

1. Can you help explain how the actions of cartels and money laundering organizations impact our daily lives and their influence is a kitchen table issue?

The US is the world's largest consumer of illegal drugs. A report from the Yale Center for the study of Globalization found that the US makes up just 5% of the global population, yet according to most estimates' accounts for over 25% of global demand for illicit drugs. Since 1971, the US has spent over a trillion dollars enforcing its drug policy. Yet the number of illicit drug users rose to 13% of the US population in 2019, which is close to its peak from 40 years ago. By the government's own assessment, profits from drug trafficking appear to grow year-on-year unabated and in 2019, "US drug sales continue to account for tens of billions of dollars in illicit proceeds annually". Drug trafficking does not just have costs in terms of the American lives it affects and destroys. Drug traffickers also use drugs as bait "to recruit people who have a substance use disorder. Or, conversely, traffickers use drugs as a means of control over their victims – to force compliance, harder work, longer hours, or to keep them "drugged out" so they do not attempt escape."¹ A rather telling example was the recent collapse of the Miami condo killing 98 people. Investigative reports found that the building was built in the hey days of the cocaine cartels and compromises were made by developers to benefit from the cocaine boom and sell apartments to drug traffickers looking for an easy way to launder money.²

2. Cartels are sophisticated business organizations. Since their product is illicit drugs, we must address drug supply and demand. But, to undermine cartels, we must also target their finances and ability to fund their illicit acts.

□ What do you think is an effective way to zero in on cartels' wallets to stop their businesses from growing?

Like any other business enterprise, drug traffickers diversify the ways in which they launder money. This is done both to extend the longevity of the business and to diversify the risk so as to prevent law enforcement from targeting their profits. While the issue of cryptocurrency is growing in prominence and adequate law enforcement and regulatory policy is necessary. More traditional methods of money laundering drug cartel profits go unchecked. It is urged that the following reforms be prioritized to adequately target the finances of cartels:

- Prioritize the finalization of the beneficial ownership rules and the creation of the beneficial ownership registry in the U.S.
- Create a permanent and nationwide rule that applies to commercial and residential real estate sector without thresholds that requires on BO, payments, source of funds, PEP and following a cascading reporting structure
- Prioritize sharing of customs information with source, transit, destination countries and advocate for TBML standards at the level of the FATF.
- Launch within FinCEN the **National Anti-Money Laundering Training Center (NALTC)** which will be an anti-money laundering knowledge and education hub for FinCEN staff, financial institution regulators, law enforcement at the federal, state and local levels and for state and federal prosecutors.
- Congress should move forward legislation to tackle the role of professional gatekeepers like lawyers, accountants, corporate formation agents to carry out anti-money laundering checks,

¹ <https://www.dea.gov/stories/2021/2021-01/2021-01-28/violent-drug-organizations-use-human-trafficking-expand-profits>

² <https://www.usatoday.com/story/news/nation/2021/08/12/cocaine-cowboys-features-surfside-condo-building-collapsed/8105118002/>

thereby reducing the mechanism through which drug cartels use professionals to exploit the loopholes in the U.S. financial system.

- Congress must increase the budget for both FinCEN and IRS to take on expanded coverage and fight the transnational nature of this crime.
- Congress should continue its oversight of FinCEN to ensure it follows through on the Administration's stated commitment to meaningfully bring the U.S. private investment sector under U.S. money laundering regulations.

3. In your written testimony, you discussed an ongoing disagreement between U.S. officials and Mexican officials about the prevalence of bulk-cash smuggling at the border, with U.S. officials taking the position that bulk-cash smuggling remains a predominant way that Mexican drug cartels move illicit proceeds across the border, while Mexican officials take the position that there has been a significant decrease in bulk-cash smuggling across the U.S.-Mexican border over the last 12 years.

□ What is your understanding of the prevalence of bulk-cash smuggling across the U.S.-Mexican border over the last 12 years?

