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SUMMARY

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Money Laundering: An Overview of 18 U.S.C. § 1956 and Related Federal Criminal Law

This report provides an overview of the elements of federal criminal money laundering statutes and the sanctions imposed for their violation. The most prominent is 18 U.S.C. § 1956. Section 1956: outlaws (1) four kinds of money laundering of proceeds generated by designated federal, state, and foreign underlying crimes (predicate offenses): promotional, concealment, structuring, and tax evasion laundering (2) when committed or attempted under one or more of three jurisdictional conditions (i.e., laundering involving certain financial transactions, laundering involving international transfers, and stings). Its companion, 18 U.S.C. § 1957, prohibits depositing or spending more than $10,000 of the proceeds from a predicate offense. Section 1956 violations are punishable by imprisonment for not more than twenty years. Section 1957 carries a maximum penalty of imprisonment for ten years. Property involved in either case is subject to confiscation. Misconduct that implicates either offense may implicate other federal criminal statutes as well. Federal racketeer influenced and corrupt organization (RICO) provisions outlaw acquiring or conducting the affairs of an enterprise (whose activities affect interstate or foreign commerce) through the patterned commission of a series of underlying federal or state crimes. RICO violations are also twenty-year felonies. The § 1956 predicate offense list automatically includes every RICO predicate offense, including each "federal crime of terrorism." A second related statute, the Travel Act (18 U.S.C. § 1952), punishes interstate or foreign travel, or the use of interstate or foreign facilities, conducted with the intent to distribute the proceeds of a more modest list of predicate offenses or to promote or carry on such offenses when an overt act is committed in furtherance of that intent. Such misconduct is punishable by imprisonment for not more than five years. Other federal statutes proscribe, with varying sanctions, bulk cash smuggling, layering bank deposits to avoid reporting requirements, failure to comply with federal anti-money laundering provisions, or conducting an unlawful money transmission business.

Section 1956's ban on attempted international transportation of tainted proceeds for the purpose of concealing their ownership, source, nature, or ultimate location is limited to instances where concealment is a purpose rather than an attribute of the transportation (simple smuggling is not proscribed as such), as the Supreme Court explained in *Cuellar v. United States*, 553 U.S. 550 (2008). In a second case, the Court held that the "proceeds" of a predicate offense often referred to the profits rather than the gross receipts realized from the offense. *United States v. Santos*, 553 U.S. 507 (2008). Congress responded by defining "proceeds" for money laundering purposes as the property obtained or retained as a consequence of a predicate offense, including gross receipts. Fraud Enforcement Recovery Act of 2009 (FERA), P.L. 111-21, 123 Stat. 1627. http://www.congress.gov/cgi-lis/bdquery/R?d111:FLD002:@1(111+21)

The citation to the federal statutes discussed, to state money laundering and money transmission statutes, and to federal predicate offenses with their accompanying maximum terms of imprisonment appear at the end of the report. Related CRS Reports include CRS In Focus IF11064, *U.S. Efforts to Combat Money Laundering, Terrorist Financing, and Other Illicit Financial Threats*, by Rena S. Miller and Liana W. Rosen, and CRS Report R47255, *The Financial Crimes Enforcement Network (FinCEN): Anti-Money Laundering Act of 2020 Implementation and Beyond*, by Liana W. Rosen and Rena S. Miller.

Contents

Contacts

Introduction

Money laundering is commonly understood as the process of cleansing the taint from the proceeds of crime.[1] In federal criminal law, however, it is more. In the principal federal criminal money laundering statutes, 18 U.S.C. §§ 1956 and 1957, and to varying degrees in several other federal criminal statutes, money laundering involves the flow of resources to and from several hundred other federal, state, and foreign crimes.[2] It consists of:

- engaging in a *financial transaction* involving the proceeds of certain crimes in order *to conceal* the nature, source, or ownership of proceeds they produced;[3]
- engaging in a *financial transaction* involving the proceeds of certain crimes in order *to promote* further offenses;[4]
- *transporting* funds generated by certain criminal activities into, out of, or through the United States in order *to promote* further criminal activities, *or to conceal* the nature, source, or ownership of the criminal proceeds, *or to evade reporting* requirements;[5]
- engaging in a *financial transaction* involving criminal proceeds in order *to evade taxes* on the income produced by the illicit activity;[6]
- *structuring financial transactions* in order to evade reporting requirements;[7]
- *spending more than $10,000* of the proceeds of certain criminal activities;[8]
- *traveling* in, or use of the facilities of, interstate or foreign commerce in order *to distribute* the proceeds of certain criminal activities;[9]
- *traveling* in, or use of the facilities of, interstate or foreign commerce in order to promote certain criminal activities;[10]
- *transmitting* the *proceeds of*, or *funds to promote*, criminal activity in the course of a money transmitting business;[11]

[1] Money laundering, is "the act of transferring illegally obtained money through legitimate people or accounts so that its original source cannot be traced," *Money-Laundering*, BLACK'S LAW DICTIONARY (12th ed. 2024).

