1   IN THE SUPREME COURT OF THE UNITED STATES

2   - - - - - - - - - - - - - - - - - - x

3   HUMBERTO FIDEL REGALADO   :

4   CUELLAR,   :

5   Petitioner   :

6   v.   :   No. 06-1456

7   UNITED STATES.   :

8   - - - - - - - - - - - - - - - - - - x

9   Washington, D.C.

10   Monday, February 25, 2008

11

12   The above-entitled matter came on for oral

13   argument before the Supreme Court of the United States

14   at 10:02 a.m.

15   APPEARANCES:

16   JERRY V. BEARD, ESQ., Assistant Federal Public Defender,

17   Fort Worth, Tex.; on behalf of the Petitioner.

18   LISA H. SCHERTLER, ESQ., Assistant to the Solicitor

19   General, Department of Justice, Washington, D.C.; on

20   behalf of the Respondent.

21

22

23

24

25

1   C O N T E N T S

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1   P R O C E E D I N G S

2   (10:02 a.m.)

3   CHIEF JUSTICE ROBERTS: We'll hear argument first

4   today in Case 06-1456, Cuellar versus United States.

5   Mr. Beard.

6   ORAL ARGUMENT OF JERRY V. BEARD

7   ON BEHALF OF THE PETITIONER

8   MR. BEARD: Thank you, Mr. Chief Justice,

9   and may it please the Court:

10   Section 1956, the money laundering statute,

11   requires an intent to minimize the criminal taint of

12   unlawful proceeds. But the statute does not criminalize

13   concealing money's existence. In this case,

14   Mr. Cuellar's conviction should be reversed for two

15   reasons. First, while the method of the transportation

16   involved may have been designed to conceal, the

17   transportation itself was not. Secondly, while Cuellar

18   may have in fact concealed money itself, he did not

19   conceal the nature, source, location, ownership or

20   control of the unlawful proceeds.

21   CHIEF JUSTICE ROBERTS: Well, he certainly

22   concealed the location. They were secreted in the car,

23   under the goat hair and everything else. The location

24   of the money was certainly concealed.

25   MR. BEARD: Chief Justice, in the broader

1   sense location was concealed. The point to be taken

2   here I think is this: An examination of the text itself

3   reveals particular listed attributes, and location

4   numbers among them. But what this suggests, the

5   requirement that there be a design to conceal or to

6   disguise these particular attributes, necessarily means

7   a plan, if you will, for those -- excuse me -- for those

8   attributes to be presented either to law enforcement if

9   they intercept the money or inject it into legitimate

10   commerce later. In other words, they'll be observed

11   later. Location has independent meaning, but it's also

12   understood within the context of the words that surround

13   it. All money changes location, whether concealed or

14   not. Location in this context means more than the

15   location that the money was found in the car.

16   JUSTICE BREYER: Maybe I should ask you this

17   now because you've probably thought about it and I can't

18   work it out. I don't see any problem with the word

19   "location." I thought what you would say is it isn't

20   the transportation in this instance that concealed the

21   location, it's the method of transportation that sealed

22   the location.

23   MR. BEARD: Yes, Justice --

24   JUSTICE BREYER: And if you read it that

25   literally, then there is no problem in getting to your

1   interpretation of the statute, or is there? Because

2   since you didn't advance that argument, I thought maybe

3   there's something I've not seen here.

4   MR. BEARD: No, Justice Breyer; you're

5   correct. There is a huge difference between the method

6   of transportation and the transportation itself. And in

7   this particular case, the difference is certainly

8   implicated. What we understand the government to be

9   arguing is that the method of the transportation

10   signifies the listed attributes. But if that were the

11   case it would effectively render all transportation of

12   funds necessarily to be money laundering.

13   JUSTICE STEVENS: May I just ask, what do

14   you mean by method of transportation in this case? I

15   mean, that it was in a car or the fact it was wrapped up

16   in dirty -- in a dirty kind of container, and so forth

17   and so on?

18   MR. BEARD: Justice Stevens, what I'm

19   referring to is certainly that it was in a car, but

20   there was a secret compartment, goat hair was sprinkled

21   around to try to throw off drug detection dogs, and

22   those type of characteristics.

23   JUSTICE STEVENS: But isn't that all just

24   evidence that there was a motive to conceal the

25   ownership?

1   MR. BEARD: No, I don't think so,

2   Justice Stevens. What we're looking at here is that the

3   design of the -- the fact Mr. Cuellar may or may not

4   have known, for example, who owned -- where the money

5   was coming from or who owned it, that doesn't go to the

6   design of the transportation. The design of the

7   transportation itself is just to get the money to

8   Mexico. I can say that abstractly, but in this case in

9   particular because we know from the government's

10   evidence that what this was was essentially the last leg

11   of a drug trafficking deal. We know that this was

12   repayment. So in this particular case at least, the

13   purpose of this transportation was to get this money

14   back as repayment money.

15   JUSTICE GINSBURG: If he were a courier

16   bringing the marijuana into the United States what would

17   be the crime and the penalty?

18   MR. BEARD: Justice, if he was bringing --

19   JUSTICE GINSBURG: If he was bringing

20   marijuana into the United States instead of returning

21   with the proceeds?

22   MR. BEARD: Well, presumably, Your Honor, it

23   would be a drug trafficking crime. But of course, as I

24   understand your hypothetical, he would possess marijuana

25   at that time.

1   JUSTICE GINSBURG: But now he possesses

2   money. And you're not saying this is innocent behavior.

3   It is criminal behavior, so what is the crime if not

4   money laundering?

5   MR. BEARD: We have suggested that

6   Mr. Cuellar's, liability, liability or culpability, lie

7   more properly under the bulk cash smuggling statute.

8   JUSTICE GINSBURG: But that requires knowing

9   that it's illegal to take out more than X amount of

10   money, and there's nothing that indicates that the

11   common courier would know anything about such a

12   provision.

13   MR. BEARD: Yes, you're correct that it

14   would require inference as opposed to direct evidence.

15   This is why in our reply brief, we gave an example of

16   where the identical type behavior arose, not in Texas

17   but in Alabama, and in fact the individual pleaded

18   guilty to bulk cash smuggling.

19   So I suppose my response would be this. The

20   same weak inferences that supported the money laundering

21   conviction in the government's eyes would be the same

22   inferences that would support the cash smuggling.

23   JUSTICE KENNEDY: If we take it that you

24   concede -- I don't want to say that you concede. If we

25   take it the government has a strong case under the

1   smuggling statute, wouldn't it have an equally strong

2   case under (i) of the statute that we're considering

3   here, which doesn't require concealing or disguising the

4   nature, just to avoid a transportation reporting

5   requirement. That's the same as the smuggling statute.

6   MR. BEARD: No, I don't think --

7   JUSTICE KENNEDY: I know the government

8   didn't indict under (ii).

9   MR. BEARD: But I don't think it is the

10   same, Your Honor, because the cash smuggling, the bulk

11   cash smuggling statute, speaks to currency and of course

12   this speaks to transactions. So I think that there

13   is in fact --

14   JUSTICE KENNEDY: You mean as the proceeds

15   of an illegal transaction?

16   MR. BEARD: Well, I'm distinguishing between

17   currency and transaction because as I understand it at

18   least transaction might implicate in a banking context,

19   but cash is cash, if you will. So --

20   JUSTICE GINSBURG: And it doesn't matter for

21   purposes of the bulk cash statute that it was illegal.

22   It could be perfectly lawful money.

23   MR. BEARD: Yes, Your Honor, absolutely.

24   That's certainly true.

25   CHIEF JUSTICE ROBERTS: But why -- why isn't

1   this transporting to conceal the location or the

2   ownership in this sense? Suppose you have someone the

3   police suspect of engaging in drug activities. They

4   know he sold, you know, so much marijuana or whatever

5   and got cash back. They think it's there, and they're

6   going to investigate it, but this fellow comes in and

7   they transport the proceeds across the border.

8   Isn't that transportation to conceal the

9   location or the ownership?

10   MR. BEARD: As I understand it, Mr. Chief

11   Justice, if the police are aware of it and then the

12   flush, if you will, takes the money across, I think

13   that's -- that's much closer. That's --

14   CHIEF JUSTICE ROBERTS: Well, they think

15   it's there, but they're not sure, and they -- you know,

16   that would help them make their case, to find out that

17   the guy they think sold the drugs has $80,000. So they

18   get a search warrant or whatever, and it turns out he

19   doesn't, because it's been transported to conceal the

20   location or ownership.

21   MR. BEARD: I would -- no, I think that

22   the -- if the police were aware, if the police were

23   aware and the kingpin were aware and put in place some

24   type of design, if you will, to flush the money and

25   perhaps to -- to Mexico under the circumstances you

1   described, then you would be closer to, to having money

2   laundering liability, although certainly I don't know

3   that the courier necessarily would.

4   However, I think it's very important to

5   consider that the money laundering statute necessarily

6   contemplates this notion of -- of detection or the money

7   resurfacing, if you will. And the reason I think that's

8   important is because it gives a particular meaning to

9   those listed attributes. If the police were just --

10   well, in this case, just stumbled upon it, and nothing

11   was -- had been done and there was no evidence on the

12   record to suggest that there was going to be anything

13   done in this case other than repayment, money laundering

14   liability is simply not going to arise.

15   Now, I think that --

16   JUSTICE BREYER: I still don't see why isn't

17   what the Chief Justice said absolutely right? If you

18   are transporting this money to get it out of town so the

19   police can't find it, you're transporting it to conceal

20   it. That falls right within the statute.

21   MR. BEARD: I --

22   JUSTICE BREYER: If you're transporting it

23   simply to pay some courier somewhere else, you're not

24   transporting it to conceal it. And if in fact the

25   transportation is done in a way that conceals it, that's

1   beside the point because the statute is interested in

2   transporting it in order to conceal it.

3   MR. BEARD: I think that --

4   JUSTICE BREYER: What is wrong with that?

5   MR. BEARD: I think what's wrong, Your

6   Honor, is that the -- the statute focuses on the

7   transportation or some of the other transfers of

8   transmission and specifically is coupled, if you will,

9   with this notion of -- of the attributes themselves. I

10   don't know that it's -- it's simply too broad, in fact,

11   to say that all transportation's will necessarily incur

12   the money laundering liability.

13   JUSTICE SCALIA: I -- maybe I don't

14   understand the -- I thought he was helping you, but

15   maybe --

16   (Laughter.)

17   JUSTICE SCALIA: Were you helping him? I

18   thought so.

19   (Laughter.)

20   JUSTICE GINSBURG: It sounds like he was

21   making the distinction that didn't the dissenting judge

22   make between -- the dissenting judge says transporting

23   to conceal is no good, but concealing to transport is

24   okay.

25   MR. BEARD: That -- you're correct, Your

11

1 Honor, and that is, I think, a point to be made. The --

2 Judge Smith below did try to highlight the fact that if

3 you transport to conceal, then you're beginning to

4 implicate money laundering liability.

5   JUSTICE ALITO: Suppose someone transports

6 money across a border and is recorded surreptitiously on

7 tape explaining exactly why the person did it, and the

8 person says: The reason why I'm transporting this

9 across the border is because I know that when I get it

10 to the destination country, that's a place where people

11 use huge amounts of cash for bank deposits, for

12 purchases; and, therefore the act of transporting it

13 from the United States to the other country will

14 disguise the nature of the cash as drug money.

15   Would that fall within the statute?

16   MR. BEARD: No, I don't think so,

17 Justice Alito, and the reason I don't is because that

18 -- what you've described implicates potential money

19 spending, this notion that the money is easier spent.

