

No.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2023

DAVID DARNELL WHITEHEAD, Petitioner,

v.

UNITED STATES OF AMERICA, Respondent

MOTION TO PROCEED IN FORMA PAUPERIS

Petitioner, David Darnell Whitehead, by his undersigned counsel, requests leave to file a Petition for Writ of Certiorari without prepayment of costs and to proceed in forma pauperis pursuant to Rule 39 of the Supreme Court Rules. Counsel was appointed in the lower court pursuant to 18 U.S.C. § 3006 and Rule 44, Fed. R. CR. P.

This the 21st day of May, 2024.

Respectfully submitted,



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PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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QUESTION PRESENTED

- I. IN AN ILLEGAL ALIEN SMUGGLING CASE, WHAT CONSTITUTES BRINGING TO OR ENTERING THE UNITED STATES "AT A PLACE OTHER THAN A DESIGNATED PORT OF ENTRY", AND WHETHER THERE WAS SUFFICIENT EVIDENCE THAT THE PETITIONER KNEW THAT THE ALIENS WERE BROUGHT TO OR ENTERED THE UNITED STATES AT A PLACE OTHER THAN A DESIGNATED PORT OF ENTRY.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, David Darnell Whitehead, respectfully prays this Court that a writ of certiorari issue to review the opinion and judgment of the United States Court of Appeals for the Fourth Circuit, issued on February 23, 2024, affirming the district court's judgment and sentence.

OPINION BELOW

The opinion and judgment of the United States Court of Appeals for the Fourth Circuit for which review is sought is United States v. David Darnell Whitehead, No. 22-4499 (4th Cir., February 23, 2024). The unpublished opinion of the United States Court of Appeals for the Fourth Circuit is reproduced in the Appendix to this petition as Appendix A. The judgment is reproduced as Appendix B. The mandate is reproduced as Appendix C.

JURISDICTION

The opinion and judgment of the United States Court of Appeals for the Fourth Circuit were issued on February 23, 2024. The jurisdiction of this court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

On October 28, 2020, the Petitioner was charged in an indictment with several counts involving alien smuggling. Several counts were dismissed. There were six counts on which he was tried and convicted. Count One charged him with conspiracy to commit alien smuggling in violation of 8 U.S.C. § 1324(a)(1)(A)(v)(I). (App. F). Counts Seventeen and Eighteen charged him with smuggling aliens and aiding and abetting, in violation of 8 U.S.C. § 1324(a)(1)(A)(i) and 18 U.S.C. § 2. (App. F). And Counts Thirty-six, Thirty-seven, and Forty charged him with money laundering and aiding and abetting to promote a specified unlawful activity, to wit: bringing an alien to the United States at a place other than a designated port of entry, in violation of 18 U.S.C. § 1956(a)(2)(A), and 18 U.S.C. § 2. (App. G).

This appeal concerns the sufficiency of the evidence that the Petitioner knew that the aliens entered the United States at a place other than a designated port of entry. It also questions the ambiguity of the statute which fails to define what constitutes bringing to or entering the United States “at a place other than a designated port of entry”.

STATEMENT OF THE CASE

PROCEDURAL HISTORY

On October 28, 2020, David Darnell Whithead was charged along with two other individuals in a 42 count indictment alleging conspiracies to commit various types of alien smuggling, aiding and abetting alien smuggling, and aiding and abetting money laundering in order to promote alien smuggling. The lead defendant was Petitioner's wife, Martha Zelaya-Mejia, and the other co-defendant was Martha's brother, Blas Antonio Celaya-Padilla.

On November 16, 2021, Petitioner pled not guilty at his arraignment. Prior to trial, several of the counts against him were dismissed. Both co-defendants pled guilty.

The case came on for trial at the May 31, 2022 term of court in Elizabeth City, North Carolina, the Honorable Terrence W. Boyle, District Court Judge, presiding. The case went to trial against the Petitioner on Counts 1, 4, 5, 17, 18, 26, 27, 36, 37, and 40. The district court allowed the Petitioner's motion for judgment of acquittal under Rule 29 of the Federal Rules of Criminal Procedure as to Counts 4, 5, 26, and 27. The Rule 29 motion was denied as to Counts 1, 17, 18, 36, 37, and 40. Those counts were submitted to the jury on June 1, 2022. The jury found Mr. Whitehead guilty of the above six counts.

The case came on for sentencing on August 23, 2022 before Judge Boyle. The Petitioner was sentenced to 21 months per count, concurrent, and to one year per count supervised release, concurrent. (App. D). Petitioner appealed.

After briefing, the case was scheduled for oral argument before the Fourth Circuit Court of Appeals. Prior to argument, the Circuit Court entered an order directing counsel to be prepared to discuss what constitutes bringing to or entering the United States “at a place other than a designated port of entry”. (App. E). Oral argument was held on January 24, 2024.

In an unpublished opinion entered on February 23, 2024, the Fourth Circuit affirmed the district court’s judgment and sentence. (App. A).

STATEMENT OF FACTS

On September 11, 2005, David Darnell Whitehead married Martha Zelaya-Mejia (hereinafter Martha), lead co-defendant in this case. This case involved a scheme by Martha to bring female aliens and their children from Honduras into the United States through Mexico. James Bryan Peterson, a defendant in a related case, was a farmer in Pender County, North Carolina, which is in the Eastern District of North Carolina. He purportedly gave Martha large sums of money to bring several women in from Honduras because he was looking for a wife. Martha had family contacts in Honduras that assisted in making arrangements to transport women through Mexico and across the border into the United States. Martha’s brother, co-defendant Blas Antonio Celaya-Padilla, was also involved and acted at times as a courier, sometimes referred to as a “mule” or “coyote”.

The scheme involved bringing several women into the United States from Honduras. They included Karen Menjivar, Alma Mendez, Karen Ordonez, and a fourth woman named Besay, who never reached the United States. It appears that

Peterson was paying Martha to bring him a wife, whereas she was telling the women they were coming here to work for him.

