No. 21-6775

IN THE SUPREME COURT OF THE UNITED STATES

TEMNE HARDAWAY
Petitioner

v.

UNITED STATES
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE
EIGHTH CIRCUIT COURT OF APPEALS

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QUESTION PRESENTED

In United States v. Cabrales,524 U.S. 1, 2 (1998) this Court and the Eighth Circuit held in a substantive money laundering charge that venue is improper in the jurisdiction that generated proceeds or of the specified unlawful activity, emphasizing the statutes prohibited conduct " interdict only the financial transactions (acts located entirely in, not the anterior criminal conduct that yielded the funds allegedly laundered" *United States v. Cabrales*, 524 U.S. 1, 2 (1998).The court left open the question as to where venue would be appropriate in a conspiracy to money launder. The appellate courts assert that in a money laundering conspiracy, United States v Cabrales is not applicable.

1.Whether a person who obtains proceeds and makes a separate and distinct agreement from the anterior criminal conduct, to engage in a financial transaction in a different jurisdiction from where only the alleged proceeds from specified unlawful activity took place, confer venue to the specified underlying activity district in a conspiracy to money launder 1956(h) in violation of 18 U.S.C. § 1956(a)(1)(B)(i)

2.Whether the Constitution Sixth Amendment right, that guarantees The Trial of all Crimes * * * shall be held in the State where the said Crimes shall have been committed, expands venue in conspiracy criminal trials to those places where the "essential elements," the anterior criminal conduct of a predicate crime took place

but no "essential conduct elements," or acts in furtherance of the subsequent charged conspiracy was committed by any conspirators for that conspiracy?

RELATED PROCEEDINGS

United States District Court (E.D. Missouri): United States v. Hardaway, No. 4:17-cr-00198-JAR (May 28, 2019) (Report and recommendation)

United States v. Hardaway, No. 19-3448 (United States Eighth Circuit of appeals, June 7,2021)

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OPINION BELOW

The opinion of the United States Court of Appeals for the Eight Circuit No. 19-3448 is reprinted at Appendix A .

JURISDICTION

The court of appeals entered judgment on June 7, 2021. On July 19,2021 this court ordered that, in any case in which the relevant lower court judgment, order denying discretionary review, or order denying a timely petition for rehearing was issued prior to July 19, 2021, the deadline to file a petition for a writ of certiorari remains extended to 150 days from the date of that judgment or order. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article III, Section 2, Clause 3 of the United States Constitution provides in relevant part: The Trial of all Crimes * * * shall be held in the State where the said Crimes shall have been committed. The Sixth Amendment to the United States Constitution states in relevant part: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law.

Venue in a 1956(h) or 1957 violation is set forth in 18 U.S.C. 1956(i), which provides in part as follows: (i) Venue. (2) A prosecution for an attempt or conspiracy offense under this section or section 1957 may be brought in the district where venue would lie for the completed offense under paragraph (1), or in any other district where an act in furtherance of the attempt or conspiracy took place. 18 U.S.C. § 1956

Introduction

When a paramour, straw buyer or any other individual who makes an agreement to engage in a financial transaction and obtains proceeds in a separate jurisdiction from suspected, specified unlawful activity jurisdictions, give prosecutors the power to charge them in a district that violates their Sixth Amendment right, that guarantees The Trial of all Crimes * * * shall be held in the State where the said Crimes shall have been committed?

The answer to this Petition has sweeping implications. Everyday millions of people use money in financial transactions, unaware of where it was generated, nor Participating in the transfer of the proceeds, from the jurisdiction in which the unlawful proceeds were generated. If, as some Circuits hold, the generation of proceeds is an act in furtherance of a separate and distinct money laundering crime, than any person who engages in financial transactions, with proceeds generated from specified unlawful activity

is subject to stand trial in a location that bears no connection to where the financial transaction took place.

This case presents a recurring question about the interpretation of these provisions, on which the courts of appeals are openly divided on venue, specifically, the place appropriate for trial on charges of 1956(h)conspiracy to money laundering in violation of 18 U.S.C. § 1956(a)(1)(B)(i) , defined in statutory proscriptions, 18 U.S.C. § 1956(a)(1)(B)(i), "that interdict only the financial transactions" *United States v. Cabrales*, 524 U.S. 1, 7 (1998), (acts located entirely in California), "not the anterior criminal conduct that yielded the funds allegedly laundered." *United States v. Cabrales*, 524 U.S. 1, 7 (1998).

Although this court addressed and made it clear where venue is appropriate in substantive money laundering cases *United States v. Cabrales, 524 U.S. 1, 6 (1998)*, the appellate courts have consistently held that it is not applicable in conspiracy to money launder cases. The interpretation becomes complex when it's a conspiracy to money launder. In cases similar to Cabrales, where the financial transaction occurred in a separate district than the specified unlawful activity but distinguishable from Cabrales, where an agreement was made, outside the charging district, with someone who is a defendant to the underlying unlawful activity. When conspiracies are not intertwined, nor charged as such, there needs to be clarity on where venue can be held.

The government contends, and the Eighth Circuit held, that the commission of the suspected underlying activity, standing alone is an act in furtherance of a separate distinct agreement. "The money laundering offense and the underlying offense that generated the money to be laundered must be distinct to be separately punishable. *"United States v. Santos*, 553 U.S. 507, 518 (2008). With the government having no identifiable financial transactions to show, and no agreement, from the charging district to the district where the financial transaction took place, this ruling allows prosecutors to charge defendants in jurisdictions that have no nexus to where the crime was committed.

