

No. 24-583

---

IN THE  
**Supreme Court of the United States**

---

XUNHUI CHENG, *et al.*,

*Petitioners,*

*v.*

DAN LIU, *et al.*,

*Respondents.*

---

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

---

**BRIEF OF AMICUS CURIAE THE NANJING  
MUNICIPAL PEOPLE'S PROCURATORATE  
IN SUPPORT OF PETITIONERS**

---

EDWARD E. LEHMAN  
*Counsel of Record*  
LEHMAN, LEE & XU  
3rd Floor,  
Hanhai International Building  
No. 13, Jiuxianqiao Road,  
Chaoyang District  
100015 Beijing, China INT 00000  
elehman@lehmanlaw.com

*Counsel for Amicus Curiae*



## TABLE OF CONTENTS

	<i>Page</i>
TABLE OF CONTENTS.....	i
TABLE OF CITED AUTHORITIES .....	iv
INTEREST OF AMICUS CURIAE.....	1
INTRODUCTION AND SUMMARY OF ARGUMENTS.....	2
STATEMENT OF FACTS .....	4
ARGUMENT.....	7
I. Money Laundering and Anti-Money Laundering (AML) Regime.....	7
1. Criminality of Money Laundering .....	7
2. The Status Quo of Anti-Money Laundering (AML) in the United States ..	10
3. International Legal Framework for Anti-Money Laundering (AML) .....	11
II. The Responsibility of the United States within the International Legal Framework ...	13
1. United Nations Convention against Corruption (UNCAC).....	13

*Table of Contents*

	<i>Page</i>
2. United Nations Convention against Transnational Organized Crime (UNTOC) .....	14
3. International Convention for the Suppression of the Financing of Terrorism .....	14
4. Financial Action Task Force (FATF) Recommendations .....	15
III. U.S. Policies as Implemented by the Treasury Department's Financial Crimes Enforcement Network (FinCEN) .....	16
IV. Defendants' Actions Under the UN Convention Against Corruption, to Which Both China and the United States Are State Parties .....	17
V. The Status of Asset Recovery in International Cooperation and Mutual Legal Assistance Concerning AML .....	18
VI. Under International Law: Use of the Constructive Trust and the Law of the Place Where the Properties Are Located .....	20
VII. A Call for Stronger Enforcement of AML by This Court of Appeal .....	21

*Table of Contents*

	<i>Page</i>
i. Necessity of Strengthened AML Enforcement.....	21
ii. Cracking Down on Money-Laundering Crimes .....	22
iii. Preventing the Spread of Grave Criminal Activities .....	23
iv. Protecting Financial Institutions and Ensuring Systemic Stability .....	23
SUMMARY AND CONCLUSIONS .....	24

## TABLE OF CITED AUTHORITIES

*Page*

### **Articles:**

Article 8 requires the U.S. to detect and freeze funds intended for terrorist acts .....	15
Articles 9-11 require the U.S. to investigate individuals involved in terrorist financing and, where applicable, ensure their prosecution or extradition .....	15
Article 12 mandates the U.S. to cooperate with other states in criminal investigations related to terrorist financing, sharing relevant evidence and information .....	15
Articles 12-14 obligate the U.S. to adopt procedures for the identification, seizure, and confiscation of proceeds of crime .....	14, 19
Articles 13-21 of the Convention require the U.S. to establish a legal framework for the extradition of offenders and to provide mutual legal assistance in criminal investigations and prosecutions .....	14
Article 14 of the UNCAC requires state parties to implement measures to prevent money laundering, including customer identification, due diligence, and suspicious activity reporting ...	17

*Cited Authorities*

	<i>Page</i>
Articles 31 and 35 mandate that state parties cooperate in asset confiscation, seizure, and freezing, as well as providing compensation for damages .....	17, 18
Article 27, the U.S. must cooperate with other nations in investigations and prosecutions of organized crime offenses, sharing information and evidence .....	14
Article 57 focuses on the return of assets to their rightful owners, while Article 46 requires full mutual assistance in investigations and prosecutions.....	13, 17, 18
Chapter IV, the U.S. is required to collaborate internationally in the fight against corruption. This includes the extradition of offenders (Article 44), providing mutual legal assistance (Article 46), and enforcing foreign confiscation orders (Article 54).....	13
Chapter V mandates that the U.S. establish procedures for identifying, tracing, freezing, and confiscating proceeds of crime (Article 52). The U.S. must assist other states in returning assets (Article 57) and ensure that its courts can order compensation to victims of corruption (Article 52).....	13