The scheme unraveled on August 9, 2019 when Karen Ordonez placed a 911 call to the Pender County Sheriff's Department claiming she and her eight month old son were being held against their will at Peterson's house in Willard, North Carolina. Detective John Leatherwood and female Deputy Scott responded to the call.

David Whitehead's alleged participation involved Karen Ordonez and her son coming into the country. Ordonez testified that she and her son came to the United States in a boat driven by smugglers. She walked until she came to a bridge and was stopped by the Border Patrol. She met with Immigration authorities and they released her. She went to her uncle's house in Texas, and was there about one month. Martha then paid for her to fly from Texas to Boston, Massachusetts. Although Martha and Peterson drove to Boston, Peterson came back alone to North Carolina because Martha told him to leave.

Martha testified that since Peterson had to come back to North Carolina, she called Petitioner to come to Boston to meet her and Ordonez. Petitioner drove to Boston to pick them up. However he and Martha had an argument, and he left Boston and drove Ordonez back to Fayetteville, North Carolina. He left Ordonez and her son at the Sheriff's Department in Fayetteville, and Peterson picked them up.

Further facts will be developed during the argument portion of the petition.

REASONS FOR GRANTING THE PETITION

- I. THERE WAS INSUFFICIENT EVIDENCE THAT THE PETITIONER, KNOWING A PERSON IS AN ALIEN, KNOWINGLY CONSPIRED TO BRING SUCH PERSON TO THE UNITED STATES AT A PLACE OTHER THAN A DESIGNATED PORT OF ENTRY, DID KNOWINGLY BRING, AND AIDED AND ABETTED BRINGING TO THE UNITED STATES AN ALIEN AT A PLACE OTHER THAN A DESIGNATED PORT OF ENTRY, AND KNOWINGLY TRANSFERRED MONETARY INSTRUMENTS AND FUNDS FROM A PLACE IN THE UNITED STATES TO A PLACE OUTSIDE THE UNITED STATES TO PROMOTE BRINGING SUCH PERSON TO THE UNITED STATES AT A PLACE OTHER THAN A DESIGNATED PORT OF ENTRY.

It is unlawful under 8 U.S.C. § 1324(a)(1)(A)(i) to bring an alien to the United States “at a place other than a designated port of entry.” (App. F-1) David Whitehead was charged and convicted of six counts, all of which contained the essential element that an alien had been brought to the United States “at a place other than a designated port of entry.” As previously noted, his counts included conspiracy, two counts of alien smuggling, and three counts of money laundering to promote alien smuggling. He contends that there was insufficient evidence as a matter of law that Karen Ordonez and her child were brought to the United States at a place other than a designated port of entry, or that he knew that they were brought to the United States at a place other than a designated port of entry. He further claims that a “designated port of entry” is not defined in the statute, and that the term is vague under the totality of the circumstances in his case.

After briefing, and prior to oral argument, the Fourth Circuit panel entered an order directing counsel to be prepared to discuss the following at oral argument: What constitutes bringing to or entering the United States “at a place other than a

designated port of entry”? (App. E). Defense counsel and Government counsel both addressed this issue at oral argument. The testimony of Karen Ordonez indicated that the smugglers brought her across the river in a boat, that she was told to just start walking, and that she walked to a bridge where there was a patrol car. She testified there were hundreds of people there. Immigration officials let her come into the country, and told her to present herself two days later, which she did. She testified she was allowed to go to her uncle’s place in Texas where she stayed for one month. Martha and Peterson paid for her and her child to take a flight from Texas to Boston.

Based upon the above scenario of events, it is respectfully urged that it is impossible to tell whether or not Ms. Ordonez and her child entered the United States at a place other than a designated port of entry. True, her entry may not have been exactly at the port of entry, but it certainly appeared from her testimony that it was close by. Also, the fact she turned herself in to the border patrol, met with Immigration, was required to come back two days later, which she did, and was then allowed to go to her uncle’s place lends credence to the fact that she did appear at a designated port of entry. More importantly, based upon the above scenario, it is impossible to determine whether Ms. Ordonez and her child entered the United States at a place other than a designated port of entry, or that the Petitioner knew that.

The Fourth Circuit reviews a challenge to the sufficiency of the evidence *de novo*, and will sustain the verdict if there is substantial evidence, viewed in the

light most favorable to the Government, to support it. United States v. Caldwell, 7 F. 4th 191, 209 (4th Cir. 2021). Substantial evidence is evidence that a reasonable finder of fact could accept as adequate and sufficient to support a conclusion of a defendant's guilt beyond a reasonable doubt. See United States v. Alerre, 430 F. 3d 681, 693 (4th Cir. 2005), citing Glasser v. United States, 315 U.S. 60, 80, 62 S. Ct. 457, 469, 86 L.Ed. 680 (1942).

To establish an alien smuggling conspiracy, the Government must prove an agreement to carry out one of the substantive offenses and that the defendant had the intent necessary to commit the underlying offense. United States v. Torralba-Mendia, 784 F.3d 652, 663 (9th Cir. 2015). The Ninth Circuit also cited United States v. Shabani, 513 U.S. 10, 13, 115 S. Ct. 382, 384, 130 L.Ed. 2d 225 (1994), holding that conspiracies require an overt act only when explicitly stated in the statute's text. In the instant case, one of the elements for the conspiracy charge and the two smuggling charges was that the defendant knew that the alien had been brought to the United States "at a place other than a designated port of entry". Based upon the above, it is urged that there was insufficient evidence as a matter of law regarding the element of whether Karen Ordonez and her child entered the United States at a place other than a designated port of entry.

Black's Law Dictionary defines "port" as follows:

"port 1. A harbor where ships load and unload cargo. 2. Any place where persons and cargo are allowed to enter a country and where customs officials are stationed. — Also termed (in sense 2) *port of entry*." Black's Law Dictionary (11th Edition 2019).

