the state level, some governors refuse to invest in new court systems that will likely not be finished until they are out of office.¹⁰⁸ Other elected officials have likewise delayed implementation due to concerns that it may hurt their popularity and make them appear too soft on crime.¹⁰⁹

The 2008 constitutional reforms also include specific measures aimed at combating organized crime.¹¹⁰ Mexican federal law defines organized crime as an organization of three or more individuals whose goal is the commission of crimes in a permanent or repeated way, “as provided by the law on the matter,” a reference to Mexico’s *Ley Federal Contra La Delincuencia Organizada* (Federal Statute Against Organized Crime)(LFCDO).¹¹¹ These eleven requisite crimes include: terrorism, drug trafficking, counterfeiting, money laundering, arms trafficking, trafficking of migrants, trafficking of organs, robbery, kidnapping, trafficking of minors, and car theft.¹¹² Authorities may also initially hold those suspected of organized crime for forty days without access to legal counsel, with the possibility of extending custody for another forty days.¹¹³ This practice, known as an *arraigo*, has reportedly led to abuse by authorities.¹¹⁴ Additionally, prosecutors of organized crime do not need to introduce evidence gathered from witnesses during the investigatory phase in front of the judge or defense attorney at trial.¹¹⁵ Despite these controversial practices, which in effect limit the rights of those affiliated with organized crime for easier prosecution, such groups have begun to diversify their activities to include kidnapping, bank robbery, extortion, and other criminal activities, while continuing to grow throughout the country.¹¹⁶

¹⁰⁷ See *id.* at 11.

¹⁰⁸ See *id.* at 10.

¹⁰⁹ *Id.*

¹¹⁰ See *id.* at 6.

¹¹¹ Ley Federal Contra La Delincuencia Organizada [LFCDO] [Organized Crime Law], as amended, art. 2°, Diario Oficial de la Federación [DO], 7 de noviembre de 1996 (Mex.) [hereinafter LFCDO].

¹¹² See *id.* art. 2(1)–(2).

¹¹³ See BUILDING BLOCKS, *supra* note 86, at 11; SEELKE, *supra* note 86, at 6.

¹¹⁴ See BUILDING BLOCKS, *supra* note 86, at 11; SEELKE, *supra* note 86, at 6.

¹¹⁵ See SEELKE, *supra* note 86, at 6.

¹¹⁶ Shirk, *supra* note 88, at 2.

C. Legal Tools for Combatting Organized Crime

1. The U.S.-Mexico Extradition Treaty

Mexico and the United States signed an extradition treaty in 1978.¹¹⁷ Currently, the extradition of nationals is a discretionary matter for the Mexican government.¹¹⁸ The U.S.-Mexico Extradition Treaty provides that, if extradition is not granted on account of the nationality of the individual, the requested party shall submit the case to its competent authorities for its prosecution.¹¹⁹ Mexico's Supreme Court of Justice (SCJN) ruled in January of 2001 that the extradition of Mexican nationals is in accord with Mexico's constitution.¹²⁰ The SCJN indicated that the U.S.-Mexico Extradition Treaty grants a discretionary authority to the Mexican government upon request by the U.S. government to deliver Mexicans that committed offenses in the United States, if not prevented by Mexican laws.¹²¹ The SCJN ultimately concluded that Mexican federal law does not prohibit the extradition of Mexican nationals and that Mexican nationals may be extradited pursuant to Article 9 of the Treaty.¹²² Furthermore, Mexico does not have the death penalty; therefore, Article 8 of the Treaty stipulates that when an individual is requested for an offense that carries capital punishment, the requested party may refuse extradition unless the requesting party gives assurances that the death penalty will not be imposed.¹²³ Moreover, Article 15 permits a requested party, after granting the extradition, to defer the individual's surrender to a requesting state until the conclusion of the proceedings or the imposition of punishment for a different offense within the requested party's own state.¹²⁴

Introduction of 21 U.S.C. § 959 in the United States allowed federal prosecutors to specifically target drug traffickers living and working in foreign countries.¹²⁵ Many Title 21 drug statutes require that the offense take place within the trial district.¹²⁶ Similarly, in drug conspiracy cases, venue is only proper in a district where an overt act in furtherance of a conspiracy was committed.¹²⁷ This

¹¹⁷ Vanessa Maaskamp, Note, *Extradition and Life Imprisonment*, 25 LOY. L.A. INT'L & COMP. L. REV. 741, 744 (2003).

¹¹⁸ *See id.*

¹¹⁹ Rodrigo Labardini, *Mexico's Supreme Court Allows the Extradition of Mexican Nationals*, 17 INT'L ENFORCEMENT L. REP. 106, 108–09 (2001).

¹²⁰ *See id.*

¹²¹ *See* Maaskamp, *supra* note 117, at 745.

¹²² *See* Extradition Treaty Between the U.S. and Mex., U.S.-Mex., art. 9(1), May 4, 1978, 31 U.S.T. 5059 [hereinafter Extradition Treaty]; Maaskamp, *supra* note 117, at 745.

¹²³ Extradition Treaty, *supra* note 122, art. 8; Maaskamp, *supra* note 117, at 743–44.

¹²⁴ Extradition Treaty, *supra* note 122, art. 15.

¹²⁵ *See* Reid, *supra* note 52, at 410.