20 But without more, money spending would not equate to

21 money laundering. That's --

22   JUSTICE ALITO: Why wouldn't that fit the

23 literal language of the statute? It's a transportation

24 across the board with the design to conceal the nature,

25 i.e., that it's drug money, of this money?

12

1   MR. BEARD: I'm not sure, Justice, that

2   you've actually concealed the nature. If the money was

3   going -- if the money was dirty and going across dirty,

4   it remained dirty and just happened to be spent. But --

5   JUSTICE SOUTER: Yes, but it doesn't remain

6   dirty simply because it goes to a place in which the

7   appearance of this kind of cash does not have the dirty

8   appearance that it does at home.   Why -- why isn't

9   that the correct answer?

10   MR. BEARD: I --

11   JUSTICE SOUTER: Why doesn't that make it

12   laundering?

13   MR. BEARD: Again, I don't know that there

14   has been -- as I understood the hypothetical, I don't

15   think that there's been any suggestion of a design to

16   conceal, the why. You're just taking dirty and you're

17   --

18   JUSTICE SOUTER: No, but the design to

19   conceal -- maybe I misunderstood the hypo, but I thought

20   the design to conceal was you conceal the dirty

21   character of the money by taking it to a place and using

22   it in that place where use of large amounts of cash,

23   whether for bank deposits or spending in luxury stores,

24   does not have the dirty implication, the dirty

25   appearance that it does in the United States.

 1   So, why doesn't that therefore satisfy the

 2   concealment?

 3   MR. BEARD: I -- Justice Souter, I think

 4   that the answer to the question is here. The statute is

 5   designed to take -- or purposed to take these dirty

 6   proceeds, unlawful proceeds, and to cleanse them so as

 7   to prevent their injection into streams of legitimate

 8   commerce.

 9   What you've described as spending is

10   admittedly spending, but I don't think that the spending

11   that's -- that you've contemplated there basically

12   implicates the core concern, if you will. The money --

13   JUSTICE SCALIA: You don't have any evidence

14   like that here anyway, do we? Do we know that this was

15   going to "Spendy Land" where everybody has a lot of

16   money? Did we know that?

17   MR. BEARD: Justice Scalia, what we know,

18   because the government's evidence established it, is

19   that the money was being sent back to Mexico to repay

20   --

21   JUSTICE SCALIA: Does everybody have a lot

22   of money in Mexico? Is that --

23   MR. BEARD: Well, I would hazard to say no,

24   of course, but the record --

25   JUSTICE ALITO: Was there -- was there

1 evidence about the nature of the Mexican economy?

2   MR. BEARD: There was. There was, Your

3 Honor.

4   JUSTICE ALITO: What was the evidence?

5   MR. BEARD: I'm sorry?

6   JUSTICE ALITO: What was the evidence?

7   MR. BEARD: The evidence that you just asked

8 about went to that it was easier to spend money in

9 Mexico.

10   JUSTICE ALITO: Wasn't there an expert who

11 said that Mexico has a cash economy?

12   MR. BEARD: Yes, yes. And it -- and --

13   JUSTICE ALITO: And what does that mean?

14   MR. BEARD: What I take it to mean --

15   JUSTICE ALITO: Does it mean people can

16 spend a lot of cash without raising eyebrows?

17   MR. BEARD: Certainly more than here. That

18 was what I think that the evidence was offered for. And

19 the same expert, of course offered, you know,

20 established -- or the government established through the

21 same expert that the purpose of this particular

22 transportation was to complete the transaction, the drug

23 transaction.

24   JUSTICE ALITO: In your brief, you argue

25 that there has to be a design to create the appearance

1   of legitimate wealth. Are you drawing back now from

2   that argument?

3   MR. BEARD: No, and, of course, we are well

4   aware that those words are not found in the statute, nor

5   do we suggest that they were. But what we have

6   suggested is simply that that's, if you will, shorthand

7   for describing what necessarily occurs if the

8   attributes, the listed attributes, are obfuscated. That

9   is the cleansing mechanism.

10   JUSTICE ALITO: Well, why would that be so?

11   Suppose -- I mean, just take -- modify my hypothetical.

12   What this person says on the tape is: I'm sending this

13   money across the border because I know that if it --

14   once it gets there, it will be harder to establish my

15   ownership of it. People will still know that it's drug

16   money perhaps, but they -- it will be harder to

17   establish my ownership of it.

18   Now, would that fall within the statute?

19   MR. BEARD: Well, at that point, yes,

20   because I think --

21   JUSTICE ALITO: But there wouldn't be an

22   attempt to create the appearance of legitimate wealth

23   there then, would there?

24   MR. BEARD: Well, to the extent that the

25   individual who has been taped is contemplating the

16

1   money's resurfacing, I think that there would be. It

2   would be not legitimate wealth, though. And perhaps I

3   need to drive this point home. It would be less dirty.

4   In other words, there's not a requirement that the dirty

5   money necessarily be made clean or a description, but

6   that the dirty money be made less dirty. And that I

7   think is -- is what we're talking about.

8   JUSTICE SCALIA: Does the statutory purpose

9   have to be the only purpose or the principal purpose? I

10 mean, I could conceive that the principal purpose of

11 this transportation was to give the money back to the

12 fellow who gave the drugs, to pay the provider of the

13 drugs. I assume that would be the principal purpose.

14   But what if you know that when the -- when

15 the provider of the drugs is paid, he'll be able to

16 spend this cash easily in Mexico, which has a cash

17 economy? And let's assume that the latter is enough to

18 satisfy the purpose requirement of this statute. What

19 -- what would be the result?

20   MR. BEARD: If we -- well, Justice Scalia,

21 if we --

22   JUSTICE SCALIA: If you assume a primary

23 purpose to pay off the --

24   MR. BEARD: Right. If we assume that the --

25 that the latter, as you just said, satisfies the

1   statute, then you have a conviction.

2   But we certainly don't assume that, because

3   that implicates money spending, and money spending

4   hasn't -- hasn't been held to be money laundering.

5   JUSTICE SCALIA: Even though that wasn't the

6   real purpose -- I mean, the real purpose was to pay off

7   this fellow, who otherwise might come to hurt you.

8   MR. BEARD: Yes, absolutely.

9   JUSTICE SCALIA: But once you do pay him

10   off, you know that the money is going to be ready

11   spendable.

12   MR. BEARD: Well, certainly in this case, we

13   don't have any evidence that Mr. Cuellar knew any such

14   thing. If you were to remove it from the confines of

15   the Cuellar case, I think you -- your hypothetical does

16   come closer to implicating liability; but that's simply

17   not what we have here, at least.

18   JUSTICE STEVENS: Now, what you understand

19   the language "disguise the nature of the proceeds of

20   this specified unlawful activity" to mean, does that --

21   is that satisfied by merely proof that it is proceeds of

22   unlawful activity? Or do you have to tell that -- what

23   is the word "nature" talking about?

24   MR. BEARD: No, Justice Stevens. It would

25   again, I think, require more. If all that were required

1   is to show that there was unlawful proceeds --

2   JUSTICE STEVENS: Well, that's what it seems

3   to say. What I'm asking is: What do you think it

4   means?

5   MR. BEARD: Well, what I think it means is

6   that there has to be some -- the transportation or what

7   have you has to be purposed, designed, to take the

8   nature and obfuscate it. And this --

9   JUSTICE STEVENS: But I'm just asking about

10   the word -- the meaning of the word "nature." What is

11   the nature, other than the fact it's proceeds of

12   unlawful activity?

13   MR. BEARD: That it would -- I think that it

14   would -- "nature" is perhaps the first and foremost of

15   the attributes, but I think that it means, that it means

16   dirty, unclean.

17   JUSTICE STEVENS: "Dirty" in some sense

18   other than being proceeds of specified unlawful

19   activity?

20   MR. BEARD: Oh, okay. I don't know.

21   JUSTICE STEVENS: I just don't know what

22   that means other than that it is proceeds of unlawful --

23   MR. BEARD: When I have -- when I read the

24   attributes and contemplate --

25   JUSTICE STEVENS: I'm just talking about the

1   one attribute, "nature."

2   MR. BEARD: Right.

3   JUSTICE STEVENS: I'm trying to understand

4   what you think that means.

5   MR. BEARD: I have thought of it as meaning

6   basically dirty.

7   JUSTICE STEVENS: Proceeds of unlawful

8   activity.

9   MR. BEARD: Proceeds of unlawful activity

10   are the --

11   JUSTICE STEVENS: It's always dirty.

12   MR. BEARD: There may be -- well, yes, I see

13   where you're going. Is there -- what is the independent

14   meaning of "nature." I think that --

15   JUSTICE GINSBURG: Why isn't it simply to

16   change the nature from being drug money to look like

17   it's apparently innocent? I mean the change of the

18   nature -- the nature going in is it's always dirty.

19   It's drug money. And the purpose of the concealment is

20   to get it converted to some different nature, i.e.,

21   clean money.

22   Isn't that what "disguise the nature" means?

23   MR. BEARD: I don't -- I brook no quarrel

24   with that. I mean, yes. I'm just -- what I was simply

25   suggesting --

1   JUSTICE STEVENS: But the verb is not

2 "transformed." The verb is "disguise" or "conceal."

3   MR. BEARD: That's true, and the meaning

4 certainly of "conceal" would be to bring it forward with

5 maybe no explanation of the taint, if you will. And, of

6 course, "disguise" would be to maybe create a false

7 explanation of where the money is --

8   JUSTICE KENNEDY: Was there a reporting

9 requirement for -- for this shipment. If he had gone to

10 the border, would he -- well, then, a lot of what you're

11 arguing about isn't very important because they could

12 just indict under (ii).

13   MR. BEARD: To avoid a transaction-reporting

14 --

15   JUSTICE KENNEDY: To avoid a

16 transaction-reporting requirement, and you wouldn't have

17 to go through all this "nature" thing.

18   MR. BEARD: Your Honor, as I understand it

19 he would have a currency-reporting requirement, had he

20 been going South.

21   JUSTICE KENNEDY: You indicated that there

22 is such a requirement.

23   MR. BEARD: A currency-reporting

24 requirement, yes. I'm not sure that there is a

25 transaction-reporting requirement. I think that that --

1   JUSTICE KENNEDY: Oh, I see.

2   MR. BEARD: -- may implicate different

3   considerations.

4   JUSTICE GINSBURG: And if he -- if he didn't

5   know about the currency-reporting requirement, then he's

6   not guilty under that statute because it requires

7   knowledge.

8   MR. BEARD: Yes, Your Honor, I understand.

9   And so where we are left is he may not be guilty under

10   money laundering and perhaps, perhaps not under bulk

11   cash smuggling. But that in itself does not necessitate

12   a broadly interpreted understanding of the money

13   laundering statute.

14   JUSTICE GINSBURG: If he's not -- if he

15   doesn't fit into either category, then there's no crime?

16   MR. BEARD: That's a possibility, yes,

17   absolutely.

18   CHIEF JUSTICE ROBERTS: Counsel, can I ask

19   you to go back to Justice Stevens's line of questioning?

20   If -- do you conceal the nature of proceeds if you

21   conceal the proceeds?

22   MR. BEARD: No, and I think that --

23   Mr. Chief Justice, I think that it's important to

24   understand, for example, that hiding money is not

25   necessarily the same thing as -- I mean, concealing

22

 1   money is not necessarily the same thing as concealing

 2   the location. And I think you could make the same type

 3   of analysis in the other --

 4   CHIEF JUSTICE ROBERTS: Well, that -- that

 5   doesn't seem to follow. I understand the argument with

 6   "nature." In other words, you're not concealing the

 7   nature; it's just not there. But when you're hiding it,

 8   you are concealing the location.

