No._____

ORIGINAL

IN THE

Supreme Court of the United States

ROLAND ADAMS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARY

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Pro Se Petitioner

QUESTIONS PRESENTED.

1. Whether the district court lacked jurisdiction to enter judgement under 18 U.S.C § 1956(h), where Petitioner was not charged with nor engaged in "***financial transaction in criminal profit***" of $2.1 million, and whether judgment contravene clearly established Supreme Court law and the Due Process clause of the 5th and 14th Amendment.

2. Whether the waiver in the Plea Agreement bars Petitioner from challenging the Court's Jurisdiction to convict and sentence him for violation of 18 U.S.C. 18 U.S.C. § 1956 (h) where the State is precluded by Federal law and the United States Constitution from hailing Petitioner into court on this charge.

3. Whether the waiver in the Plea Agreement bars Petitioner's Challenge to a VOID Judgment where the court exceeded its statutory authority and on a charge the State cannot constitutionally prosecute.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARY

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

This case is from a Federal Court.

The Opinion of the United States Court of Appeals appears at Appendix A to the Petition and is unpublished.

The Opinion of the United States District Court of appears at Appendix B to the Petition and is unpublished

JURISDICTION

The date which the United States Court of Appeals decided my case was **March 2, 2021.**

A timely Petition for Rehearing was denied by the United States Court of Appeals on **May 26, 2021**, and a copy of the Order denying Rehearing appears in **Appendix C**

The Jurisdiction of the U.S Supreme Court is invoked under 28 U.S.C § 1254(1)

CONSTITUTIONAL AND STATUTORY PROVISIONSINVOLVED

1. United States Constitutional Amendment *Article III, Section 2*
2. The *Fifth Amendment* to the United States Constitution
3. The *Sixth Amendment* to the United States Constitution
4. The *Fourteenth Amendment* to the United States Constitution

STATEMENT OF CASE

On June 17, 2002, Petitioner was arrested and charged in a ten counts indictment. (Doc.5, 6/20/02). The indictment contained no "loss amount", "victims" or "co-conspirators" nor charged any "***financial transaction in criminal profits***".

Petitioner pled guilty as charged to Count 1 charging conspiracy to commit an offense in violation of 18 U.S.C §371, and Count 7 charging conspiracy to commit money laundering in violation of 18 U.S.C. § 1956 (h). The Plea contract contained no "***loss amount***" Count 1 or any "***financial transaction in criminal profit***" in Count 7, but provided for "*Restitution*" to be later determined by the Probation Officer. The Plea provided for criminal forfeiture trial by the court as to Counts 9 and 10.

At the Taking of Plea Colloquy, Petitioner ***DID NOT ADMIT*** to engaging in "***financial transactions in criminal profit***" of $2.1million in Count 7. The Government promised to prove actual losses to the alleged victims in the event of a trial stating, "***The government would call victims to testify, presenting actual losses in excess of two point one million dollars***". (Doc.67, pg. 23, 8/18/03).

At the September 22, 2003, criminal forfeiture trial on Counts 9 and 10, the Government failed to call any "victims" to testify or present any evidence of ***actual losses*** as promised at the Plea Colloquy.

In October 2003, Petitioner moved to withdraw this Plea Agreement. At the evidentiary hearing, his Federal Public Defender, testified he was constitutionally ineffective for failure to advise Petitioner as to the "***direct consequences of his plea***" amongst others, and stated that there was a "***fair and just" reason to withdraw the plea*** (Doc.212, pg. 10-11, 3/19/04). The court denied the motion but also noted that Petitioner was not informed or aware of the "***direct consequences of his plea***". (Doc.212, pg 82, 3/19/04).

After Pre-Sentencing Investigation Report was prepared, Petitioner filed Formal *Blakeley/Ameline* Objections to ***the $2.1 million "LOSS AMOUNT"*** (Doc.89).