In Department of Homeland Security v. Thuraissigiam, 591 U.S. ___, 140 S.

Ct. 1959, 207 L.Ed. 2d 427 (2020), this Court defined “port of entry” as follows:

“An alien who arrives at a ‘port of entry,’ *i.e.*, a place where an alien may lawfully enter, must apply for admission. An alien like respondent who is caught trying to enter at some other spot is treated the same way. §§ 1225(a)(1), (3).

If an alien is inadmissible, the alien may be removed.”

140 S. Ct. at 1964.

The Code of Federal Regulations provides a list of ports of entry for aliens arriving by vessel or by land transportation. See 8 C.F.R. § 100.4.

Despite directing that counsel be prepared to address what constitutes bringing to or entering the United States “at a place other than a designated port of entry”, and carefully questioning counsel about this at oral argument, the Fourth Circuit Court of Appeals opinion did not address this issue. Notably, the phrase “at a place other than a designated port of entry” is not mentioned in the opinion. It is urged that this was a significant issue, it needed to be addressed, and under the totality of the facts and circumstances there was insufficient evidence that the Petitioner knew or should have known that Ms. Ordonez and her child were brought to the United States at a place other than a designated port of entry. The fact she was able to walk to a bridge where she saw a patrol vehicle, met with Immigration officials, returned two days later to meet with them again, and was allowed to remain in the United States would necessarily lead one to believe that she arrived at, or reported to a designated port of entry.

Petitioner David Whitehead also urges that the Fourth Circuit panel's question about the designated port of entry emphasized the vagueness of this statute. Criminal statutes are to be strictly construed and should not be interpreted to extend criminal liability beyond that which Congress intended. In light of the serious consequences flowing from a criminal conviction, the Supreme Court has held that the rule of strict construction rests on the principle that "no [person] shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed." United States v. Lanier, 520 U.S. 259, 265-266, 117 S.Ct. 1219, 1225, 137 L.Ed.2d 432 (1997). Petitioner Whitehead urges that the statute herein fails to adequately describe what constitutes bringing to or entering the United States at a place other than a designated port of entry. What if an alien arrives within view of a designated port of entry and immediately reports to said port of entry? What if an alien misses a port of entry entirely, but reports as soon as possible thereafter and follows Immigration directions? After raising this issue the Fourth Circuit opinion failed to address it. It is respectfully requested that this Court address this issue.

Due to the above vagueness, Petitioner Whitehead respectfully contends that the rule of lenity should apply. The rule of lenity requires that when a choice has to be made between two readings of what Congress has made a crime, it is appropriate, before choosing the harsher alternative, to require that Congress should have spoken in a language that is clear and definite. See United States v.

Universal C.I.T. Credit Corp., 344 U.S. 218, 221-222, 73 S. Ct. 227, 229, 97 L.Ed. 260 (1952).

The rule of lenity is based on two substantial considerations. First, the rule recognizes that a fair warning should be given to the world in language that the common world will understand, of what the law intends to do if a certain line is passed. Second, the rule acknowledges that Congress, rather than the judiciary, is the appropriate institution to define criminal conduct. See Yi v. Fed. Bureau of Prisons, 412 F. 3d 526, 535 (4th Cir. 2005), quoting Babbitt v. Sweet Home Chapter of Communities, 515 U.S. 687, 704 n. 18, 115 S. Ct. 2407, 132 L.Ed.2d 597 (1995).

Petitioner contends that the statute herein is ambiguous regarding what constitutes bringing to or entering the United States “at a place other than a designated port of entry.” This Court has held that it declines to speculate regarding the intent of Congress when there is ambiguity or uncertainty in the statute. See Barber v. Thomas, 560 U.S. 474, 488, 130 S. Ct. 2499, 2508, 177 L.Ed. 2d. 1 (2010), quoting United States v. Muscarello, 524 U.S. 125, 139, 118 S. Ct. 1911, 1919, 141 L.Ed. 2d 111 (1998).

What constitutes bringing to or entering the United States “at a place other than a designated port of entry”, is an essential element of all of the charges against Petitioner David Whitehead. He contends that the vagueness of what this actually means creates ambiguities and uncertainties as to the intent of Congress. He further contends that the rule of lenity should apply. The Fourth Circuit should


have addressed this issue, and Petitioner requests that this Court grant his petition so that this issue may be considered.

CONCLUSION

For the foregoing reasons, Petitioner David Darnell Whitehead, respectfully requests that a Writ of Certiorari issue to review the opinion and judgment of the United States Court of Appeals for the Fourth Circuit affirming his conviction, judgment and sentence.

This the 21st day of May, 2024.

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No.
IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2023

DAVID DARNELL WHITEHEAD, Petitioner,

v.

UNITED STATES OF AMERICA, Respondent

ENTRY OF APPEARANCE
and
CERTIFICATE OF SERVICE

I, Rudolph A. Ashton, III, a member of the North Carolina State Bar, having been appointed to represent the Petitioner in the United States Court of Appeals for the Fourth Circuit, pursuant to the provisions of the Criminal Justice Act, 18 U.S.C. § 3006A, hereby enter my appearance in this Court in respect to this Petition for a Writ of Certiorari.

I, Rudolph A. Ashton, III, do swear or declare that on this date, the 21st day of May, 2024, pursuant to Supreme Court Rules 29.3 and 29.4, I have served the attached motion for leave to proceed *in forma pauperis* and petition for a writ of certiorari on each party to the above proceeding, or that party's counsel, and on every other person required to be served by depositing in an envelope containing the above documents in the United States mail properly addressed to each of them and

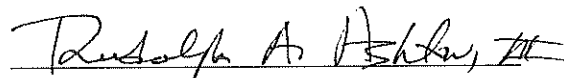
with first-class postage prepaid. The names and addresses of those served are as follows:

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This the 21st day of May, 2024.


