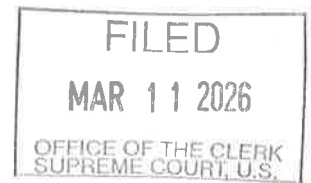


00

ORIGINAL

No. 25-6616

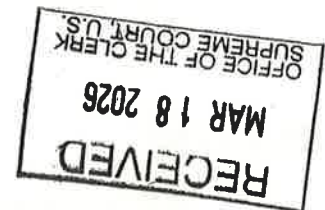


**IN THE
SUPREME COURT OF THE UNITED STATES**

UNITED STATES OF AMERICA,
PLAINTIFF-APPELLEE,

Vs.

OKECHUKWU AMADI,
Defendant-Appellant



PETITION FOR PANEL REHEARING AND REHEARING EN BANC

OKECHUKWU 'DESMOND' AMADI

1572 GATEWAY ROAD

CALEXICO, CALIFORNIA 92231

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....

INTRODUCTION.....1

- I. The Supreme Court in two decisions that addressed the issue of concealment under money laundering statute held that the government is required to prove that the purpose not the effect of a money laundering transaction must be to conceal the provenance of the funds.
- II. The Supreme Court held in two cases of precedent that were decided after appellant's conviction that for a crime to reach a wire fraud statute, the government is required to prove that there was an identifiable victim deprived of a property interest.

ARGUMENTS.....2

1. The government failed to prove the proceeds element and therefore failed to carry its burden of proving that appellant "knew" about the endeavor to conceal the proceeds by way of laundering.
2. The government failed to prove the concealment element consistent with the Supreme Court holding in Ness and Cuellar.
3. The government failed at appellant's sentencing to institute a Jury special finding to determine the amount of funds laundered for Restitution and forfeiture purposes.
4. The Government failed to articulate a scheme with the purpose of obtaining money or property that deprived an 'identifiable victim' of a property interest. The Supreme court decided two cases after appellant's conviction that have significant implications for appellant's conviction. See Kelly v. United States, 590 U.S 391 and Ciminelli v. United States 598 U.S.306.

TABLE OF AUTHORITIES

CASES

Cuellar v. United States

553 U.S. 550, 128 S.Ct. 1994, 170 L.Ed.2d 942 (2008)

Kelly v. United States, 590 U.S. 391 (May 7, 2020)

Ciminelli v. United States

598 U.S. 306 (May 11, 2023)

United States v. Garcia

587 F.3d 509 (Dec 2009)

Huezo, 546 F.3d at 179

Ness

565 F.3d 73, 78 (2d Cir. 2009)

United States of America vs Lisette Lopez

75 F.4th 1337 (August 7, 2023, 11th Circuit)

David Whitfield v. United States

543 U.S. 209, 125 S.Ct. 687; 160 L.Ed.2d 611; 2005 U.S. LEXIS 625; 73 U.S.L.W. 4053; 18 Fla.L.

Taylor v. United States, 495 U.S. 575, 110 S.Ct. 2143, 109 L.Ed.2d 607 (1990)

United States v. Santos, 553 U.S. 507, 128 S.Ct. 2020, 170 L.Ed.2d 912, 2008 U.S. LEXIS 4699 (Jan 11 2005)

United States v. Sciablabba,

282 F.3d 475 (2002)

Chowdury v. INS 249 F.3d 970 (2001)

United States vs Esterman, 324 F.3d 565

Nijhawan v Holder

557 U.S 29 (2009)

Munez-Morales v. Att'y Gen of US,

379 Fed.Appx.210,215 (3d Cir.2010)

United States v. Benyo

384 f. supp.2d 909,914 (E.D Va 2005)

United States v. Ivanchukoy,

405 f. Supp.2d 708, 712-13 (E.D.Va 2005)

INTRODUCTION

The Supreme Court in explaining the concealment prong of the money laundering statute engaged in interpreting the analogous transportation provision of the money laundering statute, which prohibits the transportation of certain criminal proceeds into or out of the United States knowing that such transportation is designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership or the control” of the funds, 18 U.S.C.S § 1956 (a)(2)(B)(i). The Supreme Court held that the statute requires proof that the purpose- not merely effect of the transportation was to conceal or disguise a listed attribute of the funds. The Court held that “In the context of the money laundering statute, merely hiding funds during transportation is not sufficient to violate the statute even if substantial efforts have been expended to conceal the money”. Rather, the Supreme Court has focused on the word “design” in the statutory requirement that the transportation be designed in whole or in part to conceal or disguise a listed attribute of the money and has reasoned that “design in that context must mean purpose or plan, i.e., the intended aim of the transportation being to conceal or disguise a listed attribute. In the same vein, to prove concealment within the transaction money laundering context, the same rationale applies with equal force, one has to make a distinction between why a series of subsequent transactions, following an initial transaction were executed. The ‘purpose’ of these subsequent transactions must be to conceal the original wire transfer. Courts have held that there has to be a clear separation between an initial transaction that represents the anterior crime and subsequent transactions that are designed to conceal the wire from the alleged fraudulent crime or the initial transaction.

