

I. INTRODUCTION

What if governments across the globe could meaningfully restrain drug manufacturing, drug trafficking, and terrorism by making simple edits to already existing legislation?

As state sponsorship of terrorism declines, terrorist organizations look for more creative, and often more sinister means of financing their operations.¹ Narcoterrorism is a term used to define the nexus between terrorist activity and drug trafficking.² The two most common types of narcoterrorists are terrorists that traffic and manufacture drugs to fund their operations, and drug cartels that use terrorist activity to support their drug dealing interests.³

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the immediate precursor chemicals necessary to produce the other illicit narcotics listed in the statute.¹⁶

The legislature should amend § 841(a) to explicitly include List II and

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Afghanistan and Pakistan, cooperates and receives money from drug dealers and drug trafficking, sometimes in exchange for protection.²⁵ This is a double-edged sword because the money is used to acquire resources to carry out terror operations while also increasing d

criminal organizations, not the governments, will ultimately control the

suffer from addiction to Mandrax.⁶³ After the dissolution of the apartheid regime, forensic chemists found enough precursor chemicals in their labs to make over 3.5 million tablets of Mandrax.⁶⁴ Mandrax is particularly dangerous because of its potential use as a crowd control weapon to incapacitate protesters by making them docile—as illustrated by its use on anti-apartheid protesters dependent on Mandrax.⁶⁵ Proper regulation, monitoring, and vetting of precursor movement by an international body could have potentially prevented this atrocious misuse of precursors to create weapons, drugs, and agents that were used to ethnically cleanse an entire population. It is imperative that the international community places uniform safeguards to prevent authoritarian regimes from improper utilizations of precursors against dissenters. Ultimately, this would provide a safer environment for democratic spirit to thrive and spread across the globe.

IV. THE PRECURSOR BATTLE AGAINST NARCO-TERRORISM ON A NATIONAL LEVEL

In 1988, Congress passed the Chemical Diversion and Trafficking Act (CDTA), placing forty-one chemicals under control because of their high risk for illicit uses.⁶⁶ These laws provide a series of regulations and criminal sanctions to address both national and international diversion of sensitive precursor chemicals, without restricting access to precursor chemicals used for legitimate commerce.⁶⁷ The DEA classifies and regulates sensitive chemicals and solvents that are likely to be used in illicit drug and controlled substance manufacturing.⁶⁸ These precursors are categorized on two DEA lists, List I for precursor reagents, and List II for precursors that can be used to synthesize and purify controlled substances, such as illicit narcotics.⁶⁹

Including List II precursor chemicals in § 841(a) would effectively ensnare people who knowingly provide precursor chemicals to any person or organization that they know engages or has engaged in terrorism under § 960a. As written, § 960a effectively doubles the sentence of someone engaging in drug crimes, who knows or intends that the transaction supports

63. *Id.*

64. *Id.*

65. *Id.*

66. Chemical Diversion and Trafficking Act, 21 C.F.R. §1310.02(a)-(b) (1988).

67. *See id.* at 153-54.

68. *Overview of Controlled Substances and Precursor Chemicals*, USC ENV'T HEALTH & SAFETY (2020), <https://ehs.usc.edu/research/cspc/chemicals/> [Hereinafter *Overview of Controlled Substances*].

69. *Id.*

terrorism.⁷⁰ However, under my proposal to § 960a, those who recklessly sell or distribute precursors would also be criminalized under the statute. This aims to incentivize corporations to increase monitoring

intent to ensnare individuals that are even remotely involved in the drug-terror nexus.

s or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of⁸⁵ Effectively, the legislature has gone so far as to convict an individual under § 963 for attempt or conspiracy to commit a § 960a offense, the substantive offense being conspiracy or attempt to commit a drug crime in support of terrorism. This results in a combination of double inchoate crime possibilities: *attempt to attempt, attempt to conspire, conspiracy to attempt, or conspiracy to conspire*.⁸⁶

Admittedly, this has confused courts and sparked criticism regarding the potential for due process violations when prosecuting multiple inchoate criminals.⁸⁷ The possible violation of due process rests in the statute itself. As written, it is unclear, and that vagueness could implicate the statute as unconstitutional.⁸⁸ However, the explicit effort by the legislature to convict even the farthest removed actor engaging in drug-terror crimes remains.