The government's position finds no support in this Court's precedents. It is instead, an unconstitutional power grab that would permit exploratory conspiracy to money launder indictments. Which in many cases are defendants, whom are women, and minorities that have been subjected to crimes of circumstances and have no part in the underlying specified activity but are instead charged with the subsequent act of conspiring to money launderer.

This conclusion that the anterior criminal conduct of a predicate crime, is an act in furtherance of a subsequent conspiracy, that the Eight Circuit upheld is not consistent with the principle that the commission of the Specified Unlawful Activity is a "circumstance element" and not "an essential conduct element" of the money laundering offense, and therefore is a violation of the Constitution. "In

performing our venue inquiry, we must be careful to separate "essential conduct elements" from "circumstance elements." Rodriguez-Moreno, 526 U.S. at 280 & n.4.

STATEMENTS OF THE CASE

On 7/17/18 Petitioner was sleeping in her home when DEA agents from St. Louis Missouri flew to California and performed a no-knock search warrant, in hopes that they would find, petitioners fugitive, paramour, Gerald Hunter (who didn't live there) residing there. She was arrested and indicted for 1956(h) conspiracy to money launder. After the judge granted her bail in California, the government in St. Louis Missouri objected to her bond and remanded her to the Eastern District of Missouri. She was then denied bond by the district judge and remained incarcerated. All the while wondering why she was being held with no bond, in St. Louis Missouri, when she had never been to Missouri or had no connection to Missouri.

After speaking with her attorneys, she later discovered that because it was alleged that she had obtained money to purchase real estate with drug proceeds that were generated in the Eastern District of Missouri, she would now have to bear the burden of going to trial, to prove her innocence, in a place where she knows no one, has never been, and has no ties to. A far place from her witnesses and in a different location than where the acts were committed.

The Constitution makes it clear that determination of proper venue in a criminal case requires determination of where the crime was committed. * * * The provision for trial in the vicinity of the crime is a safeguard against the unfairness and hardship involved when an accused is prosecuted in a remote place. (Citing United States v. Cores, 356 U.S. 405, 407, (1958)) 376 U.S. 240, 245

The Supreme Court was emphasizing the principle that the issue of of venue is more than just a rule of criminal procedure, but rather a Constitutional guarantee preserved in both Article III of the Constitution as well as the Sixth Amendment. The two provisions are read together to create one constitutional right compelling trial in the proper judicial district for any crime charged. See United States v. Cabrales, 524 U.S. 1, 6 (1998). It's recognized that the first issue to consider in a venue case is whether a defendant's constitutional right to be tried in a district where the crime was committed is being violated.

In a five-count indictment returned in the United States District Court for the Eastern District of Missouri, Hardaway, a sole defendant, was charged with the following offense: 18 U.S.C. § 1956(h), conspiracy in violation of 1956(a)(1)(B)(i) (Count IV).The indictment alleged that, petitioner and her co-defendant conducted a financial transaction designed to conceal the source of the funds - proceeds of Fentanyl and Cocaine distribution. The Indictment does not specifically allege where the money laundering occurred, where the narcotics distribution took place, the nature of the financial transaction, the manner and means of carrying out the

conspiracy nor specification of any overt acts. However, written and oral judicial admissions by the government revealed that the only money laundering event contended by the government to have been engaged in by petitioner is the purchase of a residential property at 3931 West 58th Place, Los Angeles, California 90043.

During the course of the underlying investigation, investigators assumed that Petitioner engaged in financial transactions involving drug proceeds that were generated in Missouri. Specifically, on or about February 21, 2017, Petitioner purchased real property located at 3931 W. 58th Place, Los Angeles, CA 90043 for $650,000. The investigation revealed that any agreements and all financial transactions occurred in California. One individual gifted $350,000 of the purchase price to Petitioner. The remaining money was deposited into escrow by means of cashier's checks and wire transfers.

Petitioner moved to dismiss the indictment in its entirety for improper venue. On recommendation of the Magistrate, the District Court denied the motion as to Count IV, the conspiracy count, based on the Government's assertions that the generation of proceeds, the commission of the specified unlawful activity, standing alone is an act in furtherance of the money laundering conspiracy.

ARGUMENT

I. Venue Lies

In the present case, the requirements for venue in a 1956 or 1957 violation is set forth in 18 U.S.C. 1956(i), which provides as follows: (i) Venue. (1) Except as provided in paragraph (2), a prosecution for an offense under this section or section 1957 may be brought in— (A) any district in which the financial or monetary transaction is conducted; or (B) any district where a prosecution for the underlying specified unlawful activity could be brought, if the petitioner participated in the transfer of the proceeds of the specified unlawful activity from that district to the district where the financial or monetary transaction is conducted. (2) A prosecution for an attempt or conspiracy offense under this section or section 1957 may be brought in the district where venue would lie for the completed offense under paragraph (1), or in any other district where an act in furtherance of the attempt or conspiracy took place. For purposes of this section, a transfer of funds from 1 place to another, by wire or any other means, shall constitute a single, continuing transaction. Any person who conducts (as that term is defined in subsection (c)(2)) any portion of the transaction may be charged in any district in which the transaction takes place.18 U.S.C. § 1956.