¹²⁶ *See id.*

¹²⁷ *See id.*

requires the identification of an activity connected to the conspiracy in the district where the defendant is to be charged.¹²⁸ Now, under 21 U.S.C. § 959, the U.S. Attorney's Office prosecuting the defendant no longer needs to worry about jurisdictional impediments, as long as it can be proven that a conspiracy to import drugs into the United States existed.¹²⁹ In recent years, however, this nexus with the United States element has been a source of frustration due to Mexico's increasing trafficking efforts aimed toward European markets.¹³⁰ Informants and recorded conversations now have to serve as the primary mode of proving a nexus by tying drug shipments seized in the United States to Mexican DTOs.¹³¹ During the Calderón administration, Mexico extradited record numbers of criminals to the United States.¹³² The extradition of cartel heads to the United States, while effective in the short term, has done little to strengthen Mexico's own criminal justice system.¹³³

2. The Racketeer Influenced and Corrupt Organization Act in the United States

The Racketeer Influenced and Corrupt Organization Act (RICO) has traditionally been one of the most potent governmental tools in combating organized crime.¹³⁴ The U.S. Congress passed RICO in 1970 as an inventive means of targeting a criminal organization as a whole, instead of pursuing liability only against its individual members.¹³⁵ The statute strengthened law enforcement's evidence-gathering apparatus, included harsher criminal punishments, and introduced civil remedies, such as asset forfeiture, for those engaged in organized crime.¹³⁶

RICO is a complex and unique statute because of its incorporation of both a criminal offense and a civil cause of action.¹³⁷ A RICO action necessitates proof that a defendant, "through the commission of two or more acts constituting a pattern of racketeering activity, directly or indirectly invested in, or maintained

¹²⁸ See *id.* at 410–11.

¹²⁹ See *id.* at 410.

¹³⁰ See *id.* at 411.

¹³¹ See *id.*

¹³² See SEELKE, *supra* note 86, at 3.

¹³³ See Martinez, *supra* note 15, at 11.

¹³⁴ See Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961–1968 (2013); *Organized Crime: Italian Organized Crime*, FED. BUREAU INVESTIGATION, http://www.fbi.gov/about-us/investigate/organizedcrime/italian_mafia (last visited Mar. 31, 2014), archived at <https://perma.cc/X6FD-7HJE?type=source> [hereinafter FBI].

¹³⁵ See Mike Cormaney, Note, *RICO in Russia: Effective Control of Organized Crime or Another Empty Promise?*, 7 TRANSNAT'L L. & CONTEMP. PROBS. 261, 276 (1997).

¹³⁶ See *id.* at 276, 304.

¹³⁷ See *id.* at 287, 300.

an interest in, or participated in, an enterprise, the activities of which affected interstate or foreign commerce.”¹³⁸ Prosecutors, therefore, have to prove each individual element, comprising of: “(1) the commission of two or more acts of ‘racketeering activity,’ (2) a pattern, (3) an enterprise, (4) an effect on interstate commerce, and (5) that the accused act is prohibited.”¹³⁹ The statute does not generate any new criminal offense, but simply heightens the punishments for members of a criminal organization who commit certain predicate crimes.¹⁴⁰ Compound liability punishes organized crime more severely because it is more likely to cause harm to society.¹⁴¹ Penalties include fines in proportion to the harm imposed, such as criminal forfeiture, and prison sentences of up to twenty years—sentences are significantly more severe than those levied for each individual predicate offense.¹⁴²

RICO created several new legal concepts such as “racketeering activity,” “pattern” of racketeering activity, and “enterprise.”¹⁴³ Conventional state crimes such as murder, kidnapping, and robbery, as well as an array of white-collar offenses including financial institution fraud, money laundering, and immigration fraud all serve as “racketeering activity,” as listed under Section 1961(1) of RICO.¹⁴⁴ The Supreme Court stipulated that racketeering acts must be related to each other and demonstrate continuity to operate as a pattern.¹⁴⁵ The statute further states that “any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity” constitute an enterprise.¹⁴⁶

The concept of enterprise liability is particularly important to combat organized crime.¹⁴⁷ In typical organized crime groups, there would be several diverse types of isolated agreements, but no commonly shared criminal objective.¹⁴⁸ Due to this lack of a shared agreement, a group could be prosecuted only for several smaller schemes, as opposed to a larger overarching conspiracy.¹⁴⁹ Common

¹³⁸ Larry D. Newman, *RICO and the Russian Mafia: Toward a New Universal Principle Under International Law*, 9 IND. INT'L. & COMP. L. REV. 225, 231 (1998).

¹³⁹ See *id.* at 241–42.

¹⁴⁰ See Cormaney, *supra* note 135, at 281.

¹⁴¹ See *id.*

¹⁴² See *id.* at 288.

¹⁴³ 18 U.S.C. § 1961(1), (4)–(5) (2013); see Pamela Bucy Pierson, *RICO Trends: From Gangsters to Class Actions*, 65 S.C. L. REV. 213, 217 (2013).

¹⁴⁴ 18 U.S.C. § 1961(1), (4)–(5) (2013); see Pierson, *supra* note 143, at 217.

¹⁴⁵ See Pierson, *supra* note 143, at 217–18. (referring to *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 230 (1989), where the Supreme Court held that Congress intended that prosecutors prove a “pattern of racketeering activity” by showing both “relationship” and continuity.”).

¹⁴⁶ 18 U.S.C. § 1961(4) (2013); see Pierson, *supra* note 143, at 218.

¹⁴⁷ See Cormaney, *supra* note 135, at 294; Newman, *supra* note 138, at 241.

¹⁴⁸ See Cormaney, *supra* note 135, at 294.

¹⁴⁹ See *id.*

models such as chain and wheel conspiracies are ineffective in taking down an entire criminal organization where it is difficult to infer a common objective between seemingly unrelated criminals.¹⁵⁰ Thus, the introduction of enterprise liability allowed an agreement to participate in the affairs of a criminal enterprise by committing two predicate acts of racketeering activity to further the goals of the enterprise to form a basis for liability.¹⁵¹

Mexico currently has in place what experts refer to as a pseudo-RICO statute.¹⁵² Mexico's organized crime statute, the LFCDO, defines organized crime as three or more individuals organized permanently or repeatedly to try and commit one of the following eleven crimes: terrorism, drug trafficking, counterfeiting, money laundering, arms trafficking, trafficking of migrants, trafficking of organs, robbery, kidnapping, trafficking of minors, and car theft.¹⁵³