There is a possibility that those engaged in drug activity, not connected to terrorism, are found guilty under § 960a, because the statute does not explicitly emphasize the drug-terror nexus.⁸⁹ Drug and terror crimes are intrinsically connected, and bureaucratic and legal compartmentalization has

85. 21 U.S.C. § 963.

86. *See supra* note 18.

87. Thomas, *supra* note 1, at 1904-05.

88.

See United States v. Meacham, 626 F.2d 503, 509 (5

made it difficult for law enforcement to effectively combat narcoterrorism.⁹⁰ The reluctance to treat drug organizations as terrorists, and terrorist organizations as drug traffickers, has come at a substantial cost to American public health, safety, and stability.⁹¹ Therefore, the congressional intent when drafting § 960a, correctly indicates that there is almost always a connection, direct or indirect, between drug crimes and supporting terrorism.

⁹² effectively diminishes a clear drug-terror nexus and raises concerns that a careless or malicious prosecutor can unjustifiably ensnare an individual not connected to terrorism under the narcoterrorism statute.⁹³ However, § 960a in its essence addresses the drug-terror nexus; the legislature intended to broadly deter such behavior by giving prosecutors vast discretion in prosecuting drug-terror actors. Although § 960a does not seem to necessitate a direct drug-terror link with clear and express language,⁹⁴ the legislative intent when drafting § 960a was not to draw a clear link, but rather t-for-terrorism statute to

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Thomas provides a hypothetical differentiating a terrorist using proceeds from drug sales to support terrorism and a drug dealer using terrorism to scare away law enforcement.⁹⁶ Ultimately, Thomas argues that only individuals using proceeds from drug sales to fund terrorism should be prosecuted under § 960a, exempting those who use terrorism to protect their drug business.⁹⁷ This reasoning is futile because terrorists and drug traffickers are often the same people, or at least closely related.⁹⁸ methodology is applicable to terrorists, and vice-versa. There cannot be meaningful restraint of terrorism without meaningful restraint of drug abuse and drug trafficking.⁹⁹ Congress recognized the nexus when drafting § 960a,

90. Marshall, *supra* note 76, at 599.

91. *Id.*

92. Thomas, *supra* note 1

exports, or possesses with intent to distribute or manufacture a controlled substance, . . . knowing or intending *that such activity*, directly or indirectly, aids or provides support, resources, or
151 CONG. REC. H6207 (daily ed. July 21, 2005) (statement of Rep. Hyde) (offering the amendment)).

93. *Id.* at 1903-04.

94. *Id.* at 1899.

95. *See* 151 CONG. 01 363.9 366(dai)16(l)13(y)-14(ed.)-1123y ed ed ed.

and it correctly¹⁰⁰ reflects their legislative intent to ensnare those who, directly or indirectly, use terrorism to protect their drug dealing interests, as well as those who use drug trafficking proceeds to finance terrorism.

Further, Thomas raises concerns that a small dealer, who provides even minimal support to a terrorist organization,¹⁰¹ can be prosecuted by an overzealous prosecutor under § 960a and serve a twenty-year statutory minimum sentence.¹⁰² He argues that these are not the kind of people the legislature intended to criminalize under § 960a.¹⁰³ Thomas takes a theoretical approach by applying the law to a situation where one who is not morally culpable enough to be designated as a terrorist, is prosecuted under § 960a.

Thomas provides a hypothetical in which a twenty-two-year-old recent college graduate, *K*, supplied marijuana to friends at a fraternity reunion only once.¹⁰⁴ Officials discovered that *K* is an outspoken supporter of the Animal Liberation Front (ALF), which is a designated terrorist organization that has carried out numerous terrorist attacks in the name of animal rights.¹⁰⁵ *K* sends two checks for 500 dollars to ALF annually with the knowledge that the money will be used to finance terrorist activities.¹⁰⁶ Technically, *K* could be prosecuted under § 960a for selling drugs and then using the proceeds to provide support to a terrorist organization.