**INTEREST OF AMICUS CURIAE<sup>1</sup>**

1. The Nanjing Municipal People's Procuratorate is a key judicial authority in China, overseeing criminal prosecutions and the protection of legal rights within its jurisdiction. In this case, it has played a central role in addressing the Yiqian Funding Ponzi scheme, which defrauded over 95,000 investors. Defendant Dan Liu, the CEO of Yiqian Funding, fled to the United States after transferring funds from defrauded investors to Founders Group International LLC (FGI) in South Carolina.

The Procuratorate was instrumental in seizing assets linked to the Ponzi scheme within mainland China, including real property, cash, and financial assets, which have been distributed to victims in accordance with Chinese law. However, a significant portion of the fraudulent assets, including investments made outside of China, remains in South Carolina, USA. Due to the absence of a Mutual Legal Assistance Treaty (MLAT) between China and the United States, these assets are beyond the reach of Chinese authorities, complicating the full recovery of the stolen funds.

The Procuratorate seeks to continue fostering international legal cooperation for asset recovery and supports efforts to ensure fair compensation for defrauded

---

1. Pursuant to Supreme Court Rule 37, counsel for amicus curiae states that no counsel for a party authored this brief in whole or in part, and no person, other than amicus curiae or its counsel, made a monetary contribution intended to fund its preparation or submission. All parties were timely notified of the filing of this brief.

investors. Its participation as an amicus curia reflects its commitment to upholding the rule of law, ensuring accountability in cross-border financial matters, and recovering remaining assets in this complex case.

## **INTRODUCTION AND SUMMARY OF ARGUMENTS**

This case involves the fraudulent activities of Liu Dan and other Defendants who orchestrated a Ponzi scheme based in China, involving money laundering and financial crimes under Chinese, U.S., and international law. The Plaintiffs are more than 95,000 mostly China based investors were, defrauded by this scheme, seek the imposition of a constructive trust on real estate properties in South Carolina, purchased using the proceeds from these illegal activities. The Defendants' actions, including money laundering, immigration fraud, and using illicit funds in real estate transactions wherein Liu Dan obtained individual mortgages in his name on investors properties created liquidity to him have had a widespread impact.

The Plaintiffs' class action request seeking equitable relief over the Defendant's constructive trust is supported by both domestic and international legal principles, particularly in the context of asset recovery and Anti-Money Laundering (AML) enforcement. The constructive trust ensures that assets obtained through illegal means, specifically luxury properties in South Carolina, are returned and held in conservatorship by the Plaintiffs. This legal remedy prevents the Defendants from profiting from their fraud, allowing for partial restitution to the victims.



The case centers on South Carolina luxury real estate purchased with proceeds from the Ponzi scheme, which now represent the only realistic means for the Plaintiffs to recover the stolen funds. The imposition of a constructive trust is necessary to trace, seize, and return the assets, as the Defendants have hidden and integrated these funds into the properties. This action is crucial because no other legal avenues are available for recovery, highlighting the urgency of the case.

The fraudulent operation is transnational, with crimes spanning both China and the U.S., involving complex cross-border money laundering. Liu Dan, the principal defendant, obtained a fraudulent EB-1(c) visa, purchased tax haven passports, and engaged in illegal real estate transactions to launder Ponzi scheme funds. His actions illustrate the broader challenge of combating international financial crime and underscore the need for effective AML enforcement and asset recovery processes through the recognition of this class action for the Plaintiffs.

A key legal principle in this case is *lex situs*, which holds that property is governed by the law of the jurisdiction where it is located. Given the South Carolina real estate involved, a constructive trust is the only legal remedy to ensure the stolen assets are returned to the rightful owners, the victims of the Ponzi scheme. Without this remedy, the Defendants could continue to conceal their illicit assets and profit from the fraud.

The case underscores the importance of international cooperation in tackling financial crime. The U.S. legal system, supported by frameworks like the UN Convention Against Corruption (UNCAC) and UN Convention

Against Transnational Organized Crime (UNTOC), plays a critical role in asset recovery, helping ensure that criminals like Liu Dan are held accountable, regardless of where they hide their assets.

