APPENDIX

APPENDIX A

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-4127

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

SEUN BANJO OJEDOKUN,

Defendant – Appellant.

Appeal from the United States District Court for the District of Maryland, at Greenbelt.
Paul W. Grimm, District Judge. (8:19-cr-00228-PWG-1)

Argued:	Decided:
September 23, 2021	October 26, 2021

Before GREGORY, Chief Judge, KING, and FLOYD, Circuit Judges.

Affirmed by published opinion. Judge King wrote the opinion, in which Chief Judge Gregory and Judge Floyd joined.

ARGUED: Brent Evan Newton, Gaithersburg, Maryland, for Appellant. John Michael Pellettieri, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Appellee. **ON BRIEF:**

Jonathan F. Lenzner, Acting United States Attorney, Nicholas L. McQuaid, Acting Assistant Attorney General, Daniel S. Kahn, Acting Deputy Assistant Attorney General, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C.; Thomas P. Windom, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Greenbelt, Maryland, for Appellee.

KING, Circuit Judge:

Following a jury trial in the District of Maryland, defendant Seun Banjo Ojedokun was convicted of conspiracy to commit money laundering, in contravention of 18 U.S.C. § 1956(h). Ojedokun's conviction arose from his conspiratorial conduct in Nigeria, which involved efforts to distribute and conceal the proceeds of an extensive fraud scheme based in the United States. In 2019, after relocating to this country, Ojedokun was questioned and arrested by the FBI at his Illinois home and was thereafter indicted in Maryland. The grand jury returned a superseding indictment in August 2020, which Ojedokun unsuccessfully moved to dismiss as untimely. Ojedokun filed multiple unavailing suppression motions, was convicted and sentenced to 108 months of imprisonment, and subsequently moved for a new trial. Following the district court's denial of that motion, Ojedokun filed a motion for reconsideration, asserting the court lacked subject matter jurisdiction by reason of an inappropriate application of § 1956's extraterritorial jurisdiction provision. The court likewise rejected that motion.

Ojedokun has timely appealed his conviction and sentence to this Court, asserting the following: (1) the

district court did not possess extraterritorial jurisdiction over the § 1956(h) conspiracy charge; (2) the superseding indictment was time-barred; (3) the FBI's entry into Ojedokun's home ran afoul of the Fourth Amendment; and (4) Ojedokun's trial counsel rendered ineffective assistance under the Sixth Amendment. As explained herein, we concur with the district court's determinations as to extraterritorial jurisdiction and the timeliness of the superseding indictment. We further find no colorable Fourth Amendment violation and decline to reach Ojedokun's Sixth Amendment ineffective assistance of counsel claim. Accordingly, we affirm.

I.

A.

The criminal proceedings against Ojedokun grew out of a complex international operation designed to obscure the proceeds of a U.S.-based fraud scheme. That scheme principally involved contacting elderly victims by way of internet dating websites, where coconspirators, posing as romantic partners facing financial difficulties, would persuade their targets to surrender large sums of money. The fraud victims frequently paid the coconspirators tens or hundreds of thousands of dollars, only later to realize that their supposed newfound romantic connections were a sham.

Upon completion of the ploy, the fraud victims' money would be deposited into bank accounts controlled by various members of the conspiracy, including Gbenga Benson Ogundele, a United States citizen living in Laurel, Maryland, who served as the principal coordinator of the scheme. The

coconspirators agreed to arrange financial transactions designed to promote the underlying scheme and to conceal the source of its proceeds by distributing the money among geographically scattered members of the conspiracy.

Ojedokun lived and worked in Lagos, Nigeria, throughout the conspiracy. For his part, Ojedokun would send and receive by email information concerning the fraud victims' payments, including electronic documents confirming bank account deposits. Deposit slips and other wire transfer documents forwarded to Ojedokun's two email accounts would oftentimes be altered to reflect an inflated sum of money. The documents would then be dispatched from the accounts to other members of the conspiracy, including Mukhtar "Mukky" Haruna in Nigeria and eventually Ogundele in Maryland. Those emails would pass through a lengthy series of coconspirators, usually without comment in the body of the messages, so as to aid in concealing the origin of the fraud proceeds. The government later alleged that the conspiracy continued between either 2011 and 2015 or 2013 and 2015.

Ojedokun first came to the United States in 2017, intending to pursue a doctoral degree in chemistry at the Illinois Institute of Technology. On April 25, 2019, shortly before 8:00 a.m., an FBI agent from the Baltimore, Maryland complex financial crimes division, along with a special FBI agent from Chicago, knocked at the door of Ojedokun's home in the South Side of Chicago. When Ojedokun emerged from the home, the agents identified themselves by name, displayed their FBI credentials, and asked Ojedokun if he would be willing to speak with them. More

specifically, the agents asked Ojedokun if he "ha[d] a moment" to answer "a few questions . . . a couple of questions about some people you may have known, uh, back in Nigeria." *See* J.A. 1114.[1] To that inquiry, Ojedokun replied, "Okay." *Id.* at 1115. One agent then asked, "Can we talk? . . . Inside? Or . . . ," to which Ojedokun replied, "Oh, either way." *Id.* The agent asked, "Okay, can we go in?," and Ojedokun again replied, "Okay." *Id.* The agents and Ojedokun then went inside and were seated at Ojedokun's kitchen table.

Once inside, one of the agents informed Ojedokun that the interview was "completely voluntary" and further stated, "[I]f you don't want to answer my questions, you don't have to." *See* J.A. 1116. Ojedokun again responded, "Okay," and the agents proceeded to interview him for roughly one hour. *Id.* The interview primarily concerned Ojedokun's time spent in Nigeria and his use of the two email accounts utilized in distributing the wire transfer documents. During the interview, Ojedokun made incriminating statements pertaining to the email accounts and the conspiracy, confessing that he had sent and received the emails in question. Ojedokun also made repeated reference to a "friend" who he called his "brother," and an agent asked Ojedokun to retrieve the friend's phone number from his cell phone. *Id.* at 1140–42. When Ojedokun could not locate the number, the agent requested to see the phone. Ojedokun replied, "Sure, that's fine," and signed a consent form for a search of the device's contact information. *Id.* at

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[1] Citations herein to "J.A. __" refer to the contents of the Joint Appendix filed by the parties in this appeal.

1142–44. At the conclusion of the interview, the agents arrested Ojedokun and seized the cell phone.

B.

On May 6, 2019, the grand jury in the District of Maryland returned an indictment charging Ojedokun with a single count of conspiracy to commit money laundering, in contravention of the Money Laundering Control Act (the "MLCA"), 18 U.S.C. § 1956. *See United States v. Ojedokun*, No. 8:19-cr-00228 (D. Md. May 6, 2019), ECF No. 6 (the "Original Indictment"). Section 1956(a)(1) provides for two substantive offenses relevant to this case, known as "promotion" and "concealment" money laundering. Both require as an element "conduct[ing] . . . a financial transaction" involving "the proceeds of specified unlawful activity." *See* 18 U.S.C. § 1956(a)(1); *see also United States v. Bolden*, 325 F.3d 471, 486–87 (4th Cir. 2003) (explaining distinction between promotion and concealment offenses). The statute defines "specified unlawful activity" to include, inter alia, those offenses set out at 18 U.S.C. § 1961(1), a list which includes — as pertinent to this appeal — wire fraud in contravention of 18 U.S.C. § 1343, but not conspiracy to commit wire fraud in violation of 18 U.S.C. § 1349. Section 1956(h) makes unlawful conspiring to commit promotion or concealment money laundering, providing:

> Any person who conspires to commit any offense defined in this section or section 1957 shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

See 18 U.S.C. § 1956(h).

The Original Indictment alleged that the money laundering conspiracy lasted from January 2011 to March 2015. Notably, it identified the "specified unlawful activity" generating the proceeds to be laundered as "conspiracy to commit wire fraud in violation of 18 U.S.C. § 1349." *See* Original Indictment 2–3. The Original Indictment detailed the mechanics of the "internet-based romance scam" and maintained that Ojedokun's coconspirators used certain "drop accounts" to receive millions of dollars from fraud victims, caused those victims to wire money into the accounts, and disbursed the victims' money by way of wire transfers and other conveyances. *Id.* at 2–4. It further alleged that Ojedokun joined with the coconspirators — including Haruna and Ogundele — in sending and receiving emails evidencing the account deposits with the conscious objects of "promot[ing] criminal conduct" and "conceal[ing] and disguis[ing] the nature, location, source, ownership, and control of the proceeds" of the fraud scheme. *Id.* at 3.

On August 10, 2020, the grand jury returned the operative superseding indictment, once again charging Ojedokun with a single count of conspiracy to commit money laundering in contravention of § 1956(h). *See United States v. Ojedokun*, No. 8:19-cr-00228 (D. Md. Aug. 10, 2020), ECF No. 79 (the "Superseding Indictment"). The Superseding Indictment retained — substantially verbatim — the Original Indictment's allegations as to "drop accounts," bank deposits by the fraud victims, emails used to distribute deposit confirmation documents, disbursal of the proceeds, and the objects of "promot[ing] . . . criminal conduct" and concealing and

disguising "the nature, location, source, ownership, and control of the proceeds." *See* Superseding Indictment 1–4. The Superseding Indictment differed from its predecessor in two principal ways: first, it alleged the conspiracy lasted only from 2013 to March 2015, and second, it identified "wire fraud in violation of 18 U.S.C. § 1343" as the predicate "specified unlawful activity," as opposed to mere conspiracy to commit wire fraud. *Id.* at 3. The government later conceded that the Original Indictment alleged a non-qualifying "specified unlawful activity" but maintained that the Superseding Indictment cured that defect and related back to the return date of the Original Indictment.

C.

Prior to the return of the Superseding Indictment, Ojedokun filed three pre-trial motions to suppress. The first motion asserted that Ojedokun's statements made during the FBI interview should be excluded from trial because (1) he was in custody during the interview and was not given the warnings required by *Miranda v. Arizona*, 384 U.S. 436 (1966), and (2) the statements were involuntarily given. The remaining motions contended that Ojedokun had not given knowing or voluntary consent to the search of his cell phone and that a search warrant for the records of Ojedokun's email accounts was issued in the absence of probable cause, all in violation of the Fourth Amendment. Accordingly, those motions argued that the contact information and emails obtained from the cell phone should be suppressed. At an August 18, 2020 suppression hearing, the district court heard testimony from Ojedokun and the FBI agents and orally denied the motions. The court concluded that

the 2019 interview did not amount to a custodial interrogation and that Ojedokun accordingly was not entitled to *Miranda* warnings. The court further ruled that Ojedokun's decision to answer the agents' questions and to permit the search of his cell phone were fully voluntary, and that the contested search warrant was founded on probable cause. As relevant to this appeal, Ojedokun's trial counsel did not move to suppress the statements and cell phone data on grounds that the agents' entry into Ojedokun's home violated the Fourth Amendment because he did not provide valid consent to do so.

Following the denial of his suppression motions, Ojedokun filed a motion to dismiss the Superseding Indictment, averring the indictment was time-barred because it could not relate back to the date of the Original Indictment. Because both indictments alleged the conspiracy terminated in March 2015, Ojedokun explained that the August 2020 Superseding Indictment was untimely under the applicable five-year statute of limitations unless it related back to the May 6, 2019 return date of the Original Indictment.[2] Ojedokun maintained that by substituting "wire fraud in violation of 18 U.S.C. § 1343" for "conspiracy to commit wire fraud in violation of 18 U.S.C. § 1349" as the "specified unlawful activity" required for the § 1956(a)(1) substantive money laundering offenses, the

[2] The applicable statute of limitations for non-capital offenses provides that "no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information is instituted within five years next after such offense shall have been committed." *See* 18 U.S.C. § 3282(a).

government had "materially broaden[ed] and/or substantially amend[ed] the charges against [him]," such that the Superseding Indictment could not relate back to the date of the Original Indictment. *See* J.A. 233; *see also United States v. O'Bryant*, 998 F.2d 21, 23 (1st Cir. 1993).

At a hearing on August 26, 2020, the district court orally denied Ojedokun's motion to dismiss. The court explained that the inquiry as to whether a superseding indictment "materially broadens or substantially amends" an earlier indictment turns on whether the first indictment put the defendant on notice of the nature of the ultimate charges against him, thereby allowing him to prepare an adequate defense. The court emphasized that "the inquiry is not confined to the statutes under which the defendant is charged" but rather to the factual allegations on which the government relies. *See* G.S.A. 7–9.[3] After considering a redline comparison of the Original and Superseding Indictments and the allegations contained therein, the court determined that the Original Indictment afforded Ojedokun sufficient notice of the Superseding Indictment's charges, and consequently, that the later indictment was not a "curveball" that materially broadened or substantially amended the earlier version. As such, the court ruled that the Superseding Indictment related back to the return date of the Original and was not time-barred.

Ojedokun's jury trial began on September 8, 2020. During trial, the government presented the testimony of multiple fraud victims and relied on bank records,

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[3] Citations herein to "G.S.A. __" refer to the contents of the Supplemental Appendix filed by the government in this appeal.

telephone communications, messages sent to and from the email accounts, as well as Ojedokun's statements to the FBI agents to show that he joined with Ogundele and other coconspirators in an effort to launder the proceeds of the fraud scheme. Ojedokun testified in his own behalf and denied any involvement, claiming that he worked at a "cyber café" in Nigeria during the alleged course of the conspiracy where he frequently shared his passwords and email accounts with customers. Ojedokun admitted to sending emails containing wire transfer documents but insisted that he sent them on behalf of café customers and denied knowing or otherwise conspiring with Haruna, Ogundele, or any other involved parties. The jury concluded to the contrary and, on the sixth day of trial, returned a guilty verdict.