Importantly, in two cases of precedent namely *Ciminelli v. United States* 598 U.S. 306 (May 11, 2023) and *Kelly v. United States* 590 U.S. 391 (May 7, 2020), both of which have significant implications for Appellant’s case, the Supreme court also outlined the burden the government had to carry in order to prove a crime under the Statute 18 U.S.C §1343. In *Ciminelli*, the Supreme Court decided whether the Second Circuit’s longstanding ‘right to control’ theory of fraud describes a valid basis for liability under the federal wire fraud statute, which criminalizes the use of interstate wires for “any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretense, representations, or

promises.” 18 U.S.C. § 1343. The Supreme court held that the federal fraud statutes criminalize only schemes to ‘deprive people’ of traditional ‘property interest’. In Kelly, the Supreme court reversed a conviction under the federal wire fraud statute and in doing so held that “because the scheme did not aim to obtain money or property, Baroni and Kelly could not have violated the federal-program fraud or wire fraud laws.” The Supreme court held that the Government had to show that Baroni and Kelly engaged in deception, but that an object of their fraud was money or property. Appellant asserts that the government failed to articulate a scheme with the purpose of obtaining money or property that deprived an identifiable victim of a property interest. In appellant’s case, the government in failing to identify a victim failed to prove that a ‘property interest’ was an object of the fraud.

ARGUMENTS

1. The government failed to prove the proceeds element and therefore failed to carry its burden of proving that appellant “knew” about an endeavor to conceal the proceeds by way of laundering.

The 11th Circuit Court of Appeal in its ruling in United States of America vs Lisette Lopez 75 f. 4th 1337 (11th Circuit 2023) sheds light on the application of the categorical approach to a conspiracy crime, specifically 18 U.S.C.S § 1956 (h). The Court in its ruling held that 18 U.S.C.S 1956 and 18 U.S.C.S § 1956(a)(1)(B) did not categorically involve moral turpitude. The Chief Judge, William Pryor in his opinion described this case as one that required the Court to decide how to apply the categorical approach to a Conspiracy crime- in the words of the Chief Judge “a question of first impression in our Circuit”. The ruling in this case is significant as appellant will demonstrate below how the bold step taken by the 11th circuit set a precedent with significant implications for appellant’s case. The court delved into the knowledge element of the statute to determine whether a person charged under 18 U.S.C.S§ 1956(h) could be held culpable of committing a crime of moral turpitude within the immigration context.

The Supreme Court in Taylor v. United States adopted the “categorical approach”. The Court guides us to look only to the statutory definitions, i.e., the elements, of a defendant’s offense, and not the particular facts underlying the conviction. If the relevant statute has the same elements as the “generic crime”, then the conviction is a “categorical match”. However, when the statute sweeps more broadly than the

generic crime, a conviction under that law cannot be a 'categorical match'. See *United States vs Lisette Lopez*, 75 F.4t 1337 (August 2023).- finding that the knowledge element in 1956(h) is not a categorical match for the alternative sets of elements in a substantive money laundering statute and therefore is broad. Furthermore, the Lisette court found that the least culpable conduct was structuring a transaction that involves proceeds of unlawful activity to avoid a reporting requirement, under subpart (ii), constitutes the least culpable conduct prohibited by § 1956(a)(1)(B). The court held that "the structuring and reporting of financial transactions has no inherent moral significance". The significance of this ruling cannot be overemphasized, the 11th Circuit homed in on the 'knowledge element' and the conduct which represents the act that runs afoul of the law. The Court delved into its analysis of Section 1956(a)(1)(B)(i) and section 1956(a)(1)(B)(II), concluding that both outline two 'means' of committing the same "knowing-concealment" crime. Conviction under both clauses requires proof of the same mens rea: Knowledge. 18 U.S.C § 1956 (a)(1)(B). The difference lies in what facts the defendant knew about the nature and purpose of the transaction and funds at issue. The takeaway from this legal reasoning raises serious constitutional concerns especially taken into consideration how a person charged under the statute of money laundering 18 U.S.C§ 1956 (h) and 18 U.S.C. §1956 (a)(1)(B) could not be held culpable within the Immigration context but yet could be held criminally guilty, beyond a reasonable doubt, under the same statute of money laundering even when the proceeds element was not proven by the government at the trial.

The Supreme Court in *David Whitfield v United states* 543 U.S 209;125 S.Ct.687;160 L.E.2d 611; 2005 U.S LEXIS 625; 73 U.S.L.W. 4053;18 Fla. L, a federal grand jury indicted several defendants on charges including conspiracy to launder money, in violation of § 1956(h). The indictment described, in general terms, the "manner and means" allegedly used to accomplish the conspiracy's objective. In other words, "knowledge' of the improper purpose is the means by which the transaction was rendered illicit as the Lisette Court points out, it boils down to what the person knew about the crime in question. As Lisette Court held, as is relevant here, the question is what the person knew about the crime in question.