The Plaintiffs' pursuit of a constructive trust on the South Carolina properties is a vital step toward asset recovery and enforcement of AML laws. This action will help restore stolen funds to the victims and reaffirm the commitment to upholding the rule of law in the fight against financial crime. Given that the South Carolina properties are the only traceable assets, the constructive trust is the only means for the Plaintiffs to seek fair compensation for their losses.

This case highlights the need for robust enforcement of AML principles and asset recovery laws, and the legal system to permit class actions to seek equitable relief and therefore to better protect the global financial system and ensure that financial criminals are held accountable, regardless of where they attempt to hide their illicit gains.

## **STATEMENT OF FACTS**

This case arises from a massive Ponzi scheme orchestrated by Defendant Liu Dan and his co-conspirator Xiuli Xue ("Xue"), which defrauded over 95,000 investors in mainland China. The scheme falsely promised high returns from real estate investments but instead misappropriated billions of dollars, with a significant portion used to purchase golf courses and luxury real estate in the United States in South Carolina.

A primary recipient of the fraudulent funds was Founders Group International (FGI), a South Carolina-based LLC. FGI transferred these funds to other shell companies, laundering the stolen money through a complex web of transactions to conceal its origins.

In China, Liu Dan was instrumental in this scheme, operating as the ultimate beneficial owner, CEO, and officer of Nanjing Yiqian and Jiangsu Yiqian, the companies through which the Ponzi scheme was conducted. At the same time, Liu fraudulently obtained an EB-1(c) visa by falsely claiming he had been a senior manager at FGI during one of the the three years prior to his application. However, Liu had not worked for FGI during this period he worked instead in Nanjing at Yiqian partnering with Xue in running the company. Xue was convicted in China for her role in the fraudulent activities of Yiqian, sentenced to 15 years in prison after being found guilty of misappropriating investor funds and participating in a scheme that led to the financial loss of more than \$2 billion she had surrendered voluntarily and provided testimony against Defendant Liu. As a result of this misrepresentation to USCIC, his U.S. EB-1 c visa was revoked, and his fraudulent activities in the United States came to light.

Liu's Chinese passport has expired, and he cannot renew it due to an outstanding arrest warrant from the Nanjing Municipal People's Procuratorate. Despite this, Liu has acquired a second citizenship through an investment-based citizenship program in the the tiny Pacific Island, offshore tax haven nation of of Vanuatu, allowing him to travel internationally and evade detection.

Liu currently resides in Charlotte, North Carolina, where he retains control over the real estate properties purchased with the Ponzi scheme's proceeds which remain in a constructive trust. His acquisition of Vanuatu citizenship provides him with the means to remain in the U.S. and avoid extradition, while the stolen assets continue to be concealed in the U.S. legal system.

In China, the Nanjing Municipal People's Procuratorate had seized assets tied to the Ponzi scheme, including property and financial assets within mainland China, and successfully distributed these assets to over 95,000 defrauded investors. However, a large portion of the assets purchased with the fraudulent funds are located outside of China in South Carolina, and are beyond the reach of Chinese authorities due to the absence of a Mutual Legal Assistance Treaty (MLAT) between the U.S. and China.

This lack of cooperation between U.S. and Chinese authorities has allowed the U.S. to become a haven for stolen assets. Liu continues to control the fraudulent real estate investments, despite legal actions in China, and remains in the U.S. unaccountable for his admitted fraud. The absence of an MLAT between the U.S. and China further complicates the recovery of these assets.

Liu's actions illustrate the troubling gap in international legal cooperation that enables fraudsters to retain control of stolen assets in the U.S. The U.S. financial system, lacking adequate safeguards, facilitates the concealment and laundering of criminal proceeds. Without stronger legal mechanisms in the form of this class action for constructive asset recovery and international cooperation, the U.S. risks becoming a sanctuary for foreign criminals and the stolen assets the fraudsters seek to protect.