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and feelings.¹⁰⁸ Also, the establishment of standards of performance

B. Hypothetical Situations that the Proposed Amendment to § 841(a) Criminalizes Diverters Under § 960a

The proposed amendment to § 841(a) would criminalize a new swath of individuals who are diverting precursors to organizations engaged in terrorism. Different hypothetical situations discussed below would criminalize a divertor of precursor chemicals § 960a.

1. Diverting Precursor Chemicals to a Terrorist Organization

The first hypothetical analyzes a situation in which a precursor diverter knowingly or intentionally diverts precursor chemicals directly to a terrorist organization to manufacture illicit narcotics. The diverter could be prosecuted under § 960a for providing something of pecuniary value to a terrorist organization. However, explicitly including precursors in § 841(a) would tie the sentencing for the crime to the controlled substance that particular precursor was used to produce. For example, if the prison sentence for heroin is twenty-five years, and acetic anhydride is used to make heroin, the sentence for diverting acetic anhydride to narcoterrorists would also be twenty-five years.

2. Diverting Precursors to a Drug Cartel Engaged in Terrorist Activity

The second hypothetical is a situation in which *A* is diverting precursor chemicals to a drug cartel that uses terrorist activity to bulwark drug dealing interests. *A* is not directly involved in the drug cartel, but he brokers deals, which he knows will ultimately deliver precursor chemicals to the drug cartel, disguised as a shell corporation. This drug cartel is also engaged in terrorist activity, which includes assassinations of public officials and law enforcement officers. As mentioned above, drug cartels and terrorist organizations are so entwined that it is often difficult to differentiate between them. *A* intends to indirectly provide drug cartels engaged in terrorist activity with the means necessary to manufacture the drugs that fuel their entire operation. Here, *A* would be criminalized under § 960a even though *A* is not part of the drug cartel and does not directly engage in terrorist activity.

3. Using Terrorism to Support Precursor Chemical Diversion

This hypothetical analyzes a scenario in which someone uses terrorism to support precursor chemical diversion for the purpose of producing controlled substances. Suppose *B*, a member of a designated terrorist organization, regularly ambushes law enforcement and attempts to assassinate high-ranking city officials in an effort to deter them from thwarting its drug operations. *B* controls a small militia that is directly

involved in the manufacture, distribution, and transportation of various drugs to fund its terrorist activities. The only source of funding for this organization are the proceeds from drug sales. *B* requires precursor chemicals to produce drugs in order to fund the organization, so it regularly raids ships importing precursor chemicals.

Section 960(a) criminalizes those who engage, or attempt, or conspire to engage in drug activity, knowing or intending to provide, directly or

without conducting even basic checks of their background.¹²⁵ In just the first

hurdles. Lowering the mens rea to recklessness will enable prosecutors to establish criminal responsibility at a higher rate, ensure DEA regulatory compliance, incentivize chemical companies to execute diligent monitoring and vetting, and ultimately protect the health and safety of Americans and people abroad.

Despite the three decades of international drug laws aimed at preventing the diversion of precursors, drug cartels and terror organizations continue to use American made chemicals to keep heroin, meth, and cocaine labs running at full capacity.¹³⁰ Eastman paid only a total of 1.3 million dollars for illegally selling the 22,000 gallons of MMA, which is enough to produce about 3.2 billion dollars worth of methamphetamine.¹³¹ This is a result of a corporate culture that puts sales above all else,¹³² which is dangerous, especially when sensitive precursors are being distributed.

Partners, ramped up the sale of chemicals between 2007 and 2010 by fourteen percent in anticipation of selling the company or a public stock offering. The imminent sale of Taminco was the motive for the parent company to sell as many chemicals as possible, even in an irresponsible, reckless, and even illicit manner.

