

IN THE SUPREME COURT OF THE UNITED STATES

HARINDER SINGH, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals erred in rejecting petitioner's argument that the trial evidence was insufficient to support his conviction for conspiring to participate in money-laundering transactions, in violation of 18 U.S.C. 1956(a)(1)(B)(i).

ADDITIONAL RELATED PROCEEDINGS

United States District Court (C.D. Cal.):

United States v. Singh, No. 14-cr-648 (Nov. 26, 2018)

United States Court of Appeals (9th Cir.):

United States v. Singh, No. 18-50423 (May 3, 2021)

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No. 21-6383

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 2-31) is reported at 995 F.3d 1069. The opinion of the district court is not published in the Federal Supplement but is available at 2018 WL 1662483.

JURISDICTION

The judgment of the court of appeals was entered on May 3, 2021. A petition for rehearing en banc was denied on June 30, 2021 (Pet. App. 1). The petition for a writ of certiorari was filed on November 18, 2021. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Central District of California, petitioner was convicted of conspiring to participate in money-laundering transactions, in violation of 18 U.S.C. 1956(a)(1)(B)(i) and (h); conspiring to operate an unlicensed money transmitting business, in violation of 18 U.S.C. 371 and 1960; and operating an unlicensed money transmitting business, in violation of 18 U.S.C. 1960. Pet. App. 5. He was sentenced to 70 months of imprisonment, to be followed by three years of supervised release. Id. at 32. The court of appeals affirmed. Id. at 2-31.

1. From April through October of 2012, petitioner transmitted the proceeds of drug trafficking as part of a hawala network. Pet. App. 6-8. "Hawala is a system designed to transfer funds from point to point outside of formal money transmission channels without the physical movement of money." Id. at 6. A hawala broker in one country receives money from the transferor and then communicates with a broker in the transferee's country, who gives the transferee the money after deducting fees. Ibid. "[B]ecause of [hawala's] informality, lack of record keeping," and lack of "government oversight," hawala "may be used to transfer illegally derived funds." Id. at 7.

The drug proceeds in this case originated with a Canadian drug trafficker who needed to transfer millions of dollars to California to pay his Mexican drug suppliers. Pet. App. 6. He

provided the necessary amounts in Canadian currency to a Canadian hawala broker, who worked with a network of other hawala brokers to pay out large sums in United States currency to drug suppliers in the Los Angeles area. Id. at 6-7. Petitioner was recruited into the operation in 2012 by his uncle, "but later worked independently" for the Canadian broker and with another member of the conspiracy. Id. at 7. Petitioner's role was to collect and distribute money to the Canadian drug supplier's associates in the Los Angeles area. Ibid. In 2012, he made 10 to 15 deliveries for the Canadian broker of sums ranging from \$100,000 to \$800,000. Ibid. And during a six-month period in 2012, he collected money for another member of the conspiracy on 30 to 40 occasions, with the sums ranging from \$50,000 to \$150,000. Id. at 7-8. Petitioner knew that the funds were drug proceeds. Id. at 7.

Petitioner was arrested after a traffic stop in 2012. Pet. App. 8. During the stop, the officer asked petitioner about the contents of bags in the back of his car, and petitioner replied that the bags contained his wife's shoes. Ibid.; see Gov't C.A. E.R. 920-921. When the officer searched the bags, he found nearly \$275,000 in cash. Gov't C.A. E.R. 922-925. Petitioner also made a phone call to his wife during the traffic stop, claiming that he was asking his wife about the shoes. Id. at 921. A short time later, officers who were watching petitioner's apartment saw petitioner's wife leave the residence carrying a bag. Id. at 788. She dropped the bag when officers approached her, and the officers

found more than \$388,000 inside. Id. at 789-790, 796. A later search of petitioner's home uncovered large amounts of cash, along with drug ledgers. Pet. App. 8.

2. A federal grand jury charged petitioner with conspiring to commit money-laundering offenses, in violation of 18 U.S.C. 1956(a) (1) (A) (1), (a) (1) (B) (i), (a) (2) (A), (a) (2) (B) (i), and (h); conspiring to operate an unlicensed money transmitting business, in violation of 18 U.S.C. 371 and 1960; and operating an unlicensed money transmitting business, in violation of 18 U.S.C. 1960. Pet. App. 37-67. At trial, petitioner made a general motion for judgment of acquittal at the close of the government's case and at the submission of his own case, and the district court reserved decision each time. Pet. C.A. E.R. 116-117, 173.