On the face of the statute, Venue lies where it would lie if the object of the conspiracy were completed as the co-conspirators planned it, or an act in furtherance of the conspiracy Whitfield v. United States, 543 U.S. 209 (2005). In most cases, the facts fall within one or both prongs of section 1956(i), but if no agreement is reached nor any part of the financial transaction occurred in the specified unlawful activity district except the alleged underlying crime, venue, as

the Supreme Court stated in Cabrales, would be improper where the anterior criminal conduct occurred. If the crime is the agreement, or an act in furtherance of the conspiracy is required, then venue must be available in the district where the agreement was reached or an act in furtherance of the conspiracy, not where prior acts were committed in a distinct predicate crime.

The Supreme Court has recognized for decades that "questions of venue in criminal cases . . . are not merely matters of formal legal procedure. They raise deep issues of public policy" and implicate "the fair administration of criminal justice and the public confidence in it. United States v. Johnson, 323 U.S. 273, 276 (1944).

A split in the circuits as to whether the district in which the unlawful proceeds were obtained, had venue to hear a money laundering case when the financial transaction occurred totally in a separate district was resolved by the Supreme Court in United States v. Cabrales, 524 U.S. 1 (1998). In Cabrales, petitioner was charged with money laundering in violation of 18 U.S.C. 1956(a)(1)(B)(ii) in Missouri. However, all acts pertaining to the money laundering offense occurred in Florida. The government argued, in conflict with the Eighth Circuit, that the Supreme Court should follow other Courts of Appeals which had held that venue for money laundering offenses is proper in the district in which the funds were unlawfully generated, even if the financial transaction that constitutes the laundering occurred wholly within another district. The Supreme Court rejected

the government's position and held: We adhere to the general guide invoked and applied by the Eighth Circuit: "The locus delicti must be determined from the nature of the crime alleged and the location of the act or acts constituting it." 524 U.S. at 6-7.

The money-laundering statute permits venue in "any district where a prosecution for the underlying specified unlawful activity could be brought, if the petitioner participated in the transfer of the proceeds of the specified unlawful activity from that district to the district where the financial or monetary transaction is conducted." 18 U.S.C. § 1956(i)(1)(B). Consistent with the holding in Cabrales, all of petitioner's alleged money laundering conduct occurred in California and the alleged underlying unlawful activity, and proceeds derived therefrom, occurred in Missouri. "It was of no moment that the money came from Missouri, the court explained, because Cabrales dealt with it only in Florida, the money-laundering counts alleged no act committed by Cabrales in Missouri, and the Government did not assert that Cabrales transported the money from Missouri to Florida." *United States v. Cabrales*, 524 U.S. 1, 2 (1998) Similarly, no allegations have been made and no evidence has revealed that Petitioner acquired any of the laundered funds in Missouri and transported them to California, nor participated in any transfers outside of California.

Not specifically addressed in Cabrales is the issue of a conspiracy charge and its impact on venue. Statute 18 U.S.C. 1956(i)(2)(2) provides that a prosecution

for an attempt or conspiracy offense under this section or section 1957 may be brought in the district where venue would lie for the completed offense under paragraph (1), or in any other district where an act in furtherance of the attempt or conspiracy took place. On the other hand, the Supreme Court observed: "If Cabrales is in fact linked to the drug-trafficking activity, the Government is not disarmed from showing that is the case. She can be, and indeed has been, charged with conspiring with the drug dealers in Missouri. If the Government can prove the agreement it has alleged, Cabrales can be prosecuted in Missouri for that confederacy, and her money laundering in Florida could be shown as overt acts in furtherance of the conspiracy." United States v. Cabrales 524 U.S. at 9.

In the present case, Petitioner and co-defendant are charged together only with conspiracy to commit money laundering in violation of 18 U.S.C. 1956(a)(1)(B)(i). The conspiracy charged is not a general conspiracy pursuant to 18 U.S.C. 371, but the statute 18 U.S.C. 1956(h), that deals with conspiracies for specific unlawful acts involving financial transactions. "The federal money laundering statute, 18 U.S.C. § 1956, prohibits specified transfers of money derived from unlawful activities. Subsection (a)(1) makes it unlawful to engage in certain financial transactions," *Cuellar v. United States*, 553 U.S. 550, 556 (2008). The government acknowledged that all financial transactions took place in California. Standing alone, only the generation of proceeds happened in Missouri. "We have observed that "the core of money laundering . . . is the laundering transaction itself," and that "details about the nature of the unlawful activity underlying the

character of the proceeds need not be alleged." *U.S. v. Bolden*, 325 F.3d 471, 491 (4th Cir. 2003)

The single money laundering transaction, in question, revealed by the government, is the purchase of a residence in Los Angeles, California which was consummated in a single day in California. By the very nature of the alleged money laundering conspiracy, nothing in furtherance of the Section 1956(h)conspiracy, could have happened in Missouri.