3. Potential Classification of Drug Trafficking Organizations as Foreign Terrorist Organizations

Many academics and government officials have considered redefining the Mexican drug trafficking issue as a "non-international armed conflict" (NIAC) by characterizing DTOs as "Foreign Terrorist Organizations," thus subjecting them to the laws of armed conflict.¹⁵⁴ The post-World War II Geneva Conventions regulate armed conflicts between states in an effort to prevent unnecessary and unwarranted suffering.¹⁵⁵ Common Article 3, so named because of its inclusion in all four Geneva Convention treaties, provides minimum protections to combatants engaged in conflicts "not of an international character occurring in the territory of one of the High Contracting Parties."¹⁵⁶ While Article 3 does not

¹⁵⁰ See *id.* 283–84. A chain conspiracy occurs where a successful completion of the criminal end-goal depends upon every member of the group fulfilling their role and where each link of the chain understands that success of the conspiracy depends on everyone in the chain. See *United States v. Elliot*, 571 F.2d 880, 901 (5th Cir. 1978). Wheel conspiracies exist when there is one individual at the center of the wheel conspiring with various other individuals who serve as the "spokes." See *United States v. Chandler*, 388 F.3d 796, 808 (11th Cir. 2004). The co-conspirators must have knowledge of the goal of the conspiracy, and of the other "spokes" of the wheel in order to be held liable for each other's actions. See *id.*

¹⁵¹ See Cormaney, *supra* note 135, at 294.

¹⁵² Rodrigo Labardini, *Mexico's Organized Crime Act*, 11 Mex. L.J. 133, 147 (2003).

¹⁵³ See LFCDO, *supra* note 111, art. 2; Labardini, *supra* note 152, at 140.

¹⁵⁴ See Sanchez, *supra* note 29, at 476–79.

¹⁵⁵ See Chelluri, *supra* note 47, at 72.

¹⁵⁶ *Id.*; see Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31 [hereinafter Geneva Convention I]; Geneva Convention for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea, Aug. 12, 1949, 6 U.S.T. 3217, 75 U.N.T.S. 85 [hereinafter Geneva Convention II]; Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3216, 75 U.N.T.S. 135 [hereinafter Geneva Convention III]; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S.

provide concrete conditions necessary to determine what constitutes an NIAC, its drafting history and commentary detail several considerations that would permit an application of international law.¹⁵⁷ Similarly, Additional Protocol II was created in 1977 to supplement protection for those suffering within NIACs, and applies to NIACs that “take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups.”¹⁵⁸ Article 3 is often interpreted as demanding a higher level of violence before qualifying a conflict as an NIAC.¹⁵⁹ This higher threshold, and its explicit exclusion of internal disturbances such as “acts of public disorder accompanied by acts of violence,” has led to the view that conditions need to reach a level of almost total civil war in order for the Protocol to apply.¹⁶⁰

The jurisprudence of the International Criminal Tribunal for the former Yugoslavia (ICTY) further clarified definitional fissures regarding armed conflicts

287 [hereinafter Geneva Convention IV]. Common Article 3 appears verbatim in all four Geneva Conventions, stating,

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in hostilities, including members of armed forces who have laid down their arms and those placed ‘hors de combat’ by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) taking of hostages

(c) outrages upon personal dignity, in particular humiliating and degrading treatment;

(d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized people.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavor to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

See Geneva Convention I, *supra* note 156; Geneva Convention II, *supra* note 156; Geneva Convention III, *supra* note 156; Geneva Convention IV, *supra* note 156.

¹⁵⁷ See Sanchez, *supra* note 29, at 479.

¹⁵⁸ See Chelluri, *supra* note 47, at 72–73.

¹⁵⁹ See Sanchez, *supra* note 29, at 480.

¹⁶⁰ See *id.*

left by the aforementioned international agreements.¹⁶¹ The ICTY, in *Prosecutor v. Tadic*, provided a broader definition of armed conflict than Additional Protocol II, concluding that an armed conflict exists whenever “there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups within a State.”¹⁶² Other factors to consider include the intensity of the violence, the number of forces, and the types of forces involved in the conflict.¹⁶³

The Additional Protocol II also provides three elements that should be considered to determine the classification of armed groups: (1) territorial control, (2) responsible military command capable of executing a sustained military campaign, and (3) the ability to implement the Protocol.¹⁶⁴ When read in conjunction with ICTY interpretations, additional considerations such as the ability to plan and execute troop movements and logistics, as well as the ability to speak with one voice and negotiate agreements, also become determining factors.¹⁶⁵ Drafting documents of Common Article 3 further indicate that for an NIAC to exist, parties would have “an organization purporting to have the characteristics of a State,” and indications of an intent to be bound by the Convention itself.¹⁶⁶

Historically, international law has arranged armed challenges to a state into three distinct stages, depending on their level of violence and intensity: rebellions, insurgencies, and belligerencies.¹⁶⁷ Rebellions form the lowest threat in the hierarchy, often characterized by localized and weak uprisings that the state can suppress with its local or national police force and its domestic laws.¹⁶⁸ Insurgencies, marked by an escalation in violence against the state’s authority, are adequately organized and provide a meaningful threat against the state’s legitimacy.¹⁶⁹ Finally, the recognition of an insurgent group as a belligerent party entitles both the insurgent group and the state to recognize the existence of an international armed conflict, thus triggering international laws and constraint.¹⁷⁰

U.S. Army Field manual 3-24, *Counterinsurgency*, describes the goal of insurgencies is to break away from state control and form an autonomous entity or ungoverned space that it controls.¹⁷¹ Moreover, insurgencies comprise of five

¹⁶¹ See Chelluri, *supra* note 47, at 75.

¹⁶² See *Prosecutor v. Tadic*, Case No. IT-94-1-I, Decision on Defence Motion for Interlocutory Appeal on Jurisdiction, ¶ 70 (Int’l Crim. Trib. for the Former Yugoslavia Oct. 2, 1995); Sanchez, *supra* note 29, at 480.

¹⁶³ See Chelluri, *supra* note 47, at 78–79.

¹⁶⁴ Sanchez, *supra* note 29, at 484.

¹⁶⁵ See *id.*

¹⁶⁶ See *id.*

¹⁶⁷ See Chelluri, *supra* note 47, at 78.