[2] Over 20 years ago, one commentator estimated the number of § 1956 predicate offenses at "250 or so," Stefan D. Cassella, *The Forfeiture of Property Involved in Money Laundering Offenses*, 7 BUFF. CRIM. L. REV. 583, 612 (2004). Today, the estimate seems exceptionally conservative. Each of the 50 states outlaws (1) murder, (2) kidnapping, (3) gambling, (4) arson, (5) robbery, (6) bribery, (7) extortion, (8) dealing in obscene material, and (9) drug dealing. A felony violation of any one of these is a § 1956 predicate offense. 18 U.S.C. §§ 1956(c)(7)(A), 1961(1)(A). Each of the close to 200 countries of the world outlaws many, if not most of, the same types of misconduct (murder, kidnapping, robbery, and the like) and when they do, these too are § 1956 predicate offenses if they involve a financial transaction in the U.S. *Id.* § 1956(c)(7)(B). Yet however daunting the absolute number of § 1956 predicate offenses may be, the reported cases suggest that a handful of predicate offenses (like mail fraud, wire fraud, and drug dealing) account for the vast majority of § 1956 prosecutions.

[3] 18 U.S.C. § 1956(a)(1)(B)(ii).

[4] *Id.* § 1956(a)(1)(A)(i).

[5] *Id.* § 1956(a)(2).

[6] *Id.* § 1956(a)(1)(A)(ii).

[7] *Id.* § 1956(a)(1)(B)(ii); 31 U.S.C. § 5324.

[8] 18 U.S.C. § 1957.

[9] *Id.* § 1952(a)(1).

[10] *Id.* § 1952(a)(3).

[11] *Id.* § 1960(a), (b)(1)(C).

- *transmitting funds* in the course of an unlawful money transmitting business;[12]
- *smuggling* unreported *cash* across a U.S. border;[13] or
- *failing to comply* with the Department of the Treasury's anti-money laundering provisions.[14]

Money laundering in some forms is severely punished, sometimes more severely than the underlying crime with which it is associated. The penalties frequently include not only long prison terms, but the confiscation of the property laundered, involved in the laundering, or traceable to the laundering. The following is an overview of the elements and other legal attributes and consequences of violations of §§ 1956 and 1957, as well as selected related federal criminal statutes.

18 U.S.C. § 1956

Section 1956 outlaws four kinds of laundering—promotional, concealment, structuring, and tax evasion—committed or attempted under one or more of three jurisdictional conditions (i.e., laundering involving certain financial transactions, laundering involving international transfers, and stings). More precisely, § 1956(a)(1)[15] outlaws financial transactions involving the proceeds of other certain crimes—predicate offenses referred to as "specified unlawful activities" (sometimes known as SUA)—committed or attempted (1) with the intent to promote further predicate offenses; (2) knowing the transaction is designed to conceal the nature, location, source, ownership, or control of the proceeds; (3) with the intent to evade taxation; or (4) knowing the transaction is designed to avoid anti-laundering reporting requirements.[16]

Section 1956(a)(2) outlaws the international transportation or transmission (or attempted transportation or transmission) of funds (1) with the intent to promote a predicate offense; (2) knowing that the purpose is to conceal the nature, location, source, ownership, or control of the funds and knowing that the funds are the proceeds of a predicate offense; or (3) knowing that the purpose is to avoid reporting requirements and knowing that the funds are the proceeds of a predicate offense.[17]

Section 1956(a)(3) covers undercover investigations ("stings"). It outlaws financial transactions (or attempted transactions) that the defendant believes involve the proceeds of a predicate offense and that are intended to (1) promote a predicate offense, (2) conceal the source or ownership of the proceeds of a predicate offense, or (3) avoid reporting requirements.[18]

[12] *Id.* § 1960(a), (b)(1)(A), (B).

[13] 31 U.S.C. § 5332.

[14] *Id.* § 5322. Federal law features a wide array of administrative, regulatory, and diplomatic anti-money laundering provisions that are beyond the scope of this report.

[15] As a matter of convenience, this report refers to subsections (18 U.S.C. § 1956(a)), paragraphs (18 U.S.C. § 1956(a)(1)), subparagraphs (18 U.S.C. § 1956(a)(1)(A)), clauses (18 U.S.C. § 1956(a)(1)(A)(i)), and their subclauses as sections.

[16] 18 U.S.C. § 1956(a)(1)(A)(i), 1956(a)(1)(A)(ii), 1956(a)(1)(B)(i), and 1956(a)(1)(B)(ii); *e.g.*, United States v. Davis, 122 F.4th 71, 75 (2d Cir. 2024) (per curiam).