This case underscores the urgent need for stronger international legal cooperation in the form of a class action to ensure that fraudsters like Liu Dan are held accountable, and that defrauded parties receive restitution. The U.S. should not be a haven for ill-gotten gains, particularly when those funds were stolen from innocent investors abroad. Reforms to enhance cooperation, including facilitating the enforcement of foreign judgments and the return of stolen assets, are essential to combat this growing issue.

## **ARGUMENT**

The relief sought by the plaintiffs in a class action to seek equitable relief of the constructive trust aligns with international law and the domestic laws of both China and the United States, including federal law and the laws of several states, such as South Carolina.

### **I. Money Laundering and Anti-Money Laundering (AML) Regime**

#### **1. Criminality of Money Laundering**

Money laundering involves the process of making illegally obtained funds appear legitimate through a series of transactions designed to conceal their illicit origin. This process typically occurs in three stages:

- a. The initial step is placement, where illicit funds are introduced into the financial system.
- b. Next, the layering which is the process of obscuring the source of the funds through complex financial transactions.

c. The final step is integration, where the “cleaned” money is integrated into the economy, allowing it to be used legally.

Money laundering facilitates a range of other crimes, including tax evasion, market manipulation, and bribery, often creating a breeding ground for corruption. It also undermines the integrity of financial institutions, destabilizes economies, and erodes social morality.

The global community recognized the threat posed by money laundering in the latter half of the 20th century, especially in response to the rise of narcotics trafficking. This led to a widespread international consensus on the need to criminalize and combat money laundering. In 1970, the United States enacted the Bank Secrecy Act (BSA), laying the groundwork for anti-money laundering (AML) efforts in the U.S. The BSA aimed to reform the banking system, preventing the use of anonymous transactions for illicit purposes.

By the 1980s and 1990s, many other countries, including Switzerland and emerging economies, adopted their own AML laws. Switzerland, historically known for its strict banking secrecy, began accepting international AML standards in response to global pressure, requiring banks to disclose the identities of individuals transferring large sums through anonymous accounts.

China’s legal response to money laundering has evolved alongside international efforts. After the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances came into force in 1988, China began to address money laundering more

directly. In 1997, China amended its Criminal Law to include provisions criminalizing money laundering. This was further expanded after the 9/11 terrorist attacks, when the law was amended again to include the laundering of proceeds from terrorist activities.

China's People's Bank of China (PBOC) introduced regulations for financial institutions, requiring them to report large-value and suspicious transactions. These rules, enacted in the early 2000s, established the foundation for China's AML framework. In 2006, China enacted the Anti-Money Laundering Law of the People's Republic of China (AMLL), creating a comprehensive regulatory structure aimed at preventing and punishing money laundering.

Despite these significant legal frameworks, international cooperation remains a major challenge. The lack of effective cooperation between countries hinders the ability to prevent or recover the proceeds of money laundering, particularly when assets are transferred across borders to purchase luxury real estate. For instance, the absence of a Mutual Legal Assistance Treaty (MLAT) between China and the United States complicates efforts to trace, freeze, and recover illicit financial assets, especially those derived from large-scale corruption, ponzi schemes, and other transnational crimes.

The U.S. Department of the Treasury has estimated that \$154 billion in illicit proceeds flow through China annually. In response, the U.S. State Department has classified China as a "Country/Jurisdiction of Primary Concern" with respect to money laundering and financial crimes. Despite these concerns, the lack of transparency

and cooperation among global financial institutions continues to undermine efforts to combat money laundering and recover stolen assets.

Although both China and the United States have pledged to clamp down on the proceeds of foreign crime, a vast amount of illicit assets remains unaccounted for. This ongoing issue highlights the need for stronger international collaboration and better enforcement of AML regulations.

## **2. The Status Quo of Anti-Money Laundering (AML) in the United States**

The United States has long relied on the private sector as the primary line of defense against money laundering. Financial institutions and professionals in regulated sectors are required by law to conduct risk-based due diligence checks on customers. These checks are designed to identify potential criminal proceeds, and suspicious activities must be reported to the FBI via Suspicious Activity Reports (SARs).

The U.S. has also become a major destination for illicit capital, especially during periods of political or economic instability, with corruption and political risk being significant driving factors. For example, in 2016, when Liu Dan used Yiqian money moved their illegally obtained funds out of China, approximately \$700 billion in capital left the country just that year, with \$50-\$90 billion leaving per month.