At sentencing the government claimed that ***"the Probation Officer determined the total loss from the conspiracy to be $2.1 million"*** (Doc.104, pg. 2), and that the $1.2 million "***restitution***" being sought by the government was for "***intended loss***". (Doc.122, pg 10, ln 16-18).

The district court did not hold any evidentiary hearing to resolve this dispute in the Probation Officer's PSI Report as required by Fed.R.Crim.P. 32. Petitioner again *OBJECTED* to both the "***Loss Amount***" amount at sentencing. (Doc.122, pg 26-31, 3/11/05). The court adopted the PSI Report ***"without change"***.

Petitioner was sentenced on March 11, 2005, based on the disputed $2.1 million, to the statutory maximum of 60 months in Count 1. This disputed $2.1 million was considered as "***financial transactions in criminal profit***" in Count 7 resulting in 97 months sentence after enhancement.

On direct appeal, the Ninth Circuit vacated the criminal forfeiture *ORDER* from the trial by the judge on Counts 9 and 10 because the use of facts that *pre-dated* the indictment. The Court held that the district court never determined how much, if any, Petitioner earned or profited from ***"the offense of conviction"***. Conviction and sentence were affirmed on both counts 1 and 7. *See U. S v. Adams*, 189 Fed.Appx. 600 (CA9 2006).

Upon remand, Petitioner's second motion to withdraw the Plea agreement was denied. The court entered an Amended Judgment on all counts on May 16, 2007.

While direct appeal was pending the United States Supreme Court in *U.S v. Santos*, 128 S.Ct. 2020 (200 interpreted that the word "proceeds" in 18 U.S.C. 18 U.S.C. § 1956 (h), ***"applies only to transactions involving criminal profits, not criminal receipts"***, and that to establish this element the prosecution needs to show ***"only that a single instance of specified unlawful activity was profitable and gave rise to the [money] involved in a charged transaction"***. *Id.*

Petitioner notified the court of appeals of *Santos* in a Rule 28j letter on June 23, 2008. The Government did not address Petitioner's *Santos* claims in its Answering Brief. Petitioner further argued in his Reply Brief that *Santos* represented an Intervening Change of law that warranted relief from his conviction and sentence.

Petitioner was never charged with any "***financial transaction in criminal receipts or criminal profit***". Petitioner asked to withdraw his guilty plea because he was not advised by the district court, as required by Fed.R.Crim.P.11, or by his counsel of the requisite element of "*proceeds*" embodied in 18 U.S.C. § 1956 (h) before pleading guilty.

On September 30, 2009, the Ninth Circuit denied Petitioner's appeal . A petition for rehearing and rehearing en banc was denied on December 07, 2009. The Ninth Circuit issued its MANDATE on December 15, 2009.

Upon completion of his sentence, Petitioner filed a Motion to vacate his conviction and Sentence on multiple grounds including under 18 U.S.C. § 1956 (h) due to Court lack of jurisdiction. The District Court denied his Petition. The Ninth Circuit denied his Appeal and his Petition for Rehearing En Banc

This petition for Writ of Certiorari is as result of the district court conviction and judgment, and the Ninth Circuit denial of appeal, petition for rehearing and rehearing en banc.

SUMMARY OF CASE

Petitioner, Roland Adams, was charged with violation of 18 U.S.C § 371 without any "***Loss Amount***" and 18 U.S.C. § 1956 (h) without any "***Financial Transaction in Criminal Profit***" and he pleaded guilty as charged. The Probation Officer Pre-Sentencing Report determined the Loss Amount was $2.1 million dollars. Petitioner Objected. The district Court adopted this $2.1 disputed "***Loss Amount***" for sentencing under 18 U.S.C § 371, the court then adopted this Loss Amount from the {PSR} as "***Financial Transaction in Criminal Profit***" under 18 U.S.C. § 1956 (h).