A. Acts in furtherance

The indictment did not allege that the money laundering was an act in furtherance of the drug conspiracy. These are two separate conspiracies that were not intertwined. The plain meaning of "furtherance" is "the act of furthering, advancing or helping forward." Webster's II New College Dictionary 454 (1999). United States v. Hamilton, 332 F.3d 1144, 1149 (8th Cir.2003). Conduct from a predicate crime can't be an act in furtherance of a crime that has not yet happened. It's not an act that furthers the money laundering conspiracy. As the objective of 18 U.S.C. § 1956, is to conceal the nature of the funds, it's an act that proceeds after obtaining the tainted funds. The statute is not defined in the terms of causing a drug Enterprise to continue. The generation of proceeds from illegal narcotics sales does nothing to further the objectives, of concealment money laundering. The crime of concealment money laundering begins after the proceeds have been obtained. The generation of proceeds already exist whether the money will be used in a financial transaction to conceal the funds or not. "The act must occur after the formation of

the conspiracy agreement and prior to or in completion of the conspiratorial objective. It also must have been done in furtherance of the accomplishment of that objective." *U.S. v. Perez*, 223 F. App'x 336, 340 (5th Cir. 2007). The generation of proceeds, as the government would have it, is prohibited conduct that violates the money laundering statute, when in fact it violates the statute of the crime that is generating the proceeds.

Although the government charged multiple counts on the indictment, Venue is to be proper for each count. "When multiple counts are alleged in an indictment, venue must be proper on each count." *United States v. Bowens,*224 F.3d 302, 308 (4th Cir. 2000).

What the government is trying to do in the case before us is to piggyback off the drug conspiracy charges that are properly before them. A conspiracy under 21 U.S.C. 846, and a conspiracy under 1956(h) have different prohibited conduct. "Mere use of the word "conspires" surely is not enough to establish the necessary link between these two separate statutes. In short, if Congress had intended to create the scheme petitioners envision, it would have done so in clearer terms." *Whitfield v. United States*, 543 U.S. 209, 215 (2005).The Supreme Court made it clear, just because the word conspiracy is used doesn't mean that it establishes the necessary link to be applied in the same context for different statutes.

The Court distinguished *Cabrales* by observing that in *Cabrales,* the "existence of criminally generated proceeds" was only a "circumstance element" of

money laundering in that it was established by proof of a crime that preceded the money laundering conduct. *Id.* at 280 n. 4, 119 S.Ct. 1239. Accordingly, both *Cabrales* and *Rodriguez-Moreno* clearly establish that the mere fact that proceeds were criminally generated in a particular district is not sufficient, standing alone, to establish proper venue in that district for a charge of laundering the money. *U.S. v. Villarini*, 238 F.3d 530, 535 (4th Cir. 2001). Whenever a defendant acts "after the fact" to conceal a crime, it might be said, as the Government urges, that the first crime is an essential element of the second, and that the second facilitated the first or made it profitable by impeding its detection. But the question here is the *place* appropriate to try the "after the fact" actor. It is immaterial whether that actor knew where the first crime was committed. The money launderer must know she is dealing with funds derived from specified unlawful activity, here, drug trafficking, but the Missouri venue of that activity is, at the eight-circuit said, "of no moment. *"United States v. Cabrales*, 524 U.S. 1, 2 (1998)

The only reason the government asserted jurisdiction over this separate distinct charge is because it was attached to an asset/real property that the government sought to forfeit. They are willing and showing that they will go through unscrupulous measures and have no reverence for the justice system or the Constitution.

B. Motion Hearing

Indeed, the government did not even argue to the district court or to the court of appeals that any proceeds were transferred or transported from Missouri to California and used for the real property purchase. Based on judicial admissions by the government and inquiry by the Court, we now know that the unlawful activity took place in Missouri, Defendant did not participate in that activity and never traveled to St. Louis to aid or abet the unlawful activity. We also now know that the proceeds allegedly laundered were generated in Missouri and the financial transaction giving rise to the money laundering conspiracy occurred completely in California. No allegation of either Defendant or Hunter transporting proceeds from Missouri to California is set forth in the indictment nor was any evidence presented in that regard at the hearing. Every transaction performed to purchase the real property occurred in California. Nothing was ever alleged nor is there any evidence that shows to have been initiated or attempted from Missouri. The government believed the proceeds were acquired from narcotic sales in Eastern Missouri.

"In this case, Your Honor, we have a drug conspiracy that is occurring in the Eastern District of Missouri.

The Court: But let's -- let's -- let's focus on what acts in furtherance of the money laundering conspiracy happened here. MS. Granger: The -- Okay. The -- The money is generated from the Eastern District."

The Court:"The Government has to prove that the funds came from here. And if they can't do that, it's going to have -- it's going to be a problem for more than just venue. So that's -- that's, you know, that's the case." The Magistrate recognized that many of Petitioner's constitutional rights had been violated during the "Due Process." From obtaining a search warrant to holding her with no bail.

However, no evidence of money was ever presented or alleged to have been transferred from Missouri and used in the same transaction to purchase real property in California. The government did not become aware of the purchase of the property until they started doing an investigation in California and followed someone to the property. There was no nexus between the drug conspiracy and the property purchased in California. It was two separate conspiracies in two different places. Ultimately the government succeeded, and the lower court stated that, since the government alleged in the indictment that "in the Eastern District of Missouri."

C. Interview with DEA agent

The government acknowledged that all financial transactions took place in California. Standing alone, only the generation of proceeds happened in Missouri.

