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Before the Senate Judiciary Committee

S1241: Modernizing AML Laws to Combat Money Laundering and Terrorist  
Financing

November 28, 2017  
SD-226

Chairman Grassley, Ranking Member Feinstein and Members of the Committee:

Thank you for the invitation today to discuss the Combating Money Laundering, Terrorist Financing, and Counterfeiting Act of 2017, and in particular its ability to support the interdiction of money laundering activities of transnational organized crime groups in Latin America. I believe is critical to US national security, as well as the security of the Western Hemisphere. I speak in a personal capacity and not as a representative of any of the organizations with which I am affiliated.

## **Introduction**

In the world of transnational organized crime (TOC), money laundering is an essential activity for criminal operations, and the process that allows those engaged in illicit activities to enjoy the fruits of their criminal enterprises. The magnitude of the illicit trade is staggering. A 2017 report for Global Financial Integrity estimated the value of the 11 primary illicit markets at \$1.6 trillion to \$2.2 trillion annually. The drug trade is the most lucrative, earning \$426 billion to \$652 billion, while illegal mining is estimated to yield from \$12 billion to \$48 billion. The report states that “transnational crime will continue to grow until the paradigm of high profits and low risks is challenged.”<sup>1</sup>

A 2015 World Economic Forum study on illicit economies noted that

While the state of the global economy continues to fluctuate, its illegitimate counterpart, the illicit economy, has seen unprecedented growth. The illicit economy does not affect just one aspect of society, but all of them: business, government, civil society and individuals. It is a disruptor of social order to the greatest extent. . . Much of the illicit trade is opportunistic and thrives on gaps in capacity and vulnerabilities in policy regimes across countries and regions.<sup>2</sup>

It is precisely some of these vulnerabilities the current bill seeks to remedy. Raising the risk factor for TOC groups using the U.S. financial system is particularly important as we see the growing convergence among different types of TOC groups and between TOC groups and terrorist organizations. In our hemisphere this convergence often happens under the auspices of “criminalized states” in the Bolivarian Alliance, led by Venezuela and including Bolivia, Nicaragua, El Salvador and Suriname. The term is intended to identify states that actively embrace TOC groups as instruments of statecraft and where levers of state power are incorporated into the operational structure of one or more TOC groups.<sup>3</sup>

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<sup>1</sup> Channing May, “Transnational Crime and the Developing World,” Global Financial Integrity, May 2017, accessed at: [http://www.gfintegrity.org/wp-content/uploads/2017/03/Transnational\\_Crime-final.pdf](http://www.gfintegrity.org/wp-content/uploads/2017/03/Transnational_Crime-final.pdf)

<sup>2</sup> “State of the Illicit Economy: Briefing Papers,” World Economic Forum, October 2015, accessed at: [http://www3.weforum.org/docs/WEF\\_State\\_of\\_the\\_Illicit\\_Economy\\_2015\\_2.pdf](http://www3.weforum.org/docs/WEF_State_of_the_Illicit_Economy_2015_2.pdf)

<sup>3</sup> For a full discussion of the concept of criminalized states and the national security threat they pose see: Douglas Farah, “Transnational Organized Crime, Terrorism, and Criminalized States in Latin America: An Emerging Tier-One National Security Priority,” U.S. Army War College, Strategic Studies Institute, August 2012, accessible at: <https://ssi.armywarcollege.edu/pubs/display.cfm?pubID=1117>

This convergence allows TOC groups to access new, sophisticated modalities to move and disguise illicit wealth, often through the global financial system afforded to state enterprises. Currently, loopholes in financial regulations fail to fully protect the United States financial system. This makes it relatively easy for criminal and terrorist organizations engaging in illicit activities – including gold trafficking, weapons trafficking, and drug trafficking – to use US banking entities as part of a network to move and hide their assets from law enforcement. Unfortunately, many of the current anti-money laundering protections are designed for the previous century, often preventing law enforcement and US financial institutions from identifying and stopping the billions in illicit financial assets that move through the system.