 9   MR. BEARD: Yes. But, again, I think that

10   the term "location," which is understood in the context

11   of the words surrounding it, if I take money and hide it

12   in my --

13   CHIEF JUSTICE ROBERTS: Well, that gets me

14   to a question. Several times you've referenced the

15   attributes. Are you saying that the statute would have

16   a different meaning if it just said "location"?

17   MR. BEARD: What I'm suggesting, Chief

18   Justice, is that if the -- that the statute would have a

19   particularly different meaning from the one that the

20   government wants if the attributes just listed existence

21   of the money. There is a huge difference between hiding

22   money or hiding the location of the money.

23   If you just had location by itself, I'd be

24   making the same argument; but there's a huge difference

25   between hiding money or hiding the location.

1   CHIEF JUSTICE ROBERTS: Well, you better

2   explain that a little more for me.

3   MR. BEARD: All right, then. If I --

4   CHIEF JUSTICE ROBERTS: Because they seem to

5   me the same.

6   MR. BEARD: If I -- no. I think that the --

7   hiding the location suggests that the individual is

8   contemplating the money resurfacing later, either for

9   injection into commerce or for -- perhaps if the police

10   discover it, and they're trying -- the launderer, if you

11   will, is trying to make sure that the money would

12   survive that subsequent --

13   CHIEF JUSTICE ROBERTS: Okay, so hiding

14   location assumes it's going to come up later.

15   MR. BEARD: Yes.

16   CHIEF JUSTICE ROBERTS: And if you just hide

17   the money, you assume he's just going to leave it

18   somewhere and forget about it?

19   MR. BEARD: No. No, Mr. Chief Justice. If

20   you just hide the money, that would encompass just

21   hiding money, for example, in the back yard of your

22   house with -- with -- or in a tin can or under a

23   mattress or whatever. It's a much broader -- broader

24   concept.

25   And I think that that's really what is at

24

1 play here because, to the extent that the government is

2 focusing on the method or -- of the concealment here,

3 they're -- they're implicating that type of behavior, if

4 you will, and saying it's sufficient to support a money

5 laundering conviction.

6   JUSTICE ALITO: But what if there is a wire

7 transfer to a bank in another country because that bank

8 has bank secrecy laws that will make it impossible to

9 ascertain the location of the money once it is there?

10   Does that fall within the statute?

11   MR. BEARD: At this point, no, Justice,

12 because you haven't suggested that there was any type of

13 design, any intent to disguise or conceal. You've just

14 suggested it went to another place. If I sent it to an

15 account --

16   JUSTICE ALITO: If that's the purpose. If

17 the person says, I'm sending this to blank country

18 because they've got bank secrecy laws there that make it

19 impossible to find this money once it gets into their

20 banking system.

21   MR. BEARD: No.

22   JUSTICE ALITO: That's not --

23   MR. BEARD: On those facts, no, I don't

24 think so. Now, if I were sending money to accounts in

25 the jurisdiction you've described, and perhaps with a

1   little bit more, different names on the accounts or what

2   have you, then I -- then I think a different result.

3   But if I'm just sending from my account here to my

4   account there, then no.

5   JUSTICE GINSBURG: Would you say the same

6   thing for -- if you just put it in a safe deposit box in

7   a bank in the Bahamas?

8   MR. BEARD: I would make the same -- my

9   answer would be the same without more, Your Honor.

10   CHIEF JUSTICE ROBERTS: Well, the "more" is

11   they don't hold it under your name. They hold it under

12   a numerical account number. Then that changes

13   everything?

14   MR. BEARD: It very well may. At least -- I

15   don't know that it changes everything, but it very well

16   may lead to a different result. But you just modified

17   the hypothetical.

18   What I'm -- what I'm suggesting is that if

19   you're just putting money in a safety deposit box or

20   this account or under the mattress or in the hole in the

21   back yard --

22   JUSTICE SCALIA: Because the police can't

23   find it in that account even if it is still under your

24   name. In an account here the police would be able to

25   find it. In an account in the Cayman Islands, they

1   won't be able to. Isn't that -- isn't that transporting

2   it in order to conceal, to conceal it?

3   MR. BEARD: Justice, no, I don't think so,

4   and I'll briefly answer and try to come back to you in

5   rebuttal.

6   But I think that it's important to

7   understand the money laundering statute is not a

8   detection statute. That's not where the focus of the

9   statute rests.

10   Mr. Chief Justice, if I can reserve the

11   balance of my time.

12   CHIEF JUSTICE ROBERTS: Thank you, Mr.

13   Beard.

14   JUSTICE SCALIA: I don't understand that, so

15   I hope you will explain it later. It doesn't mean

16   anything if it's not a detection statute.

17   CHIEF JUSTICE ROBERTS: Ms. Schertler.

18   ORAL ARGUMENT OF LISA H. SCHERTLER

19   ON BEHALF OF THE RESPONDENT

20   MS. SCHERTLER: Mr. Chief Justice, and may

21   it please the Court:

22   The international concealment money

23   laundering statute contains no appearance of legitimate

24   wealth requirement, nor does it demand proof that the

25   illegal proceeds will be cleansed after they cross the

 1   United States border. Petitioner's construction of the

 2   statute is not supported by its tests and would defeat

 3   its purpose.

 4   What the statute does require is proof

 5   beyond a reasonable doubt that the defendant knows that

 6   he has illegal proceeds and that he knows that the

 7   transportation across the border of those known illegal

 8   proceeds is designed in whole or in part to conceal or

 9   disguise one, at least one, of the facts in the statute

 10   about those proceeds. The phrase "designed in whole or

 11   in part" directs a full examination of the plan, of the

 12   way in which the cross-border transportation of these

 13   known illegal proceeds was planned out.

 14   JUSTICE ALITO: Does the word

 15   "transportation" mean the act of transportation across

 16   the border or the method of transportation?

 17   MS. SCHERTLER: The word "transportation"

 18   itself means the carrying of something from one place to

 19   another. The phrase "designed in whole or in part,"

 20   suggests that one should look at the entire plan, the

 21   way that this transportation was conceived or planned

 22   out in the mind, which would include, we would submit,

 23   the method that was -- that was chosen to be used for

 24   this transportation, the individual who was designated

 25   to conduct this transportation of known illegal proceeds

1 across the United States border, and, yes, reasons for

2 conducting that transportation as well.

3   But it is not limited, as Petitioner would

4 suggest, to just one fact, that being what's going to

5 happen to the funds after the transportation is over.

6   JUSTICE BREYER: You go back to

7 Justice Alito's question. I agree with you that you

8 could read this as including a prohibition against a

9 method of transportation which method is to hide the

10 money. You could. But you could also read it the way

11 that the question suggests, to refer only to the

12 transportation. So you transport it physically in order

13 later to hide it.

14   Now, the difference between the two is if we

15 accept yours, which is the broader, this statute

16 includes everything that has nothing to do with the

17 common word "money laundering." Any time you hide

18 something, for whatever reason you hide it, to take it

19 to pay the couriers, you're money laundering. Any time

20 you run a gambling operation and the people stick the

21 money in the wad of their shoe, they're money

22 laundering.

23   I mean, why would you think Congress would

24 want that narrow reading when it can be read to focus

25 much more closely on money laundering just by reading it

1   literally for what it says?

2   MS. SCHERTLER: Your Honor, several

3   responses to that, to that question.

4   First of all, what's the purpose -- if we

5   want to look beyond the words "designed in whole or in

6   part" in the context of the international money

7   laundering statute to try to discern what the purpose

8   was of the statute, the purpose of this statute was to

9   prevent criminals from taking their proceeds abroad

10   where they would be outside the reach of all of these

11   controls that have been set up in the United States in

12   order to detect illegal proceeds and use those proceeds

13   to trace back to the crimes and the criminals that

14   generated them.

15   JUSTICE SOUTER: But if that's all they were

16   getting at, they wouldn't have to have this

17   international component at all, because if you totally

18   eliminated the "to or through" requirement and you were

19   able to focus or properly focus solely on the method of

20   the transportation, et cetera, then you would cover not

21   only cases in which the concealment ultimately would

22   take place by crossing a border, but you would pick up

23   cases in which the concealment would take place even

24   within the United States; and that would certainly be in

25   the government's interest.

1   But if you add, if you say, well, but this

2   is limited by a to or through requirement, then it

3   suggests, it seems to me, as Justice Breyer's question

4   does, that it must -- the statute must be getting at

5   what happens when it crosses the border as opposed to

6   the means of crossing.

7   What's your answer to that?

8   MS. SCHERTLER: My answer to that, Your

9   Honor, is that that would have -- that would defeat the

10   purpose for which this statute was enacted. The -- the

11   premise of this statute was that once illegal proceeds

12   are taken abroad, taken outside of the United States

13   system, we lose control of them, we lose the ability to

14   find them, and we will have no idea --

15   JUSTICE SOUTER: But that would be -- that

16   would be equally true and an equally appropriate

17   objective without the "to or through" requirement in

18   there. In other words, you don't have to have the "to

19   or through" requirement in order to give the government

20   a tool for exactly the purpose that you describe.

21   MS. SCHERTLER: And there -- there could

22   have been drafted a statute that was even broader than

23   this one in that respect. But the way -- the reason

24   that Congress imposed the "to or through" requirement is

25   that it knew -- is that that was when law enforcement in

1   the United States would lose the ability to use ordinary

2   investigative methods to find the proceeds of illegal

3   fraud.

4   JUSTICE KENNEDY: Then what you're saying, I

5   suppose, is that the movement of funds, if they're

6   illegal proceeds, outside of the country is a per se

7   concealment?

8   MS. SCHERTLER: No, Your Honor. We do not

9   --

10   JUSTICE KENNEDY: Give me an example of when

11   you take money outside of the country that's illegal

12   money --

13   MS. SCHERTLER: Yes.

14   JUSTICE KENNEDY: -- that's not a

15   concealment?

16   MS. SCHERTLER: Yes. Let's say you have a

17   drug dealer who conducts a number of drug transactions

18   on one side of the border, takes his daily take, puts it

19   in his pocket or his wallet and crosses the border into

20   Mexico. Based on that evidence alone, the government

21   would not be able to show beyond a reasonable doubt that

22   merely taking those illegal proceeds, known illegal

23   proceeds, putting them in your pocket, that that was

24   designed to conceal the location, that there was a

25   plan --

1   JUSTICE SCALIA: He puts it in his shoe,

2   okay. Because it's a lot, he puts it in his shoe.

3   MS. SCHERTLER: That would --

4   JUSTICE SCALIA: That would be enough,

5   wouldn't it?

6   MS. SCHERTLER: That would -- yes. Your

7   Honor, that would permit the inference. Now, of course,

8   ultimately --

9   JUSTICE SOUTER: What if he gives it to his

10   brother and says take it across for me, will you?

11   MS. SCHERTLER: Well, I don't think that

12   that alone is -- is enough, Your Honor.

13   What the statute asks is can you find --

14   JUSTICE SOUTER: If he tells his brother to

15   put it in his shoe?

16   (Laughter.)

17   MS. SCHERTLER: That would -- that would --

18   that would get close.

19   CHIEF JUSTICE ROBERTS: Why isn't that

20   enough? If, for example, he's being -- he thinks he's

21   being watched by law enforcement because they know he's

22   up to something, but his brother isn't, why isn't that

23   concealing?

24   MS. SCHERTLER: With that additional

25   evidence, absolutely. I think there would be a basis

33

1   for a jury to find beyond a reasonable doubt that that

2   was designed, that that was designed to conceal.

3   JUSTICE KENNEDY: Well then, let me back up.

4   Then let me add this. It seems to me that you're

5   saying, as you have to say, that any movement of illegal

6   funds outside the country which is concealed is per se

7   concealing a relevant attribute?