"To your knowledge, was Temne Petitioner ever with Gerald Hunter in the Eastern District of Missouri? Answer: No. Question: To your knowledge, was she ever by herself in the Eastern District of Missouri? Answer Not that I'm aware of.

Other than the generation of the proceeds of the drug sales, was there any other aspect of the purchase of the house that occurred here? Answer No.

D. Financial Transactions

There has never been any proof that showed Petitioner obtained any money from Missouri. There was no transfer of proceeds used to purchase real property from Missouri to California. The government was unable to show that the charged defendants participated in "the transfer" the particular transfer from Missouri (or any other place outside of California) of "the proceeds" the proceeds involved in those transactions, as required by section 1956(i)(1)(B).

As said in United States v King 259 F. Supp. 3d 1267 (W.D. Okla. 2014)For purposes of section 1956(i)(3), "if there is no identifiable transfer of tainted funds discernibly connected with the charged laundering transaction from one place to another place, there can be no 'continuing transaction' for purposes of this provision." the focus is on identifiable transactions, " *United States v. King*, 259 F. Supp. 3d 1267, 1276 (W.D. Okla. 2014)."It is important in this case to bear in mind that the defendant's activities, if any, that created the taint in the first place must not be confused with—or equated with—defendant's participation in the transfer of the tainted funds. "[A] money-laundering transaction must be separate and apart from the completed predicate offense generating the proceeds used in the money-

laundering transaction." United States v. Huff, 641 F.3d 1228, 1233 (10th Cir. 2011) *United States v. King*, 259 F. Supp. 3d 1267, 1283 (W.D. Okla. 2014).

During the motion to dismiss hearing the government stated "This case involves individuals distributing fentanyl from California to the Eastern District of Missouri and money going back to California. There is fentanyl within the time frame being moved from California to the Eastern District of Missouri." Thus, generating drug proceeds, the government in the present case contends, is an overt act in furtherance of the money laundering conspiracy that creates venue in the Eastern District of Missouri. However, "obtaining money (generating proceeds) and concealing it are two different activities." United States v. Adefehinti, 510 F.3d 319, 324 (D.C. Cir. 2007); United States v. Baxter, 761 F.3d 17, 31 (D.C. Cir. 2014) (reciting language from Adefehinti); United States v. Seward, 272 F.3d 831, 836 (7th Cir.2001).The government contends that because this is a conspiracy and Petitioner's co-conspirator is charged with the Specified Unlawful Activity, that in Cabrales, the Supreme Court recognized the limits of its holding and cautioned that "notably, the counts at issue do not charge Cabrales with conspiracy; they do not link her to, or assert her responsibility for, acts done by others" and "the counts here at issue allege no conspiracy, but describe activity in which Cabrales alone engaged." Id. at 3-7.The Government asserts that, therefore, Cabrales is not applicable and cites United States v. Romero for the proposition that Cabrales does not alter a court's determination regarding venue in a conspiracy case because

"Cabrales simply does not address the issue...." 150 F.3d 821, 826 (8th Cir. 2017). (Ref.App.B 6a)

The government also cited Prosper v. U.S., 218 F.3d 883 (8th Cir. 2000) and referenced when you're charging a money laundering conspiracy under a 1956(h), a multi-state offense may be inquired and prosecuted in any district in which such an offense begun, continued or completed. Venue is proper in conspiracy cases in any jurisdiction in which an overt act in furtherance of the conspiracy was committed by any of the conspirators.

"Nevertheless, money laundering crimes are not continuing offenses simply because "all the actions are interwoven," as asserted by the Government. Instead, they are continuing offenses, if at all, because the financial transactions (1) were begun in one district and completed in another or (2) committed in more than one district. 18 U.S.C. § 3237.

U.S. v. Mikell, 163 F. Supp. 2d 720, 738 (E.D. Mich. 2001) . This is tellingly not the case in this petition, all financial transactions occurred in California, not Missouri.

E. Report and Recommendation

Although it was established during the motion hearing that an agreement was never made in Missouri, and none of the financial transactions pertaining to the single transaction that was the overt act. The magistrate allowed the government to continue to violate Petitioner's Constitutional claims. "Applying the relevant

principles articulated in Cabrales, the Eighth Circuit cases analyzing proper venue in money laundering conspiracies, as well as the venue provisions of Section 1956(i), it is clear that the indictment provides an adequate basis for venue in the Eastern District of Missouri. Although it is apparently undisputed that Defendant was never present in the Eastern District of Missouri, it appears to be equally undisputed that Defendant Hunter, Defendant's alleged co-conspirator, was present in the Eastern District of Missouri and the underlying activity, drug distribution, and proceeds derived therefrom, arguably occurred in the Eastern District of Missouri. [ECF No. 535]. More importantly, the indictment alleges that Defendant and Defendant Hunter agreed to conduct a financial transaction involving proceeds derived from Fentanyl and cocaine distribution in the Eastern District of Missouri designed to conceal the nature and source, among other things, of the proceeds." (Ref.App.B 7a)

REASONS TO GRANT THE WRIT

A. The Eighth Circuit's decision is incorrect

The extent of permissible criminal venue is an important question that warrants prompt resolution. To begin with, there is no disputing that the Founders regarded venue protections as essential to individual liberty. The selection of venue for a criminal trial is more than a "mere matter of formal legal procedure." United States v. Johnson, 323 U.S. 273, 276 (1944). However, while "the concept of a right to trial in the vicinage was so highly regarded as to appear twice in the Constitution," this Court did not specifically address in United states v. Cabrales, *524 U.S. 1, 6 (1998)* the issue of a conspiracy charge and its impact on venue. "Notably, the counts at issue do not charge Cabrales with conspiracy; they do not link her to, or assert her responsibility for, acts done by others. If the Government can prove the agreement it has alleged, Cabrales can be prosecuted in Missouri for that confederacy, and her money laundering in Florida could be shown as overt acts in furtherance of the conspiracy."

