No. _____

IN THE SUPREME COURT OF THE UNITED STATES

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DU TRUONG NGUYEN,

Petitioner,

-v-

UNITED STATES OF AMERICA,

Respondent.

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

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QUESTION PRESENTED FOR REVIEW

There is a Circuit split between the D.C. and Seventh Circuits on one side, and the Ninth Circuit on the other, about what the government needs to prove to establish concealment money laundering under 18 U.S.C. § 1956(a)(3)(B). The question presented is: What is required to prove concealment money laundering?

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Petitioner Du Trong Nguyen respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINION BELOW

In an unpublished memorandum disagreeing with the rationale of the D.C. and Seventh Circuits, the Ninth Circuit affirmed the petitioner's convictions. *United States v. Nguyen*, No. 23-2207 (9th Cir. 2025).[1]

[1] A copy of the memorandum is attached as Appendix A.

JURISDICTION

On March 11, 2025, the Ninth Circuit filed its memorandum decision. The Court has jurisdiction under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

A. The sting.

This case began with a simple sting operation involving:

- Jimmy Yip, a longtime paid government informant. 2-ER-38-40, 65, 82.2
- FBI Special Agent Omar Trevino, who oversaw Mr. Yip's undercover work and designed the sting. 2-ER-38-40.
- Du Truong Nguyen, the petitioner.

On January 24, 2011, at Agent Trevino's direction, Mr. Yip took $250,000 in cash to a Bank of America branch. 2-ER-25. He was there to complete a transaction with other targets not charged in this case. 2-ER-25. Mr. Yip planned to give the cash to the targets and receive a cashier's check for the same amount, payable to his purported company, United Business Associates (in reality, the FBI had opened an account in the name of this fake company). 2-ER-10, 41-42, 46, 51, 88. For reasons that do not appear in the record, the

2 The Excerpts of Record "ER" are on file with the Ninth Circuit.

targets could not obtain the $250,000 cashier's check, and the deal was in jeopardy. 2-ER-46, 90.

Mr. Yip waited several hours before one of these targets called Mr. Nguyen, who had a preexisting business account with Bank of America. 2-ER-26, 89. When Mr. Nguyen showed up at the bank, he was introduced to Mr. Yip – who he had not previously met – and they waited in line for the teller. 2-ER-26, 96-97. Mr. Nguyen deposited the $250,000 into his business account and obtained a cashier's check for the same amount. 2-ER-26, 49-50, 89. In full view of the teller, Mr. Nguyen handed the check to Mr. Yip. 2-ER-98.

Because the transaction exceeded $10,000 in cash, Bank of America generated a currency transaction report that it sent the government in the ordinary course of its business. 2-ER-31-32, 53. The report listed Mr. Nguyen as the person who conducted the transaction and provided his address and social security number. 2-ER-32; 3-ER-279.

After this transaction, Agent Trevino directed Mr. Yip to pursue a further deal with Mr. Nguyen. 2-ER-26. On February 4, 2011, Mr. Yip met Mr. Nguyen at a Starbucks. 2-ER-110. During the meeting, Mr. Yip said the "money that I have is corruption money from China." 2-ER-110. Mr. Nguyen raised the possibility of future transactions, and on March 17, 2011, they met again. 2-ER-112, 117-18. This time, Mr. Yip said his cash was

drug money from "cocaine and ice." 2-ER-118-19.

Eleven days later, Mr. Nguyen and Mr. Yip went to Bank of America to conduct another transaction. 2-ER-56, 86, 125. Mr. Yip gave Mr. Nguyen $25,000 in cash and a $1,500 fee. 2-ER-128. They proceeded to the bank teller, and after providing his social security number, Mr. Nguyen again obtained a cashier's check payable to United Business Associates from his business account, which he gave to Mr. Yip. 2-ER-56-58, 66-67, 132; 3-ER-274-75. There were no further transactions. 2-ER-62-64.

B. District court proceedings.

Nearly five years later, the government filed a two-count indictment against Mr. Nguyen. 2-ER-9. Count 1 charged conspiracy to commit money laundering in violation of 18 U.S.C. § 1956(h). 2-ER-9. Count two charged concealment money laundering in violation of 18 U.S.C. § 1956(a)(3)(B). 2-ER-17. For count two, the specific transaction alleged was "[t]he exchange of a cashier's check payable to United Business Associates, dated March 28, 2011, number 424251097, in the amount of $25,000, at Bank of America, for $25,000 in cash, plus a $1,500 fee." 2-ER-17.