The proposed legislation makes significant strides in closing some of these loopholes. Based on my field research and more than 30 years of experience studying transnational organized crime, several key attributes of the proposed legislation will be especially helpful in updating anti-money laundering statutes. These include:

- Filling gaps in the law by creating two new offenses that criminalize knowingly concealing, falsifying or misrepresenting important information concerning ownership or control of an account or assets held in an account, to a financial institution;
- Strengthening existing laws that allow U.S. law enforcement to obtain foreign bank records by subpoenaing banks in the United States with which the foreign bank has a correspondent account;
- Ensuring that criminals cannot evade the law that prohibits transactions in criminally derived property either by commingling criminal proceeds with clean money or by structuring transactions to evade the \$10,000 statutory threshold;
- Allowing the government to apply for a restraining order to temporarily freeze the bank accounts of defendants arrested for offenses involving the movement of funds in or out of the United States;

This legislation comes at a prescient time in Latin America, as the Revolutionary Armed Forces of Colombia (FARC), a designated terrorist organization, has formally demobilized in Colombia and prepares to enter Colombian politics. While the FARC is no longer officially on the battlefield, Colombia's fight against transnational organized crime is far from over. New criminal groups have arisen in the FARC's place. Furthermore, it is likely that the FARC itself has not surrendered a significant portion of its financial assets, although it was required to do so under the terms of the peace agreement, and instead has stored these in safe havens protected by friendly governments in Central America.

The role of the FARC remains problematic, particularly because of its leadership's opacity regarding the likely billions of dollars in hidden assets derived from drug trafficking, kidnapping, illegal gold mining and extortion. Additionally, it is allied with criminalized states like Venezuela that have shown a deep disdain for democracy, the rule of law, and partnership with the United States.

The ability to identify and seize illicit assets, particularly those that move through the US financial system, is critical to ensuring that the FARC, its allies in Hezbollah and other criminal

and terrorist groups from around the globe are unable to access their funds. Strong anti-money laundering legislation, therefore, helps ensure the security of the United States and its allies.

### **Key Money Laundering Modalities**

Maintaining the integrity of the financial structure is ever more difficult in the globalized economy, where commodities such as gold, diamonds and coltan serve as low-risk financial instruments that often yield profits higher than the cocaine trade.

For example illegally mined gold in Colombia is sometimes more profitable than coca because “cocaine typically takes six months to produce and requires considerable knowledge, while an illegal mining operation in the Colombian jungle can extract two kilograms of gold a week. [Furthermore, a] kilogram of cocaine can sell for about 5 million pesos (\$2,570) in the Colombian jungle while a kilogram of gold can fetch 19 times that...The precious metal is also relatively easy to legalize while cocaine remains banned.”<sup>4</sup>

As the GFI report noted, “Criminal organizations have not only exploited gaps in capacity and policy, they have been ahead of the curve in their use of technology and sophisticated instruments and schemes. . . . Indeed, the very forces that enable globalization and that underpin secure, private trans-national commerce are the same as those that also now make us less secure.”<sup>5</sup>

The technology now available includes crypto currencies such as Bitcoin, stored value cards, encrypted value transfer technology and many other methodologies and tools that allow vast sums of value to move through the global markets in ways that are invisible and untraceable. The primary advantage of the nation state – and perhaps the only one – is that most of these instruments eventually intersect with the formal financial sector to be of maximum use to their owners.

This explains the continued widespread use of shell corporations whose real owners are hidden behind law firms that proffer anonymous bearer shares and bank secrecy laws that allow these corporations to move millions of dollars in illegal proceeds across the globe. It explains why free trade zones that can be used for fictitious imports and exports to launder funds continue to proliferate despite the lack of profitability of many of them. And it explains why criminalized governments embrace the magical thinking of publicly announcing mega projects that cost billions of dollars on paper but seldom exist in reality, justifying the pass through and laundering of huge sums of money that provide no benefit to their people.