In appellant's case, the fund at issue was \$230,000 which was wired into an account named U.E (Entity), representing Count two of the indictment (See Exhibit A). The Government identifies U.E in its Restitution order as a victim (See Exhibit B). A testifying witness for the government, Naji, while testifying described

having control of the account (MS Products and Services) extensively for fraudulent transactions without describing the source, the nature or the origin of the \$230,000 transfer- referencing “in violation of 18 U.S.C 1343” (See Exhibit A). This is an important point as money laundering requires us to define the nature, source and origin of the illicit funds, a requirement to determine the “proceeds element”. In *United States vs Santos*, 553 US 507, 128 S Ct 2020, 170 L Ed 2d 912, 2008 US LEXIS 4699, the Supreme court delved into defining the word ‘proceeds’. The Supreme Court in that case held that “The Government did not try to prove, and defendants had not admitted, that they laundered criminal profits. There was no more reason to think “proceeds” meant “receipts” than there was to think it meant “profits”. The rule of lenity required it be interpreted in favor of defendants as “profits’”. The Court went further to hold that “The Government must prove that a charged transaction “in fact involved the proceeds of specified unlawful activity” (the proceeds element), and it also must prove that a defendant knew “that the property involved in” the charged transaction “represented the proceeds of some form of unlawful activity” (the knowledge element). The Seventh Circuit in *States v. Scialabba*, 282 F.3d 475(2002) held that the federal money-laundering statute’s prohibition of transactions involving criminal “proceeds” applies only to transactions involving criminal “profits”, not criminal receipts. *Id.*, at 478. Applying this holding to the Santos Case, the District Court found no evidence that the transactions on which the money-laundering convictions were based (Santos’s payments to runners, winners, and collectors and Diaz’s receipt of payment for his collection services) involved profits, as opposed to receipts, of the illegal lottery, and accordingly vacated the money-laundering convictions. Whether “proceeds” means “receipts” remained the crux of the issue in Santos as it relates to the merger issue it raised. The Supreme Court in its reasoning stated that “ if “proceeds” means “profits”, one could say that the statute is aimed at the distinctive danger that arises from leaving in criminal hands the yield of a crime. The Court stated that “a rational Congress could surely have decided that the risk of leveraging one criminal activity into the next poses a greater threat to society than the mere payment of crime-related expenses and justifies the money-laundering statute’s harsh penalties”. See distinction between money laundering and Fraud in *Chowdury v INS* 249 F.3d 970 (2001) (the difference in statutory language makes sense when one considers the different injuries captured by money laundering and mail fraud statutes. The

harm caused by money laundering is that it makes it more difficult to detect and prosecute criminal activity if the criminal hides the proceeds of that activity. The injury is suffered by the public fisc and the degree of harm is best measured by looking at the amount of money that has been hidden. Mail fraud, on the other hand, injures the individual who is defrauded, and the best measure of that harm is the total loss to the 'victim'). The Court in Santos continued "If we accepted the Government's invitation to speculate about congressional purpose, we would also have to confront and explain the strange consequence of the "receipts" interpretation, which respondents have described as a "merger problem." See, e.g., Brief for Respondent Diaz 34. If "proceeds" meant "receipts", nearly every violation of the illegal-lottery statute would also be a violation of the money-laundering statute, because paying a winning bettor is a transaction involving receipts that the defendant intends to promote the carrying on of the lottery. Since lotteries, if any, will not pay their winners, the statute criminalizing illegal lotteries, 18 U.S.C. § 1955, would "merge" with the money-laundering statute." The factual patterns of appellant's case are consistent with the facts of the Santos case. Naji, the main government witness testified to using the money lodged in the M.S Products and services account to pay other co-defendants evincing the 'merger issue'. As mentioned above, Naji testified to extensively using the account into which the alleged fraudulent funds of \$230,000 was wired into, M.S Products and Services account, for fraudulent transactions without describing the source or origin of the wire transfer. This means the government not only failed to prove the 'proceeds element', the government also failed to identify an 'identifiable victim' who was deprived of a 'property interest'. See "Although the statute is phrased in the disjunctive, we have consistently understood the "money or property" requirement to limit the "scheme or artifice to defraud" element because the "common understanding" of the words "to defraud" when the statute was enacted referred "to wronging one in his property rights." Cleveland, 531 U.S., at 19(internal quotation marks omitted). The Supreme Court in Santos continued in its reasoning that "The Government suggests no explanation for why Congress would have wanted a transaction that is a normal part of a crime it had duly considered and appropriately punished elsewhere in the Criminal Code to radically increase the sentence for that crime. Interpreting "proceeds" to mean "profits" eliminates the merger problem..... More generally, a criminal who enters a transaction paying the expenses of his illegal activity cannot possibly

violate the money-laundering statute, because by definition profits consist of what remains after expenses are paid. Defraying an activity's costs with its receipts simply will not be covered". In the same vein those alleged payments made by Naji, to the extent one takes his word for it, would be identified as expenses necessary to pay other co-defendants and therefore interpreted as expenses expended to defray the costs of the alleged scheme.

The takeaway from the holding in Santos is that Courts are required to examine that 'single instance' of unlawful activity which would deprive a victim of "proceeds". The Government typically accomplishes this by charging a defendant with a charge under 18 U.S.C § 1956(h) alongside other charges where the government is required to establish the "proceeds" element by tying the 'single instant' of the unlawful activity, the anterior or fraudulent crime, to an 'identifiable victim'. The Santos Court described this as the anterior crime or fraudulent crime that if traced would lead us to a victim of the fraudulent act. Notably, the government did not charge appellant under the fraud statute referenced in the indictment and the government failed to present any facts sufficient to demonstrate the violation of a fraud statute, nor did the government present an identifiable victim at trial or the sentencing besides a reference to U.E as the victim listed on the restitution order. Again, the government knowing that they would have to present this victim at the sentencing phase decides to circumvent the process of instituting a specific jury finding which would have aided the court in measuring the amount of funds as a predicate for the sentencing of appellant.