The high court regarded her deposits that were done in Florida as overt acts in furtherance of the conspiracy. The specified unlawful activity was not considered an act in furtherance. Because the high court alluded to what perhaps would be the case if there was a conspiracy, it has left the lower courts in disarray,

as to the question presented, given the absence of concrete guidance. The results are injustices, manufactured venues, and abhorrent actions from the disregard of the original understanding of constitutional protections.

United States eighth circuit court of appeals has decided an important question of federal law that conflicts with relevant decisions of this Court. This is the exact case for the high court to clarify and resolve this question that has been lingering since United States v Cabrales in 1998. Answering this question now, will prevent deprivation of Constitutional rights in the future. "The prospect of imprisonment for however short a time will seldom be viewed ... as a trivial or 'petty' matter and may well result in quite serious repercussions affecting [a defendant's career and his reputation." Baldwin v. New York, 399 U.S. 66,73 (1970). Nor "[t]o a prisoner," is "time behind bars ... some theoretical or mathematical concept. It is something real, even terrifying." Barber v. Thomas, 130 S. Ct. 2499, 2517 (2010) .

We are uncertain on how the Eighth Circuit relied on the commission of the specified unlawful activity, standing alone, can be an act in furtherance of a separate conspiracy, that happens "after the fact", of the predicate offense. They just simply stated that Hunter's drug dealing furthered the money laundering conspiracy. (App. A at 4a)

"For proceeds to be laundered, there must first be wrongfully obtained proceeds." See United States v. Shoff, 151 F.3d 889, 891 (8th Cir.1998). Money

laundering "`proceeds' are funds obtained from prior, separate criminal activity." United States v. Savage, 67 F.3d 1435, 1441 (9th Cir.1995). United States v. Butler, 211 F.3d 826, 830 (4th Cir.2000) ("Put plainly, the laundering of funds cannot occur in the same transaction through which those funds first become tainted by crime.").

B. Conditional Plea Agreement

What is also questionable, is the appellate courts obfuscating use of Petitioners conditional plea agreement to determine venue in a conspiracy to money launder, and its significance to the venue analysis. Blackledge, 417 U. S., at 30, the Court held 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. Menna, 423 U. S., at 63, Menna's claim amounts to a claim that "the State may not convict" him "no matter how validly his factual guilt is established." Ibid.Menna's "guilty plea, therefore, [did] not bar the claim."

The appellate court was told by the government that they were to only be reviewing the lower court's decision. The appellate court stated that "Even going beyond the face of the indictment, Petitioner's admissions demonstrate that venue was proper. Petitioner acknowledged in her plea agreement that the "source of the proceeds" to purchase the residence in Los Angeles "came from the distribution of fentanyl in the Eastern District of Missouri." Venue for conspiracy to commit money laundering is proper "in any . . . district where an act in furtherance of the . . .

conspiracy took place." 18 U.S.C. § 1956(i)(2). The act need not be an element of the conspiracy offense. Whitfield v. United States, 543 U.S. 209, 218 (2005) Petitioner's co-conspirator sales of controlled substances in the Eastern District of Missouri furthered the money laundering conspiracy by generating funds that Petitioner used to purchase the home in Los Angeles." (Pet. App. 4a)

When petitioner signed an 11c conditional guilty plea, it was to "conserve prosecutorial and judicial resources and advance speedy trial objectives," for an issue that could be resolved by appellate review. Not to have venue determined by guilt, evidenced by a conditional plea agreement. "If factual guilt is admitted, as in a plea of guilty, or if the facts are stipulated, there is no persuasive reason to require a lengthy trial in order to preserve a legal point for appellate review." United States v. Vonn, 535 U. S. 55, 64, n. 6 (2002)

The government repeatedly said, "she could've gone to trial", "trial is for facts", to distract the judges from hearing the facts, that petitioner's attorney was arguing. If the government sought to take the case to trial, why then did the government enter into a conditional plea agreement. "When entering a conditional plea of guilt, the government-consent requirement ensures that a conditional plea will be allowed only when the decision of the court of appeals will dispose of the case either by allowing the plea to stand or by such action as compelling dismissal of the indictment or suppressing essential evidence. And the court-approval requirement similarly "ensure[s] that 'the defendant is not allowed to take an appeal on a matter

which can only be fully developed by proceeding to trial.'" Id. (quoting Fed. R. Crim. P. 11 advisory note). In addition to the rule's explicit requirements, we have held that a conditional plea must "be limited to case dispositive issues." United States v. Bundy, 392 F.3d 641, 645 (4th Cir. 2004). If this was not a case dispositive issue, the conditional plea agreement should not have been entered.