8   MS. SCHERTLER: We don't go that far, Your

9   Honor. As I said --

10   JUSTICE KENNEDY: But if you do.

11   MS. SCHERTLER: -- you need to find --

12   JUSTICE KENNEDY: I think you have to go

13   that far to make the case you're making.

14   MS. SCHERTLER: No, not at all. I mean,

15   what -- Congress could have said every cross-border

16   transportation of illegal proceeds is covered. And they

17   did not. What they did was they set up this filter

18   for the ones --

19   JUSTICE KENNEDY: But you're always

20   concealing the control. You're always concealing the

21   ownership. You're always concealing the location if

22   it's in your shoe or in the bottom of the car.

23   MS. SCHERTLER: I don't -- you have -- they

24   have to find a design to conceal.

25   JUSTICE BREYER: He purposely puts it in his

34

1   shoe, okay.

2   MS. SCHERTLER: Yes.

3   JUSTICE BREYER: It's a design. He knows

4   he's going to do it. So -- and you're saying, I take

5   it, 100 percent of the time that's illegal. If you're

6   not saying that, I don't understand what you're saying.

7   MS. SCHERTLER: No --

8   JUSTICE BREYER: If you are saying that, I

9   don't know why they call this statute "Laundering of

10 Monetary Instruments." Why didn't they call it "shoe

11 hiding"?

12   (Laughter.)

13   JUSTICE SCALIA: And you're basically

14 confronting face-on the dissent here, which drew a

15 distinction between transporting to conceal and

16 concealing to transport. And all you have here is

17 concealing to transport, and the question is whether

18 that violates the statute.

19   I agree with Justice Breyer that if this is

20 a statute directed at concealing to transport, it's a

21 funny name for it to think that it's a money laundering

22 statute.

23   MS. SCHERTLER: Your Honor, the title of

24 this statute, "Money Laundering," this is exactly

25 what -- among the conduct that Congress had in mind when

1   it enacted and when it confronted money laundering in

2   1986. It saw money laundering as the variety of ways in

3   which criminals prevent the detection of their illegal

4   proceeds and thus are able to profit from their crimes.

5   It covered a wide range of conduct that included

6   converting, yes, illegitimate wealth into legitimate

7   forms through very complex means.

8   But Congress was also concerned about

9   criminals taking their proceeds across the border

10   surreptitiously --

11   JUSTICE GINSBURG: Were they concerned that

12   this was a 20-year penalty, not what you're talking

13   about, the person who gets -- who is the drug dealer,

14   but all that this evidence shows is that we have a

15   courier. We don't even know if he knows who put the

16   money in the car. We don't know if he knows the -- who

17   the person is that he's to deliver the money to.

18   So on your theory, all you have to prove is

19   that this defendant drove a car in which illicit money

20   was hidden in order to get it out of the country. No

21   grand design. All he is is a courier.

22   MS. SCHERTLER: He needs to know that part

23   of the design, part of the plan of that transportation,

24   was to conceal or disguise --

25   JUSTICE GINSBURG: That's a -- that's a lot

1   of fancy language. All he knows, in fact, if he's just

2   a courier is that somebody gave him money to take this

3   car in which drug money is hidden across the border.

4   MS. SCHERTLER: And the use of that courier

5   also was part of a design to conceal or disguise the

6   ownership and control --

7   JUSTICE GINSBURG: Not his design. His

8   design is only -- I mean, he's just a drug courier, and

9   I think that's what -- that's a problem with your

10   interpretation of the statute. One can think of the

11   kingpin having this elaborate plan, and when it gets to

12   Mexico it's going to go into this bank and that place.

13   But here the defendant is simply a courier, and on the

14   government's theory anyone who transports hidden money

15   to get it out of the country, who drives the car, just

16   the driver, is a money launderer.

17   MS. SCHERTLER: Justice Ginsburg, the --

18   Congress's purpose here was in getting at exactly this

19   kind of conduct by third parties in particular, because

20   when you use a third party that violates another purpose

21   at which the statute is directed: using third parties

22   to conceal who the true owner in control of the proceeds

23   is.

24   JUSTICE SOUTER: I suppose then the brother

25   should be -- giving the money to the brother should

37

1 satisfy the statute.

2   MS. SCHERTLER: It --

3   JUSTICE SOUTER: Because if I'm -- if I'm in

4 the drug business and my -- my brother is an

5 international social worker or something, I'm certainly

6 going to conceal when I give it to him and he carries it

7 across the border.

8   MS. SCHERTLER: Yes, Justice Souter, that

9 would be another example of using a third party so that

10 a -- so that one part of the design of that

11 transportation is to conceal the ownership and control

12 of the proceeds.

13   And in response to Justice Ginsburg's

14 question, Congress also -- well, in the sentencing

15 guidelines system now, the guidelines takes account of

16 whether you have the individual who is also engaged in

17 the underlying offense or whether you have a third party

18 who had not been involved in the underlying offense.

19   But no -- no matter how you see it, this was

20 precisely the conduct that Congress is getting at. It

21 saw that the only way to -- to get at crime -- one way

22 that was very important to it was to get at the money

23 and in order to get at the money you need to be able to

24 counteract the ways in which the criminals would prevent

25 law enforcement from getting at the money.

38

1   JUSTICE ALITO: Suppose the person who set

2   all this up lives in Mexico and the sole intent of that

3   person was to bring the money back to him in the place

4   where he lives? That would -- would that be money

5   laundering by him, to start out with?

6   MS. SCHERTLER: If he had designed this

7   transportation, yes, Your Honor, because the whole --

8   the design of this transportation was to conceal or

9   disguise all five of the attributes of these illegal

10   proceeds.

11   JUSTICE ALITO: Isn't that a question of --

12   isn't that a question of his intent?

13   MS. SCHERTLER: I --

14   JUSTICE ALITO: It's not the effect of the

15   design, is it? It's the intent of the design.

16   MS. SCHERTLER: It -- it is -- what was --

17   what was the plan? What was the conception? What

18   decisions were made about why and how we get these

19   proceeds from point A to point B.

20   JUSTICE SCALIA: Everybody knows he's a drug

21   dealer, back in Juarez or wherever he lives in Mexico.

22   MS. SCHERTLER: But by --

23   JUSTICE SCALIA: He's famous in town. He's

24   a well respected man because he's a big drug dealer.

25   And he has just arranged get the money delivered to him

1   so that he can spend it. What -- what's concealing

2   there?

3   MS. SCHERTLER: And he's arranged it in a

4   way, if we're assuming the transportation here, so that

5   his ownership and control of those proceeds will be

6   disguised --

7   JUSTICE SCALIA: It won't be disguised.

8   MS. SCHERTLER: -- during the course of the

9   transportation by saying, I'm going to select a third

10   party.

11   CHIEF JUSTICE ROBERTS: During the course of

12   the transportation. That is not what you say in your

13   brief. I'm looking at page 41 and what you say is: "If

14   no independent evidence establishes that concealment or

15   disguising of the pertinent attribute of the proceeds

16   would occur at the point of destination, then a

17   factfinder would lack a reasonable basis for inferring

18   that the transportation was designed to conceal or

19   disguise."

20   In other words, in the hypothetical

21   Justice Scalia just gave -- in other words everybody

22   knows he's a drug dealer, he spends the money -- there

23   is no concealment or disguising the pertinent attribute

24   at the point of destination.

25   MS. SCHERTLER: That -- the sentence,

1   Mr. Chief Justice, that you just read is the last in a

2   series of "if's" that we lay out in our brief, where we

3   -- where we assert that at any point in the

4   transportation a jury could find evidence of a design to

5   conceal or disguise. And that last sentence says if

6   they haven't found any evidence concerning the means and

7   the method and the person used for the act of

8   cross-border transportation, and if in addition there

9   was no evidence of what would occur at the point of

10 destination, then there would be no evidence.

11   CHIEF JUSTICE ROBERTS: So there is no money

12 laundering if they conceal the proceeds in a suitcase

13 that's in the trunk of the car? Is that enough?

14   MS. SCHERTLER: Well, that would --

15   CHIEF JUSTICE ROBERTS: Is that concealing

16 the money?

17   MS. SCHERTLER: If we're talking about just

18 the attribute of location, use of a suitcase I would say

19 provides some evidence that there was a design to

20 conceal the location of those illegal proceeds during --

21 as part of this cross-border transportation.

22   CHIEF JUSTICE ROBERTS: Does use of a

23 suitcase provide that evidence?

24   MS. SCHERTLER: I think it would provide

25 basis for a jury to make --

1   CHIEF JUSTICE ROBERTS: When I use a

2   suitcase I'm using it to carry my clothes, not to

3   conceal them.

4   MS. SCHERTLER: And if the jury were

5   presented with testimony that that was the design --

6   that the only design, the only purpose, the only plan in

7   using that suitcase was to use it to secure money for

8   travel, then we would not have met our burden, but based

9   solely on the circumstances.

10   JUSTICE KENNEDY: Well, your answer to

11   Justice Scalia's hypothetical is still not clear to me.

12   It -- it seems to me your answer should be yes, because

13   he's concealing the ownership as of the time he goes

14   across the border, which brings me to my earlier

15   question, if once it's concealed, the statute is always

16   -- is always valid.

17   Then you indicated that oh, well, what

18   happens at the destination is very important. Then we

19   had Justice Scalia's hypothetical. I'm not sure where

20   you came out on that.

21   MS. SCHERTLER: Oh, our -- let me -- let me

22   be clear. I think even if one were to hypothesize that

23   there would be no effort whatsoever to conceal the money

24   at the point of destination, but a jury could find that

25   the transportation itself was designed in other

1   respects -- in its method, in its means -- to conceal or

2   disguise an attribute of the proceeds, that would be

3   enough to find that it was designed in whole or in part,

4   in any part --

5   JUSTICE KENNEDY: So Concealment,

6   concealment during the transportation is always a

7   concealment of an attribute under the statute. That has

8   to be your position.

9   MS. SCHERTLER: Concealment -- yes. The

10   only exception that we make would be in the Chief

11   Justice's example, if the jury were to find that there

12   was no design to conceal the location, for instance, to

13   prevent its discovery; it was only -- my only design was

14   to secure this for transport, like I put my money in my

15   wallet to do that.

16   JUSTICE STEVENS: May I ask you a broader

17   question, forgetting the text of the statute for just a

18   minute, because the text is extremely broad. Do you

19   think the question whether there's an attempt to create

20   an appearance of legitimate wealth has anything to do

21   with the analysis? The question presented is whether

22   there must be such a --

23   MS. SCHERTLER: The question presented --

24   JUSTICE STEVENS: And you're arguing that's

25   totally irrelevant and that -- and also that that

43

1   familiar title, "Money Laundering," totally irrelevant?

2   MS. SCHERTLER: Your Honor, we disagree that

3   there is any -- there is no appearance of legitimate

4   wealth requirement in the statute. This --

5   JUSTICE STEVENS: There is no -- okay.

6   MS. SCHERTLER: This statute --

7   JUSTICE STEVENS: And the term "laundering"

8   really should be totally ignored?

9   MS. SCHERTLER: The term "laundering" under

10   -- when it is understood to mean the way Congress meant

11   it and the way Congress was viewing this conduct is much

12   broader than Petitioner suggests.

13   Laundering is the many ways in which

14   criminals prevent detection of their proceeds. It would

15   include and Congress certainly had evidence before it --

16   JUSTICE STEVENS: I understand you could

17   find a violation of it, but what I'm really asking you:

18   Is this just a total wild goose chase? We shouldn't

19   even consider laundering at all? As I understand your

20   argument, it's totally irrelevant.