In submitting the counts to the jury, the district court based the money-laundering conspiracy count only on Section 1956(a) (1) (B) (i) and (h). See Gov't C.A. E.R. 977-979. Those subparagraphs make it unlawful for any person to conspire to, "knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conduct[] or attempt[] to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity[,] * * * knowing that the transaction is designed in whole or in part * * * to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity." 18 U.S.C. 1956(a) (1) (B) (i).

The jury found petitioner guilty on all counts. Pet. App. 32. At that point, petitioner again moved for judgment of acquittal and for a new trial. Pet. C.A. E.R. 111-114. Petitioner did not raise any specific arguments, but "move[d] generally to preserve the sufficiency of evidence claim for the appeal." Id. at 112-113; see id. at 104-106 (hearing on motion). The district court denied petitioner's motion in a written order. 2018 WL 1662483.

In particular, the district court found that "the testimony and exhibits at trial established each of the elements necessary to prove violations of sections 1956(h) and 1956(a)(1)(B) beyond a reasonable doubt." 2018 WL 1662483, at *4. The court explained that, viewed in the light most favorable to the government, "each of the cooperating co-defendant witness' testimony established that there was an agreement between two or more people to use the Hawala system to engage in money laundering," and that petitioner "became a member of this Hawala system knowing that the objective was to conceal or disguise the nature, location, source, ownership, or control of the large sums of money being transferred." Ibid.

3. The court of appeals affirmed. Pet. App. 2-31.

The court rejected petitioner's argument that the evidence on the money-laundering-transaction conspiracy count was insufficient under Section 1956(a)(1)(B)(i) and (h) because the government had failed to prove that "the transactions he participated in were designed to conceal illicit drug money." Pet. App. 11. The court

of appeals recognized that, in Cuellar v. United States, 553 U.S. 550 (2008) -- which involved the separate provision of the federal money-laundering statute that prohibits international transportation of the proceeds of unlawful activity knowing that the transportation is designed in whole or in part to conceal the nature, location, source, ownership, or control of the funds, 18 U.S.C. 1956(a)(2)(B)(i) -- this Court held that a conviction requires proof that "the purpose -- not merely the effect -- of the transportation was to conceal or disguise a listed attribute" of the transaction. 553 U.S. at 567; see Pet. App. 11-12. But the court of appeals observed that petitioner's conviction would be valid if the transactions in which he participated were "'designed in whole or in part' to conceal," and the court found that, "for a host of reasons, the transactions in question [here] had (certainly in part) a concealment purpose." Pet. App. 12 (citation omitted).

The court of appeals observed that petitioner and his co-conspirators could have "saved themselves a good deal of time and effort by using wire transfers or mailing checks," but they instead chose to use a hawala system characterized by "informality, confidentiality, and intricate pickup and delivery procedures with person-to-person contact." Pet. App. 12-13. The court further observed that, rather than using a "basic hawala system," the conspirators instead used a "stepped up system that included a number of concealment enhancing add-ons." Id. at 13. The court

noted in particular that petitioner and his associates used "used coded words for drug money," "used burner phones which [petitioner] changed every 20 to 25 days," "used serial numbers on currency * * * to verify the identity of the courier receiving funds," and "charged premium fees to move the Canadian money." Ibid. And the court noted that, "when [petitioner] was arrested, he falsely stated that a bag in his car that contained large amounts of drug proceeds held his wife's shoes." Ibid. The court accordingly found that, "[b]ased on this constellation of facts, a jury could have reasonably concluded that [petitioner] intended to conceal the ownership and control of drug proceeds." Ibid.

Judge Watford concurred in part and dissented in part. Pet. App. 25-31. He recognized that, "on the surface, using a hawala network to transfer hundreds of thousands of dollars in drug proceeds from Canada to Los Angeles certainly seems like it should violate 18 U.S.C. § 1956(a)(1)(B)(i)." Id. at 25-26. And he acknowledged that the use of the network had the "effect of concealing the flow of money." Id. at 26. But in Judge Watford's view, the government's proof of petitioner's guilt had been insufficient under Cuellar because it did "not establish that the 'intended aim' of the hawala transfers was to conceal or disguise a listed attribute of the funds." Id. at 29.