[17] 18 U.S.C. § 1956(a)(2)(A), 1956(a)(2)(B)(i), and 1956(a)(2)(B)(ii); *e.g.*, United States v. Sherman, 126 F.4th 224, 230-31 (3d Cir. 2025).

[18] 18 U.S.C. § 1956(a)(3)(A), (B), (C); *e.g.*, United States v. Han, 105 F.4th 986, 991 (7th Cir. 2024).

Promotion

Financial Transactions

Of the three promotional offenses, only the § 1956(a)(1)(A)(i) financial transaction offense requires *use* of the proceeds of a predicate offense to promote a predicate offense; the § 1956 international and sting offenses require only *a purpose* to promote a predicate offense *regardless of the source* of the proceeds. Section 1956(a)(1)(A)(i) applies to anyone who:

> [K]nowing 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.[19]

The knowledge element is the subject of a specific definition, which allows a conviction without the necessity of proving that the defendant knew the exact particulars of the underlying offense or even its nature; it is enough that he knew that the property came from some sort of criminal activity and that the property in fact constitutes the proceeds of a predicate offense.[20] The knowledge element cannot be negated by turning a blind eye to reality. Here and throughout § 1956, knowledge may be inferred from facts indicating that criminal activity is particularly likely.[21]

Throughout § 1956, a defendant "conducts" a financial transaction when he initiates, concludes, or participates in initiating, or concluding a transaction.[22] The "financial transaction" element has two obvious components. It must be a transaction and it must be financial. Both components are defined by statute. Qualifying "transactions" may take virtually any shape that involves the

[19] 18 U.S.C. § 1956(a)(1)(A)(i); *Davis*, 122 F.4th at 75; United States v. Stanford, 823 F.3d 814, 849 (5th Cir. 2016); United States v. Johnson, 821 F.3d 1194, 1203 (10th Cir. 2016); United States v. Ayala-Vazquez, 751 F.3d 1, 14–5 (1st Cir. 2014); United States v. Wilkes, 662 F.3d 524, 548 (9th Cir. 2011).

[20] "The term 'knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity' means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State, Federal, or foreign law, regardless of whether or not such activity is specified in paragraph (7)." 18 U.S.C. § 1956(c)(1); United States v. Spita, 136 F.4th 1296, 1304 (11th Cir. 2025); United States v. George, 761 F.3d 42, 48 n.7 (1st Cir. 2014); United States v Flores, 454 F.3d 149, 155 (3d Cir. 2006); United States v. Hill, 167 F.3d 1055, 1065–68 (6th Cir. 1999).

[21] United States v. Ravenell, 66 F.4th 472, 490 (4th Cir. 2023); United States v. Quinones, 635 F.3d 590, 594 (2d Cir. 2011) ("A conscious avoidance instruction permits a jury to find that a defendant had culpable knowledge of a fact when the evidence shows that the defendant intentionally avoided confirming the fact." (quoting United States v. Ferrarini, 219 F.3d 145, 154 (2d Cir. 2000)); *see also* United States v. Vinson, 852 F.3d 333, 357 (4th Cir. 2017); United States v. Haire, 806 F.3d 991, 998 (8th Cir. 2015); United States v. Adorno-Molina, 774 F.3d 116, 124−25 (1st Cir. 2014); United States v. Alaniz, 726 F.3d 586, 611−13 (5th Cir. 2013); *cf.* United States v. Antzoulatos, 962 F.2d 720, 725 (7th Cir. 1992) ("It is well settled that willful blindness or conscious avoidance is the legal equivalent to knowledge.... We therefore examine the constitutionality of Section 1956(a)(1)(B) as applied to a merchant who actually knew that he was dealing with drug dealers and their money, or deliberately turned a blind eye regarding this fact.... We conclude that Antzoulatos' right to liberty under the Fifth Amendment was not violated.").

[22] 18 U.S.C. § 1956(c)(2). United States v. Ojedokun, 16 F.4th 1091, 1104 (4th Cir. 2021) (word "conduct" carries its ordinary meaning); United States v. Gotti, 459 F.3d 296, 335 (2d Cir. 2006) (mere receipt of funds constitutes "conducting a financial transaction."). In spite of the breadth of the definition, an individual must be in control at some point, and in some sense, of the property involved in the transaction, United States v. Huber, 404 F.3d 1047, 1060 (8th Cir. 2005) (a defendant does not conduct third-party financial transfers which he does not initiate and in which he does not participate).