21   MS. SCHERTLER: The title of the statute

22   says -- but the terms of the statute are what matter

23   here.

24   JUSTICE STEVENS: So it is irrelevant?

25   MS. SCHERTLER: The terms are plain. But

1   even if you were to look at the term "laundering," it

2   would not support Petitioner's argument that that has a

3   narrow meaning that includes only conduct that creates

4   an appearance of legitimate wealth.

5   CHIEF JUSTICE ROBERTS: So if this fellow

6   were driving to Canada would that be a different case,

7   because Canada does not have the sort of cash economy

8   we've heard about in Mexico?

9   MS. SCHERTLER: If the method of

10   transportation were exactly the same, it would make no

11   difference, Your Honor. In this case, this -- this

12   transportation method was designed, a jury could find

13   beyond a reasonable doubt, to conceal or disguise the

14   ownership and control of the proceeds through the third

15   party, and if that were the case and they were going to

16   Mexico it would be the same. The nature and the

17   location of the proceeds through the use of this secret

18   compartment and the goat hair to discuss the scent of

19   the proceeds from the drug detection dog.

20   CHIEF JUSTICE ROBERTS: So, what if the

21   fellow says: You know, there are dangerous roads

22   between here and Mexico. I'm hiding the money so that

23   if, you know, a gang comes up they don't find it. And

24   you say: No, we think you're hiding it because it's

25   illegal proceeds? Is that enough to get to the jury?

45

1   MS. SCHERTLER: I think that's enough to get

2   to the jury, and that would be a jury question, Your

3   Honor, yes.

4   JUSTICE SCALIA: Just to be clear, you

5   affirmatively say that concealing to transport is

6   enough, right?

7   MS. SCHERTLER: Yes, Your Honor. It's --

8   that is enough. Concealing to transport when the jury

9   -- when it is part of the design of the transportation

10   to conceal the location, nature, source, ownership, or

11   control, any single one of those things. And all of

12   those are in here.

13   JUSTICE GINSBURG: Why do you make

14   distinctions between methods of concealment? And if the

15   design is to get the money out of the country, why

16   should it matter whether you put it in a travel bag, you

17   put it in the glove compartment, you put it in your

18   wallet, or you go through this elaborate disguise that

19   we see here?

20   What -- if what's important is getting it

21   beyond the border beyond the reach of law enforcement in

22   the United States, why should it make a difference how

23   carefully it is concealed?

24   MS. SCHERTLER: That need not make a

25   difference if there is evidence before the jury, if

46

 1   there is evidence that the ultimate design of the

 2   transportation is to conceal or disguise the proceeds at

 3   the point of destination.

 4   JUSTICE KENNEDY: Well, then your only

 5   defense is to go across the border and before you go

 6   across you put all the money in your arms so the people

 7   can see it? That's the way you do it?

 8   (Laughter.)

 9   JUSTICE KENNEDY: Other than that?

10   MS. SCHERTLER: In that situation, there

11   would no basis to find concealment or disguise of

12   location. Now, some of the other attributes may be at

13   issue if a third party is conducting that

14   transportation, but location from the method alone. So

15   the jury would need information about, well, what is the

16   design, what is the purpose of this cross-border

17   transportation? They could still find that the

18   necessary design to conceal or disguise is satisfied by

19   evidence that the whole purpose here is to get it to

20   Mexico where it will be turned into legitimate wealth,

21   for instance.

22   JUSTICE GINSBURG: That's transporting to

23   conceal.

24   MS. SCHERTLER: That's -- and I, for one --

25   JUSTICE GINSBURG: But you're saying this

1   statute covers both?

2   MS. SCHERTLER: It covers both, Your Honor.

3   It asks broadly what was this -- how was this

4   transportation designed and planned out in whole or in

5   part? In any part, was it designed to conceal or

6   disguise? And that would encompass all of the stages

7   that we are -- that we are discussing.

8   JUSTICE GINSBURG: In your brief, you said

9   the bulk cash statute would not apply to a courier. Do

10   you still take that position, that the government's

11   choice is to indict for money laundering or nothing?

12   MS. SCHERTLER: The bulk cash -- well,

13   the bulk -- in this case, there's no evidence in this

14   record that a bulk cash smuggling statute charge would

15   have been viable because there's no evidence in this

16   record that this defendant knew of a currency reporting

17   requirement and intended to evade it.

18   Petitioner's argument that the bulk cash

19   smuggling statute shows that the conduct here was not

20   intended to be covered by the money laundering statute

21   is incorrect for the very reason that Justice Kennedy

22   has identified. The bulk cash smuggling statute could

23   not have filled a gap in the money laundering statute

24   for the conduct here because it has always contained a

25   provision that covers the transportation of known

1 illegal proceeds across the border to evade a --

2 reporting requirements.

3   JUSTICE SCALIA: There's no principle that

4 all criminal statutes have to cover every -- every bad

5 act. Maybe Congress has left a gap. I'm willing to

6 entertain the possibility that this individual,

7 obviously doing something very bad, doesn't -- falls

8 between the two stools. He is neither guilty under the

9 taking currency out of the country statute because he

10 didn't know of the existence of the statute, and he's

11 not guilty under one because he was not transporting to

12 conceal but was concealing to transport. And so there's

13 a gap. The Justice Department can certainly get that

14 gap filled readily enough. I don't know why we should

15 torture either one of the statutes to close it.

16   MS. SCHERTLER: The plain reading of the

17 money laundering statute covers this conduct, and

18 Congress specifically had this conduct in mind. As

19 Senator Biden said in questioning -- and he became one

20 of the co-sponsors -- questioning a witness about this:

21 Isn't it the truth that if we -- if we strengthen all

22 our domestic controls against money laundering, aren't

23 the criminals going to resort to physically transporting

24 their cash out of the United States? This is a --

25   CHIEF JUSTICE ROBERTS: How many co-sponsors

1   were there?

2   MS. SCHERTLER: I don't know, Your Honor.

3   This is part of the core conduct at which

4   this statute was directed, this international

5   concealment money laundering statute.

6   JUSTICE BREYER: How does that show what you

7   want it to show? I mean, what I just heard you say is

8   that Senator Biden said if we make it very tough to

9   launder money in the United States, then criminals will

10   send their money abroad to be laundered.

11   MS. SCHERTLER: And --

12   JUSTICE BREYER: They'll transport it abroad

13   in order to launder it. How does that help you?

14   MS. SCHERTLER: They will resort to taking

15   their money physically out of the United States. And

16   the Senate report says that this provision was designed

17   to halt this flow.

18   JUSTICE BREYER: In order to launder it.

19   Were they not talking about money laundering?

20   MS. SCHERTLER: If the premise --

21   JUSTICE BREYER: Or were they not talking

22   about it? I'm just going back -- I didn't read Senator

23   Biden's statement, so I'm just curious.

24   MS. SCHERTLER: This provision was directed

25   at preventing the illegal moneys from leaving the

1   country. It would have made no sense for Congress,

2   having understood that when money leaves the United

3   States we have little if any ability to know what

4   happens to it, to require in the statute proof beyond a

5   reasonable doubt of what would happen to the money once

6   it --

7   JUSTICE SCALIA: If you're trying to prevent

8   the money --

9   JUSTICE KENNEDY: But you, in response to

10   one of my hypotheticals, said that it would be relevant

11   in some cases to show that it was designed to create the

12   appearance of legitimate wealth. So you put that back

13   in --

14   MS. SCHERTLER: If --

15   JUSTICE KENNEDY: So you put that back into

16   play.

17   MS. SCHERTLER: If we have that evidence,

18   yes, Your Honor. But to take Petitioner's position that

19   it would be necessary evidence in every case in which to

20   prevail under this statute to know of future plans to

21   launder abroad, when the premise of this statute is that

22   when the money leaves the country we cannot know what

23   happens to it, makes no sense.

24   JUSTICE SCALIA: What if --- if that's what

25   they're concerned about, taking the money out of the

1   country, why do they have the concealment requirement?

2   They could have just said, you know, if you take dirty

3   money out of the country you're guilty.

4   MS. SCHERTLER: They --

5   JUSTICE SCALIA: They didn't say that. They

6   have a concealment -- I can't understand why, if the

7   money is hidden during the transportation, it's any

8   worse than when the money is not hidden during the

9   transportation. It isn't -- it isn't the hiding during

10   the transportation they're concerned about. The statute

11   doesn't make any sense that way.

12   MS. SCHERTLER: I think that it does, Your

13   Honor.

14   The Court -- the Congress certainly could

15   have written it in the broad way that you've suggested.

16   It's not unlike the way that they wrote section 1957,

17   which covers broadly all transactions in illegal money.

18   They chose to not cover everything and to

19   cover cross-border transportation's where there's

20   evidence of some intent on the part of that individual

21   to conceal or disguise. And when you think about it,

22   they had set up regulatory provisions like the

23   transaction reporting requirement when there's no

24   conceal or disguise. There were other controls in place

25   as, say, the first line of defense against money

1 laundering to say, $10,000 or more is leaving the

2 country, we're going to know about it because we have

3 reporting requirements.

4   Here the Senate report says that they made

5 the decision to require evidence of concealment.

6 "Evidence of concealment of a crime" is what the report

7 says. And any time one of these attributes of illegal

8 proceeds is being concealed or disguised, that is

9 concealing a crime in a way that impairs law enforcement

10 from finding those proceeds.

11   JUSTICE STEVENS: May I ask -- may I ask

12 this question? If the statute did include -- and I know

13 you think it does not -- a requirement of trying to

14 create an appearance of legitimate wealth, you would

15 lose? In this case.

16   MS. SCHERTLER: I don't think so, Your

17 Honor, and I would -- I would go back to the evidence

18 that Justice Alito has pointed out that is in this

19 record, that there's evidence in this record that --

20 that the -- by taking the funds to Mexico, they would be

21 able to be used in a way that would not raise suspicion.

22   JUSTICE STEVENS: Well, there's also,

23 consistent with the evidence, they want to pay the drug

24 dealer for the drugs. And then a jury -- you can't say

25 it's clear beyond a reasonable doubt that that was not

53

1 what it was going on.

2   MS. SCHERTLER: There was -- I would not --

3 I would not disagree with that. I think that we do -- I

4 see that my red light is on.

5   CHIEF JUSTICE ROBERTS: Why don't you finish

6 your answer?

7   MS. SCHERTLER: Your Honor, there was --

8 there was evidence in this case that the proceeds were

9 removed -- this is expert testimony -- removed from the

10 United States to conceal so as not to go through

11 reporting requirements, so that the money would not be

12 identified to U.S. law enforcement. We believe the jury

13 could also infer that further efforts to conceal and

14 disguise those proceeds would occur at the point of

15 destination.

16   Thank you, Your Honor.

17   CHIEF JUSTICE ROBERTS: Thank you,

18 Ms. Schertler.

19   Mr. Beard, you have four minutes remaining.

20   REBUTTAL ARGUMENT OF JERRY V. BEARD

21   ON BEHALF OF THE PETITIONER

22   MR. BEARD: Justice Scalia, when I left we

23 were discussing --

24   JUSTICE SCALIA: I forget what it was that I

25 didn't understand.

1   (Laughter.)

2   MR. BEARD: Happily I've been thinking about

3   it. Disruption versus detection I had told you, told

4   the Court that this was not a detection statute as much

5   as it is a disruption statute.

6   I think it is important for the Court to

7   recall that the very broad interpretations that the

8   government advances today are essentially the very broad

9   interpretations that the Congress rejected explicitly 20

10   years ago. The Congress rejected the notion that the

11   transportation of illicit funds in and of itself created

12   money laundering liability. And we've discussed that.