¹⁶⁸ See *id.*

¹⁶⁹ See *id.* at 52–53; Sanchez, *supra* note 29, at 502–03.

¹⁷⁰ See Chelluri, *supra* note 47, at 79.

¹⁷¹ U.S. DEP’T OF ARMY, FIELD MANUAL 3-24, COUNTERINSURGENCY 1–5 (Dec. 2006).

elements: (1) movement leaders, (2) combatants, (3) political cadre, (4) auxiliaries, and (5) a mass base.¹⁷² A characterization of Mexican DTO members as insurgents within an NIAC could necessitate a determination of their legal status as cartel fighters.¹⁷³ Article 5 of the third Geneva Convention dictates that “such persons shall enjoy the protection of the present convention until such time as their status has been determined by a competent tribunal.”¹⁷⁴ Such tribunals aid in determining who are lawful combatants deserving of Convention protections and who are offenders to be punished under the domestic laws of the capturing state.¹⁷⁵ United States Army Regulation (AR) 190-8 provides rules and protections for those denied POW status in traditional international armed conflicts, stating that “a competent tribunal shall determine the status of any person not appearing to be entitled to prisoner of war status who has committed a belligerent act or has engaged in hostile activities.”¹⁷⁶ An NIAC designation could permit the Mexican government to label cartel members as unlawful enemy combatants and hold them in more secure military quarters for the duration of the conflict, or until the Mexican government determines that the cartels cease to be a threat.¹⁷⁷ In Guantanamo Bay, for example, enemy fighters not belonging to a traditional state armed force are considered unlawful enemy combatants, are not afforded Geneva Convention protections, and may be placed before Combatant Status Review Tribunals (CSRT), which parallel the United States Army Regulation (AR) 190-8 tribunal for POWs.¹⁷⁸

The Mexican government recently incorporated armed civilian groups into the fight against DTOs.¹⁷⁹ The government reached an agreement with vigilante leaders to integrate an estimated twenty thousand armed civilian group members into quasi-military units called the Rural Defense Corps.¹⁸⁰ Mexican law enforcement and its military have unofficially allowed such groups to organize and act in the past, and in some cases, have even worked with these

¹⁷² *Id.* at 1–59.

¹⁷³ See Chelluri, *supra* note 47, at 94–95.

¹⁷⁴ Geneva Convention III, *supra* note 156, art. 5; see Chelluri, *supra* note 47, at 92.

¹⁷⁵ Chelluri, *supra* note 47, at 92.

¹⁷⁶ U.S. DEP’T OF ARMY, ARMY REGULATION 190-8, ENEMY PRISONERS OF WAR, RETAINED PERSONNEL, CIVILIAN INTERNEES AND OTHER DETAINEES 1–6(b) (Oct. 1, 1997).

¹⁷⁷ See Chelluri, *supra* note 47, 94–95.

¹⁷⁸ See *id.* at 93.

¹⁷⁹ See E. Eduardo Castillo & Mark Stevenson, *Mexico Just Legalized Vigilantism and Then Captured a Huge Cartel Leader*, BUS. INSIDER (Jan. 27, 2014), <http://www.businessinsider.com/mexico-legalized-vigilantes-arrests-knights-templar-drug-cartel-2014-1>, archived at <https://perma.cc/9FXJ-P9TQ?type=source>.

¹⁸⁰ See *id.*; *Firmen los Gobiernos de la Republica y de Michoacan y Grupos Ciudadanos Acuerdo para que Estos se Integren la Vida Institucional*, PRESIDENCIA DE LA REPÚBLICA MÉXICO (Jan. 27, 2014), <http://www.presidencia.gob.mx/articulos-prensa/firman-los-gobiernos-de-la-republica-y-de-michoacan-y-grupos-ciudadanos-acuerdo-para-que-estos-se-integren-a-la-vida-institucional/>, archived at <https://perma.cc/G4UR-Y2EV?type=source> [hereinafter *Firmen los Gobiernos*].

vigilantes, many of whom are armed with assault rifles, weaponry civilians are not normally permitted to carry.¹⁸¹ Per the agreement, these units will be temporary, under the control of the authority pursuant to provisions applicable, and will have to submit a list of their members to the Mexico's Ministry of National Defense.¹⁸² These provisions ensure that the government can provide oversight of the groups and can dismantle them once security in the area is established.¹⁸³ In addition, the Rural Defense Corps must register their weapons with the Mexican military in order to carry them lawfully.¹⁸⁴ The military has agreed to give the Rural Defense Corps all necessary means for communications, operations, and movement to aid the localized self-defense forces in their struggle against the Knights Templar.¹⁸⁵ Other Latin American countries, such as Guatemala, Peru, and Colombia, have had negative experiences with such legally-recognized groups causing human rights atrocities in the past.¹⁸⁶

II. ANALYSIS

Currently, Mexico's only option for dismantling drug trafficking organizations is through extradition.¹⁸⁷ The country, while it is progressing, still does not have an adequate judicial apparatus in place to investigate, prosecute, and dismantle Joaquín "El Chapo" Guzmán and the Sinaloa Cartel.¹⁸⁸ The arrest of Guzmán demonstrates Mexico's ability to hunt down and capture one of the world's most powerful and elusive drug trafficker.¹⁸⁹ Any misstep, however, in either his handling or the prosecution of his case would effectively end the Mexican criminal reform experiment.¹⁹⁰ This is not to say that extradition is, or should be, Mexico's long-term solution to its pervasive drug cartel threat.¹⁹¹ While a kingpin-extradition strategy reduced the extreme cartel-related violence

¹⁸¹ See Castillo & Stevenson, *supra* note 179.

¹⁸² See *Firmen los Gobiernos*, *supra* note 180.

¹⁸³ See *id.*

¹⁸⁴ See *id.*

¹⁸⁵ See Castillo & Stevenson, *supra* note 179.