GFI's interviews for a report submitted to Congress identified bulk-cash smuggling and trade-based money laundering (TBML) as the two primary methods used to shift drug proceeds from one jurisdiction to another. In the US, the assessment has been that bulk cash remains the most prevalent method to launder money. However, this assessment has not always been consistent. The National Drug Intelligence Center – National Drug Threat Assessment 2009 states “NDIC estimates indicate that Mexican and Colombian DTOs generate, remove, and launder between \$18 billion and \$39 billion in wholesale drug proceeds annually, a large portion of which is believed to be bulk-smuggled out of the United States at the Southwest Border.” However, the US 2020 National Strategy for Combating Terrorist and other Illicit Financing notes that even though bulk-cash smuggling seizure numbers have decreased in the last couple of years, evidence points to the increasing use of private aircraft and boats to avoid land border checkpoints. However, Mexico's 2016 National Risk Assessment states that there has been a “significant decrease in the flow of US dollars in cash within the financial sector since June 2010, when restrictions were put in place...therefore, it must be concluded that bulk-cash smuggling along Mexico's northern border has a LOW probability rate.” This view was echoed in expert interviews conducted by GFI with Mexican sources. Most notably policy reforms from Mexico in 2010 which capped the monthly deposit limit for US dollars at US\$4,000 for individual account holders at financial institutions and substantially reduced cash currency exchange for non-account holders, capped at US\$1,500 per month were noted as being impactful. At the same time, there have been fewer reports of bulk-cash seizures along the US-Mexico border. However, US government and US experts remain concerned with the prevalence of bulk-cash smuggling, noting that the decrease in seizures “does not necessarily mean that there is less bulk-cash transiting the border,” especially as its final destination may be a country other than Mexico.

Given that any successful attempt to tackle the problem will require co-operation between US-Mexico authorities as it affects allocation of resources. It is urged that both countries work together to conduct a joint assessment and publish findings that would help joint allocating of funding and personnel to address the risk.

4. In your prepared testimony, you discussed the difficulty for financial institutions and law-enforcement agencies to detect trade-based money laundering.

□ What sorts of legislation would make the detection of trade-based money laundering easier for both financial institutions and law enforcement?

For law enforcement what would make it easier would be real time exchange of trade data that also captured the beneficial owner of the companies involved in the trade. The current TTU program only applies to select jurisdictions and has suffered from implementation issues. Allowing seamless exchange of trade data on a real time basis through legislation would be vital.

Additionally, most trade transactions are open account transactions and do not have oversight from a financial institution. Therefore, designing a robust reporting framework that will spread out supervisory responsibilities across market participants, such as forwarding agents, shipping agents, clearing agents, importers, exporters, and other relevant actors. Doing so will help reduce the risk of TBML.

Finally, creating a national framework that assesses the TBML risks in the US and best practices would serve as an important guide for financial institutions.

5. In your prepared testimony, you discussed the use of real estate in money laundering and recommended FinCEN apply beneficial-ownership reporting requirements for commercial real-estate transactions financed by entities not covered by the Bank Secrecy Act.

□ Does this recommendation ultimately envision that every purchaser of commercial real estate would submit to beneficial-ownership reporting requirements unless they finance their purchases with a bank covered by the Bank Secrecy Act

With residential, while not ideal, it is still possible to capture a significant number of risks if only non-BSA financed transactions are covered. However, this distinction would be artificial for commercial real estate transactions and create both an impossible regulatory burden and a plethora of convenient loopholes for money launderers to exploit. It is not atypical for commercial real estate transactions to involve multiple legal entities that act together to make a purchase. Even if a proposed rule were to exclude from its reporting obligations transactions that received financing from a financial institution with full AML/CFT obligations, this would in no way curb the money laundering risk. A financial institution under its AML/CFT program would be only required by law to conduct customer due diligence on its client (i.e., in this case the party requesting the loan). If a high-net worth individual has acquired their money through corruption or fraud and decides to invest in commercial real estate with an investment partner who applies for the loan, as in the case of Jho Low in the 1MDB scam or Kolomoisky in the Privat Bank scandal, a financial institution would be under no obligation to carry out AML/CFT checks on them, unless they too were making a request for financing. Additionally, in a commercial real estate transaction, financing from an institution that has a robust AML/CFT program can apply to only one part of the deal that can easily be spun off into a separate legal entity. Requiring financing to apply to the whole deal or a portion of it, creates unnecessary burden for both FinCEN and for industry that must subsequently make complicated assessments to determine whether the ‘financed’ carve-out would apply. Ultimately, because of the myriad ways in which a commercial deal can be structured and the absence of any requirement under law to have standard language for closing or purchase agreements, a money launderer could simply structure the financing to avail the exception that FinCEN might grant and continue to launder money through the U.S. real estate sector with little inconvenience. Therefore, in the case of commercial real estate transactions, the term ‘financed’ would simply be too complex to narrow it down and too easy to evade. For the sake of an effective rule, it is necessary that in the case of commercial real estate transactions, irrespective of how the term ‘financed’ or ‘non-financed’ is defined, all transactions should be included.