Respectfully submitted,

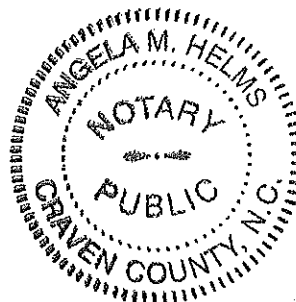


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Subscribed and Sworn to Before Me

This the 21st day of May, 2024.


Notary Public



My Commission Expires: May 2, 2028

App. A-1

UNPUBLISHEDUNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-4499

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

DAVID DARNELL WHITEHEAD,

Defendant – Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at
Wilmington. Terrence W. Boyle, District Judge. (7:20-cr-00191-BO-3)

Argued: January 24, 2024

Decided: February 23, 2024

Before HARRIS, RICHARDSON, and HEYTENS, Circuit Judges.

Affirmed by unpublished opinion. Judge Heytens wrote the opinion, in which Judge Harris
and Judge Richardson joined.

ARGUED: Rudolph Alexander Ashton, III, DUNN PITTMAN SKINNER & CUSHMAN,
PLLC, New Bern, North Carolina, for Appellant. Julie Anne Childress, OFFICE OF THE
UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee. **ON BRIEF:**
Michael F. Easley, Jr., United States Attorney, David A. Bragdon, Assistant United States
Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for
Appellee.

Unpublished opinions are not binding precedent in this circuit.

App. A-2

TOBY HEYTENS, Circuit Judge:

David Whitehead appeals six convictions stemming from his part in a smuggling scheme run by his wife. Because there was sufficient evidence for a reasonable juror to conclude Whitehead knew about and acted with intent to further the smuggling operation, we affirm.

Whitehead and his wife were paid by another man to bring multiple young women from Honduras to the United States to be the man's wife. Whitehead's wife spearheaded the operation, setting the rates, paying confederates, and assisting with transportation from the U.S. border to the man's home.

The first woman thought she would work as a cleaner or cook in the man's home until she paid off her debt for being brought to the United States. When the man revealed his intentions, the woman escaped. The man then paid Whitehead's wife to bring him a second woman. The man thought she was too young to be his wife, so he paid for a third to be brought over. The third woman—Karen Ordonez—escaped and called 911 after the man assaulted her. The man paid for a fourth woman to be brought over, but she never made it to the United States.

After Ordonez's 911 call, the smuggling scheme unraveled. Whitehead, his wife, and his brother-in-law were charged together in a 42-count indictment. Whitehead's wife and brother-in-law pleaded guilty, so Whitehead was tried alone. Some charges against Whitehead were dismissed before trial, and the district court granted a midtrial motion for acquittal on others.

A jury found Whitehead guilty of six counts. Count 1 charged him with conspiring

App. A-3

to commit smuggling. Counts 17 and 18 charged him with aiding and abetting the smuggling of two non-citizens, Karen Ordonez and her baby, respectively. Counts 36, 37, and 40 charged Whitehead with money laundering connected to Ordonez's entry. On each count, the district court sentenced Whitehead to 21 months of imprisonment to be followed by one year of supervised release, with all sentences served concurrently.

Whitehead challenges the sufficiency of the evidence supporting all six convictions. We view the evidence in the light “most favorable to the prosecution” and uphold the jury’s verdict if “*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *United States v. Millender*, 970 F.3d 523, 528 (4th Cir. 2020). “Applying these standards, we conclude [Whitehead] ha[s] not met [his] heavy burden to show [his] convictions were not supported by substantial evidence.” *United States v. Huskey*, 90 F.4th 651, 662 (4th Cir. 2024) (quotation marks removed).

Whitehead argues the same evidentiary failure undermines each conviction: the government did not prove he knew about any illegal activity and thus could not have proved he intended to further that activity. True, each charge required both knowledge of illegal activity and intent to further it. See JA 276–79 (jury instruction). But we conclude there was evidence from which a reasonable juror could find both were present here.

First, a reasonable juror could conclude that Whitehead “knew the unlawful purpose of the” smuggling scheme (JA 276 (Count 1)), that he “knew that the crime” of smuggling Karen Ordonez and her baby “was to be committed” (JA 276–78 (Counts 17, 18)), and that he knew the operation was an “unlawful activity” (JA 279 (Counts 36, 37, 40)).

Whitehead’s wife testified she told him about her smuggling business. Witnesses also

App. A-4

testified about Whitehead's knowledge and wariness of his wife's conduct, including that Whitehead warned his wife she was engaged in "human trafficking" (JA 126) and "might end up in trouble" (JA 198). The evidence showed that Whitehead was present several times when the man paid his wife—including when payments were made for Ordonez—and that Whitehead knew what the money was for. And Whitehead personally interacted with each of the women when he housed or transported them on their way to the man. From this and all the other evidence in the record, a reasonable juror could infer that Whitehead had intimate knowledge of the smuggling business, including the particulars of where and how the women came into the United States.

Next, a reasonable juror could conclude Whitehead "willfully joined" the plan (JA 276 (Count 1)) and "acted with the intention of causing" (JA 277–78 (Counts 17, 18)) and "promot[ing]" (JA 279 (Counts 36, 37, 40)) the smuggling of Ordonez and her baby. Whitehead personally wired money to locations near the Mexico–Guatemala border around the time Ordonez and her baby were there. Then, about two weeks later, Whitehead wired money to locations near the U.S.–Mexico border. These payments mirror the method Whitehead's wife admitted using to bring over the first woman. A special agent with Homeland Security Investigations also testified this pattern of payments fits the typical method used by smugglers: one payment is made as a deposit at the beginning of transit, and a second payment is made once the person reaches the U.S. border.