disposition of something constituting the proceeds of an underlying crime,[23] including a disposition as informal as handing cash over to someone else.[24] The "financial" component supplies the jurisdiction foundation for a § 1956(a)(1)(A)(ii) crime and each of the other crimes in § 1956(a)(1). Qualifying transactions must either involve the movement of funds in a manner that affects interstate or foreign commerce or involve a financial institution[25] engaged in, or whose activities affect, interstate or foreign commerce.[26] In either case, the effect on interstate or foreign commerce need be no more than minimal to satisfy the jurisdictional requirement.[27]

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[23] "The term 'transaction' includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safe deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected." 18 U.S.C. § 1956(c)(3); *e.g.*, United States v. Gonzales, 918 F.3d 808, 813 (10th Cir. 2019); United States v. Harris, 666 F.3d 905, 909 (5th Cir. 2012); United States v. Diaz-Pellegaud, 666 F.3d 492, 498 (8th Cir. 2012); United States v. Garcia, 587 F.3d 509, 516 (2d Cir. 2009).

[24] United States v. Blair, 661 F.3d 755, 764 (4th Cir. 2011) (per curiam) ("Almost any exchange of money between two parties qualifies as a financial transaction subject to criminal prosecution under § 1956, provided that the transaction has at least a minimal effect on interstate commerce and satisfies at least one of the four intent requirements."); United States v. Roy, 375 F.3d 21, 23–24 (1st Cir. 2004) (exchange between individuals of $100 bills for currency of smaller denominations to facilitate drug trafficking); United States v. Gough, 152 F.3d 1172, 1173 (9th Cir. 1998); United States v. Garcia Abrego, 141 F.3d 142, 160 (5th Cir. 1998); *but see Harris*, 666 F.3d at 909 ("[M]ere payment of the purchase price for drugs by whatever means ... does not constitute money laundering.").

[25] "[T]he term 'financial institution' includes—(A) any financial institution, as defined in section 5312(a)(2) of title 31, United States Code, or the regulations promulgated thereunder; and (B) any foreign bank, as defined in section 1 of the International Banking Act of 1978 (12 U.S.C. 3101)." *Id*. § 1956(c)(6) (footnote omitted). In § 5312, the term "financial institution" means—"(A) an insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h))); (B) a commercial bank or trust company; (C) a private banker; (D) an agency or branch of a foreign bank in the United States; (E) any credit union; (F) a thrift institution; (G) a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.); (H) a broker or dealer in securities or commodities; (I) an investment banker or investment company; (J) a currency exchange, or a business engaged in the exchange of currency, funds, or value that substitutes for currency or funds; (K) an issuer, redeemer, or cashier of travelers' checks, checks, money orders, or similar instruments; (L) an operator of a credit card system; (M) an insurance company; (N) a dealer in precious metals, stones, or jewels; (O) a pawnbroker; (P) a loan or finance company; (Q) a travel agency; (R) a licensed sender of money or any other person who engages as a business in the transmission of currency, funds, or value that substitutes for currency, including any person who engages as a business in an informal money transfer system or any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside of the conventional financial institutions system; (S) a telegraph company; (T) a business engaged in vehicle sales, including automobile, airplane, and boat sales; (U) persons involved in real estate closings and settlements; (V) the United States Postal Service; (W) an agency of the United States Government or of a State or local government carrying out a duty or power of a business described in this paragraph; (X) a casino, gambling casino, or gaming establishment with an annual gaming revenue of more than $1,000,000 which—(i) is licensed as a casino, gambling casino, or gaming establishment under the laws of any State or any political subdivision of any State; or (ii) is an Indian gaming operation conducted under or pursuant to the Indian Gaming Regulatory Act other than an operation which is limited to class I gaming (as defined in section 4(6) of such Act); (Y) any business or agency which engages in any activity which the Secretary of the Treasury determines, by regulation, to be an activity which is similar to, related to, or a substitute for any activity in which any business described in this paragraph is authorized to engage; or (Z) any other business designated by the Secretary whose cash transactions have a high degree of usefulness in criminal, tax, or regulatory matters." 31 U.S.C. § 5312(a)(2).

[26] "The term 'financial transaction' means (A) a transaction which in *any way or degree* affects interstate or foreign commerce (i) involving the movement of funds by wire or other means or (ii) involving one or more monetary instruments, or (iii) involving the transfer of title to any real property, vehicle, vessel, or aircraft, or (B) a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in *any way or degree*," 18 U.S.C. § 1956(c)(4) (emphasis added); Fakhuri v. Garland, 28 F.4th 623, 629 (5th Cir. 2022) ("Thus, the 'financial transaction' element is merely a roundabout way of requiring that the crime affect interstate commerce."); United States v. Costanzo, 956 F.3d 1088, 1092 (9th Cir. 2020).

[27] *Blair*, 661 F.3d at 764; United States v. Gotti, 459 F.3d 296, 336 (2d Cir. 2006); United States v. Ables, 167 F.3d 1021, 1029 (6th Cir. 1999); United States v. Owens, 167 F.3d 739, 755 (1st Cir. 1999).