In Postconviction proceedings, Petitioner moved to Vacate the Conviction and Sentence of 18 U.S.C. § 1956 (h) on the grounds that the Court lacked Jurisdiction to enter Judgement and that the conviction and Sentences was VOID. The District Court denied the Petition on the grounds that the waiver in Plea Agreement bars any challenge to the sentence and conviction. The Ninth Circuit denied appeal and rehearing holding that the Plea Agreement was valid.

REASONS FOR GRANTING THE PETITION

REASON 1

THE DENIAL OF PETITION TO VACATE CONVICTION AND SENTENCE FOR LACK JURISDICTION IS CONTRARY TO CLEARLY ESTABLISHED SUPREME COURT LAW

A. LEGAL PRINCIPLES:

A party may raise jurisdictional objections at any time. ***Arbaugh v. Y & H Corp.***, 546 U.S.500, 506 (2006), and defects "requires correction regardless of whether error was raised in the district court". ***U.S v. Cotton***, 535 U.S 625, 630

(2002). Petitioner argued that the use of "Loss Amount" of $2.1 million from the Pre-Sentencing Report as "***financial transaction in criminal profit***" under 18 U.S.C. § 1956 (h)was contrary to the statute and clearly Supreme Court established law in ***U.S v. Santos***, 128 S.Ct. 2020(2008) and thus deprives federal court of jurisdiction.

The Ninth Circuit decision that the Plea Agreement waiver provision bars Jurisdictional challenge to a VOID judgment was an error and contravene clearly established Supreme Court law. Guilty plea does not waive jurisdictional challenges on a charge "*which the State may not constitutionally prosecute.*" *United States v. Broce*, 488 U.S. 563, 575 (1989).

REASON 2

SUPREME COURT DECISION IN ***SANTOS*** DEPRIVES THE DISTRICT COURT JURISDICTION TO ENTER JUDGMENT

A. LEGAL PRINCIPLES:

In ***U.S v. Santos***, 128 S. Ct. 2020 (2008), the Supreme Court held that the federal money-laundering statute's prohibition of transactions involving criminal "***proceeds***" was ambiguous as it relates to the meaning of ***"proceeds"***. The Supreme Court then applied the rule of lenity to interpret the statute in favor of the defendant. Under this interpretation, the term "proceeds" in 18 U.S.C. § 1956 (h) ***"applies only to transactions involving criminal profits, not criminal receipts"***.

The Court held that to establish the "***proceeds***" element, the prosecution needs to

show "***only that a single instant of specified unlawful activity was profitable and gave rise to the money involved in a charged transaction***". Id.

B. PETITIONER'S CASE:

Petitioner claimed actual innocence of violation of 18 U.S.C. § 1956 (h) because he was never charged with any "***financial transactions in criminal profit***" or criminal receipt of $2.1 million. The Respondent failed to address *Santos* in its all the proceedings in the district Court or the Ninth Circuit because it is undisputed that there was no actual "***financial transaction in criminal profit***" of $2.1 million. The only response was that Petitioner is barred by the waiver in the Plea Agreement from ever challenging his Sentence and Conviction no matter how unlawful or unconstitutional.

The Ninth Circuit clearly erred as a matter of law when it mistakenly concluded that the waiver in the Plea Agreement was valid and prevented Petitioner from challenging the district Court's lack of jurisdiction to sentence him. Sentencing appeal waiver provision does not waive all claims on appeal. The Ninth Circuit have held in the past that certain constitutional and statutory claims survive a sentencing appeal waiver in a plea agreement. "Jurisdiction" challenging the convicting court is not waived by a guilty plea. ***U.S v. Pheaster***, 544 F.2d 353, 369 (CA9 1976) ("Objection to defect in an indictment are never waived"). Guilty plea does not waive his jurisdictional challenges on a charge "*which the State may not*

constitutionally prosecute" ***United States v. Broce***, 488 U.S. 563, 575 (1989). *See also* ***US v. Du U Bo***, 186 F.3d 1177, 1180 (CA9 1999) (That a defendant admitted the existence of a missing element as part of a guilty plea, is "irrelevant***"). U.S v. Karaouni,*** 379 F.3d 1139 (CA9 2004) ("It is fundamental that conduct which is not penally prohibited become criminal simply because an actor believes his conduct constituted a crime").