D.

Following his conviction, on September 29, 2020, Ojedokun timely filed a post-verdict motion for a new trial pursuant to Federal Rule of Criminal Procedure 33. Alongside other lines of argument, Ojedokun revived his suppression and statute of limitations contentions as bases for a new trial. By its letter order of November 17, 2020, the district court denied Ojedokun's Rule 33 motion, explaining that the motion's arguments already had been presented to and ruled on by the court.

Ojedokun thereafter obtained new counsel and filed with the district court a motion for reconsideration, again raising his statute of limitations argument as well as, for the first time, a claim that his § 1956(h) conviction was founded on an improper exercise of extraterritorial jurisdiction. Relative to the statute of

limitations issue, Ojedokun relied on our decision in *United States v. Smith*, 44 F.3d 1259 (4th Cir. 1995), for the proposition that an indictment charging a § 1956(h) conspiracy offense must allege, as an essential element of that offense, the particular predicate offense constituting the "specified unlawful activity" required for the substantive money laundering crimes. With that being the case, according to Ojedokun, a change to the statutory offense qualifying as the "specified unlawful activity" — as occurred in this case — would necessarily "broaden" or "substantially amend" the scope of an earlier indictment, such that the superseding indictment making such a change could not relate back to the date of its predecessor.

On the matter of extraterritorial jurisdiction, Ojedokun argued that the district court lacked subject matter jurisdiction to hear the charge against him because the extraterritorial jurisdiction provision of the MLCA — § 1956(f) — did not overcome the longstanding "presumption against extraterritoriality" with respect to his overseas money laundering conspiracy offense. *See Morrison v. Nat'l Austl. Bank Ltd.*, 561 U.S. 247, 255 (2010). Section 1956(f) provides:

> There is extraterritorial jurisdiction over the conduct prohibited by this section if—
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> (1) the conduct is by a United States citizen or, in the case of a non-United States Citizen, the conduct occurs in part in the United States; and

(2) the transaction or series of related transactions involves funds or monetary instruments of a value exceeding $10,000.

See 18 U.S.C. § 1956(f). Ojedokun averred in his reconsideration motion that subsection (f) could not rebut the presumption against extraterritoriality in his case because, under *Whitfield v. United States*, 543 U.S. 209, 214 (2005), a subsection (h) conspiracy requires only a "mere agreement" for the offense to be completed, not an overt act in furtherance of the conspiracy. As his conspiratorial conduct occurred entirely in Nigeria and his coconspirators' acts in furtherance of the conspiracy undertaken in the United States were not pertinent to his own culpability, Ojedokun maintained that his actions did not constitute conduct occurring "in part in the United States" within the scope of § 1956(f)(1).

For reasons explained its memorandum opinion of February 4, 2021, the district court rejected both arguments set forth in the motion. *See United States v. Ojedokun*, No. 8:19-cr-00228 (D. Md. Feb. 4, 2021), ECF No. 167 (the "Reconsideration Opinion").[4] Regarding the statute of limitations argument, the court determined that Ojedokun misread our opinion in *Smith* and that a § 1956(h) conspiracy charge is not required to allege the particular "specified unlawful activity" as an element of the offense. *Id.* at 12–13. That matter notwithstanding, the court concluded that the factual allegations in the Superseding Indictment did not "broaden or substantially amend" the allegations set out in the Original Indictment —

[4] The Reconsideration Opinion has been published and can be found at 517 F. Supp. 3d 444 (D. Md. 2021).

but in fact "narrowed the scope of the conspiratorial conduct" — and that, as wire fraud and conspiracy to commit wire fraud are "similar in essence," any claimed confusion on Ojedokun's part was "feigned." *Id.* at 14–17. Accordingly, the court ruled that the Superseding Indictment related back and was not untimely.

As to the extraterritoriality claim, the district court explained that § 1956(f) "explicitly overcomes the presumption against extraterritoriality" by "unambiguously stat[ing] the circumstances" when it affords extraterritorial effect. *See* Reconsideration Opinion 19–20. The court concluded that § 1956(f)(1) applied to Ojedokun's "conduct" abroad because, as the jury found, he "conspired with Ogundele, a Maryland [r]esident," and his conspiratorial conduct thus occurred "in part in the United States." *Id.* at 20–21.

Following its denial of the reconsideration motion, the district court convened for sentencing on March 11, 2021. The court sentenced Ojedokun to a term of 108 months of imprisonment. Ojedokun timely noted this appeal on that same date, and we possess jurisdiction pursuant to 28 U.S.C. § 1291.

II.

Ojedokun presents four issues to this Court for consideration on appeal, some based on arguments presented to the district court, and others for the first time. Specifically, Ojedokun has asked us to determine (1) whether the 18 U.S.C. § 1956(f) extraterritorial jurisdiction provision granted the district court subject matter jurisdiction to adjudicate the § 1956(h) money laundering conspiracy charge; (2)

whether the Superseding Indictment was barred by the statute of limitations or could relate back to the Original Indictment; (3) whether the FBI agents' entry into his home contravened the Fourth Amendment, such that the district court's admission of the resultant evidence amounted to reversible plain error; and (4) whether his trial counsel rendered ineffective assistance by failing to move to suppress his statements and the cell phone's contents because he did not grant valid consent for the FBI agents to enter his home. We address each of those contentions in turn.

A.

Ojedokun's principal argument in this proceeding is that § 1956(f) did not afford the district court extraterritorial jurisdiction to hear the § 1956(h) money laundering conspiracy charge growing out of his actions abroad. In advancing that claim, Ojedokun sets forth two separate contentions. First, he urges that the express terms of § 1956(f) do not overcome the presumption against extraterritoriality with respect to § 1956(h) conspiracy offenses, because a subsection (h) conspiracy is not "conduct" as subsection (f) conceives of that term and because such conspiracy offenses do not require a "transaction" as contemplated by § 1956(f)(2). Second, Ojedokun asserts that even if § 1956(f) applies to § 1956(h) conspiracies as a general matter, the provision cannot extend to cover his conspiratorial conduct in this case because his actions did not occur "in part in the United States" but instead exclusively in Nigeria.

We review de novo the district court's determination that it possessed extraterritorial

jurisdiction over the conspiracy charge against Ojedokun. *See New Horizon of N.Y. LLC v. Jacobs*, 231 F.3d 143, 150 (4th Cir. 2000). The government contends that extraterritoriality presents a merits question under the Supreme Court's decision in *Morrison v. National Australia Bank Ltd.*, 561 U.S. 247 (2010), and that because Ojedokun raised his extraterritoriality argument for the first time in a post-verdict reconsideration motion, he forfeited the claim and it is reviewable only for plain error. *Morrison*, however, considered whether § 10(b) of the Securities Exchange Act of 1934 *could* reach extraterritorial conduct. *See id.* at 250–54. Here, by contrast, § 1956(f) explicitly provides for extraterritorial jurisdiction; with it, Congress delimits federal courts' jurisdiction over foreign defendants involved in money laundering prosecutions. The statute provides for subject matter jurisdiction, the propriety of which may be attacked at any time; accordingly, our review of its application is plenary. *See United States v. Lloyds TSB Bank PLC*, 639 F. Supp. 2d 314, 317 (S.D.N.Y. 2009) ("There are two provisions in the [money laundering] statute which undertake to establish subject matter jurisdiction where the defendant is foreign. One of these is § 1956(f) . . . .").

1.

Ojedokun did not argue in the district court, nor does he here, that § 1956(f) fails to overcome the presumption against extraterritoriality in any respect. Such an argument would undoubtedly fail, as the statute specifies that "[t]here is extraterritorial jurisdiction over . . . ." *See* 18 U.S.C. § 1956(f). Rather, Ojedokun's position is that the section cannot

be interpreted to rebut the presumption as applied to § 1956(h) conspiracy offenses, largely because those offenses require nothing more than a "mere agreement" and therefore cannot constitute "*conduct* prohibited by this section" as envisioned by subsection (f). Subsections (f) and (h) again provide:

> (f) There is extraterritorial jurisdiction over the conduct prohibited by this section if—
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> (1) the conduct is by a United States citizen or, in the case of a non-United States Citizen, the conduct occurs in part in the United States; and
>
> (2) the transaction or series of related transactions involves funds or monetary instruments of a value exceeding $10,000.
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> * * *
>
> (h) Any person who conspires to commit any offense defined in this section or section 1957 shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

See 18 U.S.C. § 1956(f), (h).

Ojedokun is certainly correct that courts impose a presumption against the extraterritorial application of federal statutes absent a clear indication of contrary congressional intent. *See Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804); *EEOC v. Arabian Am. Oil Co.*, 499 U.S. 244, 248 (1991); *Morrison*, 561 U.S. at 255. The presumption against extraterritoriality is rooted in "the commonsense notion that Congress generally

legislates with domestic concerns in mind." *See Smith v. United States*, 507 U.S. 197, 204 n.5 (1993). It is well established, however, that Congress may apply its laws beyond the shores of the United States, and the Supreme Court has said that the presumption against extraterritoriality may be overcome by an "affirmative and unmistakabl[e]" instruction that the statute at hand does in fact apply to foreign conduct. *See RJR Nabisco, Inc. v. European Cmty.*, 136 S. Ct. 2090, 2100 (2016) (citing *Morrison*, 561 U.S. at 261). In *RJR Nabisco*, the Court provided us with a two-step framework for assessing questions of extraterritoriality. First, we must determine whether the presumption has been rebutted — "that is, whether the statute gives a clear, affirmative indication that it applies extraterritorially." *Id.* at 2101. If the presumption stands, the second step inquires "whether the case involves a domestic application of the statute," which will occur where the conduct relevant to the "focus" of the statute occurred within the United States. *Id.*

At bottom, whether a statute should be given extraterritorial effect is a question of congressional intent, and in searching for such intent, courts may consider "all available evidence," to include "the text of the statute, the overall statutory scheme, and legislative history." *See In re French*, 440 F.3d 145, 151 (4th Cir. 2006) (citing *Sale v. Haitian Ctrs. Council, Inc.*, 509 U.S. 155, 177 (1993); *Smith*, 507 U.S. at 201–03 & n.4).[5] Put differently, the

[5] The principles stated above, as espoused by this Court and by the Supreme Court, control the inquiry as to whether congressional intent indicates that a statute may apply in extraterritorial fashion. Ojedokun overreads the Supreme

presumption against extraterritoriality should not be read as a clear statement rule; "the structure and history of the statute are also relevant" to the extraterritoriality analysis, and the statute's "context" may be "dispositive." *See Roe v. Howard*, 917 F.3d 229, 240 (4th Cir. 2019) (quoting *RJR Nabisco*, 136 S. Ct. at 2102–03).

Ojedokun is likewise correct that the presumption is not defeated simply by virtue of a statute's expressly addressing its extraterritorial application; rather, courts must closely consider "the *extent* of the statutory exception." *See Microsoft Corp. v. AT&T Corp.*, 550 U.S. 437, 455–56 (2007) (citing *Smith*, 507 U.S. at 204). As stated, there is no question here that § 1956(f) provides a "clear, affirmative indication that it applies extraterritorially." *See RJR Nabisco*, 136 S. Ct. at 2101. Ojedokun's particular assertion is that § 1956(f)'s extraterritorial reach cannot be read to extend to a money laundering conspiracy offense under § 1956(h).

a.

In seeking to show that § 1956(h) offenses lie outside the scope of § 1956(f)'s extraterritorial range, Ojedokun first relies on the fact that subsection (f) was enacted as part of the original MLCA in 1986,

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Court's rulings on the presumption against extraterritoriality in a way that casts the presumption in an all-but-insurmountable light. He insists that we must apply what he styles as the "highly demanding" "lingering doubt standard," a purported rule drawn from dictum in *Smith v. United States*, 607 U.S. 197, 203–04 (1993). Because we do not find the "lingering doubt" standard to be well established in Supreme Court precedent, we do not discuss it further.

while subsection (h) was added six years later in 1992. Ojedokun observes that in 1986, § 1956 set out only substantive money laundering offenses — in Ojedokun's words, "offenses necessarily requiring *action*," *see* Br. of Appellant 16 — and made no mention of a conspiracy offense. Congress did not amend the language of § 1956(f) when it added § 1956(h) in 1992, nor did it do so when the Supreme Court held that § 1956(h) conspiracy offenses require only an agreement to be completed, not an overt act in furtherance of the conspiracy. *See Whitfield v. United States*, 543 U.S. 209, 214 (2005).[6] Ojedokun highlights that congressional inaction in the face of change as evidence of Congress's intent that "*conduct* prohibited by this section," as that phrase is used in subsection (f), should not be read to apply to a subsection (h) conspiracy, which requires no "act" in furtherance, but only an "agreement."