13   I think it's important, Justice Scalia, in

14   particular, in response to your question to bring this

15   up, because the Congress recognized that detection would

16   be harder in rejecting that type of legislation, but

17   rejected that they did.

18   The Congress has also shown itself capable

19   of -- of -- in the 1957 context of taking transactions

20   involving unlawful proceeds and making those per se

21   illegal. They could have easily done the same thing in

22   the transportation context if they had wanted to, but

23   instead they were looking at the separate behavior that

24   comprises money laundering. I mean, it is the notion

25   that you're taking money somewhere else and you're doing

1   something else and it gives rise to separate liability.

2   I think the true harm in the government's

3   interpretation, it basically conflates liability for

4   money laundering with the underlying offense, because

5   all of the underlying offenses involve concealment.

6   JUSTICE STEVENS: May I ask the same basic

7   question of you? Do you think that this line, "create

8   an appearance of legitimate wealth" is an essential

9   element of the offense?

10   MR. BEARD: It is not an element,

11   Justice Stevens. As I said, so --

12   JUSTICE STEVENS: So then your question

13   presented raised that question, you're walking away from

14   that question?

15   MR. BEARD: We have spoken in the question

16   presented in that broad term, because we think that that

17   language encapsulates what's taking place.

18   JUSTICE STEVENS: It is not an essential

19   element of the offense?

20   MR. BEARD: It's not an element. But what

21   is an essential element is the need for the

22   transportation -- the transportation to be designed to

23   accomplish the same thing, to obfuscate those

24   attributes. It's -- and that's -- and therein is the

25   reason why --

 1   JUSTICE ALITO: -- the same thing,

 2   appearance of legitimate wealth goes to one of the

 3   attributes, the nature of what's being transported. It

 4   doesn't go to all the other attributes.

 5   MR. BEARD: The Congress had identified,

 6   Justice Alito, those particular attributes as being key

 7   to allowing the launderer to inject the money back into

 8   commerce. It may be that nature is implicated more

 9   often, but the Congress chose to list the others because

10   they felt that those were the particular attributes

11   that, broadly speaking, allowed for the laundering

12   process.

13   This notion of --

14   JUSTICE KENNEDY: Suppose the evidence is

15   clear that he knew he was taking it across the border

16   and it was to pay the drug dealer? Would that suffice?

17   MR. BEARD: For liability under the statute,

18   Justice? No, because the purpose there was not to

19   obscure the attributes. It is simply repayment. It's

20   the final leg, if you will --

21   JUSTICE KENNEDY: Well, but -- no, no. He

22   conceals it, in order to pay the drug dealer.

23   MR. BEARD: Yes. I'm saying that -- I may

24   have misunderstood. If you are saying Mr. Cuellar were

25   to know he was paying the drug dealer?

1   JUSTICE KENNEDY: Yes.

2   MR. BEARD: That wouldn't give rise to

3   laundering, because all you have there basically is

4   money spending. It's the conduct of the underlying --

5   JUSTICE KENNEDY: It's concealing who owns

6   and controls.

7   MR. BEARD: No, I don't think so. I think

8   what you would have under these circumstances is merely

9   the final step, if you will, in the underlying unlawful

10   activity.

11   JUSTICE SCALIA: Mr. Beard, can't you give

12   us something we can get this guy on?

13   (Laughter.)

14   MR. BEARD: I'm not comfortable doing that.

15   JUSTICE SCALIA: He's carrying dirty money.

16   It even smells of drugs.

17   (Laughter.)

18   JUSTICE SCALIA: Can't we get him as an

19   accessory to drug dealing or something? You say he has

20   to walk?

21   MR. BEARD: Well, Justice, I'm not

22   uncomfortable with the notion of him walking, because

23   I'm not uncomfortable with the notion you brought up

24   earlier with that there may indeed be a gap. If there

25   is a gap, then there's a remedy for that. But I think

1   that if --

2   JUSTICE GINSBURG: The point -- the point

3   about aiding and abetting something, this money reeks of

4   marijuana, and that was very puzzling to me. Why this

5   is the standard operating procedure to take this money

6   and wrap it in containers that had contained the drug.

7   So when the police find it, they know it's drug money.

8   MR. BEARD: Justice, I know that the --

9   initially the way this went down was the money that was

10   in his pocket. That's what triggered the -- that's what

11   they said smelled like raw marijuana. And then

12   eventually, they found the drug money. And I can't tell

13   you why they did it this way. But I think that your

14   question underscores they were concerned not with

15   obfuscating any attributes, obviously, they were

16   concerned with getting this money back to repay the

17   person who had sent the drugs north under the

18   government's theory.

19   CHIEF JUSTICE ROBERTS: Thank you,

20   Mr. Beard. The case is submitted.

21   (Whereupon, at 11:04 a.m., the case in the

22   above-entitled matter was submitted.)

23

24

25

55:7,8 56:16
broader 3:25
24:23,23 29:15
31:22 43:16
44:12
broadly 22:12
48:3 52:17
57:11
brook 20:23
brother 33:10
33:14,22 37:24
37:25 38:4
brought 58:23
bulk 7:7,18 8:10
8:21 22:10
48:9,12,13,14
48:18,22
burden 42:8
business 38:4

C

C 2:1 3:1
call 35:9,10
Canada 45:6,7
capable 55:18
car 3:22 4:15
5:15,19 34:22
36:16,19 37:3
37:15 41:13
carefully 46:23
carries 38:6
carry 42:2
carrying 28:18
58:15
case 3:4,13 5:7
5:11,14 6:8,12
7:25 8:2 9:16
10:10,13 18:12
18:15 34:13
45:6,11,15
48:13 51:19
53:15 54:8
59:20,21
cases 30:21,23
51:11
cash 7:7,18,22
8:10,11,19,19

8:21 9:5 12:11
12:14 13:7,22
15:11,16 17:16
17:16 22:11
45:7 48:9,12
48:14,18,22
49:24
category 22:15
Cayman 26:25
certainly 3:21
3:24 5:7,19
8:24 10:2
15:17 18:2,12
21:4 30:24
38:5 44:15
49:13 52:14
cetera 30:20
change 20:16,17
changes 4:13
26:12,15
character 13:21
characteristics
5:22
charge 48:14
chase 44:18
Chief 3:3,8,21
3:25 8:25 9:10
9:14 10:17
22:18,23 23:4
23:13,17 24:1
24:4,13,16,19
26:10 27:10,12
27:17,20 33:19
40:11 41:1,11
41:15,22 42:1
43:10 45:5,20
49:25 54:5,17
59:19
choice 48:11
chose 52:18 57:9
chosen 28:23
circumstances
9:25 42:9 58:8
clean 17:5 20:21
cleanse 14:6
cleansed 27:25
cleansing 16:9

clear 42:11,22
46:4 53:25
57:15
close 33:18
49:15
closely 29:25
closer 9:13 10:1
18:16
clothes 42:2
come 18:7,16
24:14 27:4
comes 9:6 45:23
comfortable
58:14
coming 6:5
commerce 4:10
14:8 24:9 57:8
common 7:11
29:17
compartment
5:20 45:18
46:17
complete 15:22
complex 36:7
component
30:17
comprises 55:24
conceal 3:16,19
4:5 5:24 9:1,8
9:19 10:19,24
11:2,23 12:3
12:24 13:16,19
13:20,20 21:2
21:4 22:20,21
25:13 27:2,2
28:8 32:24
34:2,24 35:15
36:24 37:5,22
38:6,11 39:8
40:18 41:5,12
41:20 42:3,23
43:1,12 45:13
46:10 47:2,18
47:23 48:5
49:12 52:21,24
54:10,13
concealed 3:18

3:22,24 4:1,13
4:20 13:2 34:6
42:15 46:23
53:8
concealing 3:13
8:3 11:23
22:25 23:1,6,8
33:23 34:7,20
34:20,21 35:16
35:17,20 40:1
41:15 42:13
46:5,8 49:12
53:9 58:5
concealment
14:2 20:19
25:2 27:22
30:21,23 32:7
32:15 40:14,23
43:5,6,7,9
46:14 47:11
50:5 52:1,6
53:5,6 56:5
conceals 10:25
57:22
concede 7:24,24
conceive 17:10
conceived 28:21
concept 24:24
conception
39:17
concern 14:12
concerned 36:8
36:11 51:25
52:10 59:14,16
concerning 41:6
conduct 28:25
35:25 36:5
37:19 38:20
44:11 45:3
48:19,24 49:17
49:18 50:3
58:4
conducting 29:2
47:13
conducts 32:17
confines 18:14
conflates 56:3

confronted 36:1
confronting
35:14
Congress 29:23
31:24 34:15
35:25 36:8
38:14,20 44:10
44:11,15 49:5
49:18 51:1
52:14 55:9,10
55:15,18 57:5
57:9
Congress's
37:18
consider 10:5
44:19
considerations
22:3
considering 8:2
consistent 53:23
construction
28:1
contained 48:24
59:6
container 5:16
containers 59:6
contains 27:23
contemplate
19:24
contemplated
14:11
contemplates
10:6
contemplating
16:25 24:8
context 4:12,14
8:18 23:10
30:6 55:19,22
control 3:20
31:13 34:20
37:6,22 38:11
40:5 45:14
46:11
controls 30:11
49:22 52:24
58:6
converted 20:20

converting 36:6
conviction 3:14
   7:21 18:1 25:5
core 14:12 50:3
correct 5:5 7:13
   11:25 13:9
Counsel 22:18
counteract
   38:24
country 12:10
   12:13 25:7,17
   32:6,11 34:6
   36:20 37:15
   46:15 49:9
   51:1,22 52:1,3
   53:2
coupled 11:8
courier 6:15
   7:11 10:3,23
   36:15,21 37:2
   37:4,8,13 48:9
couriers 29:19
course 6:23 8:11
   14:24 15:19
   16:3 21:6 33:7
   40:8,11
Court 1:1,13 3:9
   27:21 52:14
   55:4,6
cover 30:20 49:4
   52:18,19
covered 34:16
   36:5 48:20
covers 48:1,2,25
   49:17 52:17
co-sponsors
   49:20,25
create 15:25
   16:22 21:6
   43:19 51:11
   53:14 56:7
created 55:11
creates 45:3
crime 6:17,23
   7:3 22:15
   38:21 53:6,9
crimes 30:13

36:4
criminal 3:11
   7:3 49:4
criminalize 3:12
criminals 30:9
   30:13 36:3,9
   38:24 44:14
   49:23 50:9
cross 27:25
crosses 31:5
   32:19
crossing 30:22
   31:6
cross-border
   28:12 34:15
   41:8,21 47:16
   52:19
Cuellar 1:4 3:4
   3:17 6:3 18:13
   18:15 57:24
Cuellar's 3:14
   7:6
culpability 7:6
curious 50:23
currency 8:11
   8:17 48:16
   49:9
currency-repo...
   21:19,23 22:5

D

D 3:1
daily 32:18
dangerous
   45:21
deal 6:11
dealer 32:17
   36:13 39:21,24
   40:22 53:24
   57:16,22,25
dealing 58:19
decision 53:5
decisions 39:18
defeat 28:2 31:9
defendant 28:5
   36:19 37:13
   48:16

Defender 1:16
defense 47:5
   52:25
deliver 36:17
delivered 39:25
demand 27:24
Department
   1:19 49:13
deposit 26:6,19
deposits 12:11
   13:23
describe 31:20
described 10:1
   12:18 14:9
   25:25
describing 16:7
description 17:5
design 4:5 6:3,6
   6:6 9:24 12:24
   13:15,18,20
   15:25 25:13
   34:24 35:3
   36:21,23 37:5
   37:7,8 38:10
   39:8,15,15
   41:4,19 42:5,6
   43:12,13 46:9
   46:15 47:1,16
   47:18
designated
   28:24
designed 3:16
   14:5 19:7 28:8
   28:10,19 30:5
   32:24 34:2,2
   39:6 40:18
   42:25 43:3
   45:12 48:4,5
   50:16 51:11
   56:22
destination
   12:10 40:16,24
   41:10 42:18,24
   47:3 54:15
detect 30:12
detection 5:21
   10:6 27:8,16

