



One Hundred Eighteenth Congress
Committee on Homeland Security
U.S. House of Representatives
Washington, DC 20515

August 3, 2023

The Honorable Alejandro Mayorkas
Secretary
U.S. Department of Homeland Security
Washington D.C. 20528

Dear Secretary Mayorkas:

As you may know, illicit tobacco markets can have significant geopolitical consequences. There has long been evidence of terrorist organizations and organized criminal enterprises engaging in cigarette smuggling on U.S. soil to generate revenue and finance acts of terror.¹ In one notable public case, two brothers trafficked cigarettes in the United States to raise funds for the terrorist group Hezbollah.²

It has recently come to our attention that a different criminal group is engaged in the illicit tobacco trade - the Mexican cartels. Recent reports have suggested that the *Cártel de Jalisco Nueva Generación* (CJNG), which the U.S. Department of Justice has classified as “one of the five most dangerous transnational criminal organizations in the world”,³ is engaged in tobacco sales to raise new revenues. CJNG is already responsible for trafficking significant amounts of cocaine, methamphetamine and synthetic opioids such as fentanyl-laced heroin in the United States and is considered one of the most dangerous and violent criminal organizations in Mexico. New profits obtained from tobacco sales could be used to further fund CJNG’s illicit fentanyl trafficking operations, giving this already powerful cartel even more ammunition in its coordinated campaign to ship this deadly drug into the United States. Senators Rubio and Cotton recently outlined these concerns in a letter to Secretary Yellen, requesting that the Office of Foreign Assets Control sanction the company tied to CJNG’s tobacco sales “before it is able to further spread its mafia-like business practices into the United States”.⁴

¹ U.S. Department of State, The Global Illicit Trade in Tobacco: A Threat to National Security, 12/15, <https://2009-2017.state.gov/documents/organization/250513.pdf>.

² Bureau of Alcohol, Tobacco, Firearms and Explosives, Our History, “Operation Smokescreen”, 09/16, [Operation Smokescreen | Bureau of Alcohol, Tobacco, Firearms and Explosives \(atf.gov\)](https://www.atf.gov/operation-smokescreen).

³ U.S. Drug Enforcement Agency, CJNG & Los Cuinis Foreign Narcotics Kingpin Designation Act, 05/19, <https://www.dea.gov/sites/default/files/2019-05/CJNG%20CUINIS%20X%20Chart%20for%20May%202019.pdf>

⁴ Senator Marco Rubio, Press Release, “Rubio, Colleagues Urge Biden Administration to Sanction International Tobacco Company Linked to Mexican Cartels”, 05/23,

Given this recent development and considering our battle against illegal fentanyl, we are concerned about the potential for the Mexican cartels to begin trafficking tobacco products in the United States should the Food and Drug Administration (FDA) finalize three proposed rules that would prohibit certain tobacco products. Specifically, the proposals to prohibit menthol in cigarettes and flavors in cigars and to effectively ban cigarettes by mandating a maximum level of nicotine in cigarettes could create significant illicit markets that would operate outside the control of the FDA. Forty-seven million American adults use tobacco products and approximately 31 million American adults smoke cigarettes. Additionally, the regulated market for menthol cigarettes is worth approximately \$30 billion and the regulated market for cigarettes is worth around \$80 billion. If FDA finalizes the prohibitory tobacco policies mentioned above, CJNG and other Mexican cartels will have significant financial incentive to utilize their existing fentanyl and narcotics networks to push tobacco sales in the United States. In fact, Sheriff of Cochise County, Arizona Mark Dannels recently commented on the involvement of the cartels, saying “with financial incentives this powerful, the question isn’t whether an illicit market for flavored tobacco will rise, but just how big it will be”.⁵

If the FDA moves forward without considering the potential impact of cartel activity there could be a massive criminal enterprise opportunity. In a March 29th appearance before the House Appropriations Agriculture subcommittee, FDA Commissioner Robert Califf said that he was “not aware of any study of tobacco cartels in Mexico”. Under the Tobacco Control Act, Congress required FDA to consider whether proposed tobacco product standards could create a significant illicit market. Law enforcement organizations and others have already raised concerns about the FDA’s proposed prohibitory rules, saying “there is no doubt that the proposed bans will exacerbate an already thriving illicit tobacco market, increase crime in our communities, strain already tight public safety resources, and place further stress on our departments that are greatly understaffed.”⁶ It seems as if FDA has not fully considered the impact of its proposed rules on the illicit market, despite being required under law to do so, and should reconsider these proposals in light of this new evidence of cartel activity.

Our country is already grappling with the consequences of cartel violence, human trafficking, and narcotics and weapons smuggling across the United States. And we have already lost too many American lives to illicit fentanyl pushed by the cartels. We can’t afford to give the cartels even more opportunity to expand their criminal enterprise and further devastate our communities. Given this recent evidence, we strongly urge you to work with FDA to halt these prohibitory policies before they create even further chaos and bloodshed at the hands of the cartels. This prohibition will only create unintended consequences at a time when the consequences of cartel activity on American soil are already too great.

<https://www.rubio.senate.gov/public/index.cfm/2023/5/rubio-colleagues-urge-biden-administration-to-sanction-international-tobacco-company-linked-to-mexican-cartels>.

⁵ AZ Central, “How the FDA’s flavored tobacco ban could make my border county less safe”, 06/23, <https://www.azcentral.com/story/opinion/op-ed/2023/06/08/fda-tobacco-ban-hurt-border-sheriffs-communities/70283456007/>.

⁶ Federal Comment Submission to Menthol Cigarette and Flavored Cigar Bans – Docket Nos. FDA-2021-N-1349 and FDA-2021-N-1309, August 3, 2022, <https://www.regulations.gov/comment/FDA-2021-N-1349-175322>.

Sincerely,



Mark E. Green, MD
Chairman
Committee on Homeland Security

cc: The Honorable Robert Califf, Commissioner, U.S. Food and Drug Administration
The Honorable Janet Yellen, Secretary, U.S. Department of the Treasury
The Honorable Antony Blinken, Secretary, U.S. Department of State
The Honorable Xavier Becerra, Secretary, U.S. Department of Health and Human Services
The Honorable Bennie Thompson, Ranking Minority Member, Committee on Homeland Security