That Congress added § 1956(h) to the MLCA after § 1956(f) does not by necessity mean that the earlier-enacted provision does not apply to the latter. To the contrary, Congress may well not have amended or otherwise updated subsection (f) because it understood that provision — as drafted in 1986 — already to be sufficiently broad to apply to *all* "conduct prohibited by" the totality of § 1956, to include conspiratorial agreements under § 1956(h). Traditionally, courts have hesitated to rely on

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[6] This Court also held, prior to the Supreme Court's decision in *Whitfield*, that a § 1956(h) money laundering conspiracy offense does not include an overt act as an essential element. *See United States v. Bolden*, 325 F.3d 471, 491 (4th Cir. 2003) ("[Section] 1956(h) does not require an overt act to be either alleged or proven.").

legislative inaction as a reliable basis for statutory interpretation, though drawing inferences from such silence may be appropriate in certain circumstances. *See Brown & Williamson Tobacco Corp. v. FDA*, 153 F.3d 155, 170 (4th Cir. 1998) (citing *Brecht v. Abrahamson*, 507 U.S. 619, 632 (1993)). The theory of legislative inaction usually is applied in the context of Congress "acquiescing" to administrative or judicial interpretations of a statute, but may be said also to apply in the context of inaction in the face of subsequent statutory amendments. *See, e.g.*, *Bob Jones Univ. v. United States*, 461 U.S. 574, 599–600 (1983); *Monessen Sw. Ry. Co. v. Morgan*, 486 U.S. 330, 338 (1988). In any event, an inference here that Congress's failure to amend § 1956(f) demonstrates its perception that subsection (f)'s original terms encompass subsection (h) conspiracy offenses is at least as strong as Ojedokun's argument to the contrary. *See Pension Benefit Guar. Corp. v. LTV Corp.*, 496 U.S. 633, 650 ("Congressional inaction lacks 'persuasive significance' because 'several equally tenable inferences' may be drawn from such inaction . . . ." (quoting *United States v. Wise*, 370 U.S. 405, 411 (1962))). Moreover, "the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one." *See United States v. Price*, 361 U.S. 304, 332 (1960). Accordingly, we find Ojedokun's contention minimally persuasive at best.

Turning to the statute's text, Ojedokun next asserts that because a § 1956(h) conspiracy requires only a "mere agreement" after *Whitfield* with no "act" in furtherance necessary, the offense cannot amount to "conduct" under § 1956(f). With that being so,

Ojedokun argues that § 1956(f) lacks a "clear, affirmative indication" that it rebuts the presumption against extraterritoriality as applied to subsection (h) offenses. Ojedokun's reasoning takes an exceedingly narrow view of the term "conduct" — that to enter into an agreement is not to engage in conduct, or to take an action. As support for his position, Ojedokun relies on § 1956's definition of the verb "conducts," which "includes initiating, concluding, or participating in initiating, or concluding a transaction." 18 U.S.C. § 1956(c)(2). The verb "conducts" is operative as part of § 1956's substantive offenses, which may be completed when a person "conducts or attempts to conduct" a "financial transaction." *Id.* § 1956(a)(1). Ojedokun implies that the *noun* "conduct" as used in § 1956(f) should be read to carry that same definition, such that a conspiratorial agreement — which does not involve initiating or concluding a financial transaction — would not be "conduct." Section 1956, however, does not supply a definition of the noun "conduct," and Ojedokun's argument is therefore misplaced. Instead, the ordinary meaning of "conduct" must control: that is, "[p]ersonal behavior, whether by action or inaction, verbal or nonverbal; the manner in which a person behaves; collectively, a person's deeds." *See Conduct*, *Black's Law Dictionary* (11th ed. 2009); *see also Conduct*, *New Oxford American Dictionary* (2d ed. 2005) ("the manner in which a person behaves, esp[ecially] on a particular occasion").

Ojedokun goes on to insist that even if the term "conduct" as it appears in § 1956(f) carries the "broader, dictionary-definition" of that term, "the conduct involved in a money-laundering conspiracy offense" — that is, a "mere agreement" — is "narrow

enough arguably to fall outside that dictionary definition." *See* Br. of Appellant 16–17. We reject that argument out of hand, as it is plainly inconsistent with the well-established rules of conspiracy law. It is an axiomatic principle of the criminal law that thoughts alone may not be punished — every criminal offense must proscribe some conduct, some actus reus. *See* 1 Wayne R. LaFave, *Substantive Criminal Law* § 6.1 (3d ed. 2020 update) ("Bad thoughts alone cannot constitute a crime; there must be an act . . . ."); Model Penal Code § 2.01(1) ("A person is not guilty of an offense unless his liability is based on *conduct* that includes a voluntary act . . . ." (emphasis added)).

Any agreement between two or more parties will, of course, require more than just a thought — some manner of concurrence with the proposal is needed. In these circumstances, as § 1956(h) conspiracy offenses require nothing more than an agreement to launder money, *see Whitfield*, 543 U.S. at 214, it follows that the agreement is necessarily the "conduct" making up the offense. The same can be said for other commonly charged conspiracy offenses not requiring an overt act for the crime to be complete, like the drug conspiracy statute, 21 U.S.C. § 846. *See United States v. Norman*, 935 F.3d 232, 237–38 (4th Cir. 2019). Indeed, the Supreme Court has explained that conspiracy offenses "do[] not punish mere thoughts; *the criminal agreement itself is the actus reus*." *See United States v. Shabani*, 513 U.S. 10, 16 (1994) (emphasis added) (holding that the government need not prove an overt act in furtherance to establish a violation of § 846); *see also Iannelli v. United States*, 420 U.S. 770, 777 (1975) ("Conspiracy is an inchoate offense, the essence of which is an agreement to

commit an unlawful act."). The action of agreement is the *sine qua non* of conspiracy, and in this respect, an agreement to commit money laundering is no different than one to commit any other unlawful act.

Because a conspiratorial agreement to launder money in contravention of § 1956(h) is conduct — that is, "behavior, whether by action or inaction, verbal or nonverbal," *see Conduct*, *Black's Law Dictionary* — we conclude that § 1956(f) sets out a "clear, affirmative indication" that it affords extraterritorial jurisdiction over § 1956(h) money laundering conspiracy charges. *See RJR Nabisco*, 136 S. Ct. at 2101; *accord United States v. Firtash*, 392 F. Supp. 3d 872, 886–87 (N.D. Ill. 2019) (resolving that charges alleging Austrian and Russian defendants conspired to transfer funds from abroad to U.S.-based financial institutions in contravention of § 1956(h) were within the extraterritorial reach of § 1956(f)); *United States v. Garcia*, 533 F. App'x 967, 982 (11th Cir. 2013) (concluding that "the requirements for extraterritorial jurisdiction were met" under § 1956(f) in affirming defendant's § 1956(h) conviction). On the whole, the "context" and "overall statutory scheme" of § 1956 support this determination. *See In re French*, 440 F.3d at 151; *Roe*, 917 F.3d at 240; *see also Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 440 (1989) ("When it desires to do so, Congress knows how to place the high seas within the jurisdictional reach of a statute."). Subsection (h) "prohibits" the "conduct" of conspiring — that is, agreeing — to launder money by subjecting a conspirator to the same penalties he would face for commission of § 1956's substantive offenses. The only logical conclusion, upon an examination of the statute,

is that § 1956(f) overcomes the presumption against exterritorial jurisdiction not only as applied to the substantive money laundering offenses, but also with respect to conspiracy offenses under § 1956(h).

b.

As an argument of last resort, Ojedokun points out that § 1956(f)(2) provides that extraterritorial jurisdiction will attach where "the transaction or series of related transactions involves funds or monetary instruments of a value exceeding $10,000." Turning once again to *Whitfield*'s holding that a § 1956(h) conspiracy offense requires only an agreement, Ojedokun maintains that because subsection (h) offenses need not involve any concrete "transaction," they are outside the scope of the extraterritoriality provision. But that contention, too, is unavailing. All that § 1956(f)(2) can be read to require is that a conspiracy to commit money laundering conceive of or relate to a transaction or series of related transactions exceeding $10,000 in value. Section 1956's substantive offenses require engaging in "a financial transaction," and so by necessity, a conspiracy to commit money laundering must anticipate laundering the proceeds of "specified unlawful activity" by way of "a financial transaction." So long as such transactions exceed $10,000 in value, extraterritorial jurisdiction is proper under subsection (f). Here, there is no dispute that the transactions intended to launder the proceeds of the dating website fraud scheme far exceeded $10,000. Accordingly, § 1956(f)'s requirement of a "transaction" is no bar to its application to a § 1956(h) money

laundering conspiracy offense and does not disturb our conclusion on that question.[7]

2.

Section 1956(f)(1) requires that "in the case of a non-United States citizen," the conduct over which extraterritorial jurisdiction is to be exerted must have "occur[ed] in part in the United States." Ojedokun, who was not a United States citizen when he engaged in the conduct at issue, contends that even if entering into a conspiratorial agreement constitutes "conduct" under § 1956(f), that provision cannot apply in this case because his actions occurred entirely overseas and he did not enter the United States at any time during the conspiracy. We find his argument unpersuasive.

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[7] It should here be noted that the government advances a second theory as to why jurisdiction over the conspiracy charge was proper. It submits that the second step of the Supreme Court's extraterritoriality framework applies — namely whether, if a statute does *not* overcome the presumption against extraterritoriality, "the case involves a domestic application of the statute." *See RJR Nabisco, Inc. v. European Cmty.*, 136 S. Ct. 2090, 2101 (2016). If the conduct that is the "focus" of the statute occurred in the United States, the case involves a "permissible domestic application." *Id.* The government suggests that we need not address the extraterritorial scope of § 1956(h) because the statute's "focus" — here, Ojedokun's conspiratorial agreement — occurred in the United States. Though that may be the case to an extent as addressed herein, because the *RJR Nabisco* framework instructs that a finding of extraterritoriality at step one "will obviate step two's 'focus' inquiry" and it is "preferable" to begin with step one, *see id.* at 2101 n.5, we decline to address whether this case presents a "permissible domestic application" of § 1956(h).

It is uncontested that Ojedokun resided and worked exclusively in Nigeria for the duration of the money laundering conspiracy, whether it began in 2011 or 2013. Ojedokun makes much of that fact and returns once more to his reliance on *Whitfield*, declaring that because overt acts in the United States are not relevant to the charge against him and as his "mere agreement" with Ogundele, Haruna, and other coconspirators was entered into — if at all — from Nigeria, his pertinent "conduct" did not occur "in part in the United States." To bolster his argument, Ojedokun invokes what he terms "[t]he primary source of legislative history" accompanying the enactment of the MLCA, a Senate report on that statute. The report explained that it was "not the Committee's intention to impose a duty on foreign citizens operating wholly outside of the United States to become aware of U.S. laws." *See* S. Rep. No. 99-433, at 14 (1986). Ojedokun reiterates that he never set foot in this country during the course of the conspiracy, and as such insists he operated "wholly outside" of the United States at all relevant times. His argument misses the mark and misunderstands the way in which conspiracy offenses operate.

Ojedokun brings to our attention no cases demonstrating that the making of an agreement between coconspirators in the United States and their counterparts abroad does *not* occur, at least "in part," in the United States. In assessing where such a meeting of the minds "occurs," it is instructive to consider cases evaluating proper venue in a conspiracy prosecution. Although Ojedokun has correctly reminded us that venue is not the same as jurisdiction, venue rules endeavor to permit the

prosecution of a crime only in the place where it occurred and can consequently shed light on where the intangible conduct of an "agreement" happens.

Venue in a criminal case "is proper only in a district in which an essential conduct element of the offense took place." *See United States v. Smith*, 452 F.3d 323, 334 (4th Cir. 2006). As to where the "conduct element" of a conspiracy offense "takes place," we have explained that conspiracies operate "wherever the agreement was made or wherever any overt act in furtherance of the conspiracy transpires," which may include a place where "the defendant has never set foot." *See United States v. Bowens*, 224 F.3d 302, 309, 311 n.4 (4th Cir. 2000) (citing *Hyde v. United States*, 225 U.S. 347, 356–67 (1912)); *see also United States v. Levy Auto Parts of Can.*, 787 F.2d 946, 952 (4th Cir. 1986); *accord Firtash*, 392 F. Supp. 3d at 886–87 (concluding that defendants charged under § 1956(h) for conspiring to transfer laundered funds from foreign accounts to banks in the United States engaged in conduct "in part in the United States," notwithstanding that the defendants never entered this country). The same holds for conspiracy offenses that do not include an overt act as an essential element: the Supreme Court has long held that venue in a conspiracy prosecution is proper "in any district in which an overt act in furtherance of the conspiracy was committed, even where an overt act is not a required element." *See Whitfield*, 543 U.S. at 218 (citing *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 252 (1940)).[8] In these circumstances, the

[8] That overt acts in furtherance can determine the geographic location of a conspiracy's operation — even where the

statutory venue provision in § 1956 is in accord with the above-stated principles, providing that venue in a § 1956(h) case may be had in any district where an act in furtherance of the conspiracy took place. *See id.* at 217–18; 18 U.S.C. § 1956(i)(2).