In ***Class v. United States***, 583 U.S. ___ (2018), the Supreme Court held that "A guilty plea, by itself, does not bar a federal criminal defendant from challenging the constitutionality of his statute of conviction on appeal. This holding flows directly from the Court's prior decisions. Fifty years ago, in ***Haynes v. United States,*** the Court addressed a similar claim challenging the constitutionality of a criminal statute. Justice Harlan's opinion for the Court stated that the defendant's "plea of guilty did not, of course, waive his previous [constitutional] claim." 390 U. S. 85, n. 2. That clear statement reflects an understanding of the nature of guilty pleas that stretches, in broad outline, nearly 150 years. Subsequent decisions have elaborated upon it. In ***Blackledge v. Perry***, 417 U. S. 21, the Court recognized that a guilty plea bar some "'antecedent constitutional violations,'" related to events (such as grand jury proceedings) that "'occu[r] prior to the entry of the guilty plea.'" Id., at 30 (quoting ***Tollett v. Henderson***, 411 U. S. 258 –267). However, where the claim implicates "***the very power of the State***" to prosecute the

defendant, a guilty plea cannot by itself bar it. 417 U. S., at 30. Likewise, in ***Menna v. New York***, 423 U. S. 61, the Court held that because the defendant's claim was that "the State may not convict [him] no matter how validly his factual guilt is established," his "guilty plea, therefore, [did] not bar the claim." *Id.*, at 63, n. 2. In more recent years, the Court has reaffirmed the ***Menna-Blackledge*** doctrine's basic teaching that "'a plea of guilty to a charge does not waive a claim that—judged on its face—the charge is one which the State may not constitutionally prosecute.'" *United States v. Broce*, 488 U. S. 563 (quoting *Menna*, supra, at 63, n. 2). Pp. 3–7.

Petitioner neither expressly nor implicitly waived his constitutional claims by pleading guilty. The claims at issue here do not contradict the terms of the indictment or the written plea. Petitioner challenges the Government's power to criminalize his (admitted) conduct and thereby calls into question the Government power to "***constitutionally prosecute***" him. (Quoting ***Menna,*** supra, at 61–62, n. 2). A guilty plea does not bar an appeal in these circumstances.

REASON 3

SUPREME COURT LAW IN ***SANTOS*** RENDERS JUDGMENT ***VOID*** AND MANDATES CONVICTION AND SENTENCE TO BE VACATED.

A. LEGAL PRINCIPLES:

In ***U.S v. Santos***, 128 S.Ct. 2020 (2008), the Court interpreted that the word "proceeds" in 18 U.S.C. 18 U.S.C. § 1956 (h), "***applies only to transactions***

involving criminal profits, not criminal receipts", and that to establish this element the prosecution needs to show "***only that a single instance of specified unlawful activity was profitable and gave rise to the [money] involved in a charged transaction***". In this case Petitioner was never "***charged***" with any "***transaction***" of $2.1 million. "*To successfully challenge the district court's jurisdiction, a defendant who enters a guilty plea must establish that the indictment failed to charge the element of a federal offense*". ***U.S v. Martin***, 526 F.3d 926 (CA6 2008). A party may raise jurisdictional objections at any time. ***Arbaugh v. Y & H Corp***., 546 U.S.500, 506 (2006), and defects "*requires correction regardless of whether error was raised in the district court*". ***U.S v. Cotton,*** 535 U.S 625, 630 (2002). Thus, the fact that a judgment is entered pursuant to stipulation does not insulate the judgment from attack on the ground that it is **VOID**. ***People v. One 1941 Chrysler Sedan*** (1947) 81 Cal. App. 2d 18, 21-22 [183 P.2d 368].