2. The government failed to prove the concealment element consistent with the Supreme court holding in Ness and Cuellar

The Supreme Court held in Cuellar v. United States, 553 U.S.550, 128 S.Ct.1994, 170 L.Ed.2d 942 (2008) that the concealment element of the money laundering statute requires that the purpose, not merely the effect of the endeavor must be to conceal or disguise a listed attribute of the proceeds. Id at 2004 05. Also, in United States v. Garcia 587 f.3d 509, the court, consistent with the reasoning of the Supreme Court, held that "we agree that the conduct admitted by Garcia did not provide a sufficient factual basis for finding a violation of the money laundering statute", and therefore vacated Mr. Garcia's guilty plea and remanded

the case to the district court for further proceedings. The Supreme Court has rejected the “appearance of legitimate wealth” requirement but has held that the concealment element of the money laundering statute is satisfied only where the purpose, not merely the effect, of the transportation of funds is to conceal or disguise a listed attribute of the money. In *Cuellar*, the Jury convicted Cuellar of transportation money laundering after the police found approximately \$81,000 in narcotics proceeds hidden in Cuellar’s car as he drove towards Mexico. The money was hidden in a secret compartment of the vehicle, under the rear floorboard bundled in plastic bags and duct tape and covered with animal hair. A divided panel of the fifth circuit reversed the conviction, holding that the statute requires a showing that defendant attempted to create the appearance of legitimate wealth and that the evidence failed to show that defendant attempted to create the appearance of legitimate wealth and that the evidence failed to show that defendant had intended to do so. 441 F.3d 329 (5th Cir. 2006). The Fifth circuit granted rehearing en banc and, with three judges dissenting, affirmed the conviction 478 F.3d 282 (5th Cir.2007) (en banc)- The en banc Court rejected the requirement of an intent to create a legitimate appearance of wealth, and held that Cuellar’s extensive efforts to conceal the funds during transportation sufficed to show an intent to conceal or disguise a listed attribute of the funds. *Id* at 289-92. The Supreme Court reversed the conviction rejecting the holdings of both the fifth Circuit’s panel decision and its later en banc opinion. *Cuellar*, 128 S. Ct. at 1997. First, the Supreme Court rejected Cuellar’s argument, adopted by the Fifth Circuit panel, that the statute requires that a defendant take steps to make the funds appear legitimate. *Id* at 2000-02. Then, however, the Court also rejected the government’s argument, adopted by the Fifth Circuit en banc, that the statute could be violated by a defendant who simply concealed the money during transportation holding that “merely hiding funds during transportation is not sufficient to violate the statute, even if substantial efforts have been expended to conceal the money.” *Id.* at 2003. Rather, the Supreme Court focused on the word “design” in the statutory requirement that the transportation be “designed in whole or in part to conceal or disguise” a listed attribute of the money and reasoned that “design” in that context must mean “purpose or plan”; i.e the intended aim of the transportation.” Thus, Cuellar held that the money laundering statute requires “that the purpose not merely effect of the transportation [be] to conceal or disguise a listed attribute.” *Id.* at 2005. Although

hiding funds during transportation may in certain contexts provide circumstantial evidence that the purpose of the transportation is concealment, the Supreme Court emphasized the “difference between concealing something to transport it and transporting something to conceal it; that is how one moves the money is distinct from why one moves the money. The Court stated that “Evidence of the former, standing alone, is not sufficient to prove the latter.” [***17] *id.* at 2005 (internal citation and quotation marks omitted). The facts of the case in *Cuellar* highlight the distinction between concealment as an end goal as opposed to concealment as a mere effect of the endeavor. Although *Cuellar* had clearly concealed the money to facilitate its transportation, there was no evidence that the purpose of the transportation was concealment of any sort. Even the government’s own expert witness testified that the purpose of the transportation was to compensate the leaders of the drug trafficking operation. As the government’s evidence was limited to establishing that *Cuellar* concealed the funds en route to Mexico, the Supreme Court reversed the conviction. Although *Cuellar* arose in the context of transportation money laundering, Courts has found its holding is equally applicable in the context of transaction money laundering, in light of the identical language used in the two provisions. *Huezo*, 546 f.3d at 179; See also *United States v. Ness*, 565 F.3d 73,78 (2d Cir. 2009). Comparing 18 U.S.C. § 1956(a)(1)(B)(i) (transaction money laundering) with 18 U.S.C. §1956 (a)(2)(B)(i) (transportation money laundering). As we have previously stated, “*Cuellar* confirms that a conviction for transportation money laundering, requires proof that the purpose or intended aim of the transaction was to conceal or disguise a specified attribute of the funds” *Huezo*, 546 f.3d at 179. Therefore when examining concealment within the money laundering transaction context the same rationale applies with equal force. The takeaway is that it takes more than a mere showing of concealment, the government is required to show an effort to obfuscate by way of a series of subsequent multiple transactions, following the initial transaction, designed to conceal the nature, source of funds, the purpose of the subsequent transactions.