At bottom, conspiracies operate in a sweeping geographic sense, wherever the conspiratorial agreement is made as well as anywhere an overt act in furtherance takes place — even if a particular coconspirator never travels to such places. Such a broad presence flows from the agency relationship underpinning conspiracies, which dictates that what one conspirator does is attributed to all his associates. Here, Ojedokun agreed with multiple coconspirators to arrange financial transactions intended to disperse and disguise the proceeds of the U.S.-based fraud scheme, including by way of distributing wire transfer documents through Ojedokun's email accounts. Those conspiratorial agreements were made with, among others, Gbenga Benson Ogundele, a resident of the State of Maryland. Moreover, there were ample overt acts in furtherance of the conspiracy taken in the United States, including communications with fraud victims, purchases of goods with the fraud proceeds, and wire transfers intended to conceal the illicit source of the funds. Though it is clear that such overt acts are not pertinent to Ojedokun's culpability under

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particular offense does not require an overt act in order to be completed — is well established. *See United States v. Levy Auto Parts of Can.*, 787 F.2d 946, 951 (4th Cir. 1986) (explaining that although a 21 U.S.C. § 963 conspiracy offense does not require an act in furtherance of the conspiracy, "proof of overt acts [in a jurisdiction] discloses that the conspiracy had a presence [in that jurisdiction] and was alive and well at the time").

§ 1956(h), they are relevant in assessing whether the conspiracy took place at least "in part" in the United States. *See Whitfield*, 543 U.S. at 218.

Ojedokun's claim that his conspiratorial conduct did not occur "in part in the United States" is as such without merit. By making an agreement with at least one resident of the United States and engaging in a conspiracy extensively carried out in this country, he took part in a course of conduct relevant to the § 1956(h) charge that transpired within the United States, placing his actions squarely within the confines of § 1956(f)(1). To conclude, Ojedokun's extensive efforts to demonstrate that the district court lacked extraterritorial jurisdiction over the § 1956(h) charge are unpersuasive. Section 1956(f) clearly and unambiguously extends the extraterritorial reach of § 1956 to conspiracy offenses under § 1956(h) and also applies on its own terms to Ojedokun's conduct in Nigeria. The district court did not err in so determining and was properly vested with subject matter jurisdiction over this case.

B.

The second issue presented by Ojedokun in this appeal is whether the district court erred in determining — multiple times — that the Superseding Indictment was timely returned. Ojedokun contends that the Superseding Indictment was untimely under the five-year limitations period set out at 18 U.S.C. § 3282(a) because it "substantially amended" the nature of the conspiracy charge in the Original Indictment, such that it could not relate back to the date of the Original. We review de novo the district court's conclusion of law that the statute of

limitations did not bar the Superseding Indictment. *See United States v. Uribe-Rios*, 558 F.3d 347, 351 (4th Cir. 2009). In this instance, we agree with the district court's well-reasoned determination that the Superseding Indictment was not time-barred. *See* Reconsideration Opinion 3–18.

1.

The Original Indictment, returned on May 6, 2019, charged Ojedokun with a single count of conspiracy to launder money in contravention of 18 U.S.C. § 1956(h), alleging the conspiracy lasted from January 2011 until March 2015. That indictment identified "conspiracy to commit wire fraud in violation of 18 U.S.C. § 1349" as the "specified unlawful activity" that the proceeds to be laundered derived from. *See* Original Indictment 2–3. Because the statutory list of offenses qualifying as "specified unlawful activity" for purposes of § 1956 includes wire fraud but not wire fraud conspiracy, *see* 18 U.S.C. §§ 1956(c)(7)(A), 1961(1), the government alleged in its Superseding Indictment of August 10, 2020, that the "specified unlawful activity" at issue in the instant conspiracy was "wire fraud in violation of 18 U.S.C. § 1343." *See* Superseding Indictment 3. The Superseding Indictment also alleged the conspiracy lasted only from 2013 to March 2015. Ojedokun challenged the timeliness of the Superseding Indictment three times before the district court. He averred there, as here, that the August 2020 Superseding Indictment (returned more than the permitted five years after the alleged end of the conspiracy) could not relate back to the May 2019 date of the Original Indictment because it impermissibly "broadened" or "amended" the scope of its predecessor by altering the cited "specified

unlawful activity." *See* J.A. 233. That argument was rejected by the district court each time it was raised.

The return of an indictment tolls the statute of limitations on the charges contained in the indictment, and "a superseding indictment which supplants a timely-filed indictment, still pending, is itself to be regarded as timely . . . so long as it neither materially broadens nor substantially amends the charges against the defendant." *See United States v. O'Bryant*, 998 F.2d 21, 23 (1st Cir. 1993). That is, such an indictment relates back to the date of the original indictment "so long as a strong chain of continuity links the earlier and later charges." *See id.* at 24; *see also United States v. Snowden*, 770 F.2d 393, 398 (4th Cir. 1985). Ojedokun advocates that the "key question" in assessing whether a superseding indictment "materially broadens or substantially amends" its predecessor is whether an element of the charged offense is modified in the later indictment. *See* Br. of Appellant 26. Our sister circuit courts of appeals, however, have aptly explained that a broader consideration of whether the defendant is put on sufficient notice of the charges against him is central to the inquiry. *See, e.g.*, *United States v. Grady*, 544 F.2d 598, 601–02 (2d Cir. 1976); *United States v. McMillan*, 600 F.3d 434, 444 (5th Cir. 2010); *United States v. Farias*, 836 F.3d 1315, 1324 (11th Cir. 2016).[9]

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[9] Ojedokun also asserts as part of his relation-back argument that the Superseding Indictment may not relate back because the Original Indictment was "defective" by virtue of failing to allege a qualifying "specified unlawful activity." That contention is without merit, as courts have held that superseding indictments may relate back to predecessors failing to identify "a valid overt act," a nonviable theory of fraud, and the like,

In determining whether a superseding indictment may relate back to the time of an earlier indictment, courts consider whether the new charges "allege violations of a different statute, contain different elements, rely on different evidence, or expose the defendant to a potentially greater sentence." *See United States v. Salmonese*, 352 F.3d 608, 622 (2d Cir. 2003). No factor alone is dispositive, however, as the "touchstone" of the analysis is "whether the original indictment fairly alerted the defendant to the subsequent charges against him." *See id.* That is, the relation-back inquiry focuses not strictly on "the statutes under which the defendant was charged," *see United States v. Ratcliff*, 245 F.3d 1246, 1253 (11th Cir. 2001), but primarily on "whether approximately the same facts were used as the basis of both indictments," *see United States v. Italiano*, 894 F.2d 1280, 1285 (11th Cir. 1990). Those principles are grounded in due process and seek to ensure that defendants are afforded "timely notice . . . that they will be called to account for their activities and should prepare a defense." *See Grady*, 544 F.2d at 601. If a comparison of an original and a superseding indictment reveals that the former failed to supply the defendant notice of the substance of the charges set

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provided the original indictment contained sufficient factual allegations to put the defendant on notice of the later charges against him. *See, e.g.*, *United States v. W.R. Grace*, 504 F.3d 745, 752 (9th Cir. 2007); *United States v. Italiano*, 894 F.2d 1280, 1283–86 (11th Cir. 1990). As explained herein, the Original Indictment afforded such notice in this matter, and accordingly the Original's failure to identify a sufficient "specified unlawful activity" did not preclude it from tolling the five-year statute of limitations.

forth in the latter, the subsequent indictment may not relate back to the original. *See Italiano*, 894 F.2d at 1282–83.

2.

On appeal, Ojedokun's relation-back argument functions as follows: the matter of whether a superseding indictment "substantially amends" an earlier indictment principally turns on whether an element of the charged offense is modified. In the context of a money laundering conspiracy charge, Ojedokun contends that the government must identify the particular predicate offense qualifying as the "specified unlawful activity" required for the commission of § 1956(a)(1)'s substantive money laundering offenses. That is, identifying the name or citation of the alleged specified unlawful activity is an "essential element" of a § 1956(h) conspiracy charge. With that being the case, changing the offense alleged to constitute the specified unlawful activity in a superseding indictment — as occurred here — would "substantially amend" the scope of the original indictment, such that the later indictment could not relate back to the date of the earlier version.

We reject that line of reasoning on a number of grounds. First, as noted, Ojedokun misstates the relevant legal standards controlling the relation-back inquiry, giving short shrift to the broader due process and notice concerns while focusing instead on "elements." Second, in support for his claim that identifying the offense constituting "specified unlawful activity" is an essential element of a § 1956(h) charge, Ojedokun relies only on the "necessary implication" of our decisions in *United*

States v. Smith, 44 F.3d 1259 (4th Cir. 1995), and *United States v. Bolden*, 325 F.3d 471 (4th Cir. 2003). His reliance on those cases is misplaced, and he cites no authority directly supporting his proposition.

Smith concerned a challenge to a substantive money laundering charge under 18 U.S.C. § 1957(a). There, the defendant submitted that the charges against him were deficient because they alleged the laundered funds at issue "were the proceeds of a wire fraud, in violation of 18 U.S.C. § 1343," without supplying details of that wire fraud. The charges therefore failed — according to the defendant — to allege "a necessary element of the offense of money laundering," namely that the involved money be "derived from specified unlawful activity." *See* 44 F.3d at 1263. We concluded in *Smith* that

> Just because the statute requires that funds be obtained from "specified" unlawful activity does not mean that the government is required to detail the circumstances of the unlawful activity. . . . Count 9 of Smith's indictment alleged not only that proceeds were derived from specified unlawful activity, but that the activity violated 18 U.S.C § 1343, which penalizes wire fraud. Nothing more need be alleged.

Id. at 1265.

Ojedokun focuses on *Smith*'s use of "nothing more need be alleged," insisting that "'nothing more' . . . necessarily implies 'but nothing less.'" *See* Br. of Appellant 28. That is, he reads *Smith* to require a statutory citation for a properly stated money laundering charge, whether substantive or conspiratorial, without which the charge will be

defective. *Smith*, however, held only that a direct citation is sufficient for alleging "specified unlawful activity" — not that such a citation is necessary. That decision explained that the indictment's provision of a citation will suffice to grant the defendant notice of the wrongful conduct he is charged with involvement in, and that no further factual details are required because "the requirement that the funds be illegally derived . . . does not lie at the core of the offense." *See* 44 F.3d at 1264–65. *Smith* did not go further to conclude that a statutory citation for the "specified unlawful activity" is a foundational or critical part of a substantive money laundering charge, let alone a money laundering conspiracy charge. And in this case, under *Smith*'s standard, the details set forth in both the Original and Superseding Indictments relating to the dating website fraud scheme surely were sufficient to afford Ojedokun notice of the purported wrongs underlying his conspiracy offense. In brief, Ojedokun's reliance on and interpretation of *Smith* are inappropriate.

Ojedokun's reliance on *Bolden* is likewise misplaced. There, we determined a § 1956(h) conspiracy charge adequately identified the "specified unlawful activity" underpinning the offense because, although it did not directly cite a statutory offense constituting that activity, it set out detailed factual allegations pertaining to a Medicaid fraud scheme that the defendants organized. *See* 325 F.3d at 491–92. Accordingly, we concluded that the charge put the defendants on "ample notice of the details of the specified unlawful activity" generating the proceeds at hand, just as occurred in this proceeding. *Id.* at 492.

For its part, the district court capably dispensed with Ojedokun's arguments, looking to our decisions in *United States v. Singh*, 518 F.3d 236, 248 (4th Cir. 2008), and *United States v. Green*, 599 F.3d 360, 371 (4th Cir. 2010), both of which spelled out the elements the government is obliged to prove in a § 1956(h) prosecution without any mention of pleading a particular "unlawful activity." *See* Reconsideration Opinion 8–9. The court resolved that *Smith*, unlike *Singh* and *Green*, did not purport to "squarely address" the elements of a § 1956(h) offense, and therefore concluded that the specific unlawful activity underlying a money laundering charge is not an essential element that must be pleaded and proved. *Id.* at 12–13.

3.

Ultimately, we need not decide whether an indictment must allege, as an element of a § 1956(h) charge, a particular statutory offense constituting "specified unlawful activity." This is so because our consideration of whether the Superseding Indictment "substantially amended" the Original Indictment is not confined to considering elements of the charged offense, but must instead take stock of the larger context of what each indictment alleged and whether the substance of the first "fairly alerted the defendant to the subsequent charges" outlined in the second. *See Salmonese*, 352 F.3d at 622. We conclude there can be no doubt that the factual allegations recited in the Original Indictment afforded Ojedokun more than sufficient notice of what he was accused of in the Superseding Indictment, which departed from the Original largely by changing the phrase "conspiracy to commit wire fraud" to "wire fraud." That is, the

Superseding Indictment barely amended its predecessor at all, let alone "substantially," and such would be the case even if a particular statutory offense constituting "specified unlawful activity" were held to be an essential element of a § 1956(h) conspiracy charge.

Our conclusion is supported by assessing what appears on the face of the separate indictments. The government modified the offense qualifying as the "specified unlawful activity" in the Superseding Indictment, but both indictments ultimately charged Ojedokun with the same crime: conspiracy to launder money in contravention of 18 U.S.C. § 1956(h). Moreover, the Superseding Indictment's factual allegations pertaining to both the wire fraud scheme and the money laundering conspiracy were drawn nearly word-for-word from the Original Indictment. Both described the inner workings of the "internet-based romance scam" and the communications utilized in defrauding the coconspirators' victims. *See* Original Indictment 2; Superseding Indictment 2. The indictments mutually alleged Ojedokun conspired with Haruna and Ogundele to knowingly commit promotion and concealment money laundering. *See* Original Indictment 2–3; Superseding Indictment 3. Both maintained that Ojedokun's coconspirators managed certain "drop accounts," including a particular Wells Fargo account owned by Ogundele, to receive millions of dollars from the fraud victims; that the coconspirators used wire transfers and other conveyances to conceal the "nature, source, and control" of the proceeds; and that Ojedokun would send and receive emails evidencing the deposits made by the fraud victims. *See* Original

Indictment 1–4; Superseding Indictment 1–2, 4. The Superseding Indictment did include new allegations that the coconspirators transmitted images of wire transfer forms and certain victim identity information, but those details only served to supplement the preexisting allegations and cannot be said to have altered the nature of the offense with which Ojedokun was charged.