¹⁸⁶ See *id.*

¹⁸⁷ See Joaquín "El Chapo" Guzmán Formally Charged in Mexico, Likely Slowing Extradition to U.S., CBS NEWS (Feb. 24, 2014), <http://www.cbsnews.com/news/joaquin-el-chapo-guzman-formally-charged-in-mexico-likely-slowing-extradition/>, archived at <https://perma.cc/35C7-8GP3?type=source> [hereinafter *Guzmán Formally Charged*].

¹⁸⁸ See Martínez, *supra* note 15.

¹⁸⁹ See Catherine E. Shoichet, Evan Perez & Brian Todd, 'El Chapo' Guzmán: How the World's Most Wanted Drug Lord Was Finally Busted, CNN (Feb. 24, 2014), <http://www.cnn.com/2014/02/23/world/americas/el-chapo-capture/>, archived at <https://perma.cc/CB4F-5HYA?type=source>; *The World's Most Powerful People: No. 67 Joaquín Guzmán Loera*, FORBES, <http://www.forbes.com/profile/joaquin-guzman-loera/> (last visited Mar. 31, 2014), archived at <https://perma.cc/T669-MHS5?type=source> [hereinafter *World's Most Powerful People*].

¹⁹⁰ See Editorial, *supra* note 20; Helman, *supra* note 4; Martínez, *supra* note 15.

¹⁹¹ See Martínez, *supra* note 15.

in Colombia, it has since proved damaging to Colombia's judiciary in the long term.¹⁹² The extradition of Colombian cartel kingpins left Colombia's justice system relatively impotent and dependent on the United States, resulting in an inability of Colombian prosecutors to handle complex drug-trafficking cases.¹⁹³ For this reason, Mexico must continue to implement its 2008 criminal justice reforms and transition its judiciary to a more transparent and efficient end.¹⁹⁴

A. Mexican Investigative and Prosecutorial Capability

1. The Status of Mexico's Criminal Procedure Reforms

The judicial reforms of 2008 mandated changes covering all thirty-two states and the federal justice system, effectively transitioning Mexico's closed-door, variegated inquisitorial process based on written arguments, to an accusatorial, public trial system with oral advocacy.¹⁹⁵ These judicial reforms, however, initially faced severe criticism due to inadequate resources and a lack of requisite implementing legislation.¹⁹⁶ On February 5, 2014, however, Mexico's Chamber of Deputies approved a new *Código Nacional de Procedimientos Penales* (National Penal Procedures Code) (CNPP), serving as the necessary supplementary legislation to the 2008 reforms.¹⁹⁷ The CNPP establishes a uniform application of criminal laws across Mexico's thirty-one states and Federal District.¹⁹⁸ These reforms will help make Mexico's judicial sector more transparent and accountable.¹⁹⁹ The concept of orality within the accusatorial system is "inextricably linked with principles of immediacy, publicity, contradiction" and transparency, which are vital when attempting to battle corruption and organized crime.²⁰⁰ Moreover, the reforms will bring about a greater demand for the professionalization of law enforcement and public prosecutors, which will also help address Mexico's human rights abuses and corrupt judicial sector.²⁰¹

Implementation of judicial reform in the Mexican state of Chihuahua has taken roughly two-and-a-half years from beginning to end due to its early adoption of a criminal procedure code and related reforms.²⁰² Chihuahua, ac-

¹⁹² See Juan Forero, *U.S. Faces Criticism over Extraditing Minor Colombian Drug-Trafficking Suspects*, WASH. POST (July 31, 2009), <http://www.washingtonpost.com/wp-dyn/content/article/2009/07/30/AR2009073003808.html>, archived at <https://perma.cc/5CNB-XBGB?type=source>.

¹⁹³ See *id.*

¹⁹⁴ See *id.*

¹⁹⁵ See *Congress Approves*, *supra* note 92; Reid, *supra* note 52, at 404.

¹⁹⁶ See Shirk, *supra* note 88, at 16.

¹⁹⁷ See *Congress Approves*, *supra* note 92.

¹⁹⁸ *Id.*

¹⁹⁹ See Shirk, *supra* note 88, at 16.

²⁰⁰ See Horton, *supra* note 73, at 234, 240; Ingram, *supra* note 82, at 4.

²⁰¹ See Shirk, *supra* note 88, at 16.

²⁰² See SEELKE, *supra* note 86, at 8–9.

ording to a Wilson Center survey, ranks as the most effective Mexican state at implementing the reforms and has been recommended as an example of best practices to be used by the Unified Code.²⁰³ The state of Chihuahua found that its goals of efficient, transparent, and equitable justice in dealing with overwhelming numbers of cases had other benefits such as the faster resolution of the city's minor cases.²⁰⁴ This faster resolution of minor cases, many of which took months, even years to cycle through under the old inquisitorial model, freed up government resources to attack more serious issues.²⁰⁵ Such resolution of cases has been possible through the city's new Center for Alternative Justice, which has used mediation to resolve 80 percent of its cases since its creation.²⁰⁶

Article 20 of the amended Mexican constitution, in particular, fosters an accusatory and oral atmosphere in the new public trial process, including the confrontation and cross-examination of witnesses.²⁰⁷ The Mexican federal government needs to fully replace the written dossier with public trials for determining guilt, in order to take decisions out of the private office and into the courtroom, and provide an opportunity to engage in live argument and cross examination.²⁰⁸ Furthermore, Article 20 of the constitution now requires that judges unfamiliar with the case provide an impartial view of the evidence.²⁰⁹ Rather than receiving the public prosecutor's summation of the evidence, the judges will see the evidence presented during proceedings.²¹⁰ Those trained in the inquisitorial model have had a difficult time learning the new procedure quickly.²¹¹ The judiciary and other relevant actors must be patient and willing to accept such challenges inherent in such a transition.²¹² American courts, prosecutors, and law enforcement officials had similar difficulties when learning how to utilize the Racketeer Influenced and Corrupt Organization Act (RICO) when it first emerged in

²⁰³ See Douglas Keillor & Javier Carrasco Solis, *High Stakes in Mexico's Choice on Justice System Reform*, OPEN SOC'Y FOUND. (Mar. 22, 2013), <http://www.opensocietyfoundations.org/voices/high-stakes-mexico-s-choice-justice-system-reform>, archived at <https://perma.cc/W4KQ-77PM?type=source>.