The majority of § 1956's crimes are related in one way or another to the commission or purported commission of at least one of a list of predicate offenses ("specified unlawful activities").[28] In the financial transaction promotional offense, the proscribed transaction must involve the proceeds of a predicate offense and be designed to promote a predicate offense.[29] The predicate offenses come in three varieties: state crimes, foreign crimes, and federal crimes. The list of state crimes is relatively short and consists of any state crime that is a RICO predicate offense,[30] that is, "any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act),[31] which is chargeable under state law and punishable by imprisonment for more than one year."[32]

The list of foreign crimes recognized as § 1956 predicate offenses is more extensive than the list of state crimes, and covers among other things extraditable offenses, although crimes under the laws of other countries qualify as predicate offenses only if the financial transaction occurs in this country in whole or in part.[33]

The list of federal predicate offenses is considerably longer if for no other reason than that the some qualifying offenses are specifically named and others qualify by cross-reference to the voluminous RICO predicate offense list.[34] The crimes listed by name as predicates include offenses such as interstate kidnapping, theft of funds from federally supported programs, and bank robbery.[35] RICO predicates also name bribery, mail fraud, and wire fraud as predicates.[36]

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[28] Conducting or attempting to conduct an international transfer to avoid state or federal reporting requirements must involve the proceeds of a crime but the property-generating offense need not be a money laundering predicate, 18 U.S.C. § 1956(a)(2)(B)(ii).

[29] *Id.* § 1956(a)(1)(A)(i).

[30] *Id.* § 1956(c)(7)(A).

[31] 21 U.S.C. § 802(6), 802(33), respectively.

[32] 18 U.S.C. § 1961(1)(A).

[33] *Id.* § 1956(c)(7)(B) ("[T]he term 'specified unlawful activity' means ... (B) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving—(i) the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act); (ii) murder, kidnapping, robbery, extortion, destruction of property by means of explosive or fire, or a crime of violence (as defined in section 16); (iii) fraud, or any scheme or attempt to defraud, by or against a foreign bank (as defined in paragraph 7 of section 1(b) of the International Banking Act of 1978)); (iv) bribery of a public official, or the misappropriation, theft, or embezzlement of public funds by or for the benefit of a public official; (v) smuggling or export control violations involving—(I) an item controlled on the United States Munitions List established under section 38 of the Arms Export Control Act (22 U.S.C. § 2778); or (II) an item controlled under regulations under the Export Administration Regulations (15 C.F.R. pts.730–774); (vi) an offense with respect to which the United States would be obligated by a multilateral treaty, either to extradite the alleged offender or to submit the case for prosecution, if the offender were found within the territory of the United States; or (vii) trafficking in persons, selling or buying of children, sexual exploitation of children, or transporting, recruiting or harboring a person, including a child, for commercial sex acts."); *see, e.g.*, United States v. Chi, 936 F.3d 888, 897 (9th Cir. 2019); United States v. Thiam, 934 F.3d 89, 92 (2d Cir. 2019); United States v. All Assets Held at Bank Julius Baer & Co., 520 F. Supp. 3d 71 (D.D.C. 2020).

[34] In a decision, later overturned, involving construction of the Armed Career Criminal Act, Justice Scalia's dissent referred, tongue-in-cheek, to the RICO predicate offense list as "a laundry list of nearly every federal crime under the sun." James v. United States, 550 U.S. 192, 223 (2007), overruled by Johnson v. United States, 576 U.S. 591 (2015). A list of federal money laundering predicate offenses appears at the end of this report.

[35] 18 U.S.C. § 1956(c)(7)(D) ("the term 'specified unlawful activity' means ... an offense under section ... 1201 [interstate kidnapping] ... 666 [theft] ... 2113 [bank robbery].").

[36] *Id.* § 1961(1) ("As used in this chapter—(1) Racketeering activity means ... (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery) … section 1341 (relating to mail fraud), section 1343 (relating to wire fraud) ... ").

Moreover, the RICO predicate offense list encompasses by cross-reference the federal crimes of terrorism cataloged in 18 U.S.C. § 2339B(g)(5)(B).[37]

As for the promotional element, some of the lower courts have concluded that it "may be met by transactions that promote the continued prosperity of the underlying offense."[38] One circuit has declared, however, that "the 'promotion' element of money laundering promotion cannot be met simply by demonstrating that the unlawfully earned monies were used to promote the continued functioning of an 'otherwise legitimate business enterprise.' For instance, paying the bills (payroll, rent, taxes) of a health care provider or a car dealership, even one engaged in frequent acts of fraud, may not suffice to support the promotion element."[39]

The "proceeds" in the proceeds element of the offense is defined to consist of "any property derived from or obtained or retained, directly or indirectly, through some form of unlawful activity, including the gross receipts of such activity."[40]