Consequently, the only material differences between the two indictments were the modified statutory citations and the narrowed allegation of the conspiracy's timeline. Those changes did not "materially broaden or substantially amend" the scope of the Original Indictment. Altering the predicate offense of "conspiracy to commit wire fraud" to the closely related crime of "wire fraud" was, at worst, only a "trivial or innocuous" change, which we have said will not bar a superseding indictment from relating back to an earlier version. *See Snowden*, 770 F.2d at 398. In his arguments before the district court and this Court, Ojedokun appears to allege that he was not adequately advised of the Superseding Indictment's charges before the date of its return, and that the modifications in that document prejudiced his ability to prepare a robust defense. We cannot agree, and we adopt the district court's conclusion that Ojedokun's supposed confusion was feigned. *See* Reconsideration Opinion 16. The Original Indictment afforded Ojedokun notice of the ultimate charges against him, and because such notice is the "touchstone" of the relation-back inquiry, *see Salmonese*, 352 F.3d at 622, we affirm the district court's determination that the Superseding

Indictment related back to the date of the Original and was not barred by the statute of limitations.

C.

The remaining two contentions put forward by Ojedokun were not presented to the district court, and both grow out of his interview by the FBI in April 2019. First, Ojedokun asserts that the FBI agents violated the Fourth Amendment when they entered his home in Chicago — either by reason of involuntary consent to enter or because the agents exceeded the scope of Ojedokun's consent — and that the district court's admission of the resultant evidence was accordingly reversible plain error. Second, Ojedokun alleges his trial counsel rendered constitutionally ineffective assistance as defined by the Sixth Amendment by failing to move to suppress the FBI's evidence on the aforementioned Fourth Amendment grounds. We conclude that Ojedokun's Fourth Amendment claim lacks merit and decline to reach the ineffective assistance claim raised for the first time on direct appeal.

1.

Relative to the Fourth Amendment claim, the government maintains that Ojedokun has waived his theory by failing to raise it before the district court and that we may not consider it. Ojedokun filed three pre-trial motions to suppress, all denied by the district court, submitting that his statements during the FBI interview and the evidence from his cell phone should be excluded because (1) he was in custody and not properly Mirandized; (2) his statements were involuntarily given; (3) he had not given voluntary consent to the search of the cell phone; and (4) a

search warrant for his email accounts was issued in the absence of probable cause. Ojedokun now contends that the same evidence should have been suppressed as fruit of the poisonous tree because (1) the consent he gave to the FBI agents to enter his home was invalid and (2) even if the consent was valid, the agents exceeded the scope of the consent, all in contravention of the Fourth Amendment.[10]

A defendant must generally raise a motion to suppress before trial. *See* Fed. R. Crim. P. 12(b)(3)(C). Otherwise, such a motion is untimely, and the district court may not consider it unless the defendant shows "good cause." *See* Fed. R. Crim. P. 12(c)(3). If the defendant is unable to show good cause, the untimely motion to suppress is waived. *See United States v. Moore*, 769 F.3d 264, 267 (4th Cir. 2014). When a defendant does file a motion to suppress before trial, however, and simply raises distinct suppression arguments later — including on appeal, as here — we have found those arguments only forfeited and have reviewed the district court's admission of evidence for plain error. *See, e.g.*, *United States v. Rumley*, 588 F.3d 202, 205 & n.1 (4th Cir. 2009); *United States v. Perrin*, 45 F.3d 869, 875 (4th Cir. 1995). Accordingly, we review the district court's admission into evidence of Ojedokun's statements to the FBI and the information from his cell phone for plain error. *See* Fed. R. Crim. P. 52(b). "To prevail on plain error

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[10] We pause to make clear that the Fourth Amendment claims raised by Ojedokun in the district court pertained to the search of his cell phone, and not the FBI agents' entry into his home. Accordingly, the present claim contesting the validity and scope of Ojedokun's consent for the agents to enter was not preserved for appeal.

review, an appellant must show (1) that the district court erred, (2) that the error was plain, and (3) that the error affected his substantial rights." *See United States v. Cohen*, 888 F.3d 667, 685 (4th Cir. 2018). A plain error affects the defendant's substantial rights if it was "prejudicial," in that there is "a reasonable probability that the error affected the outcome of the trial." *See United States v. Marcus*, 560 U.S. 258, 262 (2010).

The Fourth Amendment bars police from making a "warrantless and nonconsensual entry" into an individual's home in order to effect a "routine felony arrest." *See Payton v. New York*, 445 U.S. 573, 576 (1980). Consent to a search or for entry into one's home must be "knowing and voluntary." *See United States v. Buckner*, 473 F.3d 551, 554 (4th Cir. 2007). The question of "whether consent to a search is voluntary — as distinct from being the product of duress or coercion, express or implied — is one 'of fact to be determined from the totality of all the circumstances.'" *See United States v. Azua-Rinconada*, 914 F.3d 319, 324 (4th Cir. 2019) (quoting *Schneckloth v. Bustamonte*, 412 U.S. 218, 227 (1973)).

The district court made no direct factual determination as to the voluntariness of Ojedokun's consent for the agents to enter his home, but it did find that the agents "were invited in" and "were given permission to come in," that they explained the nature of their questioning, and that Ojedokun was sufficiently intelligent to understand their requests. *See* J.A. 157–59. Indeed, the agents asked Ojedokun, "[C]an we go in?," to which Ojedokun replied — not for the first time — "[O]kay." *Id.* at 1114. The record does not reveal that the agents made any

misrepresentations, operated under false pretenses, or otherwise obtained Ojedokun's consent to go inside the home under "duress or coercion." Ojedokun makes repeated reference to the fact that he was "a Nigerian citizen present in the United States for only two years" and that the agents arrived at his home at 8:00 a.m., *see* Br. of Appellant 14, 33, 36, but those circumstances do not obviate his voluntary grant of consent (and further, the evident attempt to call into question Ojedokun's intelligence brushes over the fact that he was then a Ph.D. student in chemistry). Ojedokun surely realized the agents intended to ask him more than "a couple" of questions by asking to come inside, and they assured him once there that the interview was "completely voluntary." *See* J.A. 1114, 1116. All told, an insufficient basis exists for finding Ojedokun's consent was involuntary.

When there is "no question that consent was voluntary," the scope of that consent is assessed by considering what "the typical reasonable person [would] have understood by the exchange between the officer and the suspect." *See United States v. Coleman*, 588 F.3d 816, 819 (4th Cir. 2009) (quoting *Florida v. Jimeno*, 500 U.S. 248, 251 (1991)). Here, the agents requested Ojedokun's permission to enter his home to ask him questions about his time in Nigeria. Ojedokun focuses on the agents' request to ask "a few" questions, claiming they "vastly exceeded the scope of the limited consent" given by asking more than two or three questions. *See* Br. of Appellant 37. Again, Ojedokun, like any reasonable person under the circumstances presented, surely understood the officers did not want to come into his home and sit down to ask "two or three" questions. The agents

cannot be said to have gone beyond the confines of Ojedokun's consent.

Ojedokun spends ample time explaining how the government's evidence of his incriminating statements and the information seized from his cell phone were central to its case, such that the district court's supposed error in admitting that evidence prejudiced him. The government disputes Ojedokun's prejudice characterization, but the disagreement is of no moment because Ojedokun cannot demonstrate plain error on the district court's part. It may well be the case that the evidence in question prejudiced Ojedokun at trial, but there is no demonstrated error in the Fourth Amendment context with respect to the court's decision to admit the evidence. The record suggests that Ojedokun's consent for the agents to enter his home was fully voluntary and that the agents remained within the scope of that consent. As such, the district court did not commit plain error by admitting the evidence obtained from the 2019 interview.

2.

Finally, we decline to consider Ojedokun's ineffective assistance of counsel claim, which avers that his trial counsel "inexplicably failed" to move to suppress the evidence from the FBI interview on the above-considered Fourth Amendment theory. *See* Br. of Appellant 48. In this Circuit, a defendant may raise an ineffective assistance claim for the first time on direct appeal "only where the ineffectiveness 'conclusively appears' from the record." *See United States v. Russell*, 221 F.3d 615, 619 n.5 (4th Cir. 2000) (quoting *United States v. Smith*, 62 F.3d 641, 651 (4th

Cir. 1995)). Otherwise, the claim should be raised in a collateral proceeding by way of a 28 U.S.C. § 2255 motion. *See id.; see also United States v. Fisher*, 477 F.2d 300, 302 (4th Cir. 1973). Given the foregoing, the record here does not "conclusively" establish that Ojedokun's trial counsel provided constitutionally ineffective assistance. A reasonable and competent attorney could well have concluded that Ojedokun's consent-based Fourth Amendment suppression argument was meritless and would have failed. Accordingly, we need not address Ojedokun's Sixth Amendment claim any further in this proceeding.

III.

Pursuant to the foregoing, we reject Ojedokun's appellate contentions and affirm the judgment of the district court.

AFFIRMED

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Southern Division

UNITED STATES OF AMERICA	*	
	*	
v.		
	*	**CRIMINAL NO. PWG-19-228**
SEUN BANJO OJEDOKUN,	*	
Defendant	*	

* * * * * * * * * * * * *

MEMORANDUM OPINION

Seun Banjo Ojedokun was convicted by a jury on September 15, 2020 of a single count of promotion and concealment money laundering conspiracy, in violation of 18 U.S.C. § 1956(h). The superseding indictment on which he was tried alleged that the "specified unlawful activity" of the money laundering conspiracy was wire fraud, in violation of 18 U.S.C. § 1343. ECF No. 79. The superseding indictment was returned by the grand jury on August 10, 2020. It superseded the original indictment, which was returned on May 6, 2018. ECF No. 6. The original indictment also charged a single count of promotion and concealment money laundering conspiracy, but the "specified unlawful activity" was identified as *conspiracy* to commit wire fraud, in violation of 18

U.S.C. § 1349. In both the original and superseding indictments, the conduct involved in the conspiracy ended in March, 2015, more than five years before the return date of the superseding indictment.

After the Government filed the superseding indictment, Ojedokun's retained counsel filed a motion to dismiss it based on a variety of asserted deficiencies, one of which was that it was time barred by the statute of limitations. ECF No. 86; 18 U.S.C. § 3282. The issue was briefed (ECF Nos. 86, 94) and following a hearing, I denied the motion to dismiss, finding that the superseding indictment neither broadened nor substantially amended the original charge. ECF No. 96. Following his conviction, Ojedokun's retained counsel filed a "Motion for New Trial and/or Motion to Dismiss," which, *inter alia*, reprised the statute of limitations argument. ECF No. 128. I denied it, ECF No. 140, and shortly thereafter Ojedokun's retained counsel withdrew his appearance. ECF No. 141. A CJA panel attorney then was appointed to represent Ojedokun. Ojedokun's new counsel filed a motion for reconsideration of my earlier denial of his motion for a new trial. ECF No. 146. It cited new authority to support the statute of limitations argument, and, for the first time, argued that this Court lacked jurisdiction to try Ojedokun because his conduct during the money laundering conspiracy all took place when he lived in Nigeria, thereby precluding the extraterritorial application of the money laundering statute. ECF No. 146 at 7. *See* 18 U.S.C. § 1956(f)(1) ("There is extraterritorial jurisdiction over the conduct prohibited by this section if—(1) the conduct is by a United States citizen or, in the case of a non-United States citizen, the conduct

occurs in part in the United States; and (2) the transaction or series of related transactions involves funds or monetary instruments of a value exceeding $10,000.").[1] The Government filed an opposition to the motion, ECF No. 151, Ojedokun filed a reply, ECF No. 152, and a hearing was set for January 25, 2021. Ojedokun's new counsel then filed a Second Reply to the Government's Response in Opposition, ECF No. 158, an Outline of Arguments for Oral Argument on the motion, ECF No. 159, and an email containing supplemental authorities, ECF No. 166, which I accepted (and have considered, this time), despite the fact that their filing was in violation of the local rules of this court.[2]

At the hearing on January 25, 2021, I heard argument from counsel, then denied the motion for reasons I stated on the record, ECF No. 163, but advised that I intended to supplement the oral ruling with a memorandum, because the motion raises some difficult issues, and, somewhat surprisingly, there is an absence of authority that gives clear guidance on what the outcome should be. I will begin with the statute of limitations issue raised by the filing of the superseding indictment.

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[1] Ojedokun does not deny that the transactions involved in the money laundering conspiracy exceeded $10,000.00.

[2] L.R. 105.2.b prohibits last-minute filing of memoranda—defined as "filed after 4:00 p.m. on the afternoon before the last business day preceding the day on which the proceeding to which the memorandum relates is to be held." L.R. 207 makes this rule applicable to filings in criminal cases. The deadline for submitting memoranda in support of Ojedokun's motion was Thursday, January 21, 2021. The late filed documents were filed on January 23 and 24, 2021.