Similarly in *Ness*, the defendant transported millions of dollars of narcotics proceeds via his armored car carrier business by hiding the proceeds in packages of jewelry being transported to Europe avoiding any paper trail and using code words for the delivery of the funds. All of this, the Supreme Court found, “shows

only intent to conceal the transportation, not an intent to transport in order to conceal,” and accordingly reversed his convictions for both transaction and transportation money laundering. *Ness*, 565 f.3d at 78. The Supreme Court stated “The distinction may sound narrow and verbal, but it goes to the heart of the very idea of money laundering, which is that the transaction itself operates in some way to conceal the nature, source or ownership or the like of the funds, and thus to “launder” the illicit proceeds.

In appellant’s case, the indictment states that the object of the charged money laundering Conspiracy was violation of the transaction provision of the money laundering statute, with two substantive charges of 18 U.S.C.S § 1956 (a)(1)(b)(1) representing Count 2 and Count 3 of the indictment. The government failed to prove subsequent transactions designed to obfuscate the nature, source of the funds consistent with the Supreme court’s guidance. The government is required to prove that there was an additional step of attempting to legitimize the proceeds so that observers think their money is derived from legal enterprises.

Courts that have held up convictions for money laundering under concealment have in common subsequent transactions designed to conceal the provenance of the original transaction. In the context of money laundering, the United States Court of Appeals for the Seventh Circuit has tried to maintain some separation between the ‘initial transaction’ from which illegal proceeds were derived and further transactions designed to conceal the source of those proceeds. The court has stressed that the “mere transfer and spending of funds is not enough to sweep conduct within the money laundering statute; instead, subsequent transactions must be specifically designed to hide the provenance of the funds involved.” *United States vs Esterman*, 324 f.3d 565 (September 13, 2002, 7th Cir). The facts of appellant’s case are not complicated. All the government presented at trial was a perfunctory wire transfer for \$230,000 (Count 2) with no nexus to the second transaction for \$75,000 (Count 3). There is, therefore, an insufficient factual basis to conclude that appellant knew that the transaction was designed to conceal the nature, location, source, ownership, or control of the funds involved in the transaction as the government was not able to prove the proceeds element much less were they able to prove the knowledge element. Because the government was unable to prove subsequent transactions that will support the intent to conceal, there was not conduct carried out by any alleged defendant to

evinced that Knowledge element of the crime. All the government presented was a perfunctory wire transfer of \$230,000 for count 2; another transaction representing Count 3 for \$75,000 which was in no way tied to the \$230,000 from Count 2. There was therefore no nexus between the two transactions representing Count 2 and Count 3. See “the necessary intent to conceal requires “something more” than the mere transfer of unlawfully obtained funds, though that “something more” is hard to articulate.” *Esterman*, 324 F.3d at 572. See also “Rather subsequent transactions must be specifically designed to hide the provenance of the funds involved.” *United States v. Jackson*, 935 F.2d 832,843 (7th Cir.1991). *Esterman* noted that 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.” 324 F.3d at 572. As is relevant to appellant’s case, the Supreme court’s discussion around the purpose of the transportation in *Ness* and *Cuellar* is functionally equivalent to the purpose of the subsequent transactions which are designed to conceal the source of the funds within the context of transaction money laundering. The government is required to show an initial transaction, distinct and separate from subsequent transactions designed to conceal the initial transaction. In appellant’s case, the government failed to prove the ‘proceeds element’; then the government failed to prove the ‘concealment element’, in other words, subsequent transactions designed to conceal the nature, the ownership, and the source of the funds. Given that all the government showed was a perfunctory transfer of \$230,000 representing Count 2 and another transaction of \$75,000 representing Count 3, with no nexus to each other, appellant’s conviction should not stand based on the facts presented at appellant’s trial. Suffice it to say that the facts presented at trial are radically incompatible with the holding in *Ness* or *Cuellar*. As the Supreme Court held, the rationale for concealment of transportation money laundering and concealment within the transactional context applies with equal force. Within the transaction context, the ‘purpose’ of the concealment prong requires that the government carry its burden of finding a person guilty of concealment by proving an initial transaction which represents proceeds of the specified unlawful activity, the ‘proceeds element’, and then show subsequent transactions meant to disguise the source, the ownership, or nature of the funds, ‘the concealment prong’. In *United States vs Esterman*, 324 F.3d 565;2003 U. S.

App. LEXIS 6300 (September 13, 2002), the 7th circuit stated that “We have struggled in the past to define precisely what amount of concealment must occur before mere use of ill-gotten gains becomes money laundering prohibited by subpart (B)(i) of the statute. At least two broad principles have emerged. First, we have tried to maintain some separation between the initial transaction from which illegal proceeds were derived and further transactions designed to conceal the source of those proceeds. See *United States v. Scialabba*, 282 F.3d 475, 476-78 (7th Cir.2002); see also *United States v. Seward*, 272 F.3d 831, 836 (7th Cir.2001) (noting that “the transaction or transactions that created the criminally-derived proceeds must be distinct from the money-laundering transaction”); *United States v. Mankarious*, 151 F.3d 694, 705 (7th cir. 1998) (“Money laundering criminalizes a transaction in proceeds, not the transaction that creates the proceeds.”). Second, we have stressed that the mere transfer and spending of funds is not enough to sweep conduct within the money laundering statute; instead, subsequent transactions must be specifically designed “to hide the provenance of the funds involved.” *United States v. Jackson*, 935 F.2d 832, 843 (7th Cir.1991).