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[37] *Id.*

[38] United States v. Valdez, 726 F.3d 684, 690–91 (5th Cir. 2013) (doctor's extra payments to employees assisting in a fraudulent enterprise constitute promotion for money laundering purposes); United States v. Lee, 558 F.3d 638, 642 (7th Cir. 2009) (payment of the advertising expenses of a prostitution enterprise); United States v. Lawrence, 405 F.3d 888, 901 (10th Cir. 2005) (payment of clinic rent in connection with an ongoing Medicare fraud scheme); United States v. Iacaboni, 363 F.3d 1, 5, 6 n.9 (1st Cir. 2004) (gambler's pay off of winning bettors, "nothing makes an illegal gambling operation flourish more than the prompt payment of winners," and observing that the "payment of salaries of employees is a common example of promotion within the meaning of the statute"); United States v. King, 169 F.3d 1035, 1040 (6th Cir. 1999) (drug dealer's payment for past shipments preserved the defendant's opportunity to acquire additional shipments).

[39] United States v. Brown, 553 F.3d 768, 785 (5th Cir. 2008) ("In examining the question of intent necessary for a money laundering promotion conviction, this court has held that the Government must present either direct proof of an intent to promote such illegal activity, or proof that a given type of transaction on its face, indicates an intent to promote such illegal activity." (quoting, United States v. Miles, 360 F.3d 472, 477 (5th Cir. 2004)) and United States v. Brown, 186 F.3d 661, 670 (5th Cir. 1999)).

[40] 18 U.S.C. § 1956(c)(9); *see, e.g.*, United States v. Abbas, 100 F.4th 267, 287 (1st Cir.), *cert. denied*, 145 S. Ct. 319 (2024) (mem.); United States v. Toliver, 949 F.3d 244, 248 (6th Cir. 2020).

Until Congress added this definition, the courts struggled with the precise meaning of the interwoven "proceeds" and "promotional" elements of the promotional transaction offense. In the Supreme Court's *Santos* case, for instance, the defendant was convicted of running an illegal gambling business in violation of 18 U.S.C. § 1955. Section 1955 requires the government to prove that the defendant has conducted a gambling operation either conducted over a thirty-day period or one which produced gross revenues of at least $2,000 on any given day. Santos was also convicted of promotional money laundering under § 1956, based upon evidence that during the course of operations he had paid off his winning customers and paid his employees from the revenue generated by the enterprise. Santos v. United States, 461 F.3d 886, 889 (7th Cir. 2006), *aff'd*, 553 U.S. 507 (2008). The court of appeals decided that these were expenses associated with the commission of the gambling offense, not after the fact profits. Proceeds, they reasoned based on their earlier decisions, meant profits, net revenues, not gross revenues (profits and expenses). *Id.* at 891.

Justice Scalia, in the plurality opinion for the Court, noted that the Congress had not at the time explicitly defined "proceeds" as the term was used in the money laundering statute. *Santos*, 553 U.S. at 511. In the absence of a statutory definition, words are thought to have their ordinary meaning. In common parlance, proceeds can mean either profits or gross receipts. *Id.* When the words of a criminal statute can be read in either of two ways, the rule of lenity requires them to be construed in the manner most favorable to the accused. *Id.* at 514. Recourse to the rule avoids the so-called merger problem. *Id.* at 515–16. ("Since few lotteries, if any, will not pay their winners, the statute criminalizing illegal lotteries, 18 U.S.C. § 1955, would 'merge' with the money laundering statute. Congress evidently decided that lottery operators ordinarily deserve up to 5 years of imprisonment, §1955(a), but as a result of merger they would face an additional 20 years [under the money laundering statute], §1956(a)(1).... The merger problem is not limited to lottery operators.... Generally speaking, any specified unlawful activity, an episode of which includes transactions which are not elements of the offense and in which the participant passes receipts on to someone else, would merge with money laundering.").

(continued...)

The definition answers both the profits versus gross receipts question and several others as well. It makes it clear, for example, that the term includes proceeds from a lawful source, retained through the commission of a predicate offense.[41] It does not necessarily invalidate, however, that line of lower court decisions which held that proceeds must be "derived from an already competed offense, or a completed phase of an ongoing offense, before they can be laundered."[42]

International Transmission or Transportation

The international promotional offense, § 1956(a)(2)(A), applies to anyone who:

> [T]ransports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States ... with the intent to promote the carrying on of specified unlawful activity.[43]

"Monetary instruments" is a term defined broadly to include cash, checks, securities, and the like.[44] Since § 1952(a)(2)(A) proscribes both transportation and attempted transportation, charges may be brought even though no funds were in fact transported internationally, as long as the government proves a substantial step towards international transportation.[45] The section does not demand that the transported funds flow from a predicate offense or from any other unlawful source; all that is required is that the offender intends to use them to promote a predicate

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Justice Stevens concurred in the result, but not the rationale, of the plurality opinion. *Id.* at 524 (Stevens, J. concurring in the judgment). He would presume that Congress intended the word "proceeds" to mean "gross receipts," except in those cases, like *Santos*, where the results would be too "perverse" to support such a presumption. *Id.* at 551 n.7.