1. Statute of Limitations Issue.

Ojedokun agrees that if the original indictment (identifying conspiracy to commit wire fraud as the "specified unlawful activity" that the money laundering conspiracy related to) was a legally viable indictment, then the superseding indictment "related back" to the filing of the original indictment, and there is no statute of limitations issue, so long as the superseding indictment did not "broaden or substantially amend" the original charge. *United States v. Snowden*, 770 F.2d 393, 398 (4th Cir. 1985) ("Trivial or innocuous" changes will not bar a superseding indictment from relating back to the date of the original indictment.); *see also Handy v. United States*, No. AW-09-2011, 2010 WL 3086350, at *2 (D. Md. Aug. 6, 2010) ("It is well-established that 'a valid indictment tolls the statute of limitations and that return of a superseding indictment *prior* to the dismissal of the original indictment does not violate the statute of limitations if the superseding indictment does not substantially alter the charge.'") (citations omitted); *United States v. Brown*, 580 F. Supp. 2d 518, 520 (W.D. Va. 2008) ("As long as a superseding indictment does not broaden or substantially amend the original indictment, the superseding indictment relates back to the filing of the original indictment, even if the superseding indictment is filed outside of the statute of limitations period. . . . In determining whether a superseding indictment broadens the charges in the original indictment, the touchstone is whether the original indictment provided notice of the charges such that the defendant can adequately prepare his or her defense.") (citations omitted), *aff'd on other grounds*,

438 F. App'x 203 (4th Cir. 2011); *United States v. Crysopt Corp.*, 781 F. Supp. 375, 377 (D. Md. 1991) ("[A] superseding indictment brought after the statute of limitations has expired is valid so long as the original indictment is still pending and was timely and the superseding indictment does not broaden or substantially amend the original charges." (citation omitted)). And, Ojedokun and the Government agree that, but for the statute of limitations issue, the superseding indictment on which Ojedokun was tried and convicted was a legally viable indictment alleging a money laundering conspiracy. This is because wire fraud, 18 U.S.C. § 1343, meets the definition of a "specified unlawful activity" found in 18 U.S.C. § 1956(c)(7)(A), § 1957(f)(3), and § 1961(1) that will support a charge of money laundering or money laundering conspiracy. Finally, the Government concedes that the offense of conspiracy to commit wire fraud, 18 U.S.C. § 1349, does *not* meet the statutory definition of "specified unlawful activity." But, Ojedokun and the Government disagree about whether the "specified unlawful activity" referenced in the money laundering statute constitutes an *essential element* of a money laundering conspiracy or money laundering charge, such that it must be pleaded in an indictment charging either offense in order for the indictment to be legally viable.

The foundation of Ojedokun's argument lies in *United States v. Smith*, 44 F.3d 1259 (4th Cir. 1995). At the outset, it is important to acknowledge what the issues in *Smith* did not involve, as much or more so than as what it did involve. It did *not* involve a statute of limitations issue, neither did it involve the filing of a superseding indictment to replace an allegedly

deficient original indictment. And, it did not involve the issue of whether conspiracy to commit wire fraud would qualify as "specified unlawful activity" under the money laundering statute. Rather, it involved an appeal of a money laundering conviction, in which the defendant argued that the money laundering charges in the original indictment were legally deficient because they alleged that the laundered funds "'were the proceeds of a wire fraud, in violation of 18 U.S.C. § 1343,' without giving the details of the wire fraud," thereby failing to "allege a necessary element of the offense of money laundering—that the property be "'derived from specified unlawful activity.'" *Smith*, 44 F.3d 1259 at 1263 (citing 18 U.S.C. § 1957(a)). Thus, the *Smith* case addressed whether the indictment, which alleged an underlying offense (wire fraud) that clearly is within the definition of "specified unlawful activity" in the money laundering statute, adequately put the defendant on notice of the charges he was required to defend against.

The *Smith* court began with a tutorial about the basic principles governing what must be contained in a legally sufficient indictment. It said:

> When considering whether an indictment properly charges an offense, we are guided by basic principles that (1) the indictment must contain a statement of "the essential facts constituting the offense charged," (2) it must contain allegations of each element of the offense charged, so that the defendant is given fair notice of the charge that he must defend, and (3) its allegations must be sufficiently distinctive so that an acquittal or conviction on such charges

> can be pleaded to bar a second prosecution for the same offense.

Id. (citations omitted). It added "[t]he allegations of an offense are generally sufficient if stated in the words of the statute itself." *Id.* at 1264.

Although the indictment accurately cited the wire fraud statute and its elements, and despite the fact that it was not disputed that wire fraud is among the long list of offenses included within the statutory definition of "specified unlawful activity" in the money laundering statute, the defendant in *Smith* argued that the factual details alleged in the indictment referenced several classes of victims and multiple theories of guilt, confusing him as to what he had to defend against. *Id.* The focus of his argument was that, the correct statutory reference to "specified unlawful activity" notwithstanding, the *factual allegations* of the indictment failed to provide him with the required notice of the charges against him. But the Fourth Circuit was having none of this, stating: "Smith's contention, we believe, feigns confusion. The core transaction constituting the offense of money laundering is alleged with specificity and detail, and Smith cannot fail to know what transaction forms the basis of the charge." *Id.* Ojedokun's case, in stark contrast, involves the obverse of the issue in *Smith*. Here the challenge is not to the factual sufficiency of the original indictment, but rather the correctness of its statutory citation to the "specified unlawful activity."

Ojedokun seizes on the following language in *Smith* to support his contention that the "specified unlawful activity" in a money laundering or money laundering

conspiracy charge constitutes an essential element of the charge, such that a failure correctly to cite a statutorily recognized offense as the specified unlawful activity renders the indictment invalid:

> The money laundering statute requires . . . that the money . . . be derived from "specified unlawful activity." While it is necessary in order to state a money laundering offense to include such an allegation, the requirement is merely a categorical delineation of the type of funds that are subject to a money laundering charge. The core of money laundering, which distinguishes one such offense from another, is the laundering transaction itself. Because the requirement that the funds be illegally derived is not the distinguishing aspect and therefore does not lie at the core of the offense, details about the nature of the unlawful activity underlying the character of the proceeds need not be alleged.
>
> Just because the statute requires that funds be obtained from "specified" unlawful activity does not mean that the government is required to detail the circumstances of the unlawful activity. Rather, the term "specified unlawful activity" is a defined term referring to a list of offenses which qualify as unlawful activity for purposes of stating a money laundering offense. Section 1957(f)(3) adopts the definition of "specified unlawful activity" given in 18 U.S.C. § 1956(c)(7), which in turn lists five separate categories of offenses that constitute "specified unlawful activity." Wire fraud, penalized under § 1343, is included as a "specified unlawful activity" for purposes of money laundering in 18 U.S.C.

> § 1956(c)(7)(A). Count 9 of Smith's indictment alleged not only that proceeds were derived from specified unlawful activity, but that the activity violated 18 U.S.C. § 1343, which penalizes wire fraud. Nothing more need be alleged.

Id. at 1264–65.

In this regard, Ojedokun and the Government are two parties separated by a common language—they each read the above quote to reach opposite conclusions. Ojedokun reads it to say that the "specified unlawful activity" is a required element of a money laundering charge, without which the indictment is legally deficient. In his view, the reference to "conspiracy to commit wire fraud" (§ 1349) as the "specified unlawful activity" in his original indictment rendered it invalid because § 1956(c)(7)(A), § 1957(d)(3), and § 1961(1) do not include conspiracy to commit wire fraud as a recognized "specified unlawful activity." It follows inexorably, he reasons, that the original indictment was invalid, and the superseding indictment fails to relate back to the original indictment or toll limitations, because there is no tolling if the original indictment is invalid. Def.'s Reconsideration Mot. 3–6 (ECF No. 146).

The Government views this as nonsense. It argues that *Smith* is not a case where the Fourth Circuit squarely addressed the essential elements of a money laundering charge, and concluded that the "specified unlawful activity" was an essential element of the charge that had to be among the statutorily recognized offenses that meet this definition in the money laundering statute, and be correctly alleged in

the indictment for the indictment to be valid. Instead, the Government reads *Smith* to hold, narrowly, that a money laundering indictment that correctly alleges an offense recognized as specified unlawful activity in the money laundering statute is *sufficient* to meet the minimum requirements of a valid indictment, but it is not a *sine qua non* for doing so, because it is not an element of a money laundering charge. Gov't Opp. at 2–3 (ECF No. 151). To the Government, if the original indictment in this case incorrectly cited conspiracy to commit wire fraud (§ 1349) instead of wire fraud (§ 1343), it was nothing more than a citation error, about which Fed. R. Crim. P. 7(c)(2) says "[u]nless the defendant was misled and thereby prejudiced, neither an error in a citation nor a citation's omission is a ground to dismiss the indictment or information or to reverse a conviction." Because, it argues, Ojedokun was neither misled or prejudiced by the error, his motion must be denied.

The question of whether the citation to a statutorily recognized "specified unlawful activity" constitutes an essential element of a money laundering or money laundering conspiracy charge is not as easily resolved as might be hoped. It is true, as the Government points out, that in *United States v. Singh*, 518 F.3d 236 (4th Cir. 2008), the Fourth Circuit did squarely address the essential elements of a money laundering conspiracy charge, holding that "[i]n order to prove . . . [a] conspiracy, alleged under 18 U.S.C. § 1956(h), the prosecution was obliged to establish that: (1) an agreement to commit money laundering existed between one or more persons; (2) the defendant knew that the money laundering proceeds had been derived from an illegal activity; and (3) the defendant

knowingly and voluntarily became part of the conspiracy." (citing *United States v. Allere*, 430 F.3d 681, 693–94 (4th Cir. 2005); *see also United States v. Green*, 599 F.3d 360, 371 (4th Cir. 2010) (to prove money laundering conspiracy under § 1956(h) "the Government must prove the following essential elements: (1) the existence of an agreement between two or more persons to commit one or more of the substantive money laundering offenses proscribed under §§ 1956(a) or 1957; (2) that the defendant knew that the money laundering proceeds had been derived from an illegal activity; and (3) the defendant knowingly and voluntarily became part of the conspiracy.").

And Sand's *Modern Federal Jury Instructions–Criminal*, a well-respected and frequently used reference, further supports the Government's position that the specified unlawful activity referenced in the money laundering statute is not an essential element of the offense. The knowledge instruction reads:

> The fourth element that the government must prove beyond a reasonable doubt is that the defendant knowingly engaged in an unlawful monetary transaction, as defined above.
>
> I instruct you that in a prosecution for an offense under this section, the government is not required to prove that the defendant knew the particular offense from which the criminally derived property was derived. However, the government must prove beyond a reasonable doubt that the defendant knew that the transaction involved criminally derived property, which, I remind you, means any property

> constituting, or derived from, proceeds obtained from a criminal offense.
>
> If you find that the government has established, beyond a reasonable doubt, that the defendant knew that the transaction involved property derived from a criminal offense, then this element is satisfied.

3 L. Sand, et al., *Modern Federal Jury Instructions—Criminal*, Instruction No. 50A–30 (Matthew Bender).[3]

Further, cases from other jurisdictions lend support to the Government's view. In *United States v. Neuman*, No. 3:11-CR-00247-BR, 2013 WL 5787176 (D. Or. Oct. 28, 2013) the district court addressed the

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[3] When Ojedokun's jury was instructed, a slightly modified version of this instruction was given. It said:

> The second element of money laundering conspiracy charged in Count One of the Superseding Indictment, and which the government must prove beyond a reasonable doubt, is that the defendant must have known that the proceeds were derived from an illegal activity.
>
> It is not necessary that the defendant knew the particular offense from which the criminally derived property was derived. However, the government must prove beyond a reasonable doubt that the defendant knew that the transaction or transactions that were the subject of the conspiracy involved criminally derived property, which means any property constituting, or derived from, proceeds obtained from a criminal offense.
>
> If you find that the government has established beyond a reasonable doubt that the defendant knew that the transaction(s) involved property derived from a criminal offense, then this element is satisfied for the defendant.

Jury Instruction No. 39, ECF No. 113.

issue of whether conspiracy to commit mail or wire fraud could constitute "specified unlawful activity" under §§ 1956 or 1961. In denying the defendants motion for arrest of judgment (filed pursuant to Fed. R. Crim. P. 34), the court observed: "Defendants do not cite any controlling authority for their proposition that conspiracy to commit mail or wire fraud cannot constitute "specified unlawful activity" under §§ 1956 or 1961 . . . ." *Id.* at *2. The court added: "In addition, Defendants overlook the fact that the government is not required to prove a predicate act under § 1956(h)." *Id.* (citing *United States v. Martinelli*, 454 F.3d 1300, 1312 (11th Cir. 2006), which stated: "It is by now abundantly clear that in a money laundering case (or in a money laundering conspiracy case), the defendant need not actually commit the alleged specified unlawful activity.").