²⁰⁴ Horton, *supra* note 73, 261.

²⁰⁵ *Id.*

²⁰⁶ *See id.* at 261–62.

²⁰⁷ *Id.* at 246.

²⁰⁸ *See id.*

²⁰⁹ *See id.* at 247.

²¹⁰ *See id.*

²¹¹ *See id.*

²¹² *See* Cormaney, *supra* note 135, at 287 (explaining that even U.S. prosecutors encountered difficulties in utilizing the RICO statute when it first came into effect).

1970.²¹³ It was not until decades after its introduction as a legitimate tool to combat organized crime that it was adequately and correctly utilized.²¹⁴

Mexico's judicial enforcement capability and corruption woes have been promulgated by reports of cartel leaders enjoying plasma televisions, prostitutes, and other amenities while in prison.²¹⁵ Osiel Cardenas Guillen, known as "El Mata Amigos" or "Friend Killer," continued to run the Gulf Cartel's multi-billion dollar enterprise in the northern state of Tamaulipas while confined in the Mexican prison in Altiplano.²¹⁶ Sandra Avila Beltran, the "Queen of the Pacific," received Botox injections while confined to a maximum-security prison, while Joaquín Guzmán was smuggled out of Puente Grande prison in a laundry truck.²¹⁷ Cardenas, unlike Guzmán, was captured in Matamoros amid gunfire and grenade explosions in 2003, but many experts claim his true descent did not occur until his 2007 extradition to the United States.²¹⁸ Mexican officials at the time claimed that it was not until Cardenas was extradited that the Gulf Cartel began to break up.²¹⁹

Public exposure will place judges and attorneys under greater scrutiny.²²⁰ Such transparency will discourage corrupt practices.²²¹ This will serve to incentivize the judiciary to accept their new role and to foster a more acceptable standard for their courtrooms.²²² Judges will now have a stake in the system, motivated by their new role as conciliators of the public good, rather than as anonymous civil servants operating outside of community inquiry.²²³ Chihuahua, for example, has set a significant precedent by recording proceedings in an effort to cultivate oversight, dissuade corruption, and encourage professionalism.²²⁴ The ability of victims to challenge any public prosecutor who decides not to prosecute, fails to present certain evidence, or drops a criminal proceeding will also depress the current perversion of the criminal justice system.²²⁵ Less than 25 percent of crimes in Mexico are reported, and of those reported, few are ever

²¹³ See *id.*

²¹⁴ See Cormaney, *supra* note 135, at 287, 300; FBI, *supra* note 134.

²¹⁵ Jazmine Ulloa, *How (Not) to Deal with Drug Kingpins*, CRIME REPORT (Oct. 13, 2011), <http://www.thecrimereport.org/news/inside-criminal-justice/2011-10-how-not-to-deal-with-drug-kingpins>, archived at <https://perma.cc/G6TD-LHHQ?type=source>.

²¹⁶ See *id.*

²¹⁷ See *id.*

²¹⁸ See *id.*; Martinez, *supra* note 15.

²¹⁹ See Ulloa, *supra* note 215.

²²⁰ See Horton, *supra* note 73, at 248; Ulloa, *supra* note 215.

²²¹ See Horton, *supra* note 73, at 248.

²²² See *id.*

²²³ See *id.*

²²⁴ See *id.*

²²⁵ See *id.* at 249.

probed and prosecuted.²²⁶ This suggests that only small proportions of the country's crimes are genuinely addressed.²²⁷ Public attendance and the recording of criminal proceedings, in conjunction with a victim's ability to challenge a prosecutor's discretion, provide new means of accountability that will foster public trust in the system, which is essential if Mexico hopes to establish a functioning and effective criminal justice system.²²⁸

A successful prosecution of a high-profile cartel leader within Mexico, such as Guzmán, would garner much media attention, providing an opportunity for Mexican citizens to learn not only about the criminal justice transformation, but also about the benefits of foreign concepts like plea-bargaining.²²⁹ Failure to convey the benefits of the new system to the Mexican people may undermine public buy-in.²³⁰ Recent survey data gathered from the Mexican citizenry reveals the need for more public awareness about why the reforms were enacted and what positive changes they are designed to produce.²³¹ The data suggests that the public is less concerned about safeguarding the rights of the accused and more interested in punishing the guilty.²³² Seventy-four percent of the polling public also indicated that they have little to no faith in the criminal justice system, exemplifying the uphill battle that Mexico faces.²³³ Eighty-nine percent of the surveyed population in fact knew nothing of the 2008 judicial reforms; but when told about some key elements of the reforms, such as oral trials, eighty percent expressed optimism and a renewed hope in the judicial system.²³⁴

Additionally, continued U.S. assistance and funding provided for judicial reform through the Mérida Initiative is conditioned upon the Mexican government's prioritization of its criminal justice reforms.²³⁵ A Mexican commitment to successfully prosecuting Guzmán, by extradition to the United States, would demonstrate the necessary political will and dedication to reform implementation that the United States requires for their continued support of the Mérida Initiative.²³⁶ U.S. technical assistance and training is vital to expediting the reform process.²³⁷

²²⁶ See SEELKE, *supra* note 86, at 2.

²²⁷ *See id.*

²²⁸ See SEELKE, *supra* note 86, at 2; Horton, *supra* note 73, at 248.

²²⁹ See SEELKE, *supra* note 86, at 10; Helman, *supra* note 4; Martinez, *supra* note 15.

²³⁰ See SEELKE, *supra* note 86, at 10.

²³¹ *See id.*

²³² *See id.* at 11.

²³³ *See id.*

²³⁴ *See id.*

²³⁵ See SEELKE & FINKLEA, *supra* note 37, at 17–18.

²³⁶ *See id.*

²³⁷ *See id.* at 6.