The negligible penalty for a crime that can potentially devastate thousands of communities provides virtually no deterrent effect. It will allow

precursors to unverified consumers, and only pay fines that are a small fraction of their profit. To them, it is just the price of doing business, and American citizens are paying for it with their lives.

¹³³ While aiding and abetting the production or distribution of just fifty grams of methamphetamine holds a federal sentence of at least ten years in prison, T6TQ EMC1/3 9eW* nBT45ithe9eW* n2 f8(9eW* 0.00000912 0 60000912

This case demonstrates how a lack of deterrent prosecutorial action and ineffective monitoring led to the illegal sale of 22,000 gallons of MMA to a potentially non-existent company, and possibly into the hands of Mexican drug cartels that use terrorism to support their drug trafficking interests. If prosecutors went after big chemical companies and their executives for this kind of misconduct, it would deter the misconduct and urge companies to establish thorough monitoring systems.

If the Justice Department prosecutes these crimes, the cost-benefit analysis for companies weighing the benefits of illegally selling precursors against the gravity of the punishment would likely incentivize them to yield to the rule of law and comply with DEA regulations. It would also send a chilling message to drug cartels and terrorist organizations that rely on illicitly sold precursors through backdoor transactions with chemical companies or their agents, as seen in the Taminco case. This requires the Justice Department to recognize that precursors are the root and nexus of the drug issue at hand, and as such, their illicit distribution should be investigated and prosecuted accordingly.

In May 2019, a counter-narcotics squad operating in Sinaloa, Mexico, was led to an open-air heroin producing factory after being struck by a strong chemical odor.¹³⁶ They discovered four eighteen-liter jugs of the precursor acetic anhydride, which was bottled, branded and sold in Mexico by Avantor Inc., a publicly traded U.S. company valued at 12.3 billion dollars.¹³⁷ This

also call for an increased spending toward extensive monitoring, research, and reporting.

A. *DEA Prerequisites for Transporting Precursors*

The Drug Enforcement Administration has already developed a series of regulations to provide a safe harbor for companies that are mass importing and exporting controlled precursors. If the chemical industry abides by these confines, they should not find themselves liable to criminal sanctions. Title 21 of the Code of Federal Regulations, Sections 1309, 1313, and 1314 provide the regulatory confines within which chemical manufacturers, retailers, importers, exporters, and distributors must conduct business.¹³⁹ Through a combination of industry outreach and voluntary compliance measures, the DEA strives to control chemical diversion in partnership with the industry and the public.

All businesses, research organizations and individuals seeking to handle any controlled chemical are required to apply for an individual DEA registration, and this registration allows the entities to purchase, store, and use precursor chemicals.¹⁴⁰ The Environmental Health & Safety agency conducts an onsite visit with the DEA registrant to ensure all storage and appointment.¹⁴¹

First, Section 1300.02 provides definitions relating to listed chemicals and parties involved in brokering, selling, manufacturing, and distributing precursor chemicals. A broker or trader of a precursor chemical means any individual, corporation, corporate division, partnership, association, or other legal entity which assists in arranging an international transaction in a listed chemical by negotiating contracts; serving as an agent or intermediary; or fulfilling a formal obligation to complete the transaction by bringing together a buyer and seller, a buyer and transporter, or a seller and transporter, or by receiving any form of compensation for doing so.¹⁴²

Bulk chemical manufactures are subject to chemical import and export declarations, in which they must send the DEA a detailed report of the chemicals being imported or exported.¹⁴³ The rule provides that a quantity of a chemical listed in Section 1310.02, which is either equivalent or exceeds

139. 21 C.F.R. § 1309 (2012); 21 C.F.R. § 1313 (2020); 21 C.F.R. § 1314 (2020).

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public-private partnerships and voluntary cooperation by the chemical industry as an effective strategy to thwart the diversion of precursors as well as their use in illicit drug manufacturing.¹⁴⁸

The aspects of accessibility and real-time notification provide an effective way for companies and National Competent Authorities to monitor the whereabouts of exported and imported precursors, as well as crucial information regarding where, when, and how precursor chemicals are diverted. The Precursor Incident Communication System (PICS) also bol