The Panel's opinion that the "waiver" in the Plea Agreement bars Jurisdictional challenges in this instant case was error that must now be reviewed and corrected. A party may raise jurisdictional objections at any time. ***Arbaugh v. Y & H Corp***., 546 U.S.500, 506 (2006), and defects "*requires correction regardless of whether error was raised in the district court*". ***U.S v. Cotton,*** 535 U.S 625, 630 (2002).

This Jurisdictional issue can never be waived as a matter of law as it goes to the critical issue of challenging the "***Government's Power to Prosecute***" Petitioner. Respondent failed to show any evidence of "***financial transaction in criminal profit***" of $2.1 million from the Indictment or Plea agreement. The fact is undisputed that Petitioner did not engage in any "***Financial Transaction*** in ***criminal profit***" of $2.1 million in this case. See; ***U.S v. Santos***, 128 S.Ct. 2020 (2008) and ***United States v. Costanzo***, No. 18-10291 (9th Cir. 2020). Because all the statutory elements of 18 U.S.C. § 1956(h) missing from this conviction, the Court lacked jurisdiction to impose sentence. ***US v. Du U Bo***, 186 F.3d 1177, 1180 (CA9 1999) (That a defendant admitted the existence of a missing element as part of a guilty plea, is "*irrelevant*"). ***U.S v. Karaouni***, 379 F.3d 1139 (CA9 2004) ("*It is fundamental that conduct which is not penally prohibited become criminal simply because an actor believes his conduct constituted a crime*"). This conviction must be vacated by this Honorable Court to prevent the most egregious miscarriage of justice pursuant to Supreme Court holding in. ***Menna v. New York***, 423 U.S 61 (1975) ("*where the state is precluded by the United States Constitution from hailing a defendant into court on a charge, federal law requires that a conviction on that charge be set aside even if conviction was entered pursuant to a counseled plea of guilty*"). Here

Petitioner challenged the very power of the State to prosecute him, therefore the "**waiver**" in the Plea Agreement is irrelevant no matter its validity.

B. PETITIONER'S CASE:

The Ninth Circuit decision not to vacate Petitioner's conviction and sentence in light of ***Santos*** is contrary to law and U.S. Const. Amend. art. III, §2. Petitioner was never charged with or convicted of any "***financial transaction in criminal profits***". Petitioner's motion to withdraw his guilty plea, on the ground that he was not advised by the district court as required by Fed.R.Crim.P.11(b)(1) or by his counsel under the Sixth Amendment, of the requisite element of "***proceeds***" embodied in 18 U.S.C. § 1956 (h) before pleading guilty was denied.

Santos is squarely on point and mandated the Ninth Circuit to vacate Petitioner's conviction and sentence. The money laundering conviction on Count 7 18 U.S.C. § 1956 (h) is particularly egregious and strikes at the core principal elements of "*proceeds*", "*knowledge*"[1], "*concealment*", "*intent*" and "*transaction*" embodied in 18 U.S.C. § 1956 (h). Because the Indictment contained no "***financial transaction in criminal profits***" in Count 7, and Petitioner pleaded guilty as charged, there is in fact no "**actual case**" of violation of 18 U.S.C. § 1956 (h) under U.S. Const. Amend. art. III, §2 or any "**offense**" against the United States under 18 U.S.C. §3231. The Ninth Circuit should have vacated conviction under

[1] *See Regalado-Cuellar v. United States*, No. 06-1456, 533 U.S. ____ (2008) (reversing conviction because the government failed to present evidence that "transaction" was designed to "conceal or disguise the nature, the location, the source, the ownership or control of the funds")

Supreme Court law in ***Menna v. New York***, 423 U.S 61 (1975) ("*where the state is precluded by the United States Constitution from hailing a defendant into court on a charge, federal law requires that a conviction on that charge be set aside even if conviction was entered pursuant to a counseled plea of guilty*").

