4-1-2015

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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, Joaquin “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-

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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

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5 See Helman, supra note 4.


8 See id.

9 See id.


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.\(^\text{13}\)

Recently, Guzmán’s reign of terror realized an appropriate end in Mazatlán, a Pacific port city in his home state of Sinaloa.\(^\text{14}\) Circumstances surrounding Guzmán’s arrest contradict his romanticized, untouchable aura of narco-folklore.\(^\text{15}\) 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.\(^\text{16}\) 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.\(^\text{17}\) This has shifted perceptions of cartel power relative to the Mexican state.\(^\text{18}\) 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.\(^\text{19}\) 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.\(^\text{20}\)

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.\(^\text{21}\) 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.\(^\text{22}\) Failure, however, in the form of a second escape from prison, prolonged detention, or an unsuccessful conviction,

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\(^{14}\) See Estevez, supra note 4.


\(^{16}\) See Estevez, supra note 4.

\(^{17}\) See Martinez, supra note 15.

\(^{18}\) See id.

\(^{19}\) See id.


\(^{22}\) See Helman, supra note 4; see Martinez, 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.
has historically been ruled by only one party. The Institutional Revolutionary Party (PRI) ruled Mexico for seventy years prior to the election of 2000. 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. PRI party members correspondingly maintained a “patron-client relationship” with drug cartels.

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. 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. 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.

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. 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. The objective of this three-year $1.4 billion U.S. assistance package, agreed to in 2007, was to “maximize the

28 See id.
30 Id.
32 See Old Guard, supra note 27; Opposition Wins, supra note 31.
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,
[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. 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).

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. DTOs characterized as unlawful enemy combatants would not be afforded the Geneva Convention protections. 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. These leaders have either been extradited to the United States or held for years without a trial in Mexico.

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. To traffickers, imprisonment in the United States has meant losing touch with their families and their ability to direct their criminal organizations.

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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.
51 See Miroff & Booth, supra note 11.
The United States and Colombia approved a bilateral extradition treaty in 1979.\textsuperscript{54} The prospect of extradition quickly became the greatest fear of Colombian cartel leaders and of Pablo Escobar, in particular.\textsuperscript{55} As a result, the Medellín Cartel waged a campaign of fear against the Colombian government and the citizenry.\textsuperscript{56} Colombia extradited its first four drug traffickers to Miami in 1985.\textsuperscript{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.\textsuperscript{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.\textsuperscript{59} In response to multiple threats from traffickers, the Colombian Supreme Court annulled the extradition treaty with the United States in May of 1987.\textsuperscript{60} In 1989, after presidential candidate Luis Carlos Galán spoke in favor of extradition, he was assassinated in Bogotá.\textsuperscript{61} In response, then-President Virigilio Barco Vargas issued an emergency decree re-establishing the policy of extradition.\textsuperscript{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.\textsuperscript{63} In a secret vote, the Colombian as-


\textsuperscript{56} See Penhaul, supra note 55.

\textsuperscript{57} Thirty Years, supra note 54.

\textsuperscript{58} Id.

\textsuperscript{59} Id.

\textsuperscript{60} Id.

\textsuperscript{61} Id.

\textsuperscript{62} Id.


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.

\textsuperscript{Id.}
sembly banned extradition in a new constitution. Colombia reinstituted extradition in 1995. President Álvaro Uribe extradited more than 1,100 Colombians to the United States during his two terms in office.

Extradition from Mexico to the United States remains uneven and unpredictable. Under Calderón, extraditions reached historic levels with 115 suspects being sent to the United States in 2012. Extraditions from Mexico decreased to a total of fifty-four in 2013. 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. His two brothers, Benjamin and Francisco Javier, are also in U.S. prisons for racketeering, drug trafficking, and money laundering. 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.

**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. As a result, Mexico continues to operate under a closed-door hybrid inquisitorial system lacking many of the pro-

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64 See Thirty Years, supra note 54.
65 See Ramsey, supra note 53.
67 See Yagoub, supra note 52.
68 See id.
69 Id.
71 See id.
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).
tions offered in other criminal justice systems. 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.