Whitehead insists there is an innocent explanation for the wires, claiming he sent money to support "his wife's family in Mexico." JA 244. But the jury was not required to credit that assertion, and we must assume the jury resolved all credibility disputes and

App. A-5

judgment calls in the government's favor. See *United States v. Perry*, 335 F.3d 316, 320 (4th Cir. 2003). Whitehead's wife testified that he was present when the man gave her the money for the wire transfers and that Whitehead knew what the money was for. Whitehead's wife also said Whitehead made the wire transfers for Ordonez's entry because the bank would be "suspicio[us]" if she made the same transfers multiple times. JA 182. The evidence about the nature of the wire transfers, together with his wife's testimony that he knew about the smuggling operation and why she asked him to wire the money, was enough for a reasonable juror to conclude Whitehead intended his actions to aid in Ordonez and her baby's entry.

None of Whitehead's arguments satisfy his heavy burden of showing the jury's verdict was not supported by substantial evidence. The district court's judgment is thus

AFFIRMED.

App. B

FILED: February 23, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-4499
(7:20-cr-00191-BO-3)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

DAVID DARNELL WHITEHEAD

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ NWAMAKA ANOWI, CLERK

App. C

FILED: March 18, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-4499
(7:20-cr-00191-BO-3)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

DAVID DARNELL WHITEHEAD

Defendant - Appellant

M A N D A T E

The judgment of this court, entered February 23, 2024, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule
41(a) of the Federal Rules of Appellate Procedure.

/s/Nwamaka Anowi, Clerk

UNITED STATES DISTRICT COURT

Eastern District of North Carolina

CORRECTED

UNITED STATES OF AMERICA

v.

David Darnell Whitehead

JUDGMENT IN A CRIMINAL CASE

Case Number: 7:20-CR-00191-3BO

USM Number: 32350-509

Daniel Donahue

Defendant's Attorney

THE DEFENDANT:

- ☐ pleaded guilty to count(s) _____
- ☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.
- ☒ was found guilty on count(s) 1, 17, 18, 36, 37 and 40
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
8 U.S.C. § 1324(a)(1)(A) (i), 8 U.S.C. § 1324(a)(1) (A)(v)(I)	Conspiracy to Commit Alien Smuggling.	October 28, 2020	1

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☒ The defendant has been found not guilty on count(s) 4, 5, 26 and 27
- ☒ Count(s) remaining counts ☐ is ☒ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/23/2022

Date of Imposition of Judgment

Signature of Judge

Terrence W. Boyle, United States District Judge

Name and Title of Judge

9/7/2022

Date

DEFENDANT: David Darnell Whitehead
CASE NUMBER: 7:20-CR-00191-3BO

ADDITIONAL COUNTS OF CONVICTION

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
8 U.S.C. § 1324(a)(1)(A) (i), 18 U.S.C. § 2	Smuggling Aliens and Aiding and Abetting.	10/28/2020	17 and 18
18 U.S.C. § 1956(a)(2) (A), 18 U.S.C. § 2	Money Laundering and Aiding and Abetting.	10/28/2020	36, 37, and 40

DEFENDANT: David Darnell Whitehead

CASE NUMBER: 7:20-CR-00191-3BO

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:
Counts 1, 17, 18, 36, 37 and 40 - 21 months per count, concurrent.

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

The Court recommends FCI Butner for incarceration.

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

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

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: David Darnell Whitehead
CASE NUMBER: 7:20-CR-00191-3BO

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

Counts 1, 17, 18, 36, 37 and 40 - 1 years.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☒ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

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

DEFENDANT: David Darnell Whitehead
CASE NUMBER: 7:20-CR-00191-3BO

STANDARD CONDITIONS OF SUPERVISION

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

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

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

Defendant's Signature _____

Date _____

DEFENDANT: David Darnell Whitehead
CASE NUMBER: 7:20-CR-00191-3BO

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$ 600.00	\$ 39,472.00	\$	\$	\$

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

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

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

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Karen Menjivar Martinez		\$39,472.00	

TOTALS	\$	0.00	\$	39,472.00
---------------	----	------	----	-----------

☐ Restitution amount ordered pursuant to plea agreement \$

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

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

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

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

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

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

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

DEFENDANT: David Darnell Whitehead
CASE NUMBER: 7:20-CR-00191-3BO

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☐ Lump sum payment of \$ _____ due immediately, balance due
☐ not later than _____, or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
Payment of the special assessment is due immediately.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

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

☐ Joint and Several

✓

Case Number

Defendant and Co-Defendant Names
(including defendant number)

Total Amount

Joint and Several
Amount

Corresponding Payee,
if appropriate

Martha Jakeline Zelaya-Mejia
7:20-CR-191-BO-1

3,628.00

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

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

App. E

FILED: January 9, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-4499
(7:20-cr-00191-BO-3)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

DAVID DARNELL WHITEHEAD

Defendant - Appellant

O R D E R

This case is calendared for oral argument on January 24, 2024. The parties are directed to be prepared to discuss the following at oral argument:

It is unlawful under 8 U.S.C. § 1324(a)(1)(A)(i) to bring an alien to the United States “at a place other than a designated port of entry.” What constitutes bringing to or entering the United States “at a place other than a designated port of entry”? How does the evidence presented in this case bear on that question? And has this issue been properly preserved on appeal?

For the Court

/s/ Nwamaka Anowi, Clerk

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ALIENS AND NATIONALITY

aircraft shall be granted clearance pending the determination of the liability to the payment of such fine or while such fine remains unpaid, except that clearance may be granted prior to the determination of such question upon the deposit of an amount sufficient to cover such fine, or of a bond with sufficient surety to secure the payment thereof approved by the Commissioner.

(c) Remission or refund

Except as provided in subsection (e), such fine shall not be remitted or refunded, unless it appears to the satisfaction of the Attorney General that such person, and the owner, master, commanding officer, agent, charterer, and consignee of the vessel or aircraft, prior to the departure of the vessel or aircraft from the last port outside the United States, did not know, and could not have ascertained by the exercise of reasonable diligence, that the individual transported was an alien and that a valid passport or visa was required.