2. Mexico's Pseudo-RICO Federal Organized Crime Act

Mexico's federal organized crime statute, *Ley Federal Contra la Delincuencia Organizada* (LFCDO), in conjunction with the 2008 reforms, now allows Mexican law enforcement agencies to fashion new methods of collaboration with cross-border U.S. agents.²³⁸ Wire-tapping and alternative exits, such as plea-bargaining and reparative agreements, have also been introduced, which allow prosecutors more instruments for acquiring confessions and valuable informants.²³⁹ Informants and wiretaps played a large role in the capture of Joaquín "El Chapo" Guzmán.²⁴⁰ A number of arrests of Sinaloa Cartel members prior to Guzmán's arrest provided useful informants and phones from which to gather intelligence.²⁴¹ Five wiretaps yielded valuable intelligence about Guzmán—four by the DEA and one by U.S. Customs and Enforcement.²⁴²

Given its inexperience in these investigative and prosecutorial techniques, Mexico does not have the same ethos as the United States in regards to devastating enforcement of drug trafficking and organized crime laws.²⁴³ Mexico's current inexperience in prosecutorial techniques, like plea-bargaining and the direction of complex trafficking investigations, will likely cause Mexico to flounder this opportunity not only to bring Guzmán to justice, but also to learn vital information about the Sinaloa Cartel.²⁴⁴ Moreover, Mexico's reformed pseudo-RICO legislation, the LFCDO, has blatant shortcomings, particularly when utilized against such high-profile leaders.²⁴⁵ Mexico's LFCDO does not include the predicate crimes of murder or extortion, and thus does not enable prosecutors to hold Guzmán liable for either crime.²⁴⁶ Despite these limitations, Mexico is on the right track to becoming a self-sustaining judicial system that is free of corruption.²⁴⁷ Mexico's new authorization to use such tactics will enable it to contribute more in its cooperation with the United States and will provide it with the ability to conduct its own comprehensive investigations in the future.²⁴⁸

²³⁸ See Labardini, *supra* note 152, at 140.

²³⁹ See *id.*

²⁴⁰ See Shoich et al., *supra* note 189.

²⁴¹ See *id.*

²⁴² See *id.*

²⁴³ See Guzmán *Formally Charged*, *supra* note 187.

²⁴⁴ See Labardini, *supra* note 152, at 140; Anahi Rama, *Mexico Kingpin Guzmán Seeks to Block U.S. Extradition*, REUTERS (Feb. 24, 2014), available at <http://www.reuters.com/article/2014/02/24/us-mexico-drugs-usa-idUSBREA1N1XZ20140224>, archived at <https://perma.cc/MXW7-ADKY?type=source>.

²⁴⁵ See LFCDO, *supra* note 111, art. 2(1)–(2); Rama, *supra* note 244.

²⁴⁶ See Rama, *supra* note 244.

²⁴⁷ See Martinez, *supra* note 15.

²⁴⁸ See *id.*

B. Mexico Is Not Colombia: Mischaracterizing the Threat

Modern comparisons between Mexico and Colombia fail to highlight key differences between the two countries that are crucial to analyzing current methods of combating DTOs in Mexico.²⁴⁹ Colombia's problems resulted from power vacuums that were accelerated by an upsurge of non-state actors, including paramilitary and guerilla forces, which eventually led to the establishment of the Medellín Cartel's power.²⁵⁰ It was the presence of these politically motivated guerilla forces, rather than traditional organized crime, that necessitated focus by the Colombian government's militarized "counter-insurgency" efforts.²⁵¹ Unlike in Mexico, Colombia's DTOs were enmeshed in politically motivated battlegrounds between non-state actors where guerillas and paramilitaries were the primary contributors to the violence.²⁵² Murders in Mexico, on the other hand, are primarily carried out by DTOs to convey messages to adversaries, law enforcement, and the citizenry, and are devoid of any political agenda.²⁵³ The ultimate goal for DTOs is money, not sovereignty.²⁵⁴

Dismantling profit-motivated DTOs is not the same as combating politically motivated guerilla insurgencies.²⁵⁵ Breaking up an insurgent group may lower morale and encourage desertion or surrender.²⁵⁶ Fracturing a DTO cuts standards of entry for fresh criminal organizations seeking to broaden their market influence, thus providing opportunities for inferior leaders to rise to the top of the organization.²⁵⁷ Both of these outcomes result in violence and bloodshed, whether through infighting or externalized territorial seizures.²⁵⁸ The most common metaphor used to describe such kingpin removal policies is the hydra: cut off one head and another grows right back.²⁵⁹ Moreover, Colombia, in conjunction with the United States, placed military and special forces troops on the ground to address a drug problem largely based on production, which could be combatted through eradication efforts.²⁶⁰ Mexico, on the other hand,

²⁴⁹ See Cote-Munoz, *supra* note 26.

²⁵⁰ *See id.*

²⁵¹ *See id.*

²⁵² *See id.*

²⁵³ *See id.*

²⁵⁴ Ken Ellingwood, *Why Mexico Is Not the New Colombia When It Comes to Drug Cartels*, L.A. TIMES (Sept. 25, 2010), <http://articles.latimes.com/2010/sep/25/world/la-fg-mexico-colombia-20100926>, archived at <https://perma.cc/6MQ6-DGSG?type=source>.

²⁵⁵ See Sanchez, *supra* note 29, at 503.

²⁵⁶ See Sanho Tree, *Colombia Is No Model for Mexico's Drug War*, BORDERLAND BEAT (Mar. 22, 2011), <http://www.borderlandbeat.com/2011/03/colombia-is-no-model-for-mexicos-drug.html>, archived at <https://perma.cc/K3QX-WMDQ?type=source>.

²⁵⁷ *See id.*

²⁵⁸ *See id.*

²⁵⁹ See Ulloa, *supra* note 215.