Congress resolved the issue by adding the explicit definition of proceeds to § 1956. 18 U.S.C. § 1956(c)(9) ("[T]he term 'proceeds' means any property derived from or obtained or retained, directly or indirectly, through some form of unlawful activity, *including the gross receipts of such activities.*" (emphasis added)).

[41] United States v. Yusuf, 536 F.3d 178, 185 (3d Cir. 2008) ("The narrow issue in this appeal is whether unpaid taxes unlawfully disguised and retained by means of the filing of false tax returns through the U.S. mails are 'proceeds' of mail fraud for purposes of sufficiently stating an offense for money laundering.... [T]he federal money laundering statute specifically identifies which criminal offenses constitute 'specified unlawful activities.' The term 'specified unlawful activities' covers a broad array of offenses. For example, the fraudulent *concealment* of a bankruptcy estate's assets is categorized as a 'specified unlawful activity.' Thus, property which is required to be included in a bankruptcy debtor's estate but is instead undeclared and thus *retained*, is 'proceeds' of a bankruptcy fraud offense.... Moreover, simply because funds are *originally* procured through *lawful* activity does not mean that one cannot thereafter convert those same funds into the 'proceeds' of an unlawful activity. United States v. Levine, 970 F.2d 681, 686 (10th Cir. 1992) (sustaining money laundering conviction where the defendant concealed corporate tax refund checks deposited in a hidden bank account). Accordingly, we reject the suggestion that to qualify as 'proceeds' under the federal money laundering statute, funds must have been *directly* produced by or through a specified unlawful activity, and we agree that funds *retained* as a result of the unlawful activity can be treated as the 'proceeds' of such crime." (footnote and citations omitted)).

[42] *E.g.*, United States v. Kerley, 784 F.3d 327, 344 (6th Cir. 2015) ("[T]he primary issue in a money laundering charge involves determining when the predicate crime becomes a completed offense after which money laundering can occur." (quoting pre-*Santos* decision United States v. Nolan, 223 F.3d 1311, 1315 (11th Cir. 2000)); cases arising prior to *Santos* included: *Yusuf*, 536 F.3d at 186; United States v. Singh, 518 F.3d 236, 247 (4th Cir. 2008); United States v. Szur, 289 F.3d 200, 213–14 (2d Cir. 2002); United States v. Richard, 234 F.3d 763, 770 (1st Cir. 2000).

[43] 18 U.S.C. § 1956(a)(2)(A); *e.g.*, United States v. Garcia, 99 F.4th 253, 261 (5th Cir. 2024); United States v. Galecki, 89 F.4th 713, 741 (9th Cir. 2023), *cert. denied*, 145 S. Ct. 546 (2024) (mem.); United States v. Hagen, 60 F.4th 932, 937 (5th Cir. 2023); United States v. Ho, 984 F.3d 191, 202 (2d Cir. 2020).

[44] 18 U.S.C. § 1956(c)(5).

[45] United States v. Garcia Abrego, 141 F.3d 142, 162 n.8 (5th Cir. 1998).

offense.[46] Where the international promotional offense shares common elements with other § 1956 offenses, they are comparably construed.[47] Thus, similar "intent to promote" elements impose the same requirements of proof upon the government regardless of whether the offense charged is a § 1956(a)(1)(A)(i) financial transaction promotional offense or a § 1956(a)(2)(A) international transfer promotional offense.[48] The statutory list of state, federal, and foreign predicate offenses (specified unlawful activities) applies to a § 1956(a)(2)(A) offense as it does for all but one of the § 1956 offenses.[49]

Stings

The final promotional money laundering offense, § 1956(a)(3)(A), is a variation of the financial transaction offense, created to cover situations in which law enforcement officials acting undercover have duped the offender into believing the agent is using the proceeds from a criminal source to promote a predicate offense, when in fact he is not.[50] The offense occurs when an offender:

> [W]ith the intent ... to promote the carrying on of specified unlawful activity ... conducts or attempts to conduct a financial transaction involving property represented to be the proceeds of specified unlawful activity, or property used to conduct or facilitate specified unlawful activity, shall be fined under this title.[51]

The generous statutory definition of "financial transactions," which embodies a "sale, ... transfer, delivery, or other disposition" involving a monetary instrument or the use of a financial

[46] 18 U.S.C. § 1956(a)(2)(A); United States v. Moreland, 622 F.3d 1147, 1167 (9th Cir. 2010); United States v. Krasinski, 545 F.3d 546, 550–51 (7th Cir. 2008).