The 14th amendment of the United States Constitution gives everyone a right to due process of law, which includes judgments that comply with the rules and case law. Petitioner's conviction on Count 7 violated his 14th Amendment rights. Petitioner's conviction of violation of 18 U.S.C. § 1956(h) is VOID as a matter of law under ***Santos.***

A void judgment is a nullity from the beginning, and is attended by none of the consequences of a valid judgment. It is entitled to no respect whatsoever because it does not affect, impair, or create legal rights." ***Ex parte Seidel***, 39 S.W.3d 221, 225 (Tex. Crim. App. 2001), ***Ex parte Spaulding***, 687 S.W.2d at 745 (Teague, J., concurring).

The law is well-settled that a void order or judgment is void even before reversal", ***Valley v. Northern Fire & Marine Ins. Co.***, 254 U.S. 348, 41 S. Ct. 116 (1920) "Courts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgements and orders are regarded as nullities; they are not voidable, but simply void, and this even prior to reversal." ***Williamson v. Berry***, 8 HOW.

945, 540 12 L. Ed. 1170, 1189 (1850). It has also been held that, It is not necessary to take any steps to have a void judgment reversed, vacated, or set aside, it may be impeached in any action direct or, collateral.' ***Holder v. Scott***, 396 S.W.2d 906, (Tex. Civ. App., Texarkana, 1965, writ ref., n.r.e.). A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid. It is clear and well-established law that a void order can be challenged in any court", ***Old Wayne Mut. L. Assoc. v. McDonough***, 204 U. S. 8, 27 S. Ct. 236 (1907). Judgment is a void judgment if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process, Fed. Rules Civ. Proc., Rule 60(b)(4), 28 U.S.C.A., U.S.C.A. Const.

REASON 4

THE CONVICTION IS CONSTITUTIONALLY INVALID BECAUSE PETITIONER WAS NOT INFORMED OF THE CRIMES ELEMENT BEFORE PLEADING GUILTY AND THUS DEPRIVING DISTRICT COURT JURISDICTION TO ENTER JUDGMENT

A. LEGAL PRINCIPLES:

"A guilty plea operates as waiver of important rights, and is valid only if done voluntarily, knowingly, and intelligently .... Where a defendant pleads guilty to a crime without haven been informed of the crime's element, this standard is not met, and the *plea is invalid*". ***Bradshaw v. Stumpf***, 545 U.S 175, 183 (2005). The Court must "*inform the defendant of, and determine that the defendant understands the nature of the charge*" before accepting a guilty plea. Fed.R.Crim.P. 11(b)(1);

United States v. Minore, 292 F.3d at 1115 (CA9 2002) ("*the district court [must] advise the defendant of the elements of the crime and ensure that the defendant understands them*")

The Ninth Circuit clearly erred when it divested itself of jurisdiction to adjudicate this constitutional plain error pursuant to Fed.R.Crim.P. 52(b) and especially in light of clearly established Supreme Court decision in *Santos*.

B. PETITIONER'S CASE:

The district court failed to comply with Rule 11(b)(1) by not advising Petitioner of the elements of "*Proceeds*" or "*Transactions*" or "*knowledge*" or "*intent*" embodied in 18 U.S.C. § 1956 (h) or that Petitioner understood the nature of the charge in Count 7 before accepting the plea. There was no "***money involved***" or any "***charged transaction***" in the indictment as required by the Statute under *Santos*. The court's failure to inform Petitioner of the elements of the offense before accepting the plea constitutes "plain error" under ***Minore***, 292 at 1117 (quoting ***Olano***, 507 U.S at 732) and mandates vacation of the plea. "*A defendant's due process rights are unquestionably implicated when his purported conviction rest on anything less than a finding of guilt as to all elements of the crime*". ***U.S v. Alferahin***, 433 F.3d 1148 (CA9 2006).