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<sup>4</sup> Andrew Willis, “Gold Beats Cocaine As Colombia Rebel Money Maker: Police,” Bloomberg News, June 21, 2013, accessed at: <http://www.bloomberg.com/news/articles/2013-06-21/gold-beats-cocaine-as-colombia-rebel-money-maker-police> and: Andrew Willis and Michel Smith, “Colombia Illegal Gold Mines Prosper in Global Rout,” Bloomberg News, July 24, 2014, accessed at: <http://www.bloomberg.com/news/articles/2013-07-24/colombia-illegal-gold-mines-prosper-in-global-rout> and <http://www.fatf-gafi.org/media/fatf/documents/reports/ML-TF-risks-vulnerabilities-associated-with-gold.pdf>

<sup>5</sup> May, op cit.

The case of the Lebanese Canadian Bank (LCB) illustrates the use of old methodologies with sophisticated money laundering movements in a joint TOC/terrorist venture. The U.S. government's inter-agency investigation successfully took action against the LCB in 2011, designating the bank both a "primary money laundering concern" and primary financial vehicle for Hezbollah, the bank collapsed, a measure of how successful targeted operations can be.<sup>6</sup>

A multi-year investigation found a complex Hezbollah operation that moved hundreds of millions of dollars through a series of front companies involving the sale of used cars in West Africa and a flow of money through Panama, multiple offshore havens and the United States into LCB, where Hezbollah was the main client. This massive operation, which lasted several years, combined the sophisticated use of banking structures and import-export rules with rudimentary fake car sales and easily identifiable false economic operations.<sup>7</sup>

This type of multi-nation large scale operation is possible in part because an increasing number of criminalized states ally with hybrid TOC/terrorist groups (Hezbollah, the FARC) as instruments of state policy, as discussed.

### **FARC Funds. PDVSA and Money Laundering**

As a case study in how states sponsorship of TOC groups impacts the financial system I would like to focus on a series of state-sponsored operations that I believe are part of a multinational money laundering operation that has been carried out with impunity. These operations have been directly carried out under the auspices of the most senior leadership of the Bolivarian Revolution – a structure that has been used to launder billions of dollars of illicit profits from the FARC's drug trafficking, kidnapping, extortion and human slavery, into the legal financial system.

A 2012 study by the Colombian government estimated the FARC's assets at \$10.5 billion.<sup>8</sup> While other estimates vary widely, serious estimates of the FARC's hidden assets generally range from \$3 billion to \$5 billion.

Yet the group's leaders claim to have no significant remaining assets, saying that most of their illicit income was spent to sustain their organization, a claim President Santos has seemingly accepted at face value, while most other experts remain highly skeptical.<sup>9</sup> This issue has come to a head in recent months, as the FARC has been fiercely criticized by Colombian Attorney

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<sup>6</sup> U.S. Department of Treasury, "Treasury Identifies Lebanese Canadian Bank as a 'Primary Money Laundering Concern,'" Press release, February 10, 2011, accessed at: <https://www.treasury.gov/press-center/press-releases/Pages/tg1057.aspx>

<sup>7</sup> For a full description of the case see the presentation of David Asher, the lead investigator, to the Washington Institute, March 22, 2012, accessed at: <http://www.washingtoninstitute.org/policy-analysis/view/party-of-fraud-hizballahs-criminal-enterprises>

<sup>8</sup> "The FARC's Finances: Unfunny Money." *The Economist*, April 14, 2016. <http://www.economist.com/news/americas/21697008-government-may-never-get-its-hands-guerrillas-ill-gotten-gains-unfunny-money>

<sup>9</sup> Matthew Bristow, "Colombia Hunts 300 FARC Dissidents Doing 'Pure Organized Crime.'" *Bloomberg*, January 26, 2017, <https://www.bloomberg.com/politics/articles/2017-01-26/colombia-hunts-300-farc-dissidentsdoing-pure-organized-crime>.