(d) Repealed. Pub.L. 104-208, Div. C, Title III, § 308(e)(13), Sept. 30, 1996, 110 Stat. 3009-620**(e) Reduction, refund, or waiver**

A fine under this section may be reduced, refunded, or waived under such regulations as the Attorney General shall prescribe in cases in which—

(1) the carrier demonstrates that it had screened all passengers on the vessel or aircraft in accordance with procedures prescribed by the Attorney General, or

(2) circumstances exist that the Attorney General determines would justify such reduction, refund, or waiver.

(June 27, 1952, c. 477, Title II, c. 8, § 273, 66 Stat. 227; Pub.L. 101-649, Title II, § 201(b), Title V, § 543(a)(10), Nov. 29, 1990, 104 Stat. 5014, 5058; Pub.L. 102-232, Title III, § 306(c)(4)(D), Dec. 12, 1991, 105 Stat. 1752; Pub.L. 103-416, Title II, §§ 209(a), 216, 219(p), Oct. 25, 1994, 108 Stat. 4312, 4316, 4317; Pub.L. 104-208, Div. C, Title III, §§ 308(c)(3), (e)(13), 371(b)(3), Title VI, § 671(b)(6), (7), Sept. 30, 1996, 110 Stat. 3009-616, 3009-620, 3009-645, 3009-722.)

HISTORICAL NOTES**References in Text**

This chapter, referred to in subsec. (a)(1), was in the original, "this Act", meaning Act June 27, 1952, c. 477, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification, see Short Title note set out under 8 U.S.C.A. § 1101 and Tables.

Effective and Applicability Provisions

1996 Acts. Amendment by section 308 of Div. C of Pub.L. 104-208 effective, with certain exceptions and subject to certain transitional rules, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Div. C of Pub.L. 104-208, set out as a note under 8 U.S.C.A. § 1101.

Amendment by section 371(b)(8) of Div. C of Pub.L. 104-208 effective Sept. 30, 1996, see section 371(d)(1) of Div. C of Pub.L. 104-208, set out as a note under 8 U.S.C.A. § 1101.

Amendment by section 671(b)(6), (7) of Div. C of Pub.L. 104-208 effective as if included in the enactment of Pub.L. 103-416, which was approved Oct. 25, 1994, see section 671(b)(14) of Div. C of Pub.L. 104-208, set out as a note under 8 U.S.C.A. § 1101.

1994 Acts. Pub.L. 103-416, Title II, § 209(b), Oct. 25, 1994, 108 Stat. 4312, as amended Pub.L. 104-208, Div. C, Title VI, § 671(b)(3), Sept. 30, 1996, 110 Stat. 3009-722, provided that: "The amendments made by

this section [amending this section] shall apply with respect to aliens brought to the United States more than 60 days after the date of enactment of this Act [Oct. 25, 1994]."

[Amendment by section 671(b)(8) of Div. C of Pub.L. 104-208 effective as if included in the enactment of Pub.L. 103-416, which was approved Oct. 25, 1994, see section 671(b)(14) of Div. C of Pub.L. 104-208, set out as a note under 8 U.S.C.A. § 1101.]

Amendment by section 219 of Pub.L. 103-416 effective as if included in the enactment of the Immigration Act of 1990, Pub.L. 101-649, 104 Stat. 4978, which was approved Nov. 29, 1990, except as otherwise specifically provided, see section 219(dd) of Pub.L. 103-416, set out as a note under 8 U.S.C.A. § 1101.

1991 Acts. Amendments by sections 302 through 308 of Pub.L. 102-232, except as otherwise specifically provided, effective as if included in the enactment of Pub.L. 101-649, see section 310(1) of Pub.L. 102-232, set out as a note under 8 U.S.C.A. § 1101.

1990 Acts. Amendment by Pub.L. 101-649 effective as of Nov. 29, 1990, see section 201(d) of Pub.L. 101-649, set out as a note under 8 U.S.C.A. § 1187.

Amendment by section 543(a)(10) of Pub.L. 101-649 applicable to actions taken after Nov. 29, 1990; see section 543(c) of Pub.L. 101-649, set out as a note under 8 U.S.C.A. § 1221.

Transfer of Functions

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under 8 U.S.C.A. § 1551.

Severability of Provisions

If any provision of Division C of Pub.L. 104-208 or the application of such provision to any person or circumstances is held to be unconstitutional, the remainder of Division C of Pub.L. 104-208 and the application of the provisions of Division C of Pub.L. 104-208 to any person or circumstance not to be affected thereby, see section 1(e) of Pub.L. 104-208, set out as a note under 8 U.S.C.A. § 1101.

§ 1324. Bringing in and harboring certain aliens**(a) Criminal penalties****(1)(A) Any person who—**

(i) knowing that a person is an alien, brings to or attempts to bring to the United States in any manner whatsoever such person at a place other than a designated port of entry or place other than as designated by the Commissioner, regardless of whether such alien has received prior official authorization to come to, enter, or reside in the United States and regardless of any future official action which may be taken with respect to such alien;

(ii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law;

(iii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building, or any means of transportation;

(iv) encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard

IMMIGRATION AND NATIONALITY

8 § 1324

of the fact that such coming to, entry, or residence is or will be in violation of law; or

(v)(I) engages in any conspiracy to commit any of the preceding acts, or

(II) aids or abets the commission of any of the preceding acts,

shall be punished as provided in subparagraph (B).

