



**Statement By**

**Eric L. Olson**

**Deputy Director, Latin American Program**

**Senior Advisor, Mexico Institute**

**Woodrow Wilson International Center for Scholars**

**Subcommittee on Western Hemisphere**

**House Committee on Foreign Affairs**

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**“Examining the Effectiveness of the Kingpin Designation Act  
in the Western Hemisphere”**

Good afternoon, Chairman Cook, Ranking Member Sires, and Members of the Committee. Thank you for the opportunity to appear before you today on behalf of the Woodrow Wilson Center.

As you may know, the Wilson Center was created by an act of Congress as our nation's living memorial to President Woodrow Wilson. In the words of Vice President Pence, the Wilson Center is "an institution of independent research and open dialogue and actionable ideas, truly a bi-partisan stalwart here in Washington D.C."

With that in mind, I offer the following thoughts and suggestions regarding the effectiveness of the Foreign Narcotics Kingpin Designation Act:

To begin, I believe Kingpin Designation Act of 1999 is one of the most important and powerful instruments the United States has in its quiver to fight organized crime networks and illicit financing in the region. Since the Treasury Department's Office of Foreign Assets Control issued the Foreign Narcotics Kingpin Sanctions Regulations in 2000 there have been approximately 1800 persons and entities designated and sanctioned under the act. The vast majority of these are from the Western Hemisphere.

The act is intended to paralyze a criminal group by going after its illicit properties and proceeds with the goal of taking the "benefit" out of their illicit activities. One of the intended byproducts of a Kingpin designation is to produce a pariah effect that dissuades legitimate businesses from becoming enmeshed in illicit activity. In other words, it makes it more difficult for criminal organizations to launder their illicit proceeds through legitimate businesses.

While its use has been far reaching, and many of the region's most important drug traffickers and money launders have been sanctioned under its authority, there has not been, to my knowledge, a full review of the effectiveness of the program and policy. In 2007, the Office of Foreign Assets Control conducted its own internal review of the Colombia-specific narcotics-sanctions program, but this was not a comprehensive review of the Act or an independent review. When the Kingpin Act was enacted it also created a Foreign Assets Judicial Review Commission to look into legal questions related to the Act's implementation. But I'm unaware of any public report from the Commission. Furthermore, there has been no analysis from the Treasury Department's Office of Inspector General, and nothing from the Government Accountability Office.

So an initial recommendation might be to encourage a full policy review and objective evaluation of what has been a widely used and presumably successful element of United States policy and strategy to counter transnational organized crime.

Speaking anecdotally, there is no question that the Act has been used to good effect in several countries such as Venezuela, Colombia, and Mexico. It has also been used in Central America on several occasions and in particular Honduras where I would like to focus my comments. While I have not conducted a full review of the effectiveness of the Act's use in the Western Hemisphere, I believe there are some important insights to glean from the Honduras case.

### **Background on the *Banco Continental* and Rosenthal family case**

On October 7, 2015, the Treasury Department's Office of Foreign Assets Control designated three members of the Rosenthal family of Honduras, the country's sixth largest Bank (*Banco Continental*), and several related businesses under the Kingpin Act. According to the Office of Foreign Assets Control it was the first time a bank had been designated under the Act.

**Jaime Rosenthal Oliva**, one of Honduras's richest and most powerful men, headed the Rosenthal family businesses. Not only did he and his family control *Banco Continental*, but he is the former Vice President Honduras, and owner of one of the country's most important national newspapers – *El Tiempo*.

As part of the same designation, Mr. Rosenthal's son, **Yani Rosenthal**, and nephew, **Yankel Rosenthal Coello**, were also named. All three were sanctioned for "playing a significant role in international narcotics trafficking ... including providing money laundering and other services..." to several Central American drug trafficking and criminal organizations, most notably the so-called "Cachiros." The Cachiros had previously been designated under the Act in September 2013.

Again, it's worth noting that these are not just alleged criminal actors but powerful political characters in their own right. Yani Rosenthal served as a member of the Honduran Congress from 2010 to 2014, and before that was Minister of the Presidency from 2006 to 2007. He was a candidate for President of Honduras in both the 2009 and 2013 elections. Yankel Rosenthal Coello, was Honduras's Minister of Investment until June 2015 and was president of Marathon, one of Honduras's strongest soccer clubs.

Yani Rosenthal plead guilty to money laundering in New York's Southern District Court on July 26, 2017, and Yankel Rosenthal Coello plead guilty to attempted money laundering in New York Southern District Court on August 29, 2017. Sentencing is scheduled for January 2018.

According to their indictment by the U.S. Department of Justice, The Rosenthals allegedly used a variety of mechanisms to launder Cachiros' money, including using *Banco Continental* to issue loans to the Cachiros, which were paid back with drug money. *Banco Continental* also allegedly helped Cachiros leaders establish other businesses, including the Joya Grande Zoo, and to buy equipment for construction, mining, and African palm oil companies. Some of the money laundered by the

Cachiros through the Bank allegedly came from the Government of Honduras in payment for infrastructure projects.

Jaime Rosenthal remains in Honduras, where he is on trial for unrelated charges of fraud that stem back to 2004. The United States issued a request for his extradition at the end of December 2015, but the Supreme Court of Honduras ruled that Rosenthal's charges in Honduras must be resolved before he can be extradited to the United States. Although the case against him in Honduras dates back to 2004, Rosenthal's trial has been postponed multiple times, and is currently scheduled to resume on November 30, 2017. I would point out that Honduras holds national elections on November 26<sup>th</sup>.

### **Benefits of the Rosenthal Money Laundering Organization Designation.**

So what are the benefits of this designation for the fight against criminal organizations, corruption, and impunity in Honduras?