General Néstor Martínez, who stated that the list of assets the FARC provided in August 2017, totaling \$324 million, is a grossly misleading and inaccurate accounting of their holdings.<sup>10</sup> He called for an end to the “legend of Franciscan poverty” that has been perpetrated by the FARC, referring to the common refrain of the leadership that the guerrilla army no longer controls significant financial assets.<sup>11</sup>

The FARC’s lack of full and honest financial accountability is significant because it augers ill for the group’s intentions and transparency in other aspects of the peace process. In fact, the FARC only consented to provide a full accounting of their financial assets after the first version of the peace accord was defeated via a national referendum.<sup>12</sup>

It is my assessment, based on extensive field research over four years and the review of documents acquired during the course of the research that, in addition to the resources the Colombian attorney general has found inside Colombia, significant FARC financial resources are being held outside Colombia and the legend of Franciscan poverty is indeed a false narrative.

IBI Consultants has been able to partially trace more than \$2 billion in suspicious transactions, largely involving FARC funds, as they move through a network of FARC allies in Central America and then into offshore havens. There are likely other networks that have not yet been discovered. The infrastructure in place could also allow the FARC to continue to generate funds through illicit activities and launder them.

This model of foreign holding structures, combined with creative repatriation tactics, depends on the use of financial institutions controlled by criminalized states, which operate under the umbrella of the radical populist authoritarian governments of the Bolivarian bloc.<sup>13</sup>

The FARC is an integral part of the highly criminalized Bolivarian bloc of nations, where the states use the FARC and other criminal groups as instruments of state power and see themselves as an alliance against the imperialistic control of the United States in Latin America. This trust-based alliance is built on decades of mutually-beneficial political, military, and economic alliances, and the shared view that the United States is the primary enemy of Latin America.

The primary money laundering structure for the FARC (as well as the Maduro regime in Venezuela and other criminal groups) is the Venezuelan state oil company PDVSA, sanctioned by the U.S. government on multiple occasions for violations of Iranian sanctions and other activities but never formally, institutionally designated a major money launderer or criminal enterprise. It is unclear why not.

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<sup>10</sup> “Duras Críticas del Fiscal a Listado de Bienes Entregado por las FARC.” Noticias Caracol , August 23, 2017. <https://noticias.caracol.com/el-acuerdo-final-paz-en-colombia/duras-criticas-del-fiscal-listado-de-bienesentregado-por-las-farc>

<sup>11</sup> “Fiscal Asegura Que las FARC Tienen Varios Billones en Bienes.” Revista Semana, June 5, 2017.

<sup>12</sup> Alba Tobella, “FARC’s Elusive Finances Undercut Support for Colombia Peace.” The Washington Post , June 13, 2017.

<sup>13</sup> See Douglas Farah, “Convergence in Criminalized States: The New Paradigm.” In H. Matfess and M. Miklaucic (eds.), *Beyond Convergence: World Without Order*. National Defense University Center for Complex Operations: Washington DC, October 2016.

More than a dozen senior Venezuelan officials, including PDVSA executives, are currently under indictment in the United States for drug trafficking with the FARC, financial support of Hezbollah, violating international sanctions against Syria and elsewhere and a host of other criminal activities.

A revealing insight came to light in March 2015 when the U.S. Treasury Department's Financial Crimes Enforcement Network designated the Banca Privada D'Andorra the premier bank of the most secretive banking jurisdiction in the world, as a bank of "primary money laundering concern."

The designation noted the multiple billions of dollars of money laundering activity in the bank benefitted a host of actors including PDVSA, the Venezuelan state oil company. The Treasury notice reported that BPA and PDVSA set up shell companies and "complex financial products to siphon funds off from PDVSA. BPA processed approximately \$2 billion in the PDVSA money-laundering scheme" during the two-year period they examined, meaning the amount moved through BPA was likely much higher.<sup>14</sup>

The key elements of the FARC/PDVSA foreign financial infrastructure are:

1. **ALBA Petróleos**, the subsidiary of the Venezuelan state oil company PDVSA in El Salvador. PDVSA owns 60 percent of the company and Salvadoran officials own 40 percent. ALBA Petróleos, serves as a critical part of a multi-national money laundering operation, constructed and operated by members of the Bolivarian alliance.<sup>15</sup> ALBA Petróleos' management is entrusted exclusively to the inner circle of the governing Frente Farabundo Martí Para la Liberación Nacional (FMLN) party in El Salvador. The main individual involved is the FMLN's de facto leader, José Luis Merino, also known by his nom de guerre Ramiro Vásquez, a long-time FARC ally and the recently (November 2016) named Vice Minister of Foreign Affairs for International Investments. Merino has been working closely with the FARC since at least 1994 and was a key weapons supplier to the Colombian rebels for more than two decades. He has also worked in creating front companies for the FARC outside of Colombia.<sup>16</sup> On June 19, 2017 a bipartisan group from the House of Representatives wrote to Treasury Secretary Steven T. Mnuchin requesting his department investigate the "U.S.-linked banking activities" of Merino "who's reported long-standing associations with transnational organized criminal networks are the subject of U.S. criminal

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<sup>14</sup> "FinCEN Names Banca Privada d'Andorra a Foreign Financial Institution of Primary Money Laundering Concern," *FinCEN*, March 10, 2015, accessed at: [http://www.fincen.gov/news\\_room/nr/html/20150310.html](http://www.fincen.gov/news_room/nr/html/20150310.html).

<sup>15</sup> For further reading, see Douglas Farah, "The Criminalized State in Latin America." In AEI Working Group on Transnational Organized Crime in the Americas, "Kinpins and Corruption: Targeting Transnational Organized Crime in the Americas." American Enterprise Institute, June 2017. <http://www.aei.org/wp-content/uploads/2017/06/Kinpins-and-Corruption.pdf>

<sup>16</sup> The most compelling evidence of Merino's arms trafficking and business association with the FARC came in documents captured from the camp of senior FARC commander Raul Reyes, killed by Colombian troops in Ecuador on May 1, 2008. For a full analysis of those documents see: "The FARC Files: Venezuela, Ecuador and the Secret Archives of 'Raúl Reyes,'" An IISS Strategic Dossier, International Institute for Strategic Studies, May 2011. See also Jose de Cordoba, "Chavez Ally May Have Aided Colombian Guerrillas: Emails Seem to Tie El Salvador Figure to Weapons Deal." *The Wall Street Journal*, August 28, 2008, available at <http://www.wsj.com/articles/SB121988527305078325> .

investigations for cocaine trafficking and money laundering.” The letter correctly noted that Merino was reported to have “acquired hundreds of millions of dollars in unexplained wealth while helping the FARC guerrillas, corrupt elements of the Venezuelan government and other criminal groups move funds to safe harbor.”<sup>17</sup>

2. **Albanisa**, the PDVSA subsidiary in Nicaragua. PDVSA owns 51 percent of the company and the Nicaraguan government owns 49 percent. The inner circle of the governing Frente Sandinista de Liberación Nacional (FSLN) and its leader, President Daniel Ortega, control Albanisa. Ortega’s family, including his wife and vice president, Rosario Murillo, and his sons, Laureano and Rafael, are also active in Albanisa and its subsidiaries in Nicaragua. Like the FMLN and Merino, the FSLN and Ortega are longtime allies of the FARC and have provided political and logistical support to the rebels for several decades.
3. **A network of dissident FARC commanders**, who were “expelled” from the FARC after reportedly refusing to accept the peace agreement with the government. These commanders continue to traffic in both illegal gold and cocaine, and reportedly maintain back-channel ties to the FARC as well as their Central American allies.
4. It is worth noting that the president of both Albanisa and ALBA Petróleos is Asdrúbal Chávez, cousin for the late Hugo Chávez, and member of the inner circle of the Maduro government. Asdrúbal Chávez was just name director of Citgo, PDVSA’s U.S. affiliate, following the illegal arrest of Citgo’s leadership in Caracas.