(B) A person who violates subparagraph (A) shall, for each alien in respect to whom such a violation occurs—

(i) in the case of a violation of subparagraph (A)(i) or (v)(I) or in the case of a violation of subparagraph (A)(ii), (iii), or (iv) in which the offense was done for the purpose of commercial advantage or private financial gain, be fined under Title 18, imprisoned not more than 10 years; or both;

(ii) in the case of a violation of subparagraph (A)(ii), (iii), (iv), or (v)(II), be fined under Title 18, imprisoned not more than 5 years, or both;

(iii) in the case of a violation of subparagraph (A)(i), (ii), (iii), (iv), or (v) during and in relation to which the person causes serious bodily injury (as defined in section 1365 of Title 18) to, or places in jeopardy the life of, any person, be fined under Title 18, imprisoned not more than 20 years, or both; and

(iv) in the case of a violation of subparagraph (A)(i), (ii), (iii), (iv), or (v) resulting in the death of any person, be punished by death or imprisoned for any term of years or for life, fined under Title 18, or both.

(C) It is not a violation of clauses (i) (ii) or (iii) of subparagraph (A), or of clause (iv) of subparagraph (A) except where a person encourages or induces an alien to come to or enter the United States, for a religious denomination having a bona fide nonprofit, religious organization in the United States, or the agents or officers of such denomination or organization, to encourage, invite, call, allow, or enable an alien who is present in the United States to perform the vocation of a minister or missionary for the denomination or organization in the United States as a volunteer who is not compensated as an employee, notwithstanding the provision of room, board, travel, medical assistance, and other basic living expenses, provided the minister or missionary has been a member of the denomination for at least one year:

(2) Any person who, knowing or in reckless disregard of the fact that an alien has not received prior official authorization to come to, enter, or reside in the United States, brings to or attempts to bring to the United States in any manner whatsoever, such alien, regardless of any official action which may later be taken with respect to such alien shall, for each alien in respect to whom a violation of this paragraph occurs—

(A) be fined in accordance with Title 18 or imprisoned not more than one year, or both; or

(B) in the case of—

(i) an offense committed with the intent or with reason to believe that the alien unlawfully brought into the United States will commit an offense against the United States or any State punishable by imprisonment for more than 1 year,

(ii) an offense done for the purpose of commercial advantage or private financial gain, or

(iii) an offense in which the alien is not upon arrival immediately brought and presented to an appropriate immigration officer at a designated port of entry, be fined under Title 18 and shall be imprisoned, in the case of a first or second violation of subparagraph (B)(iii), not more than 10 years, in the case of a first or second violation of subparagraph (B)(i) or (B)(ii), not less than 3 nor more than 10 years, and for any other violation, not less than 5 nor more than 15 years.

(3)(A) Any person who, during any 12-month period, knowingly hires for employment at least 10 individuals with actual knowledge that the individuals are aliens described in subparagraph (B) shall be fined under Title 18 or imprisoned for not more than 5 years; or both.

(B) An alien described in this subparagraph is an alien who—

(i) is an unauthorized alien (as defined in section 1324a(h)(3) of this title), and

(ii) has been brought into the United States in violation of this subsection.

(4) In the case of a person who has brought aliens into the United States in violation of this subsection, the sentence otherwise provided for may be increased by up to 10 years if—

(A) the offense was part of an ongoing commercial organization or enterprise;

(B) aliens were transported in groups of 10 or more; and

(C)(i) aliens were transported in a manner that endangered their lives; or

(ii) the aliens presented a life-threatening health risk to people in the United States.

(b) Seizure and forfeiture

(1) In general

Any conveyance, including any vessel, vehicle, or aircraft, that has been or is being used in the commission of a violation of subsection (a), the gross proceeds of such violation, and any property traceable to such conveyance or proceeds, shall be seized and subject to forfeiture.

(2) Applicable procedures

Seizures and forfeitures under this subsection shall be governed by the provisions of chapter 46 of Title 18 relating to civil forfeitures, including section 981(d) of such title, except that such duties as are imposed upon the Secretary of the Treasury under the customs laws described in that section shall be performed by such officers, agents, and other persons as may be designated for that purpose by the Attorney General.

(3) Prima facie evidence in determinations of violations

In determining whether a violation of subsection (a) has occurred, any of the following shall be prima facie evidence that an alien involved in the alleged violation had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law:

18 § 1955

CRIMES

Part 1

Federal, State, local, and Native American tribal governments, as well as on communities and social institutions, including individuals, families, and businesses within such communities and institutions, and to submit a report, not later than two years after its first meeting, to the President, the Congress, State Governors, and Native American tribal governments containing the Commission's findings and conclusions, together with any recommendations, and further provided for membership of the Commission, meetings, powers and duties of the Commission, contracts for research with the Advisory Commission on Intergovernmental Relations and the National Research Council, definitions, appropriations, and termination of the Commission 60 days after submission of its final report.

Priority of State Laws

Enactment of this section as not indicating an intent on the part of the Congress to occupy the field in which this section operates to the exclusion of State or local law on the same subject matter, or to relieve any person of any obligation imposed by any State or local law, see section 811 of Pub.L. 91-452, set out as a Priority of State Laws note under section 1511 of this title.

Commission on the Review of the National Policy Toward Gambling

Sections 804 to 809 of Pub.L. 91-452 established the Commission on the Review of the National Policy Toward Gambling, provided for its membership and compensation of the members and the staff, empowered the Commission to subpoena witnesses and grant immunity, required the Commission to make a study of gambling in the United States and existing federal, state, and local policy and practices with respect to prohibition and taxation of gambling activities and to make a final report of its findings and recommendations to the President and to Congress within four years of its establishment, and provided for its termination sixty days after submission of the final report.

§ 1956. Laundering of monetary instruments

(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity—

(A)(i) with the intent to promote the carrying on of specified unlawful activity; or

(ii) with intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986; or

(B) knowing that the transaction is designed in whole or in part—

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than \$500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both. For purposes of this paragraph, a financial transaction shall be considered to be one involving the proceeds of specified unlawful activity if it is part of a set of parallel or dependent transactions, any one of which involves the proceeds of specified unlawful activity, and all of which are part of a single plan or arrangement.