Similarly, *United States v. Liersch*, No. 04CR02521, 2005 WL 6414047 (S.D. Cal. May 2, 2005)—a case cited by Ojedokun,[4] more directly addresses the issues in this case. The defendant sought to dismiss the indictment against him, in part based on his assertion that the concealment money laundering charge failed to allege all the essential elements of the statute. The court rejected this argument, saying:

> Section 1956(a)(1)(B)(i) requires that the money being laundered be "proceeds of specified unlawful activity." Defendant contends that the indictment is insufficient because it fails to allege the elements of the specified unlawful activity from which the funds that were transferred were allegedly derived. Defendant's suggestion to the

[4] Def.'s Mot. 5, ECF No. 146.

> contrary notwithstanding, it is clear in the Ninth Circuit that the elements of the specified unlawful activity are not elements of the crime of money laundering.

Id. at *7 (citing *United States v. Lomow*, 266 F.3d 1013, 1017 (9th Cir. 2001) ("Because the elements of money laundering do not include the elements of the 'specified unlawful activity,' the district court did not violate Rule 11 by not informing Lomow of the elements of mail fraud."). The *Liersch* court concluded: "Thus, there is no basis for dismissing the indictment for failing to allege the elements of the specified unlawful activity and the motion to dismiss on this ground is denied." *Id*. at *7; *see also United States v. Golb*, 69 F.3d 1417, 1429 (9th Cir. 1995) (holding that the district court was not required to instruct the jury on the elements of the predicate activity for the money laundering charge, because the predicate specified unlawful activity "was not part of the charged money-laundering offense.").

Finally, in his second reply, defense counsel cited *Stirone v. United States*, 361 U.S. 212 (1960) to support the proposition that a change in the specified unlawful activity materially alters an essential element of the offense. There, the Supreme Court held that convicting the defendant of interference with interstate commerce under the Hobbs Act stemming from his interstate movement of steel—when the indictment alleged he interfered only with movements of sand—was not fairly charged in the indictment. *Id*. at 215.

Stirone is unpersuasive as it relates to the present issue. There, the trial court allowed evidence about

both prior interstate transfer of sand (as alleged) and potential future interstate transfer of steel (which was omitted from the indictment). *Id*. at 214. The trial court went on to instruct the jury that the defendant's guilt could rest on either the sand or the steel allegation. *Id.* But the Supreme Court reversed, finding that the prospective steel allegation amounted to a broadening of the indictment, reasoning "neither this nor any other court can know that the grand jury would have been willing to charge that Stirone's conduct would interfere with interstate exportation of steel." *Id*. at 215–17. Conviction on the steel charge amounted to an amendment of the indictment and added an alternative theory of the defendant's guilt. *Id*. at 218. Similar deficiencies are not present here: the original and superseding indictment were returned by the grand jury. Thus, this is not an instance where the charge was effectively amended by the court mid-trial. Moreover, here the underlying facts remained the same.

So, where does this leave us? If the specified unlawful activity is not an essential element of a money laundering or money laundering conspiracy charge, and if the Government is not required to prove it at trial, or the judge to instruct the jury on the elements of it when making the jury charge, does the erroneous citation of wire fraud conspiracy as the "specified unlawful activity" in the original indictment against Ojedokun render it legally nugatory, such that the filing of a superseding indictment more than five years after the date of the last activity of the charged money laundering conspiracy is time barred? And, if Fed. R. Crim. P. 7(c)(2) precludes dismissal of an indictment or reversal of a conviction when a

money laundering conspiracy indictment omits a citation to, or erroneously cites, the *charged* offense (as opposed to the specified unlawful activity) in the absence of the defendant being misled or prejudiced, then, *a fortiori*, how can an error in citation of the specified unlawful activity, which is not an element of the charged offense, be a basis for dismissal of the indictment or reversal of a conviction rendered pursuant to it?

Based on the discussion above, I agree with the Government that the Fourth Circuit's decision in *Smith* cannot fairly be read to hold that the "specified unlawful activity" underlying a money laundering charge must be pleaded as an essential element of that charge in order for the indictment to be valid. Rather, the court was faced with a case where the indictment correctly alleged that the laundered funds "were the proceeds of a wire fraud, in violation of 18 U.S.C. § 1343," but the defendant argued that, viewed collectively, the citation of the money laundering statute (§ 1957) as the charge, the reference to wire fraud as the source of the laundered funds (§ 1343), and the factual allegations in the indictment still were insufficient to give him "the details" of the wire fraud. *Smith*, 44 F.3d at 1263. After stating the "basic principles" of what an indictment must include ((1) essential facts constituting the charge, (2) allegations of each element of charged offense, to give fair notice to the defendant, and (3) sufficiently distinctive allegations to allow the defendant to plead acquittal or conviction as a bar to a second prosecution for the same offense), the court noted that this usually is accomplished simply by using the words of the statute itself. *Id.* at 1264. It then concluded that the word

"*specified*," as used in the phrase "specified unlawful activity," was a term of art referring to the type of unlawful activity included in the statutory provisions relating to money laundering. It did not mean that the indictment was required to set forth in detail the underlying facts supporting the charge against the defendant. *Id.* at 1265. The court concluded that because the indictment before it did allege that the proceeds were derived from specified unlawful activity, and that the activity violated § 1343, further factual details were not required. *Id.* In short, *Smith* is best read to hold that what was pleaded in the indictment in that particular case was sufficient to allege a money laundering charge. It did not, as the Fourth Circuit did in *Singh*, 518 F.3d 236, and *Green*, 599 F.3d 360, undertake to set forth the essential elements of a money laundering charge. And *Singh* and *Green* are consistent with the other cases cited above that held that the specified unlawful activity underlying a money laundering charge is not an essential element of the charge that must be pleaded, defined in the jury charge, and proved at trial.

In this case, the original indictment did plead the elements of a money laundering conspiracy, it did allege they were the proceeds of specified unlawful activity, but it mistakenly alleged that the specified unlawful activity (as that term of art is used in the money laundering statute) was conspiracy to commit wire fraud (§ 1349), instead of wire fraud (§ 1343), and the Government concedes that that was an error. What must be determined now is the consequence of that error. Did it result in a failure to allege the essential elements of a money laundering conspiracy? *Singh* and *Green* say "no," as many other courts have

agreed. If this error was not an omission of an essential element, then it was more akin to "an error in citation or a citation's omission," as referenced in Rule 7(c)(2)—which is not a basis for dismissing the indictment or reversing Ojedokun's conviction, unless he was "misled and thereby prejudiced." Fed. R. Crim. P. 7(c)(2). And that inquiry dovetails nicely with the inquiry that must be made to determine whether the superseding indictment—which "cured" the citation error in the original indictment, relates back to it for purposes of tolling the statute of limitations. Both the "relation back" inquiry, and the "misled and prejudiced" inquiry can be accomplished by comparing the original to the superseding indictment, to determine if the latter was a "trivial or innocuous change" which does not bar relation back, *United States v. Snowden*, 770 F.2d 393, 398 (4th Cir. 1985), or one which materially broadened or substantially amended the original charges, *United States v. Ratcliff*, 245 F.3d 1246, 1253 (11th Cir. 2001), which would prevent relation back, and also suggest that Ojedokun was "misled and thereby prejudiced" for Rule 7(c)(2) purposes.

Both the original indictment and the superseding indictment (ECF Nos. 6, 79) charge Ojedokun with conspiracy to commit money laundering, in violation of 18 U.S.C. § 1956(h). In both charging documents, the statement of the conspirators and charged conduct reference Ojedokun, Mukhtar Haruna, and Gbenga Ogundele, and, with respect to the latter, his company G.O. Benson Group, and Wells Fargo bank account number ending in 4126, into which proceeds of the underlying criminal conduct were deposited. And, both discuss the source of the laundered funds as

various types of internet "romance scams" (with common examples in both, but some additional online dating sites of the same nature identified in the superseded indictment). In addition, both charging documents describe related internet fraud scams that were the source of laundered funds, (including tax return scams, lottery scams, counterfeit check scams, account takeovers, and business email scams). And, while the superseding indictment added employment scams and unauthorized wire transfers, these additional examples do not amount to a substantial change in the nature of the conspiracy. The superseding indictment also added that as part of the conspiracy, criminals transmitted images of bank deposits and wire transfer forms as proof that a victim had been tricked into making a wire transfer or bank deposit, Superseding Indictment ¶ 7, but this additional detail did not substantially change the nature of the conspiracy from the original indictment. Similarly, the superseding indictment added that victim identity information also was used or transferred during the criminal conduct, *id.* ¶ 8, which, again, did not broaden or substantially amend the nature of the charged conduct. Both charging documents charged that the conspiracy ended in March 2015, but the superseding indictment charged that the conduct began in 2013, instead of January 2011, the commencement date in the original indictment. *Id.* ¶ 9. Thus, the superseding indictment narrowed the scope of the conspiratorial conduct, it did not expand it.

Of course, as extensively discussed above, the original indictment identified the specified unlawful conduct as conspiracy to commit wire fraud (§ 1349),

while the superseding indictment identified it as wire fraud (§ 1343). While Ojedokun correctly points out that the elements of proof for conspiracy to commit wire fraud are not identical to the elements of wire fraud, both offenses are forms of criminal conduct made illegal by the Title 18, Chapter 63 ("Mail Fraud and other Fraud Offenses"), so they are similar in essence, and are subject to the same penalties. § 1349 ("Any person who attempts or conspires to commit any offense under this chapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy."). And, of course, the original indictment charged conspiracy to commit *wire fraud* (as opposed to one of the other forms of fraud listed in Chapter 63 of Title 18), so the nature of the fraud itself was the same in both the original and superseding indictments.

When the superseding indictment is compared with the original indictment under the lens of the "basic principles" used to assess whether an indictment properly charges an offense, both: contained the same "essential facts constituting the offense charged"; alleged each element of the *charged* offense (money laundering conspiracy); and the common factual allegations were "sufficiently distinctive so that an acquittal or conviction" on the money laundering conspiracy charged could be pleaded by Ojedokun as a bar to a second indictment for the same offense. *Smith*, 44 F. Supp. 3d at 1263. And, in each, the allegations of the money laundering conspiracy were stated in the words of the money laundering statute itself, which is "generally sufficient." *Id.* at 1264. To the extent that Ojedokun claims that he was misled

by the content of the superseding indictment and was confused about the core transactions he was facing, my reaction is the same as the Fourth Circuit's in *Smith*—the confusion is feigned. *Id.*

The Fourth Circuit has recognized that "trivial or innocuous" changes will not bar a superseding indictment from relating back to the date of the original indictment. *United States v. Snowden*, 770 F.2d 393, 398 (4th Cir. 1985) (citations omitted). While a change in the offense charged in the superseding indictment may not be thought of as "trivial or innocuous," the offense charged in the original and superseding indictment was identical—money laundering conspiracy. And, as the Government points out, the original indictment was timely filed, and was still pending when the superseding indictment was brought, and I have concluded that the superseding indictment did not materially broaden or substantially amend the original indictment. Under these circumstances, as the Eleventh Circuit persuasively has found (collecting cases from the First, Second, Third, Fifth, Ninth, and Tenth Circuits holding the same), the touchstone for the relation-back doctrine is whether the Defendant had notice of the charges against him:

> Notice to the defendant is the central policy underlying the statutes of limitation. If the allegations and charges are substantially the same in the old and new indictments, the assumption is that the defendant has been placed on notice of the charges against him. That is, he knows that he will be called to account for certain activities and should prepare a defense.

United States v. Ratcliff, 245 F.3d 1246, 1253 (11th Cir. 2001).

As I have pointed out, the charges in the original and superseding indictment are substantially the same. Ojedokun was placed on notice of the charges against him. He knew what he would be called upon to account for, so that he could prepare his defense. For that reason, the superseding indictment relates back to the timely filed original indictment, and Ojedokun's statute of limitations defense is without merit.[5]

Finally, for all the reasons why I have found that the superseding indictment did not materially broaden or substantially amend the original indictment, I also find that the erroneous citation to wire fraud conspiracy as the "specified unlawful

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[5] During the hearing on January 25, 2021, Ojedokun argued that he was misled and prejudiced by the change in designation of the "specified unlawful activity" in the superseding indictment. He hypothesized that had the case gone to trial on the original indictment, he would have held his cards close to the vest, allowed it to proceed to trial, and if convicted, placed them on the table with a flourish in a motion for a judgment of acquittal, arguing that the erroneous reference to wire fraud conspiracy in the original indictment was fatal because that offense does not meet the statutory definition of "specified unlawful activity" in the money laundering statute. But, for this "defense" to succeed, Ojedokun would have to be correct that the specified unlawful activity was an essential element of the money laundering charge, an argument that I have rejected. For reasons I have explained at length above, the change in the designation of the "specified unlawful activity" did not change an essential element, and so there was no prejudice to him caused by his inability to raise his argument that he could not be convicted of money laundering conspiracy on an indictment alleging that conspiracy to commit wire fraud was the "specified unlawful activity."

activity" of the money laundering conspiracy in the original indictment did not mislead Ojedokun, or prejudice him such that the original indictment was subject to dismissal or that his conviction should be reversed, for purposes of Fed. R. Crim. P. 7(c)(2). For all the reasons stated above, I find that the motion to reconsider my earlier denials of Ojedokun's motion for a new trial or acquittal based on his statute of limitations defense must be DENIED.