The ALBA businesses which operate in Central America, as noted, are majority-owned subsidiaries of the Venezuelan oil company PDVSA. Originally billed as social development organizations, the ALBA companies on paper were funded by subsidized oil from Venezuela’s PDVSA, which sold oil to these Central American affiliates at reduced rates. In theory, the affiliates could then use the profits of the oil sales for investment in social programs. However, it has become clear that regardless of their stated intentions at inception the ALBA businesses have not fulfilled promises of social development.<sup>18</sup>

In recent investigations by journalists in Nicaragua, published reports have found that Albanisa redirected some \$4 billion of its funds, originally earmarked for social programs, for “privatization.”<sup>19</sup> According to these investigations, the privatized money helped support political campaigns as well as elected officials allied with the ruling FSLN party.<sup>20</sup>

The pattern is similar in El Salvador, where over a 5-year period (2012-2016) ALBA Petróleos on paper generated \$1.2 billion in profits but lent more that 90 percent of that money to other companies that its leaders controlled outside of El Salvador. One investigation in El Salvador

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<sup>17</sup> Letter from Hon. Jeff Duncan, chairman of the Subcommittee on the Western Hemisphere Committee on Foreign Relations and Hon. Albio Sires, ranking member, et al to the Secretary of the Treasury, June 19, 2017.

<sup>18</sup> Carlos Fernando Chamorro, “Nicaragua tiene derecho a saber más de Albanisa.” *El Faro*, April 12, 2016, <https://www.elfaro.net/es/201604/opinion/18400/Nicaragua-tiene-derecho-a-saber-m%C3%A1s-de-Albanisa.html> .

<sup>19</sup> Carlos Fernando Chamorro, “Nicaragua y el costo de la corrupción.” *Animal Político*, May 11, 2017, <http://www.animalpolitico.com/blogeros-blog-invitado/2017/05/11/nicaragua-costo-la-corrupcion/> .

<sup>20</sup> Octavio Enríquez, “Albanisa: el nuevo emporio.” *Confidencial*, September 6, 2015, <https://confidencial.com.ni/archivos/articulo/21956/albanisa-el-nuevo-emporio>.



uncovered more than \$300 million from ALBA Petróleos funneled to companies in Panama through shell companies controlled by Merino's inner circle and disguised as loans from ALBA Petróleos and its subsidiaries.<sup>21</sup> Another recent investigation found that ALBA Petróleos' network is controlled by a series of front men who respond to Merino and who sit on overlapping boards of directors, in order to control the flow of funds from El Salvador to overseas companies.<sup>22</sup>

Barclay's Bank, in March 2015, estimated that Venezuelan oil going to Petrocaribe, including El Salvador and Nicaragua, had dropped by 50 percent from 2012 through 2014, from a total of 400,000 barrels per day (BPD) to 200,000 BPD. The bank expected the oil flow to be further reduced in 2015, from 200,000 BPD to 80,000, which was accurate.<sup>23</sup> According to leaked internal PDVSA documents, production in 2017 continued to drop precipitously, after another major dip from 2015 levels in 2016.<sup>24</sup> This means that the Central American structures were at best receiving less than 15 percent of the oil they started with (and likely not even that), and were selling it at less than 50 percent of the projected price.

However, both Central American oil companies underwent remarkable and inexplicable economic booms. During that period, ALBA Petróleos' revenues grew by 30 percent to 50 percent a year. Similarly, President Daniel Ortega in Nicaragua has stated that Albanisa boasts revenues of \$400-500 million, which are not accountable to any government institutions. Instead, the money, which could be a sum totaling upwards of one fifth of the Nicaraguan national budget, operates as Ortega's personal slush fund. Given the cratering oil exports from the beleaguered Venezuelan state, there are very few oil shipments that could legitimately explain the profits that Albanisa and ALB Petróleos have reported.<sup>25</sup> In El Salvador, if Merino's public statements that ALBA Petróleos generated \$1 billion in 2014 were accurate, it would represent about 15 percent a year of the nation's total budget of \$4.4 billion flowing outside of any accountability.

This type of economically irrational behavior is generally seen when illicit money is being laundered into financial systems in order to justify its origin. In instances where the initial investments of the money can be traced, the businesses seldom generate profits and many are not operational. Rather, the projects exist on paper, hundreds of millions of dollars are legitimized as investments in the fictitious projects, and the money can enter the financial stream to be repurposed for other uses.