In particular, the U.S. is the top destination for Chinese businesses seeking foreign real estate



investments, with residential properties accounting for 70% of these purchases. In 2015 alone, overseas buyers spent \$87.3 billion on residential real estate in the U.S. According to Global Financial Integrity, over \$2.3 billion in illicit funds were laundered through U.S. real estate from 2015 to 2020.

Further, an assessment by the U.S. Department of the Treasury found that real estate transactions often involve complicit professionals, legal entities, and nominees who assist corrupt officials in laundering criminal proceeds. Cash transactions, in particular, have become a key method for laundering money in the U.S.

### **3. International Legal Framework for Anti-Money Laundering (AML)**

As globalization has advanced, money laundering has become an increasingly transnational issue. The differences in AML enforcement across countries provide opportunities for cross-border laundering. In response, the United Nations has actively addressed the problem of international money laundering. In 1988, the UN adopted the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which criminalized money laundering linked to narcotics trafficking—the first such international convention.

Since then, the international community has taken further steps. In 1990, the European Council adopted a Convention on Laundering, Search, Seizure, and Confiscation of Proceeds from Crime, and in 1995, the UN issued guidelines for countries to prevent money laundering. The UN General Assembly also passed the

International Convention for the Suppression of the Financing of Terrorism (1999) and the Convention against Transnational Organized Crime (2000), which called for the implementation of AML programs in all state parties. In 2003, the UN Convention Against Corruption reinforced the requirement for stronger AML programs.

Following the 9/11 terrorist attacks, counter-terrorism financing became closely linked with AML efforts. In response, the U.S. Congress passed the PATRIOT Act, strengthening anti-terrorism financing rules, which were mirrored by similar legislation in other countries. The Financial Action Task Force (FATF), established by the G-7 Summit in 1989, set out 40 Recommendations to combat money laundering, which became the global standard for AML legislation.

The FATF's 40 Recommendations include requirements for countries to criminalize money laundering, strengthen financial supervision, establish Financial Intelligence Units (FIUs), and promote international cooperation in the investigation and prosecution of money laundering. These recommendations have been widely adopted and serve as the guiding framework for AML efforts around the world.

Despite this progress, the international legal framework on AML is still fragmented. While there are strong commitments to combat money laundering, there is no binding treaty that mandates specific measures to prevent the facilitation of money laundering by states. Instead, international norms have emerged through customary international law, particularly through the FATF and related conventions, which prohibit states from facilitating the laundering of proceeds from foreign crimes.

The FATF's Risk-Based Approach emphasizes that countries must tailor their AML measures based on the specific risks they face. This approach encourages nations, especially major financial centers, to ensure that their financial systems do not facilitate criminal activity. Countries with significant economic activity should bear a greater responsibility for preventing money laundering and its associated risks.

## **II. The Responsibility of the United States within the International Legal Framework**

### **1. United Nations Convention against Corruption (UNCAC)**

The UNCAC seeks to combat corruption globally by promoting cooperation, accountability, and integrity in both public and private sectors. As a signatory, the United States is obligated to implement laws and measures that prevent, detect, punish, and eradicate corruption.

- a. Under Chapter IV, the U.S. is required to collaborate internationally in the fight against corruption. This includes the extradition of offenders (Article 44), providing mutual legal assistance (Article 46), and enforcing foreign confiscation orders (Article 54).
- b. Chapter V mandates that the U.S. establish procedures for identifying, tracing, freezing, and confiscating proceeds of crime (Article 52). The U.S. must assist other states in returning assets (Article 57) and ensure that its courts can order compensation to victims of corruption (Article 52).

## **2. United Nations Convention against Transnational Organized Crime (UNTOC)**

The UNTOC requires the U.S. to adopt measures to address transnational organized crime, including participation in organized criminal groups and money laundering.

- a. Articles 13-21 of the Convention require the U.S. to establish a legal framework for the extradition of offenders and to provide mutual legal assistance in criminal investigations and prosecutions.
- b. Under Article 27, the U.S. must cooperate with other nations in investigations and prosecutions of organized crime offenses, sharing information and evidence.
- c. Articles 12-14 obligate the U.S. to adopt procedures for the identification, seizure, and confiscation of proceeds of crime. The U.S. must also assist in the return or disposal of criminal assets in accordance with the Convention.