Leaving the Eighth circuit's ruling in place creates incentives for prosecutors to broaden the scope of the money laundering venue statute and give prosecutors power in jurisdictions that they would not have otherwise. This also creates situations for defendants to have to go to trials in places based on another crime, that they had no involvement in.These tactics by prosecutors force defendants to take plea deals that they otherwise wouldn't take, if they were afforded their constitutional rights, not far from their witnesses and where the crime was committed. This in turn expands the limits that the Sixth Amendment guards us against.

C. Circuit Courts Divided

The 4th circuit is not in accord with the Eighth Circuit

United States v. Stewart, 256 F.3d 231 (4th Cir. 2001) (where defendant picked up and delivered money within California and had never been to Virginia, did not know anybody in Virginia, and had never received any telephone calls from Virginia, venue in Virginia was improper).

U.S. v. Villarini, 238 F.3d 530, 535 (4th Cir. 2001), -The Government attempts to distinguish *Cabrales* by noting that Villarini, unlike the defendant in *Cabrales,* was charged with the crime that generated the laundered proceeds in the district in which she was tried. The Government relies on *Heaps,* in which this court held that venue for money laundering of drug proceeds was proper in the district in which the proceeds were criminally generated. *See Heaps,*39 F.3d at 482. Our holding in *Heaps,* however, was based on the proposition that the generation of the criminal proceeds that were eventually laundered is an "essential element" of the crime of money laundering, a proposition that the Supreme Court rejected in *Cabrales, cf. Cabrales,*524 U.S. at 7, 118 S.Ct. 1772 (explaining that 18 U.S.C.A. § 1956(a)(1)(B)(ii) prohibits only "financial transactions . . ., not the anterior conduct that yielded the funds allegedly laundered"); *U.S. v. Villarini*, 238 F.3d 530, 534 (4th Cir. 2001)

The 7th circuit is not in accord with the Eighth Circuit

United States v King

Similarly, to the present case in Question, in United States v King The moving defendants originally filed motions to dismiss the money laundering counts, attacking venue based on the face of the Superseding Indictment. Those motions were denied because the Superseding Indictment did not, on its face, shed light one way or the other on the question of whether venue was properly laid in this district.

See, doc. no. 649, at 4. Because of the seriousness of the consequences which would flow from an erroneous determination of the venue issue, and because the right to be tried only in a legally authorized venue is obviously (to borrow the words of the Supreme Court from a different context) "a right not to be tried which must be upheld prior to trial if it is to be enjoyed at all," United States v. MacDonald, 435 U.S. 850, 861, 98 S.Ct. 1547, 56 L.Ed.2d 18 (1978) , the court determined that the venue issue should be decided by way of a second set of motions to dismiss, to be filed after requiring the government to file a bill of particulars stating with specificity the facts upon which the government relies to support venue in this district . *United States v. King*, 259 F. Supp. 3d 1267, 1269 (W.D. Okla. 2014)

Funds from over 40 states, including funds originating in the Western District of Oklahoma, were aggregated in Panama, and then returned to the United States. The funds were commingled in Panama; however, the government was not able to show that any particular funds that originated in the Western District of Oklahoma were present in any particular transaction. "Venue under § 1956(i)(1)(B)," The government was unable to show that the charged defendants participated in "the transfer"—the particular transfer— from the Western District of Oklahoma of "the proceeds"—the proceeds—involved in those transactions, as required by section 1956(i)(1)(B). *United States v. King*, 259 F. Supp. 3d 1267, 1269 (W.D. Okla. 2014)

United States v. Seward, 272 F.3d 831, 836 (7th Cir.2001) ("The transaction or transactions that created the criminally-derived proceeds must be distinct from the money-laundering transaction, because the money laundering statutes criminalize `transaction[s] in proceeds, not the transactions that create the proceeds.'"

Sixth Circuit is in accord with the Eighth Circuit

United States v. Logan-The government in the present case cited *United States v. Logan*, 542 F. App'x 484, 10 (6th Cir. 2013) in support of the drug conspiracy being an act in furtherance of the money laundering. Although very different circumstances than this petition, the government still relied on its ruling. Drugs were transported from California to Michigan, and the proceeds were transported from Michigan to California; once in California, the proceeds were laundered through the purchase of vehicles, including the motorhome bought for the conspiracy's kingpin. Accordingly, the government established that an overt act in furtherance of the conspiracy—the sale of drugs—occurred in Michigan. *United States v. Logan*, 542 F. App'x 484, 10 (6th Cir. 2013*United States v. Logan*, 542 F. App'x 484, 10 (6th Cir. 2013). This case is distinguishable from Petitioner's, in that, the object that was purchased,(Real property, that was not on wheels) with alleged proceeds was not used to transport drugs or proceeds back and forth to the unlawful activity jurisdiction.

Fifth Circuit is in accord with the Eighth Circuit

United v Perez-Appellants' reliance on *United States v. Cabrales*, 524 U.S. 1, 118 S.Ct. 1772, 141 L.Ed.2d 1 (1998), is misplaced, for there the Court was careful to point out that " *notably*, the counts at issue do not charge Cabrales with conspiracy; they do not link her to, or assert her responsibility for, acts done by others. "Compare *Cabrales*, at 1777 ("The counts before us portray her [Cabrales] and the money she deposited and withdrew as moving inside Florida only"). *U.S. v. Perez*, 223 F. App'x 336, 343 (5th Cir. 2007)

C. **This case is the right vehicle for resolving the conflict**

The entrenched conflict over how to construe venue in a money laundering conspiracy provides ample reason to grant certiorari regardless of which circuits have the better reading of the statute because its applicability varies case by case. The peculiarity of the Eighth Circuit's interpretation conflicts with their own prior precedent and in conflict with the Supreme Court's prior rulings makes review more warranted here.