A jury convicted Mr. Nguyen. 1-ER-7. The district court imposed a 24-month sentence. 1-ER-2.

C. The appeal.

On appeal, among other claims, Ms. Nguyen argued the government failed to prove the requisite concealment element under section 1956(a)(3)(B). The subject $25,000 transaction at Bank of America – the sole basis for the charge – involved nothing more than a straightforward transfer of what Mr. Nguyen believed was unlawfully obtained funds from drug trafficking. The money trail from cash to check was easily traced to Mr. Nguyen, and there were no affirmative steps to conceal the source of the funds, such as lying to the bank. The transaction, therefore, wholly lacked the convoluted character associated with concealment money laundering. Thus, Mr. Nguyen's money laundering conviction could not stand.

The court of appeals rejected his argument: "Relying on decisions by the Seventh and D.C. Circuits, Nguyen narrowly contends that a rational jury could not find beyond a reasonable doubt that he had the intent to conceal because the laundering transaction was easily traceable to him. But the government was not required to prove that Nguyen intended to conceal his own identity. Rather, under § 1956(a)(3)(B), the government needed to prove that Nguyen intended to conceal the 'nature, location, source, ownership, or control' of the money itself. Here, the government's evidence sufficiently established that Nguyen intended to conceal that the money was drug money from Yip."

APP:A at 4. Thus, "a rational jury could conclude that Nguyen committed money laundering." APP:A at 4.

REASON FOR GRANTING THE PETITION

This case presents an opportunity to resolve the Circuit split between the D.C. and Seventh Circuits, and the Ninth Circuit, about what the government needs to prove to establish concealment money laundering.

In count two, the government charged Mr. Nguyen with concealment money laundering in violation of 18 U.S.C. § 1956(a)(3)(B) for a specific transaction: "The exchange of a cashier's check payable to United Business Associates, dated March 28, 2011, number 424251097, in the amount of $25,000, at Bank of America, for $25,000 in cash, plus a $1,500 fee." 2-ER-17.

Section 1956(a)(3)(B) provides: "Whoever, with the intent—to *conceal or disguise the nature, location, source, ownership, or control of property* believed to be the proceeds of specified unlawful activity . . . conducts or attempts to conduct a financial transaction involving property represented to be the proceeds of specified unlawful activity . . . shall be fined under this title or imprisoned for not more than 20 years, or both."

This type of money laundering is called "concealment money laundering" because it requires concealment or disguise. "In its classic form, the money launderer folds ill-gotten funds into the receipts of a legitimate business."

United States v. Adefehinti, 510 F.3d 319, 322 (D.C. Cir. 2007). The D.C. and Seventh Circuits have further explained, "the necessary intent to conceal requires something more than the mere transfer of unlawfully obtained funds . . . Rather, subsequent transactions must be specifically designed to hide the provenance of the funds involved." *Id.; see also United States v. Esterman*, 324 F.3d 565, 570-72 (7th Cir. 2003).

For this reason, "cases in which courts have upheld money laundering convictions have in common the existence of more than one transaction, coupled with either direct evidence of intent to conceal or sufficiently complex transactions that such an intent could be inferred." *Adefehinti*, 510 F.3d at 322-23. As *Adefehinti* and *Esterman* explained, the list of cases where courts have upheld money laundering charges is instructive:

> Cases concluding that the line has been crossed into the "money laundering" territory include *United States v. Thayer*, 204 F.3d 1352, 1354-55 (11th Cir. 2000) (**funneling illegal funds through various fictitious business accounts**); *United States v. Majors*, 196 F.3d 1206, 1212-13 (11th Cir. 1999) ("**elaborate shell game" involving multiple inter-company transfers with a variety of signatory names**); *United States v. Willey*, 57 F.3d 1374, 1387 (5th Cir. 1995) ("**highly unusual" transactions involving cashier's checks, third party deposits, and trust accounts used to disguise source of funds**); *United States v. Garcia-*

Emanuel, 14 F.3d 1469, 1476-79 (10th Cir. 1994) (**land purchased in name of restaurant to make it appear that business was source of wealth and truck purchased in wife's name for stated purpose of deceiving IRS**); *United States v. Campbell*, 977 F.2d 854, 858 n.4 (4th Cir. 1992) (**reduction in price for sale of house combined with under-the-table payment**); *United States v. Beddow*, 957 F.2d 1330, 1334-35 (6th Cir. 1992) (**use of "front man" and "convoluted financial dealings" to invest in emeralds and a charter boat, designed to disguise ownership and evade transaction reporting requirements**); *United States v. Lovett*, 964 F.2d 1029, 1033-37 (10th Cir. 1992) (**convoluted financial transactions leading up to purchase of house, combined with misleading statements regarding nature and source of purchase money**).