3.The government failed at appellant’s sentencing to institute a Jury special finding to determine the amount of funds laundered for Restitution and forfeiture purposes.

The penalties for money laundering are designed to be imposed only for the removal of profits from criminal activity which permit the leveraging of one criminal activity into the next. Again, at sentencing, the government had yet another opportunity to present a victim; prove the ‘single instance of specified unlawful activity’, which resulted in the laundering of the proceeds, but the government failed to present this victim. Courts are required as the Santos court advises, to examine that ‘single instance’ of unlawful activity which would have deprived a ‘victim’ of “proceeds”. The court then examines the circumstances and the underlying facts which can only be accomplished by a determination of the “proceeds’ element. The goal in a circumstance-specific finding is the same process a jury will engage in making a jury special finding. This process has to be tied to a victim of the fraudulent crime (single instant of unlawful activity), the origin or source of proceeds of the specified unlawful activity. The circumstance-specific finding is utilized to make a determination regarding the amount of funds laundered for sentencing purposes as well as for forfeiture actions. In other words,

this circumstance-specific inquiry is instructive in the sentencing of a defendant as the defendant is sentenced based upon the amount of funds laundered. See *Chowdhury v INS* 249 F.3d 970 (9th Cir 2001) (“ hold that the sentencing judge must look to the amount of money that has been laundered rather than the total loss to the victim in calculating the sentence. Moreover, the guidelines for money laundering, which use the value of the funds language, measure harm differently than the guidelines for wire fraud which use the loss to the victim language”)

The issue of the “merger problem” recognized in *Santos* is also essentially a sentencing issue, therefore resolving the issue posed in *Santos* between proceeds and receipts invariably affects the sentencing of a defendant charged under a money laundering statute. In appellant’s case, the government conveniently avoided a proximate-cause analysis (circumstance-specific finding) to determine the “proceeds element” which, if conducted, would have aided in the determination of the amount of funds laundered and would have formed a basis to make a determination of the restitution and the forfeiture amount as well as the sentencing of appellant. The government knew that it could not carry this burden so it failed to bring the Jury to make a special finding for sentencing purposes and failed to return a special verdict of forfeiture which, if carried out, would have shown that none of the funds reflected in the restitution order were traceable to appellant. There is therefore sufficient “conflicting evidence” to justify looking past the restitution and forfeiture orders. There are undisputed facts that undermine the restitution order’s reliability as a measure of amount of funds laundered. The government submits a forfeiture action subject to the provisions of 21 U.S.C 7 853(p), as incorporated by 18 U.S.C § 982(b)(1). Appellant was not connected to the underlying offense and the government could not prove the proceeds element, let alone could the government demonstrate any connection between appellant and any of the alleged victims. The government failed to carry its burden of proving any laundered money tethered and traceable to the conduct of conviction (the two counts) was connected to the appellant. In other words, the record does not establish that the restitution order was tethered and traceable to Appellant (relating to engaging in monetary transactions in property derived from specific unlawful activity). Appellant asserts that the government failed to provide a constitutionally valid administrative forfeiture proceeding in violation of appellant’s due process rights. In its final order of forfeiture for substitute Asset (See Exhibit C), the Government cites federal statutes governing forfeiture orders yet denied appellant an opportunity to contest the forfeiture through a fair administrative forfeiture proceeding. The government clearly circumvents this

proceeding knowing it could not make a showing based on a clear and convincing standard that any of the Forfeiture/substitute asset had a nexus whatsoever to the underlying criminal counts. In fact, the Government has had an opportunity at sentencing to prove this nexus; and yet failed to prove a nexus between these Forfeited assets and the underlying crime. In a related action, a 41(g) currently pending in the Second circuit, the government alleges to having published notice of the forfeiture action and its intent to dispose of the asset allegedly on its official government website, www.forfeiture.gov, from January 4, 2019 through February 2, 2019. The Government in its final order of forfeiture for substitute Asset points to the fact that it published its notice on its official website knowing full well that appellant was still incarcerated in Florida without access to the internet. The Government purposefully failed to make any reasonable efforts to notify appellant of any pending proceedings, given the government's knowledge of appellant's identity and whereabouts.

Appellant asserts that there is no nexus between him and the forfeiture/ restitution amounts. Again, with deference to the Santos theory's definition of proceeds, within the context of forfeiture, 'Proceed' is defined as "property of any kind obtained directly or indirectly, as the result of the commission of the offense giving rise to the forfeiture, and any property traceable thereto." In other words, property is forfeitable if the defendant would not have received it but for the illegal activity. See *United States v. Benyo*, 384 F.Supp.2d 909, 914 (E.D Va 2005) ("The Government must show that defendants.....would not have received the [allegedly forfeitable property] 'but for' the predicate illegal activity"; *United States v. Ivanchukov*, 405 F. Supp. 2d 708, 712-13 (E.D.Va 2005) (adopting a "but for" nexus test for illegal proceeds under the criminal forfeiture statute and noting the test's use in several other circuits). "Proceeds are property that a person would not have but for the criminal offense". Section. Section 982(a)(1) provides that "The Court, in imposing sentence on a person convicted of an offense in violation of section 1956, 1957, or 1960 of this title, shall order that the person forfeit to the United States any property traceable to such property". Because the Government cannot meet its burden under the traceability requirement for forfeiture action as it relates to the alleged forfeited/ restitution amounts, the Government circumvents the administrative forfeiture proceeding in clear violation of appellant's due process rights.

