

The Pendulum Swings Back on Money Laundering

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After a long period of the U.S. government seeking to expand the scope of the criminal money laundering statutes, the United States Supreme Court has slammed on the brakes. On June 2, 2008, the Supreme Court, in separate opinions, overturned two defendants' convictions for money laundering. In doing so, the Court made it clear that certain provisions of the statutes should be read narrowly, thereby limiting their scope.

Cuellar v. United States¹

The first case the Court handed down was *Cuellar v. United States*. Texas police stopped Cuellar's car as he was driving toward the Mexican border. In a secret compartment under the rear floorboard of the car, the police found \$81,000 wrapped in plastic and duct tape and smelling of marijuana. Cuellar was convicted of violating section 1956(a)(2)(B)(i), which provides:

Whoever transports, transmits, or transfers, . . . a monetary instrument or funds from a place in the United States to or through a place outside the United States . . . knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer represent the proceeds of some form of unlawful activity and knowing that such transportation, transmission, or transfer is designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity shall be [guilty of a crime].²

On appeal, a divided panel of the Fifth Circuit overturned the conviction, holding that even if Cuellar concealed the money for the purpose of transporting it, he did not do so in an attempt to create the appearance of legitimate wealth, which the Fifth Circuit found was necessary for a conviction.³ The Fifth Circuit granted a rehearing en banc and affirmed the conviction, holding that the government was not required to prove that the defendant attempted to create the appearance of legitimate wealth. Moreover, the en banc

¹ 553 U.S. ____ (2008), Slip Opinion No. 06-1546.

² 18 U.S.C. § 1956(a)(2)(B)(i).

³ 441 F.3d 329 (5th Cir. 2006).

panel found that Cuellar's attempts to conceal the money showed that he sought to conceal or disguise certain specified attributes (e.g., nature, location, source, ownership or control) of the money.⁴

The Supreme Court addressed the question of whether Cuellar's efforts to take the funds to Mexico were designed, at least in part, to conceal or disguise the funds' nature, location, source, ownership or control.⁵ The government argued that concealment during transportation satisfied this element where the circumstances showed substantial efforts at concealment.⁶ The Supreme Court disagreed, stating that "merely hiding funds during transportation is not sufficient to violate the statute, even if substantial efforts have been expended to conceal the money."⁷

Though the Court overturned Cuellar's conviction, it agreed with the government that the government need not prove in every money laundering prosecution that the defendant intended to create "the appearance of legitimate wealth." The court held that the statutory language was broader and "captures more than classic money laundering."⁸ In this case, however, the government failed to prove that Cuellar transported the funds for the purpose of concealing them.

United States v. Santos⁹

The second case decided by the Court was *United States v. Santos*. Santos was convicted of running an illegal lottery in Indiana and laundering the proceeds of the lottery. Runners gathered money for bets, kept a portion as their commission, and then delivered the rest to collectors. Collectors delivered this money to Santos, who then used the money to pay the salaries of the collectors and to pay the winners of the lottery.¹⁰ The money laundering provision under which Santos was convicted stated:

Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity with the intent to promote the carrying on of specified unlawful activity shall be [guilty of a crime].¹¹

Santos was sentenced to only five years on the gambling charge, but 17 ½ years on the money laundering charge.

The District Court overturned the money laundering conviction on the grounds that the financial transactions that formed the basis for the conviction involved gross receipts of the gambling operation, not its profits, and therefore they did not involve "proceeds" of unlawful activity.¹² The Court of Appeals affirmed.¹³

⁴ 478 F.3d 282 (5th Cir. 2007).

⁵ *Cuellar*, Slip. Op. at p. 10-11.

⁶ *Cuellar*, Slip. Op. at p. 11.

⁷ *Cuellar*, Slip. Op. at p. 12.

⁸ *Cuellar*, Slip. Op. at p. 7.

⁹ 553 U.S. ____ (2008), Slip Opinion No. 06-1005.

¹⁰ *Santos*, Slip. Op. at p. 1.

¹¹ 18 U.S.C. § 1956(a)(1)(A)(i).

¹² 342 F.Supp.2d 781 (N.D. Ind. 2004).

¹³ 461 F.3d 886 (7th Cir. 2006).

The sole issue before the Supreme Court was whether the term “proceeds” in the money laundering statute meant “gross receipts” or “profits,” both of which were ordinary meanings for the term and had been used by Congress in various federal statutes.

Finding that there were equally strong arguments on both sides, the Supreme Court employed the “rule-of-lenity,” which required that ambiguous criminal laws be interpreted in favor of the defendant.¹⁴ Thus, the Court held that “proceeds” meant profits, not receipts, and affirmed the Court of Appeals’ decision overturning the money laundering conviction.

Conclusion

Money laundering charges have often been sought in a wide variety of cases involving transactions with criminal proceeds. In deciding both cases the same day, the Court sent a clear message that at least with respect to the language in the statutes addressed in *Santos* and *Cuellar*, the money laundering statutes need to be read more narrowly than they have been until now.

The fact that these cases arose in the context of drugs and gambling does not mean that their holdings are not applicable in the white collar context. For example, a defendant who sells securities based on inside information and deposits the proceeds of the sale into his bank account may argue under *Santos* that only the profits, but not the entire proceeds, of his sale may form the basis of a money laundering charge. Similarly, a bank that violates its Know Your Customer policies and allows a criminal to deposit proceeds of criminal activity into an account may argue under *Santos* that only the small fee it earned on the deposits, and not the entire funds on deposit, could form the basis of a money laundering charge. There can be no doubt that despite their blue collar origins, these holdings will be applied in the white collar context.

Live Links

Cuellar v. United States; Supreme Court of the United States Syllabus; October Term, 2007 (PDF, 22 pages)

United States v. Santos; Supreme Court of the United States Syllabus; October Term, 2007 (PDF, 48 pages)

Federal Money Laundering Statute, 18 U.S.C. §1956

Original Fifth Circuit Decision in *Cuellar*; United States Court of Appeals for the Fifth Circuit; Filed February 26, 2006 (PDF, 11 pages)

Fifth Circuit En Banc Decision in *Cuellar*; United States Court of Appeals for the Fifth Circuit; Filed February 2, 2007 (PDF, 63 pages)

Seventh Circuit Decision in *Santos*; OSDir



¹⁴ *Santos*, Slip. Op. at p. 6.

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