Adefehinti, 510 F.3d at 323; *Esterman*, 324 F.3d at 572.

"At the other end of the spectrum are typically simple transactions that can be followed with relative ease[.]" *Adefehinti*, 510 F.3d at 322 (citing *United States v. Olaniyi-Oke*, 199 F.3d 767, 770-71 (5th Cir. 1999)).

On appeal, Mr. Nguyen explained that his case fell at this other end of the spectrum because it would be hard to conceive of a more straightforward transaction to follow. At a bank teller in full view of the public, he exchanged cash for a cashier's check using his own business account and social security number with Mr. Yip standing right next to him in full view of the surveillance

camera and knowing that the bank would complete a currency transaction report. That type of open transaction has none of the hallmarks of concealment money laundering.

Mr. Nguyen, for instance, did not use false accounting to make it seem like the cash came from a legitimate business source. There was no elaborate shell game involving multiple inter-company transfers. There were no highly unusual transactions. There were no property purchases with false names. There were no misleading statements about the source of the money, etc.

In the D.C. and Seventh Circuits, this would be outcome determinative in Mr. Nguyen's favor because, as just noted, "the necessary intent to conceal requires something more than the mere transfer of unlawfully obtained funds," but here that "something more" did not exist. *Adefehinti*, 510 F.3d at 322.

In *Adefehinti*, for instance, the defendant was convicted of concealment money laundering based on "the disposition of a settlement check for $ 41,010, which was payable to 'Mohamed Massaqudi,' an evidently fictional seller. *Id.* at 322. The D.C. Circuit vacated the defendants' convictions, explaining: "There is no evidence that [the defendants] took steps to disguise or conceal the source or destination of the funds. Even assuming the check's original endorsee--Bernard Adeola--was a fictional character, the funds never entered his account, and the check expressly indicated a link to W.H.V. Realty, a firm

that could easily be tied to [the defendants]." *Id.* at 323.

The court continued: "An observer who reads the endorsement on the initial check and studies the names and numbers on the subsequent deposit slips and checks *could discern the money trail with ease*. The record has no suggestion that the prosecutors and law enforcement agents had any difficulty doing so. *All the transactions conspicuously lack the convoluted character associated with money laundering*." *Id.*

Similarly, in *Esterman*, 324 F.3d at 571, the Seventh Circuit vacated the defendant's money laundering conviction because he "made no effort to disguise or conceal either his withdrawals from the [subject] account or the destinations of the funds. There was nothing complicated about his disposition of the funds: to the contrary, he simply made deposits into other bank accounts that were correctly identified and he engaged in some retail transactions." The court further noted that "prosecutors easily traced [the defendant's] transfers from one account to the other," *id.* at 572, and there were no "irregular transfers that were calculated to evade detection." *Id.* at 571. As such, the court concluded concealment "element is lacking in [the] transactions[.]" *Id.*

Here, even more so than *Adefehinti*, it was easy to discern the money trail based on Mr. Nguyen's use of his own account and identification. And

the sole charged transaction conspicuously lacked the convoluted character associated with money laundering. Further, like *Esterman*, Mr. Nguyen made no effort to disguise or conceal either his withdrawal from the subject account or the destinations of the funds.

The Ninth Circuit, however, rejected the reasoning of *Adefehinti* and *Esterman*. It concluded that regardless of how easy it was to trace the transaction, the government could prove concealment money laundering simply by establishing that "Nguyen intended to conceal that the money was drug money from Yip." APP:A at 4.

Because that conclusion directly conflicts with *Adefehinti* and *Esterman*, it creates a split of authority on an important issue worthy of this Court's review. The law is now unsettled as to whether concealment money laundering "requires something more than the mere transfer of unlawfully obtained funds." *Adefehinti*, 510 F.3d at 322. In the D.C. and Seventh Circuits the answer is yes, while in the Ninth Circuit the answer is no. Accordingly, defendants in Los Angeles, Seattle, or San Francisco are treated differently than defendants in Chicago or Washington D.C. This Court should bring uniformity to the law.

CONCLUSION

The Court should grant the petition for a writ of certiorari to resolve this Circuit split.

Respectfully,

Dated: April 15, 2025

s/ Devin Burstein

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