4. The Government failed to articulate a scheme with the purpose of obtaining money or property that deprived an 'identifiable victim' of a property interest. The Supreme court decided two cases after Petitioner's conviction that have significant implications for Petitioner's conviction. See *Kelly v. United States*, 590 U.S. 391 (May 7, 2020) and *Ciminelli v. United States* 598 U.S. 306 (May 11, 2023). In failing to prove the proceeds element, the government also failed to prove that an identifiable victim suffered an injury or pecuniary loss as required under the Fraud statute 18 U.S.C. 1343.

To prove the elements of a fraud crime under 18 U.S.C § 1343, the government is required to prove a scheme or artifice to defraud was committed with the aim of obtaining money or property by means of false or fraudulent pretenses, representations, or promises, which deprived an identifiable victim of his property rights. The government failed to prove a crime under 18 U.S.C § 1343 (See Exhibit A). The government references a wire for \$230,000, the transaction alleged to represent the alleged wire fraud (See Exhibit A), the property interest which is the alleged 'object of the fraud'. See § 1343 (barring fraudulent schemes "obtaining money or property"). The federal wire fraud statute makes it a crime to effect (with the use of the wires) "any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises." 18 U.S.C. § 1343. In *Kelly v. United States*, 590 U.S. ----- (2020), the Supreme court in reversing the conviction held that "the defendants did not take money or property for purposes of the statutes banning wire fraud and fraud on federally funded program. The Court held that "because the scheme here did not aim to obtain money or property, Baroni and Kelly could not have violated the federal-program fraud or wire fraud laws. The court referencing settled precedent that "officials could violate those laws only if an object of their dishonesty was to obtain the Port Authority's money or property". In *Cimminelli v United States*, the Supreme Court granted certiorari to determine whether the Second Circuit's 'right-to-control theory' of wire fraud is a valid basis for liability under 18 U.S.C. § 1343. The Supreme Court held that it was not. The Supreme Court held that the wire fraud statutes "protect property rights only". The Court stated, "Although the statute is phrased in the disjunctive, we have consistently understood the "money or property" requirement to limit the "scheme or artifice to defraud" element because the "common understanding" of the words "to defraud" when the statute was enacted referred "to wronging one in his property rights." *Cleveland*, 531 U.S., at 19 (internal quotation marks omitted). The Supreme court stated that "the government must prove not only that wire fraud defendants "engaged in

deception," but also that money or property was "an object of their fraud." Kelly, 590 U.S., at ____ (slip op., at 7) (alterations omitted). The government in appellant's case failed to, consistent with these principles set forth and the guidance from the Supreme Court, prove that there was an identifiable victim who was fraudulently deprived of a property interest caused as a result of a misrepresentation. The government references a victim for Count two (See Exhibit A) without demonstrating at trial or at the sentencing how the entity U.E (See exhibit A) was deprived of any property interest at trial. In other words, the government failed to present an 'identifiable' victim of the alleged conduct that according to the government, ran afoul of the law. See "On appeal the court agreed that insufficient evidence was introduced to convict one of the business co-owners of money laundering under 18 U.S.C.S 1956(a)(1)(B)(i) because the government failed to prove that he intended to conceal that a check made payable to a fictitious person that he deposited into his personal account had originated in a bank fraud." United States v. Adefehinti, 510 F.3d 319, 327-328 (CA DC 2008). Given that the government failed to prove the elements of the fraud crime this conviction should be reversed.

CONCLUSION

This Court should grant rehearing en banc.

Respectfully submitted,

Okechukwu 'Desmond' Amadi.



3/9/2026

CERTIFICATE OF GOOD FAITH

Pursuant to Rule 44.2, I, Okechukwu Desmond Amadi, state the following grounds for review namely –

1. The government failed to prove the proceeds element and therefore failed to carry its burden of proving that appellant “knew” about an endeavor to conceal the proceeds by way of laundering.
2. The government failed to prove the concealment element consistent with the Supreme Court’s holding in Ness and Cuellar.
3. The government failed at appellant’s sentencing to institute a jury special finding to determine the amount of funds laundered for Restitution and forfeiture purposes.
4. The government failed to articulate a scheme with the purpose of obtaining money or property that deprived an ‘identifiable victim’ of a property interest. The Supreme Court decided two cases after Petitioner’s conviction that have significant implications for Petitioner’s conviction. See *Kelly v. United States*, 590 U.S.391 (May 7,2020) and *Ciminelli v. United States* 598 U.S.306 (May 11,2023). In failing to prove the proceeds element, the government also failed to prove that an identifiable victim suffered an injury or pecuniary loss as required under the Fraud statute 18 U.S.C. 1343.

I certify that the grounds are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented. In addition, I certify that the petition for rehearing is presented in good faith and not for delay.