36:3 44:14
   45:19 55:3,4
   55:15
difference 5:5,7
   23:21,24 29:14
   45:11 46:22,25
different 20:20
   22:2 23:16,19
   26:1,2,16 45:6
direct 7:14
directed 35:20
   37:21 50:4,24
directs 28:11
dirty 5:16,16
   13:3,3,4,6,7,16
   13:20,24,24
   14:5 17:3,4,6,6
   19:16,17 20:6
   20:11,18 52:2
   58:15
disagree 44:2
   54:3
discern 30:7
discover 24:10
discovery 43:13
discuss 45:18
discussed 55:12
discussing 48:7
   54:23
disguise 4:6
   12:14 18:19
   20:22 21:2,6
   25:13 28:9
   36:24 37:5
   39:9 40:19
   41:5 43:2
   45:13 46:18
   47:2,11,18
   48:6 52:21,24
   54:14
disguised 40:6,7
   53:8
disguising 8:3
   40:15,23
disruption 55:3
   55:5
dissent 35:14

dissenting 11:21
   11:22
distinction
   11:21 35:15
distinctions
   46:14
distinguishing
   8:16
dog 45:19
dogs 5:21
doing 49:7 55:25
   58:14
domestic 49:22
doubt 28:5
   32:21 34:1
   45:13 51:5
   53:25
drafted 31:22
drawing 16:1
drew 35:14
drive 17:3
driver 37:16
drives 37:15
driving 45:6
drove 36:19
drug 5:21 6:11
   6:23 9:3 12:14
   12:25 15:22
   16:15 20:16,19
   32:17,17 36:13
   37:3,8 38:4
   39:20,24 40:22
   45:19 53:23
   57:16,22,25
   58:19 59:6,7
   59:12
drugs 9:17
   17:12,13,15
   53:24 58:16
   59:17
D.C 1:9,19

E

E 2:1 3:1,1
earlier 42:14
   58:24
easier 12:19

15:8
easily 17:16
  55:21
economy 15:1
  15:11 17:17
  45:7
effect 39:14
effectively 5:11
effort 42:23
efforts 54:13
either 4:8 22:15
  24:8 49:15
elaborate 37:11
  46:18
element 56:9,10
  56:19,20,21
eliminated
  30:18
enacted 31:10
  36:1
encapsulates
  56:17
encompass
  24:20 48:6
enforcement 4:8
  31:25 33:21
  38:25 46:21
  53:9 54:12
engaged 38:16
engaging 9:3
entertain 49:6
entire 28:20
equally 8:1
  31:16,16
equate 12:20
ESQ 1:16,18 2:3
  2:5,8
essential 56:8,18
  56:21
essentially 6:10
  55:8
establish 16:14
  16:17
established
  14:18 15:20,20
establishes
  40:14

et 30:20
evade 48:17
  49:1
eventually 59:12
everybody
  14:15,21 39:20
  40:21
evidence 5:24
  6:10 7:14
  10:11 14:13,18
  15:1,4,6,7,18
  18:13 32:20
  33:25 36:14
  40:14 41:4,6,9
  41:10,19,23
  44:15 46:25
  47:1,19 48:13
  48:15 51:17,19
  52:20 53:5,6
  53:17,19,23
  54:8 57:14
exactly 12:7
  31:20 35:24
  37:18 45:10
examination 4:2
  28:11
example 6:4
  7:15 22:24
  24:21 32:10
  33:20 38:9
  43:11
exception 43:10
excuse 4:7
existence 3:13
  23:20 49:10
expert 15:10,19
  15:21 54:9
explain 24:2
  27:15
explaining 12:7
explanation
  21:5,7
explicitly 55:9
extent 16:24
  25:1
extremely 43:18
eyebrows 15:16

eyes 7:21

———————
F
———————
face-on 35:14
fact 3:18 5:15
  6:3 7:17 8:13
  10:24 11:10
  12:2 19:11
  29:4 37:1
factfinder 40:17
facts 25:23 28:9
fall 12:15 16:18
  25:10
falls 10:20 49:7
false 21:6
familiar 44:1
famous 39:23
fancy 37:1
far 34:8,13
February 1:10
Federal 1:16
fellow 9:6 17:12
  18:7 45:5,21
felt 57:10
FIDEL 1:3
filled 48:23
  49:14
filter 34:17
final 57:20 58:9
find 9:16 10:19
  25:19 26:23,25
  31:14 32:2
  33:13 34:1,11
  34:24 41:4
  42:24 43:3,11
  44:17 45:12,23
  47:11,17 59:7
finding 53:10
finish 54:5
first 3:3,15
  19:14 30:4
  52:25
fit 12:22 22:15
five 39:9
flow 50:17
flush 9:12,24
focus 27:8 29:24

30:19,19
focuses 11:6
focusing 25:2
follow 23:5
foremost 19:14
forget 24:18
  54:24
forgetting 43:17
forms 36:7
Fort 1:17
forth 5:16
forward 21:4
found 4:15 16:4
  41:6 59:12
four 54:19
fraud 32:3
full 28:11
funds 5:12 29:5
  32:5 34:6
  53:20 55:11
funny 35:21
further 54:13
future 51:20

———————
G
———————
G 3:1
gambling 29:20
gang 45:23
gap 48:23 49:5
  49:13,14 58:24
  58:25
General 1:19
generated 30:14
getting 4:25
  30:16 31:4
  37:18 38:20,25
  46:20 59:16
Ginsburg 6:15
  6:19 7:1,8 8:20
  11:20 20:15
  22:4,14 26:5
  36:11,25 37:7
  37:17 46:13
  47:22,25 48:8
  59:2
Ginsburg's
  38:13

give 17:11 31:19
  32:10 38:6
  58:2,11
gives 10:8 33:9
  56:1
giving 37:25
glove 46:17
go 6:5 21:17
  22:19 29:6
  34:8,12 37:12
  46:18 47:5,5
  53:17 54:10
  57:4
goat 3:23 5:20
  45:18
goes 13:6 42:13
  57:2
going 9:6 10:12
  10:14 13:3,3
  14:15 18:10
  20:13,18 21:20
  24:14,17 29:4
  35:4 37:12
  38:6 40:9
  45:15 49:23
  50:22 53:2
  54:1
good 11:23
goose 44:18
government 5:8
  7:25 8:7 15:20
  23:20 25:1
  31:19 32:20
  55:8
government's
  6:9 7:21 14:18
  30:25 37:14
  48:10 56:2
  59:18
grand 36:21
guidelines 38:15
  38:15
guilty 7:18 22:6
  22:9 49:8,11
  52:3
guy 9:17 58:12

38:24 43:13
44:14 51:7
preventing
50:25
primary 17:22
principal 17:9
17:10,13
principle 49:3
probably 4:17
problem 4:18,25
37:9
procedure 59:5
proceeds 3:12
3:20 6:21 8:14
9:7 14:6,6
18:19,21 19:1
19:11,18,22
20:7,9 22:20
22:21 27:25
28:6,8,10,13
28:25 30:9,12
30:12 31:11
32:2,6,22,23
34:16 36:4,9
37:22 38:12
39:10,19 40:5
40:15 41:12,20
43:2 44:14
45:14,17,19,25
47:2 49:1 53:8
53:10 54:8,14
55:20
process 57:12
profit 36:4
prohibition 29:8
proof 18:21
27:24 28:4
51:4
properly 7:7
30:19
prove 36:18
provide 41:23
41:24
provider 17:12
17:15
provides 41:19
provision 7:12

48:25 50:16,24
provisions 52:22
Public 1:16
purchases 12:12
purpose 6:13
15:21 17:8,9,9
17:10,13,18,23
18:6,6 20:19
25:16 28:3
30:4,7,8 31:10
31:20 37:18,20
42:6 47:16,19
57:18
purposed 14:5
19:7
purposely 34:25
purposes 8:21
put 9:23 26:6
33:15 36:15
43:14 46:16,17
46:17 47:6
51:12,15
puts 32:18 33:1
33:2 34:25
putting 26:19
32:23
puzzling 59:4

———————
Q
———————
quarrel 20:23
question 14:4
23:14 29:7,11
30:3 31:3
35:17 38:14
39:11,12 42:15
43:17,19,21,23
46:2 53:12
55:14 56:7,12
56:13,14,15
59:14
questioning
22:19 49:19,20

———————
R
———————
R 3:1
raise 53:21
raised 56:13
raising 15:16

range 36:5
raw 59:11
reach 30:10
46:21
read 4:24 19:23
29:8,10,24
41:1 50:22
readily 49:14
reading 29:24
29:25 49:16
ready 18:10
real 18:6,6
really 24:25
44:8,17
reason 10:7 12:8
12:17 29:18
31:23 48:21
56:25
reasonable 28:5
32:21 34:1
40:17 45:13
51:5 53:25
reasons 3:15
29:1
rebuttal 2:7
27:5 54:20
recall 55:7
recognized
55:15
record 10:12
14:24 48:14,16
53:19,19
recorded 12:6
red 54:4
reeks 59:3
refer 29:11
referenced
23:14
referring 5:19
REGALADO
1:3
regulatory
52:22
rejected 55:9,10
55:17
rejecting 55:16
relevant 34:7

51:10
remain 13:5
remained 13:4
remaining 54:19
remedy 58:25
remove 18:14
removed 54:9,9
render 5:11
repay 14:19
59:16
repayment 6:12
6:14 10:13
57:19
reply 7:15
report 50:16
53:4,6
reporting 8:4
21:8 48:16
49:2 52:23
53:3 54:11
require 7:14 8:3
18:25 28:4
51:4 53:5
required 18:25
requirement 4:5
8:5 17:4,18
21:9,16,19,22
21:24,25 22:5
27:24 30:18
31:2,17,19,24
44:4 48:17
52:1,23 53:13
requirements
49:2 53:3
54:11
requires 3:11
7:8 22:6
reserve 27:10
resort 49:23
50:14
respect 31:23
respected 39:24
respects 43:1
Respondent
1:20 2:6 27:19
response 7:19
38:13 51:9

55:14
responses 30:3
rests 27:9
result 17:19
26:2,16
resurfacing 10:7
17:1 24:8
returning 6:20
reveals 4:3
reversed 3:14
right 10:17,20
17:24 20:2
24:3 46:6
rise 56:1 58:2
roads 45:21
ROBERTS 3:3
3:21 8:25 9:14
22:18 23:4,13
24:1,4,13,16
26:10 27:12,17
33:19 40:11
41:11,15,22
42:1 45:5,20
49:25 54:5,17
59:19
run 29:20

———————
S
———————
S 2:1 3:1
safe 26:6
safety 26:19
satisfied 18:21
47:18
satisfies 17:25
satisfy 14:1
17:18 38:1
saw 36:2 38:21
saying 7:2 23:15
25:4 32:4 34:5
35:4,6,6,8 40:9
47:25 57:23,24
says 11:22 12:8
16:12 25:17
30:1 33:10
41:5 44:22
45:21 50:16
53:4,7