Granting a writ of certiorari, will prevent prosecutors from extending their reach way beyond their jurisdiction, and depriving citizens their constitutional rights to a fair trial. And the many other Fourteenth Amendment rights that are violated along the way, such as Due Process, Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950).As in this case, when the government from the

Eastern district of Missouri obtained a no knock search warrant in California and invaded the petitioner's home, with several male officers, with guns drawn, as she slept alone, in the nude. One false move could have resulted in a death. Petitioner was given a bond in California and was remanded to Missouri and had her bond revoked, for a nonviolent crime, held in Missouri, for 18 months. This was an absolute failure of the justice system and infringement of constitutional rights that are in place to protect, came crumbling down, shattering her future. Instances like the petition before us, can give clarity as to the jurisdictional limitations in a conspiracy to money launder and not allow prosecutors to overstep their boundaries and conflate two different statutes.

There has been many similar questions presented to the high court but none of those cases give clarity to the one being presented. United States v Cabrales 524 U.S. 1, 6 (1998) was venue in a substantive money laundering case. United States v Santos was the interpretation of the meaning of proceeds. In Cuellar v. United States, the court determined merely hiding funds during transportation is not sufficient to violate the statute, even if substantial efforts have been expended to conceal the money. Our conclusion turns on the text of § 1956(a)(2)(B)(i), and particularly on the term "design." In this context, "design" means purpose or plan; *i.e.,* the intended aim of the transportation. *Cuellar v. United States*, 553 U.S. 550, 563 (2008). In United States v Whitfield, "Conviction for conspiracy to commit money laundering, in violation of § 1956(h), does not require proof of an overt act in

furtherance of the conspiracy." *Whitfield v. United States*, 543 U.S. 209, 210 but for venue "conspiracy offense . . . may be brought in the district where venue would lie for the completed offense under [§ 1956(i)(1)], or in any other district where an act in furtherance of the conspiracy took place,"" *Whitfield v. United States*, 543 U.S. 209, 210 (2005). With all these different cases none of them gave answers to the contextual interpretation of venue in a money laundering conspiracy. In Whitfield it was clarified that Congress did not intend that an overt act be required to prove a money laundering conspiracy under 18 U.S.C. § 1956(h), but an act in furtherance is needed for the default venue rule.

"Since context gives meaning, we cannot say the money-laundering statute is truly ambiguous until we consider "proceeds" not in isolation but as it is used in the federal money-laundering statute" *United States v. Santos*, 553 U.S. 507, 512 (2008). "And once again, why should one choose this chancy method of solving the problem, rather than interpret ambiguous language to avoid it?" *United States v. Santos*, 553 U.S. 507, 519 (2008). The same consideration should also be given to the context of "conspiracy" Since context gives meaning, we cannot say the money-laundering statute is truly ambiguous until we consider "conspiracy" not in isolation but as it is used in the federal money-laundering venue statute. Keeping in mind the courts stance, "This venerable rule not only vindicates the fundamental principle that no citizen should be held accountable for a violation of a statute whose commands are uncertain, or subjected to punishment that is not clearly prescribed. " *United States v. Santos*, 553 U.S. 507, 514 (2008)

However, in the present case the government treats the generation of proceeds / the commission of the specified unlawful activity conduct, as an overt act in furtherance of a distinct and separate money laundering conspiracy. If the same conduct is prohibited by two different statutes, every time someone sold narcotics, or an act of fraud they simultaneously would be committing an act of money laundering. "Conspiracy to commit an offense and the subsequent commission of that crime normally do not merge into a single punishable act." "To Put another way, Count 1 targeted a conspiracy to submit false bills to Medicare, while Count 13 alleged a conspiracy to use fraudulently obtained money with the goal of submitting subsequent false bills." Because these distinct agreements did not clearly and obviously merge, we find no plain error. "United States v. Gibson, 875 F.3d 179 (5th Cir. 2017).

The ruling by the Eighth Circuit, exemplifies that there is confusion amongst the Circuit Courts interpretation of 1956(h), conspiracy to money launder statute. With the underlying criminal activity and the subsequent acts done after obtaining proceeds, Congress has not yet enacted a statute that makes these two separate punishable acts merge into a single crime.

> Leaving this question unanswered, will also leave defendants questioning the validity of the right to be tried where the acts were committed." A right to jury trial is granted to criminal defendants to prevent oppression by the Government." *Singer* v. *United States*, 380 U.S. 24, 31 (1965). The framers of the constitutions strove to create an independent

judiciary but insisted upon further protection against arbitrary action. Providing an accused with the right to be tried by a jury of his peers gave him an inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge. Duncan *v. Louisiana*, 391 U.S. 145, 156 (1965).

CONCLUSION

For the foregoing reasons, the Court should reverse the judgment below and remand to the Eighth Circuit.

Respectfully submitted,

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