The 1917 constitution empowered public prosecutors by investing in them complete authority for criminal proceedings. Public prosecutors were thus tasked with not only bringing criminal charges, but also overseeing both the investigatory police agencies and individual investigations. In making a decision, the judge would rely on a written report (a “dossier”) created by the public prosecutor. Evidence pertaining to the accused, like most other aspects of a case, was sealed to the public until the end of the case. This unchecked power included the ability to disregard exculpatory evidence at will, with little to no external accountability. 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.

Although prosecutors enjoyed such unchecked power in certain respects, they lacked one vital function: prosecutorial discretion. 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. Moreover, Mexican courts did not observe a presumption of innocence in practice, despite its 1917 constitutional guarantee. 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, kidnappers, and other criminals.

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74 See id.
75 Id.
76 Id.
77 Id.
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)).
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. The United States and Mexico view the implementation of these 2008 reforms as vital to their bilateral efforts under the Mérida Initiative. 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. Limited prosecutorial aptitude in gathering the type of evidence required to build strong cases has kept conviction rates low. Survey data gathered from the Mexican public and relevant justice sector actors has provided insight as to the sentiment surrounding the reforms. 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.

The difficulty has been the ability for those trained in the inquisitorial model to learn the new procedure quickly. 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. 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. 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.
89 See SEELKE, supra note 86, at 11.
90 See id.
91 See id. at 10.
93 See Horton, supra note 73, at 249.
94 See SEELKE, supra note 86, at 92.
phasis on juvenile offenders. Such an approach is especially significant for Mexico, because the youth serve as an interminable supply of recruits for DTOs. Mexican youth often have little education and fewer employment prospects, and therefore, have no choice but to turn to DTOs.

Mexico’s Chamber of Deputies approved a new Código Nacional de Procedimientos Penales (National Penal Procedures Code) on February 5, 2014. The new code establishes uniformity in the application of criminal laws across Mexico’s thirty-one states and Federal District. 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. This new code standardizes procedures regarding investigations, arrests, charges, hearings, and sentencing. The professionalization of the investigative process will set clearer guidelines for granting warrants, conducting home searches, and monitoring individual communications. 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.

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. The Mexican state of Chihuahua is the prototype for what the government hopes will become the norm across the country. 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.

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

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95 Horton, supra note 73, at 251.
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. 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. Other elected officials have likewise delayed implementation due to concerns that it may hurt their popularity and make them appear too soft on crime.

The 2008 constitutional reforms also include specific measures aimed at combating organized crime. 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). 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. 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. This practice, known as an arraigo, has reportedly led to abuse by authorities. 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. 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.

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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.
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.\textsuperscript{117} Currently, the extradition of nationals is a discretionary matter for the Mexican government.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{125} Many Title 21 drug statutes require that the offense take place within the trial district.\textsuperscript{126} Similarly, in drug conspiracy cases, venue is only proper in a district where an overt act in furtherance of a conspiracy was committed.\textsuperscript{127}

\textsuperscript{118} See id.
\textsuperscript{119} Rodrigo Labardini, Mexico’s Supreme Court Allows the Extradition of Mexican Nationals, 17 INT’L ENFORCEMENT L. REP. 106, 108–09 (2001).
\textsuperscript{120} See id.
\textsuperscript{121} See Maaskamp, supra note 117, at 745.
\textsuperscript{123} Extradition Treaty, supra note 122, art. 8; Maaskamp, supra note 117, at 743–44.
\textsuperscript{124} Extradition Treaty, supra note 122, art. 15.
\textsuperscript{125} See Reid, supra note 52, at 410.
\textsuperscript{126} See id.
\textsuperscript{127} See id.
requires the identification of an activity connected to the conspiracy in the
district where the defendant is to be charged.\textsuperscript{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 im-
port drugs into the United States existed.\textsuperscript{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.\textsuperscript{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.\textsuperscript{131}
During the Calderón administration, Mexico extradited record numbers of crim-
inals to the United States.\textsuperscript{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.\textsuperscript{133}

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

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

RICO is a complex and unique statute because of its incorporation of both a
criminal offense and a civil cause of action.\textsuperscript{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

\begin{footnotesize}
\begin{enumerate}
\item See id. at 410–11.
\item See id. at 410.
\item See id. at 411.
\item See id.
\item See SEELKE, supra note 86, at 3.
\item See Martinez, supra note 15, at 11.
\item See Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961–1968
gov/about-us/investigate/organizedcrime/italian_mafia (last visited Mar. 31, 2014), archived at
\item See Mike Cormaney, Note, RICO in Russia: Effective Control of Organized Crime or Another
\item See id. at 276, 304.
\item See id. at 287, 300.
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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

139 See id. at 241–42.
140 See Cormaney, supra note 135, at 281.
141 See id.
142 See id. at 288.
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.
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. 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.