Furthermore, Petitioner was denied his Sixth Amendment right to counsel because counsel failed to notice that the indictment was constitutionally deficient

for not including the elements of the offense. Petitioner argued in light of ***Santos*** that counsel's performance fell below objective standard of reasonableness under ***Strickland v. Washington***, 466 U.S 694 (1984). Petitioner would never have pleaded guilty but for counsel's error which led to his detriment. ***Hill v. Lockhart***, 474 U.S 52 (1985). Petitioner was subjected an egregious miscarriage of justice because counsel led him to plead guilty when he is in fact there was no legally charged offense. This counsel's conduct falls below the minimal legal standard of constitutional justice.

This Honorable Court should grant the writ, vacate the judgment pursuant to ***Bradshaw v. Stumpf***, 545 U.S 175, 183 (2005).

REASON 5

THE USE OF $2.1 MILLION FROM THE PRE-SENTENCING REPORT CONSTRUCTIVELY AMENDMENED THE INDICTMENT AND THUS DEPRIVING THE COURT OF JURISDICTION TO SENTENCE PETITIONER UNDER 18 U.S.C. § 1956 (h)

A. LEGAL PRINCIPLES:

Under the Fifth Amendment a defendant must stand trial only on charges made in the indictment. U.S. Const. Amend. 5. ***Stirone v. United States***, 361 U.S 212 (1960) ("*a court cannot permit a defendant to be tried on charges not made in the indictment*"). ***Dunn v. U.S.*** 442 U.S 100 (1979) ("*Few constitutional principles are more firmly established than a defendant's right to be heard on the specific charge for which he is accused*"). Constructive amendment mandates per se

reversal. ***U.S v. Bhagat***, 436 F.3d 1140 (CA9 2006). The Sixth Amendment guarantees the Right to Notice. ***Gautt v. Lewis***, 489 F.3d 993 (CA9 2007). A plea may be set aside on direct appeal.". Fed.R.Crim.P. 11(e). ***United States v. Davis***, 428 F.3d 802, 805 (CA9 2005).

The Indictment charges on Count 7 18 U.S.C. 18 U.S.C. § 1956 (h) did not charge Petitioner with $2.1 million in "***financial transaction in criminal profit***". The conviction and sentence therefore violated Petitioner's due process right. The Ninth Circuit clearly erred when it held that this was barred by the waiver in the Plea agreement. This constitutional claim is not waived by the Plea agreement.

The use of the Pre-Sentencing Report disputed "***Loss Amount***" as "***financial transaction***" representing the jury verdict violates Petitioner's due process rights to be held to answer only to the charges in the indictment. Because Petitioner was not charged with any "***financial transaction in criminal profit***" of $2.1 million, the district court lacked jurisdiction to enter judgment. *Stirone*, supra.

This Honorable Court should grant the writ, vacate conviction pursuant to the Fifth and Sixth Amendments.

CLOSING ARGUMENT

The Ninth Circuit overlooked this Court's interpretation of "***proceeds***" in ***Santos***, and the [undisputed fact] there was no "***charged transaction in criminal profit***" of $2.1 million in Count 7 of the indictment as required by the Statute under 18 U.S.C. § 1956 (h). The Ninth Circuit also misunderstood the law that, Guilty plea does not waive jurisdictional challenges on a charge "*which the State may not constitutionally prosecute.*" ***United States v. Broce***, 488 U.S. 563, 575 (1989). The Ninth Circuit erred when it failed to set aside conviction pursuant to Supreme Court law in ***Menna v. New York***, 423 U.S 61 (1975) ("*where the state is precluded by the United States Constitution from hailing a defendant into court on a charge, federal law requires that a conviction on that charge be set aside even if conviction was entered pursuant to a counseled plea of guilty*"). The money laundering alleged does not qualify as an *ACTUAL OFFENSE* under ***U.S. Const. Amend. art. III, §2***.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

AUGUST 14TH, 2021

DATE

ROLAND ADAMS