2. Extraterritoriality, Lack of Subject Matter Jurisdiction, Rule of Lenity, and Void for Vagueness.

In his several filings relating to the pending motion, Ojedokun added some arguments that his retained counsel did not raise in his various pretrial and posttrial motions. Specifically, he now claims that this court lacks subject matter jurisdiction over Ojedokun (under either of the indictments) because, at all times relevant to the allegations in the charging documents Ojedokun was residing outside the United States (specifically, Nigeria).[6] He supports this argument by citation to the extraterritorial jurisdiction provision of the money laundering statute, 18 U.S.C. § 1956(f), which states:

> There is extraterritorial jurisdiction over the conduct prohibited by this section if: (1) the conduct is by a United States citizen or, in the case of a non-United States citizen, the conduct occurs in part in the United States; and (2) the transaction or series of related transactions

[6] The Government argues that these arguments were waived by not having been brought earlier. But since subject matter jurisdiction cannot be waived, I have considered them.

> involved funds or monetary instruments of a value exceeding $10,000.

There is no dispute in this case that Ojedokun was not a United States Citizen during the conduct alleged in the charging documents, and that the money laundering transactions he was charged with exceeded $10,000.00. Rather, Ojedokun hangs his hat on his contention that none of *his* conduct occurred within the United States. From this position, he argues that criminal statutes are presumed not to have an extraterritorial effect, and that this presumption cannot be overcome in this case, which deprives this court of jurisdiction over the charges brought against him. For good measure, he adds that if I find that there is jurisdiction, I ought to exercise the rule of lenity to give him the benefit of the doubt (assuming there is any doubt about the existence of extraterritorial jurisdiction) and, as a belt-and-suspenders argument, that § 1956(f) is void for vagueness. Because I find that § 1956(f) is not vague, and that the statutory language clearly rebuts the presumption against extraterritoriality, and that the conduct of Ojedokun's co-conspirators most certainly (devastatingly, in fact, to the many victims) occurred within the United States, I DENY his motion to dismiss for want of jurisdiction, void for vagueness, and for lenity.

Ojedokun is correct that, as a general principle of law, criminal and civil statutes do not have extraterritorial application. *RJR Nabisco, Inc. v. European Community*, 136 S. Ct. 2090, 2100 (2016). Moreover, in *RJR Nabisco*, the Supreme Court set forth an elaborate two-step framework that ordinarily must be followed for analyzing exterritoriality issues:

> At the first step, we ask whether the presumption against extraterritoriality has been rebutted—that is, whether the statute gives a clear, affirmative indication that it applies extraterritorially. We must ask this question regardless of whether the statute in question regulates conduct, affords relief, or merely confers jurisdiction. If the statute is not extraterritorial, then at the second step we determine whether the case involves a domestic application of the statute, and we do this by looking to the statute's "focus." If the conduct relevant to the statute's focus occurred in the United States, then the case involves a permissible domestic application even if other conduct occurred abroad; but if the conduct relevant to the focus occurred in a foreign country, then the case involves an impermissible extraterritorial application regardless of any other conduct that occurred in U.S. territory.

Id. at 2101.

Fortunately, however, in this case, it is not necessary to undertake this two-step analysis. This is because the money laundering statute, § 1956(f), unambiguously states the circumstances when the money laundering statue does have extraterritorial effect. As recently noted by the United States District Court for the Eastern District of New York in *United States v. Hawit*, (a case cited by Ojedokun himself):

> [U]nlike the wire fraud statute, the federal money laundering statute contains a provision specifying the circumstances in which it can be applied extraterritorially, and thus overcomes

> the presumption against extraterritoriality. 18 U.S.C. § 1956(f); *see RJR Nabisco*, 764 F.3d at 139 ("Applying Morrison's presumption against extraterritoriality to [money laundering and material support] statutes, we conclude that . . . both apply extraterritorially under specified circumstances. . . .").

United States v. Hawit, No. 15-cr-252 (PKC), 2017 WL 663542 at *8 (E.D.N.Y. Feb. 17, 2017).

I agree with the analysis in *Hawit*, and similarly conclude that § 1956(f) explicitly overcomes the presumption against extraterritoriality. And, as the Government correctly pointed out in its opposition memorandum to Ojedokun's pending motion, § 1956(f)(1) applies to him because the conduct of his co-conspirators took place in part in the United States. Gov't Opp. 4 (The jury found Ojedokun conspired with Ogundele, a Maryland Resident; this is the clearest example of the instant conduct occurring in the United States.); *see also United States v. Firtash*, 392 F. Supp. 3d 872, 900 (N.D. Ill. 2019) (holding district court had jurisdiction over defendants outside of the U.S. due to co-conspirator's substantial actions in the U.S. in furtherance of the conspiracy); *United States v. Hayes*, 99 F. Supp. 3d 409, 422 (S.D.N.Y. 2015) (denying Swiss citizen defendant's motion to dismiss in § 1349 prosecution upon finding Complaint alleged sufficient nexus between defendant and the U.S. where defendant's and conduct occurred abroad); *United States v. Hijazi*, 845 F. Supp. 2d 874, 886 (C.D. Ill. 2011) (citing *United States v. Wormick*, 709 F.2d 454, 461 (7th Cir. 1983) (co-conspirator's "actions in furtherance of the scheme to defraud can thus be attributed to [the defendant], even though he is a

foreign national"); *United States v. Manuel*, 371 F. Supp. 2d 404, 409 (S.D.N.Y. 2005) ("The Supreme Court has specifically upheld the exercise of jurisdiction over conspirators who have never entered the United States, where the conspiracy was 'directed to violation of the United States law within the United States.'"); *cf. United States v. McKeeve*, 131 F.3d 1, 11 (1st Cir. 1997) ("a conspiracy occurring partly within the United States is prosecutable without resort to any theory of extraterritorial jurisdiction"); *United States v. Finch*, Cr. No. 10-333 SOM-KSC, 2010 WL 3938176, at *2 (D. Haw. Sept. 30, 2010) ("if an overt act in furtherance of a conspiracy occurs in this country, then the conspiracy falls within the jurisdiction of the United States").

Because I have no doubt about the application of the unambiguous text of 18 U.S.C. § 1956(f)(1) to this case, there is no basis to apply the rule of lenity to Ojedokun. And, as noted, I do not find that § 1956(f) is ambiguous, therefore it is not void for vagueness.

Conclusion

For all of the above reasons, Ojedokun's motion for reconsideration and related relief is DENIED. A separate order follows.

DATED this 4th day of February, 2021.

BY THE COURT:

/S/
Paul W. Grimm
United States District Judge

APPENDIX C

United States District Court
District of Maryland

UNITED STATES OF AMERICA	**JUDGMENT IN A CRIMINAL CASE** (For Offenses Committed on or After November 1, 1987)
v.	Case Number: PWG-8-19-CR-00228-001
SEUN BANJO OJEDOKUN	Defendant's Attorney: Brent Evan Newton, CJA Assistant U.S. Attorney: Thomas Patrick Windom

THE DEFENDANT:

☐ pleaded guilty to count(s) ___
☐ pleaded nolo contendere to count(s) _____, which was accepted by the court.
☒ was found guilty on count(s) 1 of the Superseding Indictment after a plea of not guilty.

Title & Section

18 U.S.C. § 1956(h)

Nature of Offense

Conspiracy To Commit Money Laundering

Date Offense Concluded

03/2015

Count Number(s)

1a

The defendant is adjudged guilty of the offenses listed above and sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984 as modified by *U.S. v. Booker*, 543 U.S. 220 (2005).

☐ The defendant has been found not guilty on count(s) ____

☒ Count 1 of the Original Indictment is dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

March 11, 2021
Date of Imposition of Judgment

s/Paul W. Grimm March 15, 2021
Paul W. Grimm Date
United States District Judge

Name of Court Reporter: Marlene Kerr

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **108 months as to Count 1s**. The Bureau of Prisons should give the defendant credit for time served in federal custody since April 25, 2019.

☒ The court makes the following recommendations to the Bureau of Prisons:

1. That the defendant be designated to a FCI in the Washington Metropolitan area, so that the defendant may be close to friends, for the service of his sentence.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at ____a.m./p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender, at his/her own expense, to the institution designated by the Bureau of Prisons at the date and time specified in a written notice to be sent to the defendant by the United States Marshal. If the defendant does not receive such a written notice, defendant shall surrender to the United States Marshal:

☐ before 2pm on _____.

A defendant who fails to report either to the designated institution or to the United States Marshal as directed shall be subject to the penalties of Title 18 U.S.C. §3146. If convicted of an offense while on release, the defendant shall

be subject to the penalties set forth in 18 U.S.C. §3147. For violation of a condition of release, the defendant shall be subject to the sanctions set forth in Title 18 U.S.C. §3148. Any bond or property posted may be forfeited and judgment entered against the defendant and the surety in the full amount of the bond.

RETURN

I have executed this judgment as follows:

Defendant delivered on ____ to ____ at ____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By: _____
DEPUTY U.S. MARSHAL

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years.

The defendant shall comply with all of the following conditions:

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

A. MANDATORY CONDITIONS

1) You must not commit another federal, state or local crime.

2) You must not unlawfully possess a controlled substance.

3) You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

   ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*

4) ☒ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*

5) You must cooperate in the collection of DNA as directed by the probation officer.

6) ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq*.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*

7) ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page

B. STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1) You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2) After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3) You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4) You must answer truthfully the questions asked by your probation officer.
5) You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in

advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

6) You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.

7) You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

8) You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.

9) If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.

10) You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).

11) You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.

12) If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.

13) You must follow the instructions of the probation officer related to the conditions of supervision.

C. SUPERVISED RELEASE ADDITIONAL CONDITIONS

Deported/Remain Outside of U.S.

☒ If you are ordered deported from the United States, you must remain outside the United States, unless legally authorized to re-enter. If you re-enter the United States, you must report to the nearest probation office within 72 hours after you return.

Financial Disclosure

☒ You must provide the probation officer with access to any requested financial information and authorize the release of any financial information.

The probation office may share financial information with the U.S. Attorney's Office.

No New Debt/Credit

☒ You must not incur new credit charges or open additional lines of credit without the approval of the probation officer.

No Contact with Victim

☒ You must not communicate, or otherwise interact, with any victim in this case, either directly or through someone else, without first obtaining the permission of the probation officer.

Restitution – Money

☒ Pay outstanding monetary restitution imposed by the Court to the victims in the amount of $325,100.00. Restitution payments shall be paid at a rate of $100.00 per month over a period of 36 months and be paid to the Clerk, U.S. District Court, 6500 Cherrywood Lane, Suite 200, Greenbelt, MD 20770, for distribution to the victim(s).

Special Assessment

☒ Pay special assessment $100.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 5B.

	Assessment	Restitution	Fine
TOTALS	$100.00	$325,100.00	Waived

	AVAA Assessment*	JVTA Assessment**
TOTALS	N/A	N/A

☐ CVB Processing Fee $30.00

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

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* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22

Name of Payee

Clerk, US District Court
6500 Cherrywood Lane
Greenbelt, MD 20770
For disbursment to victim(s)

Total Loss***

Restitution Order

$325,100.00

Priority or Percentage

TOTALS	$ _____	$ $325,100.00

☐ Restitution amount ordered pursuant to plea agreement _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

☐ the interest requirement is waived for the
☐ fine ☐ restitution

☐ the interest requirement for the
☐ fine ☐ restitution is modified as follows:

SCHEDULE OF PAYMENTS

Payment of the total fine and other criminal monetary penalties shall be due as follows:

A ☒ $100.00 Special Assessment fee shall be paid in full immediately.

B ☐ $_____ immediately, balance due (in accordance with C, D, or E); or

C ☐ Not later than _____; or

D ☐ Installments to commence _____ day(s) after the date of this judgment.

E ☐ In ____ (*e.g. equal weekly, monthly, quarterly*) installments of $_____ over a period of _____ year(s) to commence when the defendant is placed on supervised release.

The defendant will receive credit for all payments previously made toward any criminal monetary penalties imposed.

Unless the court expressly orders otherwise, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Bureau of Prisons Inmate Financial Responsibility Program, are to be made to the Clerk of the Court.

☐ **NO RESTITUTION OR OTHER FINANCIAL PENALTY SHALL BE COLLECTED THROUGH THE INMATE FINANCIAL RESPONSIBILITY PROGRAM.**

If the entire amount of criminal monetary penalties is not paid prior to the commencement of supervision, the balance shall be paid:

☐ in equal monthly installments during the term of supervision; or

☐ on a nominal payment schedule of $____ per month during the term of supervision.

The U.S. probation officer may recommend a modification of the payment schedule depending on the defendant's financial circumstances.

Special instructions regarding the payment of criminal monetary penalties:

☐ Joint and Several

Case Number Defendant and Co-Defendant Names *(including defendant number)*	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

APPENDIX D

FILED: November 23, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-4127
(8:19-CR-00228-PWG-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

SEUN BANJO OJEDOKUN

Defendant - Appellant

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Chief Judge Gregory, Judge King, and Judge Floyd.

For the Court

/s/ Patricia S. Connor, Clerk

APPENDIX E

18 U.S.C. § 1956
Laundering of monetary instruments

* * *

(f) There is extraterritorial jurisdiction over the conduct prohibited by this section if—

(1) the conduct is by a United States citizen or, in the case of a non-United States citizen, the conduct occurs in part in the United States; and

(2) the transaction or series of related transactions involves funds or monetary instruments of a value exceeding $10,000.

* * *

(h) Any person who conspires to commit any offense defined in this section or section 1957 shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

* * *