Mexico currently has in place what experts refer to as a pseudo-RICO statute. 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.

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. The post-World War II Geneva Conventions regulate armed conflicts between states in an effort to prevent unnecessary and unwarranted suffering. 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.” While Article 3 does not

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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.


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.

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.\textsuperscript{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.”\textsuperscript{158} Article 3 is often interpreted as demanding a higher level of violence before qualifying a conflict as an NIAC.\textsuperscript{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.\textsuperscript{160}

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

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\textsuperscript{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.


\textsuperscript{157} See Sanchez, \textit{supra} note 29, at 479.

\textsuperscript{158} See Chelluri, \textit{supra} note 47, at 72–73.

\textsuperscript{159} See Sanchez, \textit{supra} note 29, at 480.

\textsuperscript{160} See id.
left by the aforementioned international agreements. 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.” Other factors to consider include the intensity of the violence, the number of forces, and the types of forces involved in the conflict.

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. 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. 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.

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. 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. 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. 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.

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. Moreover, insurgencies comprise of five

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161 See Chelluri, *supra* note 47, at 75.
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.
elements: (1) movement leaders, (2) combatants, (3) political cadre, (4) auxiliaries, and (5) a mass base. A characterization of Mexican DTO members as insurgents within an NIAC could necessitate a determination of their legal status as cartel fighters. 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.” 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. 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.” 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. 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.

The Mexican government recently incorporated armed civilian groups into the fight against DTOs. 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. 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 DETAINES 1–6(b) (Oct. 1, 1997).
177 See Chelluri, supra note 47, 94–95.
178 See id. at 93.
vigilantes, many of whom are armed with assault rifles, weaponry civilians are not normally permitted to carry. 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. These provisions ensure that the government can provide oversight of the groups and can dismantle them once security in the area is established. In addition, the Rural Defense Corps must register their weapons with the Mexican military in order to carry them lawfully. 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. 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.

II. ANALYSIS

Currently, Mexico’s only option for dismantling drug trafficking organizations is through extradition. 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. The arrest of Guzmán demonstrates Mexico’s ability to hunt down and capture one of the world’s most powerful and elusive drug trafficker. Any misstep, however, in either his handling or the prosecution of his case would effectively end the Mexican criminal reform experiment. This is not to say that extradition is, or should be, Mexico’s long-term solution to its pervasive drug cartel threat. While a kingpin-extradition strategy reduced the extreme cartel-related violence

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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.
188 See Martinez, supra note 15.
190 See Editorial, supra note 20; Helman, supra note 4; Martinez, supra note 15.
191 See Martinez, supra note 15.
in Colombia, it has since proved damaging to Colombia’s judiciary in the long term.\textsuperscript{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.\textsuperscript{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.\textsuperscript{194}

\textit{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.\textsuperscript{195} These judicial reforms, however, initially faced severe criticism due to inadequate resources and a lack of requisite implementing legislation.\textsuperscript{196} On February 5, 2014, however, Mexico’s Chamber of Deputies approved a new \textit{Código Nacional de Procedimientos Penales} (National Penal Procedures Code) (CNPP), serving as the necessary supplementary legislation to the 2008 reforms.\textsuperscript{197} The CNPP establishes a uniform application of criminal laws across Mexico’s thirty-one states and Federal District.\textsuperscript{198} These reforms will help make Mexico’s judicial sector more transparent and accountable.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{202} Chihuahua, ac-


\textsuperscript{193} See id.

\textsuperscript{194} See id.

\textsuperscript{195} See Congress Approves, supra note 92; Reid, supra note 52, at 404.

\textsuperscript{196} See Shirk, supra note 88, at 16.

\textsuperscript{197} See Congress Approves, supra note 92.

\textsuperscript{198} Id.

\textsuperscript{199} See Shirk, supra note 88, at 16.