6. In your 2020 report, *Narcotics Proceeds in the Western Hemisphere*, you mention that “estimating the value of illicit activities is methodologically challenging.”

What steps can U.S. agencies take to better estimate the value of the narcotics trade?

Estimating the financial value of illicit activities is both challenging and methodologically problematic. It involves complex calculations starting from estimates and fractions of an unknown whole. Exact figures may provide a false sense of precision. By the same token, ranges are often too large as to be truly useful. In a report GFI submitted to Congress, “Daniel Mauricio Rico, a Colombian expert on illicit economies stated “if you’re asking for the dollar amount, you’re asking the wrong question. The right question to ask is: how easy would it be for bad actors to find loopholes in the current system?” There may be a perfect way to estimate narcotic proceeds because the existing challenges are difficult to account for. For example, when GFI did an analysis GFI focused on five specific substances for which data was available: cocaine, heroin, marijuana, methamphetamine, and fentanyl. However, the assumptions were based on a simplified assumption that drugs are pure or close to pure when they cross the United States-Mexico border and are subsequently diluted. However, the reality is much more complex. If there was better data on the quality of drugs as they enter that would improve accuracy. Additionally, the retail value of drugs as they are sold across different towns and cities across the United States are different and this in turn makes estimation challenging. The prices at which drugs are sold is higher than the wholesale value. GFI’s analysis shows that, while some data points are available, gaps in information make this type of estimate very challenging. For example, pricing data is challenging, as prices vary substantially depending on the location and quality of the product. By the same token, average usage data is problematic since many of the surveys available include only very addicted populations, and relatively small numbers of participants. Moreover, not all drug proceeds will be laundered; some may be used to pay for operating costs. Finally, the data available on pricing and usage is not always current, and the Covid-19 pandemic may impact drug trafficking and financial flows in ways that this report cannot capture. Some of this can be improved through better data collection. But the best way forward is to understand that like money laundering, no estimate is perfect, but given the scale of the problem, the solutions remain the same.

7. In that same 2020 report, you note that *trade-based money laundering (TBML)* is one of the primary methods that drug traffickers use to move their ill-gotten gains. You further suggest that *Trade Transparency Units* are a promising tool to fight these financial schemes, but “[suffer] from insufficient funding and technical support.”

□ How would a specific appropriations for Trade Transparency Units strengthen the U.S.’ fight against TBML?

The existing TTU relationships cover only 31.8 percent of all jurisdictions identified as “Major Drug Producing/Transit Countries,” 26.5 percent of “Major Precursor Chemical Source Countries” and only 18.7 percent of “Major Money Laundering Countries.” The numbers are better, but in most cases are well below 50 percent for jurisdictions in the Western Hemisphere. Specific appropriations could increase the numbers of countries connected to the TTUs. Additionally, specific appropriations could help remedy some of the issues that exist in the program due to resource constraints and include:

- i. Modifying the DARTTS system to allow for real-time exchange of information on a pilot basis with trusted partners to examine the impact on enforcement;
- ii. Addressing as a matter of highest priority the connectivity and compatibility issues with the cross-border exchange of data through DARTTS. Delays of several months, and regular connectivity issues disincentivize participation and interest in the TTU program;

8. *In Acres of Money Laundering, you evaluated Geographic Targeting Orders (GTOs) and found that more than \$2.3 billion was laundered through U.S. real estate between 2015 and 2020. Your report also provides concrete examples of how individuals affiliated with the drug trade, such as former Mexican governor Javier Duarte, launder narco-dollars through real estate in non-GTO covered areas. Such examples underscore the need to expand GTOs nationwide.*

□ What other steps should the Financial Crimes Enforcement Network take to strengthen GTOs?

It is recommended that the GTOs at this stage should be replaced by a more appropriate nationwide regime that at a minimum should have the following characteristics:

1. It should be a permanent and nationwide regime.
2. There should be no monetary reporting threshold for transactions.
3. It should apply to both residential and commercial real estate
4. To address the deficiencies of the GTO in focusing only on reporting entity, it is recommended that a cascading reporting obligation for multiple real estate professionals, including title and escrow companies and agents, real estate agents and brokers, and real estate attorneys be adopted. This ensures that a reporting requirement falls on at least one entity in the real estate transaction.
5. It should apply to both transactions by legal entities and natural persons.
6. There should be a requirement to submit beneficial ownership information of both the buyer and the seller, as well as information on source of funds, identification of PEPs, and other key pieces of information of the transaction.