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<sup>21</sup> Efren Lemus, "Alba tiene ocho offshore en Panamá y así reduce impuestos en El Salvador." El Faro, April 1, 2016, [https://elfaro.net/es/201604/el\\_salvador/18388/Alba-tiene-ocho-offshore-enPanam%C3%A1-yas%C3%AD-reduce-impuestos-en-El-Salvador.htm](https://elfaro.net/es/201604/el_salvador/18388/Alba-tiene-ocho-offshore-enPanam%C3%A1-yas%C3%AD-reduce-impuestos-en-El-Salvador.htm).

<sup>22</sup> Moisés Alvarado, "La red de testaferros del viceministro Merino." Revista Septimo Sentido, La Prensa Gráfica, August 29, 2017, accessed at: <http://7s.laprensagrafica.com/la-red-testaferros-del-viceministromerino/>

<sup>23</sup> Alejandro Arreaza and Alejandro Grisanti, "Venezuela: Reducing Generosity." Barclay's Emerging Market Research, March 25, 2015.

<sup>24</sup> Alexandra Ulmer and Brian Ellsworth, "Exclusive: Venezuela PDVSA Sees 2017 Oil Output Stuck Near Historic Lows - Document." Reuters, January 13, 2017. <http://www.reuters.com/article/us-venezuela-pdvsaidUSKBN14X0GW>

<sup>25</sup> For the most complete look at Albanisa, the Nicaraguan company run by Ortega and his family, see Carlos F. Chamorro and Carlos Salinas Maldonado, "Las cuentas secretas de Albanisa." Confidencial (Nicaragua), March 5, 2011, available at <http://www.confidencial.com.ni/articulo/3388/las-cuentas-secretas-dealbanisa>.

This is where the role of the criminalized state is fundamental.<sup>26</sup> Both the Ortega structure and the Merino organization have documented, longstanding ties to the FARC dating to the early 1990s; for several decades, both served as more traditional super fixers for the organization. However, it is their control of state levers that has catapulted these networks into the ranks of important criminal structures and centers of convergence for TOC groups, terrorist organizations, and criminalized states.

Now that these organizations operate with end-to-end state protection, they have access not only to government protection, but also to immunity from any form of public scrutiny or accountability for their actions.

Given the decades of trust among Ortega, Merino and the FARC secretariat, this infrastructure is ideal for moving FARC assets to safe harbor abroad. There is significant anecdotal evidence that the vast, economically irrational funds washing through ALBA Petr6leos, Albanisa, and its scores of subsidiary companies scattered from El Salvador to Gibraltar and from Panama to Nevada, are at least in significant part the FARC economic resources now being laundered into the world's financial system.

### **Gold as a Key Money Laundering Vehicle**

While increased efforts to raise the risk factors for money laundering activities are commendable, there are major holes outside the banking structure that also allow TOC groups to convert commodities to cash and place the money in the financial system as legitimate. As has been outlined in previous IBI research,<sup>27</sup> gold is now a top commodity for regional TOC groups as both a source of income and a vehicle for money laundering.<sup>28</sup>

Recent research indicates that by 2010 or 2011, the proceeds from illegally mined gold in several Latin American source countries exceeded those from narcotics trafficking.<sup>29</sup> Gold trafficking is also a major concern because of its great potential as a money laundering vehicle for TOC groups. As a recent US criminal complaint, filed against NTR Metals in Florida stated:

“Criminals frequently trade illegal gold through illicit shell or front companies using false or incomplete documents, often smuggled through third-party countries, and then sold to refineries in the U.S., in an effort to hide the true source, ownership, and origin of gold from foreign and U.S. law enforcement... In general, gold is a good medium for money laundering because it has universal and readily ascertainable value and is difficult to trace... millions of dollars [were] paid in the U.S. to Peruvian narco-traffickers [for cocaine sales]. The narco-traffickers then physically smuggle the cash payments back to

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<sup>26</sup> For further reading on criminalized states in Latin America, see Douglas Farah, “Convergence in Criminalized States: The New Paradigm.” In Hilary Matfess and Michael Miklaucic, *Beyond Convergence: World Without Order*. National Defense University Center for Complex Operations, October 25, 2016.