\textsuperscript{200} See Horton, supra note 73, at 234, 240; Ingram, supra note 82, at 4.

\textsuperscript{201} See Shirk, supra note 88, at 16.

\textsuperscript{202} See SEELKE, supra note 86, at 8–9.
According 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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{208} Furthermore, Article 20 of the constitution now requires that judges unfamiliar with the case provide an impartial view of the evidence.\textsuperscript{209} Rather than receiving the public prosecutor’s summation of the evidence, the judges will see the evidence presented during proceedings.\textsuperscript{210} Those trained in the inquisitorial model have had a difficult time learning the new procedure quickly.\textsuperscript{211} The judiciary and other relevant actors must be patient and willing to accept such challenges inherent in such a transition.\textsuperscript{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


\textsuperscript{204} Horton, supra note 73, 261.

\textsuperscript{205} Id.

\textsuperscript{206} See id. at 261–62.

\textsuperscript{207} Id. at 246.

\textsuperscript{208} See id.

\textsuperscript{209} See id. at 247.

\textsuperscript{210} See id.

\textsuperscript{211} See id.

\textsuperscript{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).
It was not until decades after its introduction as a legitimate tool to combat organized crime that it was adequately and correctly utilized. 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. 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. 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. 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. Mexican officials at the time claimed that it was not until Cardenas was extradited that the Gulf Cartel began to break up.

Public exposure will place judges and attorneys under greater scrutiny. Such transparency will discourage corrupt practices. This will serve to incentivize the judiciary to accept their new role and to foster a more acceptable standard for their courtrooms. 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. Chihuahua, for example, has set a significant precedent by recording proceedings in an effort to cultivate oversight, dissuade corruption, and encourage professionalism. 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. 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.
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. 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. Informants and wiretaps played a large role in the capture of Joaquín “El Chapo” Guzmán. A number of arrests of Sinaloa Cartel members prior to Guzmán’s arrest provided useful informants and phones from which to gather intelligence. Five wiretaps yielded valuable intelligence about Guzmán—four by the DEA and one by U.S. Customs and Enforcement.

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. 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. Moreover, Mexico’s reformed pseudo-RICO legislation, the LFCDO, has blatant shortcomings, particularly when utilized against such high-profile leaders. 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. Despite these limitations, Mexico is on the right track to becoming a self-sustaining judicial system that is free of corruption. 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.

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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.
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. 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. 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. 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. 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. The ultimate goal for DTOs is money, not sovereignty.

Dismantling profit-motivated DTOs is not the same as combating politically motivated guerilla insurgencies. Breaking up an insurgent group may lower morale and encourage desertion or surrender. 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. Both of these outcomes result in violence and bloodshed, whether through infighting or externalized territorial seizures. The most common metaphor used to describe such kingpin removal policies is the hydra: cut off one head and another grows right back. 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. Mexico, on the other hand,

\[249\] See Cote-Munoz, supra note 26.
\[250\] See id.
\[251\] See id.
\[252\] See id.
\[253\] See id.
\[255\] See Sanchez, supra note 29, at 503.
\[257\] 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.\(^\text{261}\) Mexico must instead attack these corporate DTOs with traditional law enforcement investigative techniques and targeted legislation such as its own Federal Organized Crime Act.\(^\text{262}\)

Mexico is not facing an insurgency.\(^\text{263}\) Characterizing the Mexican drug trafficking problem with such doom-laden depictions serves to misdiagnose the underlying issues and leads to desirous and inapposite strategy.\(^\text{264}\) 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.\(^\text{265}\) 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.\(^\text{266}\)

Equally significant, high-profile drug leaders comparable to Pablo Escobar have avoided his example.\(^\text{267}\) High profile drug traffickers, like Escobar in Colombia, were more likely to be targeted by the state due to their public extravagance.\(^\text{268}\) 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.\(^\text{269}\) For example, Guzmán’s actions and leadership of the Sinaloa Cartel was not evident to law enforcement for years.\(^\text{270}\) Mexican DTOs now solely rely “on corruption as good business, delegation over micromanagement, and the franchising of their operations.”\(^\text{271}\)

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.\(^\text{272}\)

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. 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. Pablo Escobar and groups such as the Extraditables amassed to better combat extradition. 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. 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. 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. 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 how to prosecute complex drug trafficking cases. 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.

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.