Respectfully submitted,

Okechukwu Desmond Amadi



EXHIBIT A

EXHIBIT A

specified unlawful activity, that is, wire fraud, in violation of 18 U.S.C. § 1343, knowing that the transaction was designed in whole and in part to conceal and disguise the nature, location, source, ownership and control of the proceeds of said specified unlawful activity, knowing that the property involved in the financial transaction represented the proceeds of some form of unlawful activity:

Count	Date of Transaction	Amount	Nature of Transaction
Two	July 2, 2014	\$230,000	Victim "U.E." wired funds into Naji's MS Products and Services account at Bank of America (-9753)
Three	July 7, 2014	\$75,000	Naji, having obtained a cashier's check from his MS Products and Services account at Bank of America (-9753), deposited it into Morgan's account at JPMorgan Chase (-8365)

In violation of 18 U.S.C. §§ 1956(a)(1)(B)(i) and 2.

EXHIBIT B

Okechukwu Desmond Amadi
8:17-cr-447-T-30AEP

EXHIBIT B

ADDITIONAL CONDITIONS OF SUPERVISED RELEASE

1. The defendant shall be prohibited from incurring new credit charges, opening additional lines of credit, or making an obligation for any major purchases without approval of the Probation Officer.
2. The defendant shall provide the Probation Officer access to any requested financial information.
3. Should the defendant be deported, he shall not be allowed to re-enter the United States without the express permission of the appropriate governmental authority.
4. The defendant shall cooperate in the collection of DNA, as directed by the Probation Officer.

CRIMINAL MONETARY PENALTIES

The defendant must pay the following total criminal monetary penalties under the schedule of payments set forth in the Schedule of Payments.

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$300.00 due immediately	N/A	Waived	\$1,358,500.00

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 in full prior to the United States receiving payment.

<u>Name of Payee</u>	<u>Total Loss**</u>	<u>Restitution Ordered</u>
F.S. Contact U.S. Attorney's Office for Payee Information	\$38,000.00	\$38,000.00
U.E. (Entity) Contact U.S. Attorney's Office for Payee Information	\$230,000.00	\$230,000.00
S.T. (Entity) Contact U.S. Attorney's Office for Payee Information	\$108,000.00	\$108,000.00
P.J.T. Contact U.S. Attorney's Office for Payee Information	\$28,000.00	\$28,000.00
K.C. Contact U.S. Attorney's Office for Payee Information	\$28,500.00	\$28,500.00

* 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.

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

EXHIBIT C

EXHIBIT C

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

v.

Case No. 8:17-cr-447-T-30AEP

OKECHUKWU DESMOND AMADI
a/k/a "Desmond Amadi"

FINAL ORDER OF FORFEITURE FOR SUBSTITUTE ASSET

THIS CAUSE comes before the Court upon the United States' Motion for a Final Order of Forfeiture, pursuant to 21 U.S.C. § 853(n)(7) and Rule 32.2(c)(2) of the Federal Rules of Criminal Procedure, for approximately \$8,216.00 in U.S. currency seized from the defendant upon his arrest in September 2017, in partial satisfaction of the defendant's \$833,625.00 order of forfeiture.

On January 2, 2019, the Court entered a Preliminary Order of Forfeiture for the asset described above, pursuant to 21 U.S.C. § 853(p), as incorporated by 18 U.S.C. § 982(b)(1). Doc. 138.

The Court finds that in accordance with 21 U.S.C. § 853(n) and Rule 32.2(b)(6)(C), the United States published notice of the forfeiture and of its intent to dispose of the asset on the official government website, www.forfeiture.gov, from January 4, 2019 through February 2, 2019. Doc. 150. The publication gave notice to all third parties with a legal interest in the asset to file with the Office of the Clerk, United States District Court, Middle District of Florida, Sam Gibbons Federal

Courthouse, 2nd Floor, 801 North Florida Avenue, Tampa, Florida 33602, a petition to adjudicate their interests within 60 days of the first date of publication. No third party has filed a petition or claimed an interest in the asset, and the time for filing such petition has expired.

Accordingly, it is hereby:

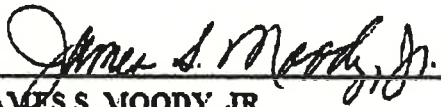
ORDERED, ADJUDGED, and DECREED that for good cause shown, the United States' motion is GRANTED.

It is FURTHER ORDERED that pursuant to 21 U.S.C. § 853(n)(7) and Federal Rule of Criminal Procedure 32.2(c)(2), all right, title and interest in the asset identified above is CONDEMNED and FORFEITED to the United States for disposition according to law.

The net proceeds from the forfeited asset will be credited towards the balance of the defendant's outstanding order of forfeiture.

Clear title to the asset is now vested in the United States of America.

DONE and ORDERED in Tampa, Florida, this 21st day of March, 2019.


JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE

Copies to:
Suzanne C. Nebesky, AUSA
Counsel of Record

No. 25-6616

IN THE
SUPREME COURT OF THE UNITED STATES

Okechukwu Amadi - PETITIONER

VS.

United States of America - RESPONDENT(S)

PROOF OF SERVICE

I, Okechukwu Amadi, do swear or declare that on this date, March 9th, 2026, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and PETITION FOR PANEL REHEARING AND REHEARING EN BANC on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Solicitor General of the United States, Room 5614
Department of Justice, 950 Pennsylvania Ave.,
N.W., Washington, D.C. 20530-0001

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on March 9th, 2026



(Signature)