## **3. International Convention for the Suppression of the Financing of Terrorism**

The International Convention for the Suppression of the Financing of Terrorism mandates the U.S. to prevent and criminalize the financing of terrorism, while cooperating internationally to suppress terrorist financing.

- a. Article 8 requires the U.S. to detect and freeze funds intended for terrorist acts.
- b. Articles 9-11 require the U.S. to investigate individuals involved in terrorist financing and, where applicable, ensure their prosecution or extradition.
- c. Article 12 mandates the U.S. to cooperate with other states in criminal investigations related to terrorist financing, sharing relevant evidence and information.

#### **4. Financial Action Task Force (FATF) Recommendations**

As a member of the FATF, the U.S. is obligated to comply with the FATF's 40 Recommendations, a global framework to combat money laundering and terrorist financing.

- a. The U.S. must implement Anti-Money Laundering (AML) measures in line with FATF's Recommendations, including customer due diligence, record-keeping, and detecting suspicious financial activities (Recommendations 1-3, 5-22).
- b. Under Recommendations 35-40, the U.S. must provide and receive mutual legal assistance in criminal matters, share financial intelligence, and cooperate in the freezing, seizure, and confiscation of criminal proceeds.

### **III. U.S. Policies as Implemented by the Treasury Department's Financial Crimes Enforcement Network (FinCEN)**

The U.S. Treasury Department, through the Financial Crimes Enforcement Network (FinCEN), has recognized vulnerabilities in the real estate sector, where illicit actors often exploit the system to launder criminal proceeds. This includes the use of shell companies, cash purchases, wire transfers from jurisdictions with strict banking secrecy, and intermediaries with limited AML/CFT obligations.

Since 2016, Geographic Targeting Orders (GTOs) have been issued to title insurance companies, requiring them to identify the beneficial owners behind legal entities used in all-cash real estate transactions. Initially, these orders targeted high-end residential properties in cities like New York and Los Angeles, but by 2022, they were expanded to other major markets, including Washington, D.C., Virginia, and Florida.

While GTOs have provided valuable insights into illicit financial risks, they are considered a temporary solution. In 2023, FinCEN proposed new rules that would require title insurance agents, settlement agents, and attorneys to file reports identifying beneficial owners of entities purchasing property without financing. If enacted, these rules would help further combat money laundering in the real estate market, making it more difficult for illicit actors to conceal the source of funds.

In December 2021, the Biden Administration released the U.S. Strategy on Countering Corruption, highlighting the U.S.'s responsibility to address gaps in its AML/

CFT regime. The strategy focuses on strengthening transparency in real estate transactions, collecting beneficial ownership information, and enhancing global cooperation to close illicit financial havens.

#### **IV. Defendants' Actions Under the UN Convention Against Corruption, to Which Both China and the United States Are State Parties**

The UNCAC, the only legally binding international anti-corruption treaty, provides a framework to combat money laundering. China signed the Convention in December 2003, while the U.S. became a party in October 2006.

- a. Article 14 of the UNCAC requires state parties to implement measures to prevent money laundering, including customer identification, due diligence, and suspicious activity reporting.
- b. Articles 31 and 35 mandate that state parties cooperate in asset confiscation, seizure, and freezing, as well as providing compensation for damages.
- c. Article 57 focuses on the return of assets to their rightful owners, while Article 46 requires full mutual assistance in investigations and prosecutions.

The actions of the defendants, particularly in laundering funds through real estate transactions, highlight the relevance of the UNCAC's provisions, especially those aimed at combating corruption in both the public and private sectors.

## **V. The Status of Asset Recovery in International Cooperation and Mutual Legal Assistance Concerning AML**

Economic globalization has driven the rise of transnational crime, making the flight of illicit assets a growing global issue. The problem of asset flight is particularly severe in developing countries, where estimates suggest that between \$20 billion and \$40 billion in illicit assets are transferred abroad annually. The ability of individual nations to address this challenge on their own is increasingly insufficient. Robust international cooperation is crucial to effectively combat transnational financial crimes, including money laundering, corruption, and asset flight.