ARGUMENT

Petitioner renews his contention (Pet. 6-10), based on this Court's decision in Cuellar v. United States, 553 U.S. 550 (2008),

that the trial evidence was insufficient to show that his transfer of unlawful drug proceeds was designed to conceal or disguise the nature, location, source, ownership, or control of the proceeds. See 18 U.S.C. 1956(a)(1)(B)(i). The court of appeals correctly rejected that contention, and the court's fact-specific decision does not conflict with any decision of this Court or another federal court of appeals. This court has previously denied petitions for a writ of certiorari raising similar claims. See Magluta v. United States, 137 S. Ct. 2292 (2017) (No. 16-964); Aguilera-Meza v. United States, 558 U.S. 1150 (2010) (No. 09-6179). It should follow the same course here.

1. The court of appeals correctly found the evidence in this case sufficient to establish every element of petitioner's violation of Section 1956(a)(1)(B)(i) and (h) beyond a reasonable doubt. The court catalogued a constellation of facts introduced by the government at trial that, taken together, allowed the jury reasonably to determine that petitioner participated in transactions whose purpose -- at least in part -- was to conceal the illicit funds' nature, location, source, ownership, or control. See Pet. App. 12-13.

a. The issue in Cuellar was whether a defendant's attempt to transport unlawful drug proceeds from the United States to Mexico by hiding them in a secret compartment in his car -- without more -- constituted unlawful international transportation "designed in whole or in part to conceal and disguise the nature,

location, source, ownership, and control" of the proceeds within the meaning of Section 1956(a)(2)(B)(i). 553 U.S. at 556-557 (citation omitted); see id. at 553-568. This Court held that, in order to prove a violation of that subparagraph, the government must establish that the defendant "transport[ed] something to conceal it," rather than simply "conceal[ed] something to transport it." Id. at 566 (citation omitted); see id. at 563-564 (reasoning that the word "'design'" refers to the "purpose" of the transportation, as opposed to simply the manner in which it was carried out). Thus, the Court stated that "merely hiding funds during transportation is not sufficient to violate" Section 1956(a)(2)(B)(i). Id. at 563.

The Court in Cuellar observed, however, that a defendant's acts of structuring the transportation of funds in order to conceal those funds during their move "may be circumstantial evidence that the transportation itself was intended to avoid detection of the funds." 553 U.S. at 565-566; see id. at 567 n.8; see also id. at 568-570 (Alito, J., concurring). But the Court explained that "how one moves the money is distinct from why one moves the money," such that proof of secrecy in transportation, "standing alone," is not enough to establish that "the purpose -- not merely effect -- of the transportation was to conceal or disguise a listed attribute." Id. at 566-567 (majority opinion). And applying that standard to the evidence that had been introduced in Cuellar, this Court concluded that the defendant's "only [proven] purpose" of

concealing money to transport it had been to compensate leaders of a drug operation, id. at 566 n.7, and that the government had not established that the defendant knew or intended the transportation to have the effect of concealing a listed attribute (e.g., the illicit origins) of the transported funds, id. at 567.

b. Assuming, as the court of appeals did here, Pet. App. 11, that Cuellar's interpretation of the international-transportation money-laundering provision in Section 1956(a)(2)(B)(i) applies equally to petitioner's offense -- the transactional-concealment money-laundering provision in Section 1956(a)(1)(B)(i) -- the court correctly determined that the evidence was sufficient under Cuellar to show that petitioner and his co-conspirators "intended to conceal the ownership and control of drug proceeds." Id. at 13 (emphasis added).

Instead of using wire transfers or other straightforward methods to move money, petitioner and his associates employed a private and specialized hawala system that involved "intricate pickup and delivery procedures," "coded words," and "burner phones" that petitioner replaced every 20 to 25 days. Pet. App. 12-13. The system used currency serial numbers to verify the couriers' identity and "charged premium fees" to move the money. Id. at 13. The government's expert described numerous aspects of hawala that make it attractive to criminal organizations as a means of money laundering -- namely, a "lack of record keeping," "no reporting to government authorities," "no regulation or

examination of the records by government authorities," and its potential "for basically an anonymous transfer of funds between countries." Gov't C.A. E.R. 231-232; see Pet. App. 7. And the specialized concealment mechanisms of petitioner and his associates made the system even more suitable to that purpose. See Pet. App. 13.

Furthermore, when petitioner was stopped by law enforcement, he perpetuated the concealment by falsely claiming that bags in his car contained his wife's shoes when, in fact, they contained nearly \$275,000 in drug proceeds. Pet. App. 13. And the jury could reasonably infer from the evidence that petitioner instructed his wife to remove an additional \$388,000 from their home. Gov't C.A. E.R. 788-790, 796, 921.