²⁶⁰ See Mejia, *supra* note 25, at 21.

is a problem of dismantling distribution networks, which does not lend itself as cleanly to a Colombia-style military role.²⁶¹ Mexico must instead attack these corporate DTOs with traditional law enforcement investigative techniques and targeted legislation such as its own Federal Organized Crime Act.²⁶²

Mexico is not facing an insurgency.²⁶³ Characterizing the Mexican drug trafficking problem with such doom-laden depictions serves to misdiagnose the underlying issues and leads to derisory and inapposite strategy.²⁶⁴ Felipe Calderón failed to realize the differences between Colombia and Mexico, and thus incorrectly, albeit not entirely negligently, used the Colombian example as justification for his militarized kingpin approach in his own country.²⁶⁵ Calderón's extradition and kingpin strategy largely failed because he did not satisfactorily evolve other necessary governmental functions in tandem, including a professionalized federal police, criminal procedure reform, and the institution of legal weapons to combat organized crime.²⁶⁶

Equally significant, high-profile drug leaders comparable to Pablo Escobar have avoided his example.²⁶⁷ High profile drug traffickers, like Escobar in Colombia, were more likely to be targeted by the state due to their public extravagance.²⁶⁸ Mexican cartel leaders, including Joaquín "El Chapo" Guzmán, learned a valuable lesson from Escobar's individual decadence and megalomania, preferring to focus on their business acumen.²⁶⁹ For example, Guzmán's actions and leadership of the Sinaloa Cartel was not evident to law enforcement for years.²⁷⁰ Mexican DTOs now solely rely "on corruption as good business, delegation over micromanagement, and the franchising of their operations."²⁷¹ As a result, Mexican cartels no longer profit solely from drugs, but now benefit from other associated activities such as kidnapping, extortion, and human trafficking as part of their profit base.²⁷²

Although the extradition of Mexican cartel leaders to U.S. courts may result in immediate headlines, it is unsustainable in the long run due to the splintering of these leaderless organizations into more violent offshoots and the incompetence of the Mexican government in handling large, complex drug traf-

²⁶¹ See Tree, *supra* note 256.

²⁶² See Horton, *supra* note 73, at 251; Labardini, *supra* note 152, at 140; Shirk, *supra* note 88, at 2; Tree, *supra* note 256.

²⁶³ Shirk, *supra* note 88, at 6.

²⁶⁴ See *id.*

²⁶⁵ See Shirk, *supra* note 88, at 10–11; Ulloa, *supra* note 215.

²⁶⁶ See Forero, *supra* note 192.

²⁶⁷ See Cote-Munoz, *supra* note 26.

²⁶⁸ See *id.*

²⁶⁹ See *id.*

²⁷⁰ See *id.*

²⁷¹ See *id.*

²⁷² See Shirk, *supra* note 88, at 2.

ficking cases.²⁷³ The Colombian government instituted this same kingpin-extradition approach against the Medellín and Cali cartels of the 1980s and 1990s, whose leaders preferred graves to extradition.²⁷⁴ Pablo Escobar and groups such as the Extraditables amassed to better combat extradition.²⁷⁵ This is because the U.S. federal court system is more intimidating to cartel leaders, due to the essential severance from their country and placement in a system not as amenable to bribery or special treatment.²⁷⁶ The Colombian judiciary, however, still does not have the prosecutorial competence to investigate and try complex drug trafficking cases because of this traditional custom of extraditing its cartel leaders to the United States.²⁷⁷ This is evidenced by the current U.S. practice of extraditing not only drug kingpins, but also periphery players in Colombian trafficking circuit as well.²⁷⁸ Such a practice of extradition is not only an expensive strategy for the United States, but an untenable practice that has precluded Colombia, and will, if continued in the long term, prevent Mexico, from training its own attorneys and judicial officers on to how prosecute complex drug trafficking cases.²⁷⁹ Although Mexico must extradite leaders such as Guzmán in the present, it must stay committed to its reforms in order to construct a self-sustaining judiciary for the future.²⁸⁰

CONCLUSION

Intense cooperation with the United States is essential as Mexico continues to transition its criminal justice system. Unfortunately, Mexico is still in an embryonic stage of its criminal justice reform initiative, and therefore does not have adequate tools in place to investigate, try, convict, and detain a high-profile cartel leader such as Joaquín “El Chapo” Guzmán. A premature attempt to do so without sufficient training in its transitioning criminal justice system will likely result in inadequacies and a substandard, if not failed, prosecution. Such a result would deter an already fragile and skeptical citizenry from trusting the new reforms. For this reason, Mexico should extradite Joaquín “El Chapo” Guzmán and other recently captured cartel leaders to the United States to permit competent extraction of cartel intelligence and immediate, substantial prosecutions.

²⁷³ See Cote-Munoz, *supra* note 26; Forero, *supra* note 192; Martinez, *supra* note 15.

²⁷⁴ See Ulloa, *supra* note 215.

²⁷⁵ See *id.*

²⁷⁶ See *id.*

²⁷⁷ See Forero, *supra* note 192.

²⁷⁸ See *id.*

²⁷⁹ See *id.*; Martinez, *supra* note 15.

²⁸⁰ See Forero, *supra* note 192; Martinez, *supra* note 15.

Mexico must, however, continue to commit to implementation of its reforms so as to acquire the capability of confronting the many mid- to high-level cartel *capos* in its own country in the future. Mexico is not facing a politically charged insurgency, but rather a profit-driven drug trafficking organization. With this in mind, Mexico must desist its militarized confrontations, which serve to propagate violence, and instead stay committed to strengthening its law enforcement investigatory ability alongside its criminal justice reforms.

Long-term Mexican success against its drug trafficking threat and continued maintenance of its sovereignty necessitates an eventual end to sole dependence on the United States for investigation, extradition, and conviction. Such a calculated approach will provide Mexico the investigatory and prosecutorial capability, as well as the requisite political capital, to serve as a more potent partner alongside the United States and other countries against drug trafficking organizations in the Western hemisphere. Until then, Mexico must be patient, and, although it may sting its pride, extradite Joaquín “El Chapo” Guzmán to the United States as it continues to pursue its criminal justice reform.