In the realm of Anti-Money Laundering (AML), asset recovery plays a central role in global efforts to combat money laundering. Recovering the proceeds of illicit activities is not only a legal requirement but also a moral imperative. International frameworks, such as the United Nations Convention Against Corruption (UNCAC) and the United Nations Convention Against Transnational Organized Crime (UNTOC), provide essential legal bases for international cooperation in identifying, tracing, seizing, and returning illicit assets.

UNCAC—ratified by 186 countries, including both China and the United States—is a crucial instrument in the recovery and return of stolen assets. Article 57 of the UNCAC mandates the return of confiscated assets to the country of origin once they have been seized, underscoring the importance of cooperation between states in the asset recovery process. Additionally, Article 31 allows for



cooperation in the freezing, seizure, and confiscation of assets derived from corruption.

Similarly, UNTOC, through Articles 12 to 14, creates a robust framework for international cooperation to identify, trace, seize, and return criminal proceeds. These conventions align with the International Convention for the Suppression of the Financing of Terrorism, which mandates mechanisms to freeze and confiscate assets linked to terrorist activities. Taken together, these instruments reflect a collective commitment to ensuring criminals do not benefit from the proceeds of their illicit activities.

At the domestic level, the United States has enacted laws such as the Money Laundering Control Act of 1986 and the Patriot Act to support the tracing, seizure, and forfeiture of assets linked to money laundering and related crimes. These U.S. laws are consistent with the Financial Action Task Force (FATF) Recommendations, which call for strong international cooperation in asset recovery. Recommendation 38 urges nations to collaborate in the return of stolen assets and sets the groundwork for multilateral efforts to address transnational financial crimes.

For the U.S., the fight against asset flight is not only a legal obligation but also a strategic national interest. The ability to recover and return stolen assets ensures financial stability, strengthens the rule of law, and helps maintain the integrity of the international financial system. As a leading global power, the United States must continue to lead the way in international AML efforts, supporting developing countries and ensuring that financial crimes do not go unpunished.

## **VI. Under International Law: Use of the Constructive Trust and the Law of the Place Where the Properties Are Located**

The issue of constructive trusts in international asset recovery has become increasingly important in the context of money laundering and financial crime. A constructive trust is a legal remedy used when property is obtained through fraudulent or illegal means, with the rightful ownership being transferred to the victim, even if legal title is held by the wrongdoer. Constructive trusts allow courts to “construct” an equitable remedy that restores property to its rightful owner, even if the wrongdoer attempts to disguise or hide the asset.

International law favors the principle that the law of the jurisdiction where the property is located (*lex situs*) should apply in cases involving the disposition of assets. This principle is particularly important in cross-border cases, where assets are located in different countries, and international legal frameworks must align to ensure effective asset recovery.

While the Hague Trusts Convention—which is a key instrument for resolving cross-border trust disputes—does not specifically address constructive trusts, it supports the principle of applying the law of the situs. The U.S. is not a party to this Convention, but the principle of *lex situs* still governs cases of asset recovery. This means that if criminal assets are located in the U.S., U.S. law applies, and the assets can be seized and returned to the victim state in accordance with international legal obligations.

In China, the Trust Law of 2001 provides the legal basis for the establishment and enforcement of trusts, including constructive trusts. This legal framework aligns with the U.S. approach to asset recovery and ensures that assets unlawfully obtained—including proceeds from money laundering—can be legally seized and returned to the rightful owner. Given the substantial international coordination required in cross-border asset recovery, the principles of *lex situs* and the recognition of constructive trusts play a key role in ensuring that illicitly obtained assets are not protected simply because they are located in another jurisdiction.

## **VII. A Call for Stronger Enforcement of AML by This Court of Appeal**

The Amicus Brief urges this Court of Appeal to enhance the enforcement of AML measures and prioritize the return of illicitly obtained assets. The Defendants in this case orchestrated a Ponzi scheme, engaging in large-scale money laundering that violated Chinese, U.S., and international law. They should not be allowed to profit from their illegal activities; instead, the proceeds of their crimes should be returned to the victims and repatriated to the rightful jurisdictions.

### **i. Necessity of Strengthened AML Enforcement**

AML enforcement is critical for safeguarding both U.S. national interests and the global public interest. Sound AML practices prevent illicit financial flows that undermine the integrity of financial markets. The effectiveness of AML laws is vital not only for ensuring economic stability but also for protecting the public

reputation of the U.S. government and its financial institutions. Effective enforcement of AML frameworks strengthens the U.S.'s commitment to international conventions, maintains a fair marketplace, and promotes international cooperation.