The court of appeals thus correctly found that the sum of the evidence amply supported the jury's determination that the transactions here had, at least in part, a "concealment purpose." Pet. App. 12. In comparing this case to Cuellar, petitioner focuses (Pet. 7) on the fact that both cases involved the movement of drug-trafficking proceeds. But unlike in Cuellar, where the elements of the offense required specific proof of a concealment purpose in the transportation of funds "from the United States to Mexico," as opposed to "the transportation of the funds within this country on the way to the border," 553 U.S. at 562, the factual context for petitioner's offense requires proof only that the operation's hawala transactions as a whole had a concealment

purpose. See Pet. App. 45-64 (indictment detailing the charged transactions and the defendants' purpose to conceal those transactions); see also 18 U.S.C. 1956(a)(1)(B)(i) and (h). And the evidence strongly supported the jury's determination that, regardless of whether petitioner's personal transportation was designed to conceal the funds' nature and source, the secretive hawala transactions were -- at least in part -- designed to achieve that end.

This Court in Cuellar explained that "purpose and structure are often related," 553 U.S. at 565, and "[c]oncealing or disguising a listed attribute need be only one of the [defendant's] purposes," id. at 566 n.7. The government's evidence here, including the evidence regarding how petitioner and his co-conspirators structured the "secretive aspects" of their hawala transactions, justified the jury's conclusion that petitioner's transactions, unlike the transportation activities in Cuellar, were designed in part to conceal the true source and ownership of the funds. Id. at 566. Thus, the court of appeals correctly determined that petitioner was not "similarly situated" to the defendant in Cuellar. Pet. App. 12.

2. Contrary to petitioner's assertion (Pet. 9-10), the court of appeals' fact-specific determination of evidentiary sufficiency does not conflict with the decision of any other federal court of appeals. On the contrary, as the court of appeals observed, "[d]ecisions from other courts reinforce [the]

conclusion" that the evidence against petitioner was adequate. Pet. App. 14. For example, the Fifth Circuit in United States v. Brown, 553 F.3d 768 (2008), cert. denied, 557 U.S. 905 and 558 U.S. 897 (2009), found that the government had proven a concealment purpose where the defendants took actions that were "intended to and did make it more difficult for the government to trace and demonstrate the nature of the[] funds," including conducting transactions in cash and keeping their deposits "below ten thousand dollars so as to avoid setting off any reporting requirements." Id. at 787. Similarly, in Magluta v. United States, 660 Fed. Appx. 803 (11th Cir. 2016) (per curiam), cert. denied, 137 S. Ct. 2292 (2017), the Eleventh Circuit found a concealment purpose where defendants in Miami moved drug proceeds through bank accounts in New York and Israel and used checks made out to false payees. Id. at 807-808.

The cases that petitioner cites (Pet. 9-10) do not conflict with the decision below. In United States v. Garcia, 587 F.3d 509 (2d Cir. 2009), the defendant, a truck driver, admitted that he had agreed to transport a large amount of drug proceeds across the country, but he answered "no" when asked at his plea colloquy whether his agreement had been "part of a larger scheme to conceal or disguise the source or ownership of [the] funds." Id. at 512-513 (citation omitted). In United States v. Ness, 565 F.3d 73 (2d Cir. 2009), the defendant's armored car company received millions of dollars in drug proceeds and transferred them overseas,

but the court found no evidence that the international transportation itself was designed to conceal the money's source, owner, or another relevant fact. Id. at 76, 78. In United States v. Faulkenberry, 614 F.3d 573 (6th Cir. 2010), the defendant obtained approval for a \$22 million payment by submitting false documentation to a bank, but the court found that the evidence had failed to show that the transaction's purpose was concealment, rather than simply perpetuating an ongoing "fraudulent scheme." Id. at 587; see id. at 578-579, 585. And in United States v. Valdez, 726 F.3d 684 (5th Cir. 2013), the defendant transferred the proceeds of Medicare fraud to his own accounts, but he did so "openly, in his name," and "did not use false names, third parties, or any particularly complicated financial maneuvers, which are usual hallmarks of an intent to conceal." Id. at 690.

None of those cases involved facts like those that were introduced at trial against petitioner, which provided the jury with an ample basis to find that the secretive hawala transactions had a concealment purpose. And none of the relevant decisions demonstrates that another circuit would have, one these facts, set aside the jury's findings and reversed petitioner's conviction. The decision below accordingly does not create any conflict warranting this Court's review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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