Scalia 11:13,17
  14:13,17,21
  17:8,20,22
  18:5,9 26:22
  27:14 33:1,4
  35:13 39:20,23
  40:7,21 46:4
  49:3 51:7,24
  52:5 54:22,24
  55:13 58:11,15
  58:18
Scalia's 42:11
  42:19
scent 45:18
Schertler 1:18
  2:5 27:17,18
  27:20 28:17
  30:2 31:8,21
  32:8,13,16
  33:3,6,11,17
  33:24 34:8,11
  34:14,23 35:2
  35:7,23 36:22
  37:4,17 38:2,8
  39:6,13,16,22
  40:3,8,25
  41:14,17,24
  42:4,21 43:9
  43:23 44:2,6,9
  44:21,25 45:9
  46:1,7,24
  47:10,24 48:2
  48:12 49:16
  50:2,11,14,20
  50:24 51:14,17
  52:4,12 53:16
  54:2,7,18
se 32:6 34:6
  55:20
sealed 4:21
search 9:18
Secondly 3:17
secrecy 25:8,18
secret 5:20
  45:17
secreted 3:22
section 3:10

52:16
secure 42:7
  43:14
see 4:18 10:16
  20:12 22:1
  38:19 46:19
  47:7 54:4
seen 5:3
select 40:9
Senate 50:16
  53:4
Senator 49:19
  50:8,22
send 50:10
sending 16:12
  25:17,24 26:3
sense 4:1 9:2
  19:17 51:1,23
  52:11
sent 14:19 25:14
  59:17
sentence 40:25
  41:5
sentencing
  38:14
separate 55:23
  56:1
series 41:2
set 30:11 34:17
  39:1 52:22
shipment 21:9
shoe 29:21 33:1
  33:2,15 34:22
  35:1,10
shorthand 16:6
show 19:1 32:21
  50:6,7 51:11
shown 55:18
shows 36:14
  48:19
side 32:18
signifies 5:10
simply 10:14,23
  11:10 13:6
  16:6 18:16
  20:15,24 37:13
  57:19

single 46:11
situation 47:10
smelled 59:11
smells 58:16
Smith 12:2
smuggling 7:7
  7:18,22 8:1,5
  8:10,11 22:11
  48:14,19,22
social 38:5
sold 9:4,17
sole 39:2
solely 30:19 42:9
Solicitor 1:18
somebody 37:2
sorry 15:5
sort 45:7
sounds 11:20
source 3:19
  46:10
Souter 13:5,11
  13:18 14:3
  30:15 31:15
  33:9,14 37:24
  38:3,8
South 21:20
speaking 57:11
speaks 8:11,12
specifically 11:8
  49:18
specified 18:20
  19:18
spend 15:8,16
  17:16 40:1
spendable 18:11
spending 12:19
  12:20 13:23
  14:9,10,10
  18:3,3 58:4
spends 40:22
Spendy 14:15
spent 12:19 13:4
spoken 56:15
sprinkled 5:20
stages 48:6
standard 59:5
start 39:5

statement 50:23
States 1:1,7,13
  3:4 6:16,20
  12:13 13:25
  28:1 29:1
  30:11,24 31:12
  32:1 46:22
  49:24 50:9,15
  51:3 54:10
statute 3:10,12
  5:1 7:7 8:1,2,5
  8:11,21 10:5
  10:20 11:1,6
  12:15,23 14:4
  16:4,18 17:18
  18:1 22:6,13
  23:15,18 25:10
  27:7,8,9,16,23
  28:2,4,9 29:15
  30:7,8,8 31:4
  31:10,11,22
  33:13 35:9,18
  35:20,22,24
  37:10,21 38:1
  42:15 43:7,17
  44:4,6,21,22
  48:1,9,14,19
  48:20,22,23
  49:9,10,17
  50:4,5 51:4,20
  51:21 52:10
  53:12 55:4,5
  57:17
statutes 49:4,15
statutory 17:8
step 58:9
Stevens 5:13,18
  5:23 6:2 18:18
  18:24 19:2,9
  19:17,21,25
  20:3,7,11 21:1
  43:16,24 44:5
  44:7,16,24
  53:11,22 56:6
  56:11,12,18
Stevens's 22:19
stick 29:20

stools 49:8
stores 13:23
streams 14:7
strengthen
  49:21
strong 7:25 8:1
stumbled 10:10
submit 28:22
submitted 59:20
  59:22
subsequent
  24:12
suffice 57:16
sufficient 25:4
suggest 10:12
  16:5 29:4
suggested 7:5
  16:6 25:12,14
  52:15
suggesting
  20:25 23:17
  26:18
suggestion
  13:15
suggests 4:4
  24:7 28:20
  29:11 31:3
  44:12
suitcase 41:12
  41:18,23 42:2
  42:7
support 7:22
  25:4 45:2
supported 7:20
  28:2
suppose 7:19 9:2
  12:5 16:11
  32:5 37:24
  39:1 57:14
Supreme 1:1,13
sure 9:15 13:1
  21:24 24:11
  42:19
surreptitiously
  12:6 36:10
surround 4:12
surrounding

23:11
survive 24:12
suspect 9:3
suspicion 53:21
system 25:20
    31:13 38:15

_____
T
_____

T 2:1,1
taint 3:11 21:5
take 7:9,23,25
    14:5,5 15:14
    16:11 19:7
    23:11 29:18
    30:22,23 32:11
    32:18 33:10
    35:4 37:2
    48:10 51:18
    52:2 59:5
taken 4:1 31:12
    31:12
takes 9:12 32:18
    38:15
talking 17:7
    18:23 19:25
    36:12 41:17
    50:19,21
tape 12:7 16:12
taped 16:25
tell 18:22 59:12
tells 33:14
term 23:10 44:7
    44:9 45:1
    56:16
terms 44:22,25
testimony 42:5
    54:9
tests 28:2
Tex 1:17
Texas 7:16
text 4:2 43:17,18
Thank 3:8 27:12
    54:16,17 59:19
theory 36:18
    37:14 59:18
thing 18:14
    21:17 22:25

23:1 26:6
    55:21 56:23
    57:1
things 46:11
think 4:2 6:1 8:6
    8:9,12 9:5,12
    9:14,17,21
    10:4,7,15 11:3
    11:5 12:1,16
    13:15 14:3,10
    15:18 16:20
    17:1,7 18:15
    18:25 19:3,5
    19:13,15 20:4
    20:14 21:25
    22:22,23 23:2
    23:9 24:6,25
    25:24 26:2
    27:3,6 29:23
    33:11,25 34:12
    35:21 37:9,10
    41:24 42:22
    43:19 45:24
    46:1 52:12,21
    53:13,16 54:3
    55:6,13 56:2,7
    56:16 58:7,7
    58:25 59:13
thinking 55:2
thinks 33:20
third 37:19,20
    37:21 38:9,17
    40:9 45:14
    47:13
thought 4:17,19
    5:2 11:14,18
    13:19 20:5
throw 5:21
time 6:25 27:11
    29:17,19 35:5
    42:13 53:7
times 23:14
tin 24:22
title 35:23 44:1
    44:21
today 3:4 55:8
told 55:3,3

tool 31:20
torture 49:15
total 44:18
totally 30:17
    43:25 44:1,8
    44:20
tough 50:8
town 10:18
    39:23
trace 30:13
trafficking 6:11
    6:23
transaction 8:15
    8:17,18 15:22
    15:23 52:23
transactions
    8:12 32:17
    52:17 55:19
transaction-re...
    21:13,16,25
transfer 25:7
transfers 11:7
transformed
    21:2
transmission
    11:8
transport 9:7
    11:23 12:3
    29:12 35:16,17
    35:20 43:14
    46:5,8 49:12
    50:12
transportation
    3:15,17 4:20
    4:21 5:6,6,9,11
    5:14 6:6,7,13
    8:4 9:8 10:25
    11:7 12:23
    15:22 17:11
    19:6 28:7,12
    28:15,15,16,17
    28:21,24,25
    29:2,5,9,12
    30:20 34:16
    36:23 38:11
    39:7,8 40:4,9
    40:12,18 41:4

41:8,21 42:25
    43:6 45:10,12
    46:9 47:2,14
    47:17 48:4,25
    52:7,9,10
    55:11,22 56:22
    56:22
transportation's
    11:11 52:19
transported
    9:19 57:3
transporting 9:1
    10:18,19,22,24
    11:2,22 12:8
    12:12 27:1
    35:15 47:22
    49:11,23
transports 12:5
    37:14
travel 42:8
    46:16
triggered 59:10
true 8:24 21:3
    31:16 37:22
    56:2
trunk 41:13
truth 49:21
try 5:21 12:2
    27:4 30:7
trying 20:3
    24:10,11 51:7
    53:13
turned 47:20
turns 9:18
two 3:14 29:14
    49:8
type 5:22 7:16
    9:24 23:2 25:3
    25:12 55:16

_____
U
_____

ultimate 47:1
ultimately 30:21
    33:8
unclean 19:16
uncomfortable
    58:22,23

underlying
    38:17,18 56:4
    56:5 58:4,9
underscores
    59:14
understand 5:8
    6:24 8:17 9:10
    11:14 18:18
    20:3 21:18
    22:8,24 23:5
    27:7,14 35:6
    44:16,19 52:6
    54:25
understanding
    22:12
understood 4:12
    13:14 23:10
    44:10 51:2
United 1:1,7,13
    3:4 6:16,20
    12:13 13:25
    28:1 29:1
    30:11,24 31:12
    32:1 46:22
    49:24 50:9,15
    51:2 54:10
unlawful 3:12
    3:20 14:6
    18:20,22 19:1
    19:12,18,22
    20:7,9 55:20
    58:9
use 12:11 13:22
    30:12 32:1
    37:4,20 41:18
    41:22 42:1,7
    45:17
U.S 54:12

_____
V
_____

v 1:6,16 2:3,8
    3:6 54:20
valid 42:16
variety 36:2
verb 21:1,2
versus 3:4 55:3
viable 48:15

viewing 44:11
violates 35:18
  37:20
violation 44:17

W

wad 29:21
walk 58:20
walking 56:13
  58:22
wallet 32:19
  43:15 46:18
want 7:24 29:24
  30:5 50:7
  53:23
wanted 55:22
wants 23:20
warrant 9:18
Washington 1:9
  1:19
wasn't 15:10
  18:5
watched 33:21
way 10:25 28:12
  28:21 29:10
  31:23 38:21,21
  40:4 44:10,11
  47:7 52:11,15
  52:16 53:9,21
  59:9,13
ways 36:2 38:24
  44:13
weak 7:20
wealth 16:1,22
  17:2 27:24
  36:6 43:20
  44:4 45:4
  47:20 51:12
  53:14 56:8
  57:2
went 15:8 25:14
  59:9
We'll 3:3
we're 6:2 8:2
  17:7 40:4
  41:17 53:2
we've 45:8 55:12

whatsoever
  42:23
wide 36:5
wild 44:18
willing 49:5
wire 25:6
witness 49:20
word 4:18 18:23
  19:10,10 28:14
  28:17 29:17
words 4:10,12
  16:4 17:4 23:6
  23:11 30:5
  31:18 40:20,21
work 4:18
worker 38:5
worse 52:8
Worth 1:17
wouldn't 8:1
  12:22 16:21
  21:16 30:16
  33:5 58:2
wrap 59:6
wrapped 5:15
written 52:15
wrong 11:4,5
wrote 52:16

X

x 1:2,8 7:9

Y

yard 24:21
  26:21
years 55:10

$

$10,000 53:1
$80,000 9:17

0

06-1456 1:6 3:4

1

10:02 1:14 3:2
100 35:5
11:04 59:21
1956 3:10

1957 52:16
  55:19
1986 36:2

2

20 55:9
20-year 36:12
2008 1:10
25 1:10
27 2:6

3

3 2:4

4

41 40:13

5

54 2:9