Furthermore, strong AML enforcement protects U.S. financial institutions from being exploited as vehicles for criminal activities. The risks of associating with illicit financial flows are substantial, including reputational damage and legal liability for U.S. financial institutions. Robust AML enforcement helps mitigate these risks, ensuring that the U.S. financial system remains secure and trusted on the global stage.

## **ii. Cracking Down on Money-Laundering Crimes**

The fight against money laundering is an ongoing, long-term effort. It requires both domestic and international cooperation to effectively disrupt the financial networks that support criminal enterprises. Money laundering is intrinsically linked to other serious crimes such as narcotics trafficking\*\*, terrorism financing, and organized crime. To dismantle criminal organizations, it is necessary to cut off their financial resources by identifying, seizing, and returning illicit funds to their rightful owners.

Effective AML enforcement and international cooperation help ensure that criminals are denied the ability to hide and transfer the proceeds of their illicit activities across borders. This makes it harder for them to continue engaging in criminal behavior and serves as a deterrent to others who might consider similar schemes.

### **iii. Preventing the Spread of Grave Criminal Activities**

Money laundering supports and sustains a wide range of criminal activities, including terrorism, drug trafficking, and organized crime. By focusing on AML, governments can disrupt the financial foundations of these dangerous activities. Cutting off the flow of illicit funds weakens criminal organizations and helps prevent the spread of violence, terrorism, and other forms of societal instability.

### **iv. Protecting Financial Institutions and Ensuring Systemic Stability**

Financial institutions play a pivotal role in the global economy, but their involvement in money laundering puts them at risk. If financial institutions fail to adhere to AML regulations, they not only jeopardize their own stability but also contribute to broader systemic financial risks. Proper AML practices are essential for safeguarding the credibility of financial institutions, ensuring that they are not complicit in criminal enterprises.

AML enforcement is vital for financial stability, as it prevents financial institutions from becoming conduits for illegal funds. It helps reduce the risk of illicit financial activity within the system, ensuring the smooth and transparent operation of markets.

## SUMMARY AND CONCLUSIONS

The actions of the Defendants in this case—operating a Ponzi scheme—amount to money laundering, a serious offense under both Chinese law, U.S. law, and international law. The Plaintiffs’ request control over the Defendant’s constructive trust on properties purchased with the proceeds of these crimes aligns with both domestic and international law and reflects the goals of ensuring justice and making the victims whole.

Furthermore, as this case illustrates, money laundering and financial fraud are not limited by borders. The principles of constructive trust and *lex situs* ensure that assets obtained through illegal means can be recovered and returned, irrespective of where they are located. The U.S. legal system, in concert with international frameworks like UNCAC and UNTOC, has the tools necessary to trace, seize, and return illicit assets. It is essential that the U.S. continue to enforce its AML laws rigorously and uphold its international commitments to combat money laundering.

The case of Liu Dan, who fraudulently obtained an EB-1(c) visa, purchased an offshore tax haven passport citizenship to Vanuatu, and engaged in fraudulent luxury real estate transactions in South Carolina involving personal mortgages, underscores the urgent need for robust enforcement of anti-money laundering (AML) and asset recovery principles. His actions, which involve both misuse of the U.S. immigration system, an international tax haven, and illegal financial activities, highlight the broader scope of the issue and emphasize the importance of continued international cooperation to hold financial criminals accountable.

In conclusion, asset recovery and AML enforcement under a class action brought by the Plaintiffs for equitable relief of the constructive trust is critical to safeguarding the integrity of the global financial system. This Court is urged to take a strong stance on AML enforcement by ensuring the return of illicit assets and making clear that those who engage in fraudulent activities—like Liu Dan—will not be allowed to profit from their crimes.

Respectfully submitted,

EDWARD E. LEHMAN

*Counsel of Record*

LEHMAN, LEE & XU

3rd Floor,

Hanhai International Building

No. 13, Jiuxianqiao Road,

Chaoyang District

100015 Beijing, China INT 00000

elehman@lehmanlaw.com

*Counsel for Amicus Curiae*