- While final court determinations have yet to be made, it's clear that this designation struck a powerful blow not only against the Rosenthal family's alleged criminal enterprises, but also against the Cachiros and other criminal networks in Honduras and throughout Central America. One of the linchpins of their criminal enterprise was crippled and destroyed.
- A number of very powerful but corrupt economic and political actors in Honduras were taken off the playing field, and their ability to manipulate and distort Honduran governance, the economy, and society was seriously weakened.
- This was a wakeup call to Honduran agencies charged with fighting money laundering and organized crime – especially the Honduran National Bank and Insurance Commission.

### **What can be gleaned from this experience?**

One of the troubling aspects of the Banco Continental case is that the alleged links between the Bank, the Rosenthal family, Honduran politicians, and criminal organizations such as the Cachiros had long been an open secret. Not only did I hear often about these links but investigative journalists were writing and publishing reports and stories about this apparent link. For example, see "Insight Crime's" report: **Honduras Elites and Organized Crime: The Cachiros**. April 9, 2016.

Despite this and other evidence, Honduras's bank oversight board and Attorney's General Office did not take action until the designation was made by the Office of Foreign Assets Control.

In contrast to Mexico and Colombia, Honduras is a small and fragile country with weak governance capacity and a tiny economy. There are many ways in which the line between organized crime and the state have become blurred. Economic and political elites can become vehicles for corruption that have lasting impacts on the country's governance.

Designations like the Kingpin Act in Honduras have the potential to create broader uncertainty, even a sense of panic that could potentially undermine a country's entire economy. As mentioned, the designation included a bank that (corrupt or not) was enmeshed in a broader financial system, so sanctioning and dissolving the Banco Continental, as happened in this case, had the potential to bring down a lot of people and financial institutions whether they were part of a criminal conspiracy or not. This is less likely to be the case when individuals and businesses are sanctioned and in larger countries like Colombia and Mexico.

While there is good reason for Treasury to employ the element of surprise, in part because our counterparts are not always reliable, as suggested above, there are also risks. In this specific case the sudden announcement of sanctions by the Treasury Department against an important national bank created a sense of uncertainty within the Honduran financial system and legitimate depositors over whether further actions by Treasury could be expected.

Even though the Kingpin Act's reach is largely limited to U.S. persons, many foreign citizens may refuse to engage in transactions that have been prohibited for U.S. persons.<sup>1</sup> According to one analysis, "even if a foreign entity can engage in certain business, if that business is sensitive for U.S. persons because of OFAC regulations, then oftentimes the foreign entity will want nothing to do with the transaction."<sup>2</sup> For this reason, the Treasury Department had to issue a clarification on their action on October 11<sup>th</sup> so that legitimate transactions by non-U.S. persons would not become paralyzed in the process, and thus put at risk the broader financial system.<sup>3</sup>

Bottom line, while the tool is powerful and legitimate, it carries with it the risk of collateral damage that can potentially undermine legitimate sectors of the financial system and ultimately the economy.

### **Policy Options for the Future:**

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<sup>1</sup> See "OFAC Clarifies its Position on a Foreign Bank: What this Says about 3rd Country Actors," blog post by Farhad Alavi, October 11, 2015, in Ussanctions.com. Access here: <https://ussanctions.com/2015/10/11/ofac-clarifies-its-position-on-a-foreign-bank-the-case-of-banco-continental/>

<sup>2</sup> Ibid.

<sup>3</sup> Department of the Treasury, Office of Foreign Assets Control: Statement of Proposed Liquidation of Banco Continental. See here: [https://www.treasury.gov/resource-center/sanctions/Programs/Documents/banco\\_continental\\_10112015.pdf](https://www.treasury.gov/resource-center/sanctions/Programs/Documents/banco_continental_10112015.pdf)

Based on this case and consultations with many experts I would offer the following options for consideration by the Subcommittee and Congress.

1) The time is right to request a full, objective, data driven evaluation of the effectiveness of the Kingpin Act. It's now been nearly seventeen years since it was first implemented and it is time to do a cost benefit analysis and find out if the Act is as effective as anecdotes might suggest it is. Questions that must be answered include whether the Kingpin Act is having any measurable impact on accountability for criminal networks and their bosses in the region? We can point to prosecutions and convictions in the United States but as the Rosenthal case suggestion, we may not be seeing greater accountability in the region.

2) We need to use this powerful tool in a focused and careful way, seeking to avoid damaging the legitimate elements of financial systems and economies in our drive to root out criminals.

3) We need to use the leverage provided by the Kingpin Act to ensure that countries undertake broader reforms of their financial and judicial systems. Sanctions on individuals and entities are powerful tools but if we can use the leverage that comes with the sanctions to push for broader reforms, the benefits can be immense.

4) We need to continue investing in efforts to strengthen the capacity of financial oversight institutions in the region. The apparent lack of action and urgency in the Honduran National Commission for Banks and Insurance is deeply troubling. Some of this inaction is due to lack of capacity, but it may also be the result of lack of political will to address the obvious problems of penetration of the state by powerful criminal, economic, and political leaders.

5) Top-down, high-value target strategies can be valuable when confronting organized crime but they often lead to the fragmentation of criminal networks that metastasize, often forming new criminal groups or joining others. These can lead to increased competition between rival criminal groups increasing violence, insecurity, and instability. In our zeal to capture the big fish, we should not overlook the benefits of building security from the bottom-up, closing off space for criminal groups to work at the local level, cutting off their access to political, economic, and social control in villages, towns, and small cities that form the foundation of their enterprise.

6) Finally, as this tool has become the centerpiece of the Administration's strategy for countering transnational organized crime, Congress needs to make sure there are adequate resources and trained personnel to conduct the investigations and enforce the sanctions that form the backbone of the designations under the Kingpin Act.

Thank you and I am happy to take your questions.