<sup>27</sup> For further reading on IBI Consultants Research related to illegal gold mining as a money laundering vehicle, see Douglas Farah and Kathryn Babineau, “Suriname: The New Paradigm of a Criminalized State.” Center for a Secure Free Society Global Dispatch, March 2017.

<sup>28</sup> <http://www.fatf-gafi.org/media/fatf/documents/reports/ML-TF-risks-vulnerabilities-associated-withgold.pdf>

<sup>29</sup> Jose de Echave, “La Minería Ilegal en Peru: Entre la informalidad y el delito.” Nueva Sociedad No. 263.

Peru where it is used to purchase illegally-mined gold, and the gold is then sold [effectively laundering the narco money].”<sup>30</sup>

Like other illicit economies, illegal gold mining fits into a broader network of illicit goods and trafficking networks, all of which help to strengthen TOC groups and fray the social fabric of affected communities. These economies that ‘complement’ illegal gold are critical to understand in order to have an accurate picture of the overall scale of criminalization. Furthermore, these conditions create the perfect environment for non-state armed actors and TOC groups to take deep root, particularly given the lack of government presence or willingness to curtail the biggest players.

The NTR complaint succinctly outlined the overall danger that illegal gold trafficking poses to efforts to combat transnational organized crime:

“Prosecutors assert the three defendants bought billions of dollars’ worth of gold from illegal mines in the Amazon rain forest, arranged to refine the precious metal, sold the gold and then wired the proceeds back to drug traffickers and other criminals in South America. . . . Narco-traffickers and other criminals financed the clandestine operation to convert their cocaine profits into cash.”<sup>31</sup>

IBI Consultants research has found glaring and documented anomalies in gold exports from Bolivia, Nicaragua and Suriname – all members of the Bolivarian Alliance – indicative of significant streams of money being laundered back into the financial system due to some of the unique attributes of this commodity.

Suriname is of particular concern due to the role of President Desi Bouterse, a convicted drug trafficker, in the creation of gold refinery that does not appear to refine any gold at all while exporting tons of the metal to the United Arab Emirates and the United States.<sup>32</sup> Suriname, like Nicaragua and Bolivia, now export significantly more gold than is reported mined in the country, another glaring anomaly and an important indicator that gold is being used on a large scale as a laundering mechanism.

## Conclusions

S1241 offers important steps to making the U.S. banking system less vulnerable to money laundering activities by: strengthening existing laws that allow U.S. law enforcement to obtain foreign bank records; criminalizing knowingly concealing, falsifying or misrepresenting important information concerning ownership or control of an account or assets held in an account, to a financial institution; allowing the government to apply for a restraining order to

<sup>30</sup> United States District Court for the Southern District of Florida. Criminal Complaint, United States of America v. Juan P. Granda. Case No. 17-MJ-02376. Sections 14-15, pg. 6.

<sup>31</sup> Jay Weaver, “Two Miami Men Convicted of Laundering Billions in Amazon Gold.” Miami Herald, September 5, 2017.

<sup>32</sup> For details of Suriname’s involvement in the illicit gold trade see: Douglas Farah and Kathryn Babineau, “Suriname: The New Paradigm of a Criminalized State,” Center for a Secure Free Society, March 2017, accessed at: <http://www.securefreesociety.org/wp-content/uploads/2017/03/Global-Dispatch-Issue-3-FINAL.pdf>

temporarily freeze the bank accounts of defendants arrested for offenses involving the movement of funds in or out of the United States; and other measures.

This bill will not fix the structural issues that make money laundering both a lucrative and low risk enterprise. But each step raises the cost of laundering money and augments the tool set available to U.S. law enforcement officials. The steps also raise the risk to TOC groups, a crucial calculation in how money is laundered. Generally the risk is negligible to both the TOC groups and the banks and financial institutions that do business with them.

Thank you and I will be happy to answer any questions.