(2) Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or

funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States—

(A) with the intent to promote the carrying on of specified unlawful activity; or

(B) knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer represent the proceeds of some form of unlawful activity and knowing that such transportation, transmission, or transfer is designed in whole or in part—

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than \$500,000 or twice the value of the monetary instrument or funds involved in the transportation, transmission, or transfer, whichever is greater, or imprisonment for not more than twenty years, or both. For the purpose of the offense described in subparagraph (B), the defendant's knowledge may be established by proof that a law enforcement officer represented the matter specified in subparagraph (B) as true, and the defendant's subsequent statements or actions indicate that the defendant believed such representations to be true.

(3) Whoever, with the intent—

(A) to promote the carrying on of specified unlawful activity;

(B) to conceal or disguise the nature, location, source, ownership, or control of property believed to be the proceeds of specified unlawful activity; or

(C) to avoid a transaction reporting requirement under State or Federal law,

conducts or attempts to conduct a financial transaction involving property represented to be the proceeds of specified unlawful activity, or property used to conduct or facilitate specified unlawful activity, shall be fined under this title or imprisoned for not more than 20 years, or both. For purposes of this paragraph and paragraph (2), the term "represented" means any representation made by a law enforcement officer or by another person at the direction of, or with the approval of, a Federal official authorized to investigate or prosecute violations of this section.

(b) Penalties.—

(1) **In general.**—Whoever conducts or attempts to conduct a transaction described in subsection (a)(1) or (a)(3), or section 1957, or a transportation, transmission, or transfer described in subsection (a)(2), is liable to the United States for a civil penalty of not more than the greater of—

(A) the value of the property, funds, or monetary instruments involved in the transaction; or

(B) \$10,000.

(2) **Jurisdiction over foreign persons.**—For purposes of adjudicating an action filed or enforcing a penalty ordered under this section, the district courts shall have jurisdiction over any foreign person, including any financial institution authorized under the laws of a foreign country, against whom

the action is brought, if service of process upon the foreign person is made under the Federal Rules of Civil Procedure or the laws of the country in which the foreign person is found, and—

(A) the foreign person commits an offense under subsection (a) involving a financial transaction that occurs in whole or in part in the United States;

(B) the foreign person converts, to his or her own use, property in which the United States has an ownership interest by virtue of the entry of an order of forfeiture by a court of the United States; or

(C) the foreign person is a financial institution that maintains a bank account at a financial institution in the United States.

(3) **Court authority over assets.**—A court may issue a pretrial restraining order or take any other action necessary to ensure that any bank account or other property held by the defendant in the United States is available to satisfy a judgment under this section.

(4) **Federal receiver.**—

(A) **In general.**—A court may appoint a Federal Receiver, in accordance with subparagraph (B) of this paragraph, to collect, marshal, and take custody, control, and possession of all assets of the defendant, wherever located, to satisfy a civil judgment under this subsection, a forfeiture judgment under section 981 or 982, or a criminal sentence under section 1957 or subsection (a) of this section, including an order of restitution to any victim of a specified unlawful activity.

(B) **Appointment and authority.**—A Federal Receiver described in subparagraph (A)—

(i) may be appointed upon application of a Federal prosecutor or a Federal or State regulator; by the court having jurisdiction over the defendant in the case;

(ii) shall be an officer of the court, and the powers of the Federal Receiver shall include the powers set out in section 754 of title 28, United States Code; and

(iii) shall have standing equivalent to that of a Federal prosecutor for the purpose of submitting requests to obtain information regarding the assets of the defendant—

(I) from the Financial Crimes Enforcement Network of the Department of the Treasury; or

(II) from a foreign country pursuant to a mutual legal assistance treaty, multilateral agreement, or other arrangement for international law enforcement assistance, provided that such requests are in accordance with the policies and procedures of the Attorney General.

(c) As used in this section—

(1) the term “knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity” means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State, Federal, or foreign law, regardless of whether or not such activity is specified in paragraph (7);

(2) the term “conducts” includes initiating, concluding, or participating in initiating, or concluding a transaction;

(3) the term “transaction” includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safe deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected;

(4) the term “financial transaction” means (A) a transaction which in any way or degree affects interstate or foreign commerce (i) involving the movement of funds by wire or other means or (ii) involving one or more monetary instruments, or (iii) involving the transfer of title to any real property, vehicle, vessel, or aircraft, or (B) a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree;

(5) the term “monetary instruments” means (i) coin or currency of the United States or of any other country, travelers’ checks, personal checks, bank checks, and money orders, or (ii) investment securities or negotiable instruments, in bearer form or otherwise in such form that title thereto passes upon delivery;

(6) the term “financial institution” includes—

(A) any financial institution, as defined in section 5312(a)(2) of title 31, United States Code, or the regulations promulgated thereunder; and

(B) any foreign bank, as defined in section 1 of the International Banking Act of 1978 (12 U.S.C. 3101);

(7) the term “specified unlawful activity” means—

(A) any act or activity constituting an offense listed in section 1961(1) of this title except an act which is indictable under subchapter II of chapter 53 of title 31;

(B) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving—

(i) the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act);

(ii) murder, kidnapping, robbery, extortion, destruction of property by means of explosive or fire, or a crime of violence (as defined in section 16);

(iii) fraud, or any scheme or attempt to defraud, by or against a foreign bank (as defined in paragraph 7 of section 1(b) of the International Banking Act of 1978);²

(iv) bribery of a public official, or the misappropriation, theft, or embezzlement of public funds by or for the benefit of a public official;

(v) smuggling or export control violations involving—

(I) an item controlled on the United States Munitions List established under section 38 of the Arms Export Control Act (22 U.S.C. 2778); or

(II) an item controlled under regulations under the Export Administration Regulations (15 C.F.R. Parts 730-774);