[47] United States v. Trejo, 610 F.3d 308, 315 (5th Cir. 2010) ("Section 1956(a)(2)(A) contains an identical specific intent requirement for transportation cases as its § 1956(a)(1)(A)(i) *transaction* counterpart. While the definitive case authority on specific intent derives from the *transaction* provision, it is safe to assume the requirement is no less rigorous under 1956(a)(2)(A). *See* United States v. Huezo, 546 F.3d 174, 179 (2d Cir. 2008) (noting the use of identical language in the transportation and transaction provisions of § 1956 is a strong indicator that they should be interpreted in the same manner). We conclude that the same stringent specific intent requirement applies in § 1956(a)(2)(A) cases").

[48] *Trejo*, 610 F.3d at 315; United States v. Caplinger, 339 F.3d 226, 233 (4th Cir. 2003).

[49] Section 1956(a)(2)(B)(ii) (international transfers to avoid state or federal reporting requirements) has no predicate offense element.

[50] "This amendment to the money laundering statute, 18 U.S.C. 1956, would permit undercover law enforcement officers to pose as drug traffickers in order to obtain evidence necessary to convict money launderers. The present statute does not provide for such operations because it permits a conviction only where the laundered money 'in fact involves the proceeds of specified unlawful activity.'" 134 CONG. REC. 27420 (1988) (Department of Justice section-by-section analysis inserted by the bill's sponsors).

[51] 18 U.S.C. § 1956(a)(3)(A). *E.g.*, United States v. Davis, 706 F.3d 1081, 1082–83 (9th Cir. 2013); United States v. Ghali, 699 F.3d 845, 845−46 (5th Cir. 2012); *see also* United States v. Flom, 256 F. Supp. 3d 253, 265 (E.D.N.Y. 2017) ("In order to prove the crime of money laundering, the government must establish beyond a reasonable doubt that: (1) the defendant conducted an interstate transaction affecting interstate commerce; (2) the transaction involved money represented by a law enforcement officer and believed by the defendant to be the proceeds of fraud [or some other predicate offense]; and (3) the defendant intended to promote the carrying on of the fraud [or some other predicate offense]."), *aff'd*, 763 F. App'x 27 (2d Cir. 2019). The terminology used in the section permits an alternative construction of the third element. The phrase in question reads "conducts or attempts conduct a financial transaction involving property represented to be the proceeds of specified unlawful activity, or *property used to conduct or facilitate specified unlawful activity.*" 18 U.S.C. § 1956(a)(3) (emphasis added). It is possible to read the portion in italics as referring to property *represented* to be property used to conduct a predicate offense or alternatively as referring to property that *in fact* constitutes property used to conduct a predicate offense. The first construction seems more consistent with the purpose for adding the section.

institution, applies with equal force here and throughout § 1956.[52] The "representations" alluded to are confined to those "made by a law enforcement officer or by another person at the direction of, or with the approval of, a federal official authorized to investigate or prosecute violations of this section."[53] In sting prosecutions under other § 1956 subsections, courts have held that the representation need not be explicit; it is enough that a reasonable person would infer from the circumstances that funds to be laundered were the proceeds of a predicate offense.[54] The same construction applies to here.[55] The qualifying state, federal, and foreign predicate offenses are the same for all the § 1956 offenses including the § 1956(a)(3)(A) promotional stings offenses.[56]

Prosecution of § 1956(a)(3) sting offenses might seem to invite entrapment defense claims. As a general rule, "[w]here the government has induced an individual to break the law and the defense of entrapment is at issue ... the prosecution must prove beyond reasonable doubt that the defendant was predisposed to commit the criminal act prior to first being approached by government agents."[57] Evidence of a defendant's predisposition may include "(1) the character or reputation of the defendant; (2) whether the government made the initial suggestion of criminal activity; (3) whether the defendant engaged in the activity for profit; (4) whether the defendant showed any reluctance; and (5) the nature of the government's inducement."[58] This defense, however, does not appear to have enjoyed a great deal of success in § 1956(a)(3) cases.[59]

[52] 18 U.S.C. § 1956(c)(3), (4).

[53] *Id.* § 1956(a)(3).

[54] United States v. Starke, 62 F.3d 1374, 1382 (11th Cir. 1995); United States v. Wydermyer, 51 F.3d 319, 327–28 (2d Cir. 1995); United States v. Kaufmann, 985 F.2d 884, 892–93 (7th Cir. 1993).

[55] United States v. Portalla, 496 F.3d 23, 28–29 (1st Cir. 2007).

[56] 18 U.S.C. § 1956(c)(7).

[57] Jacobson v. United States, 503 U.S. 540, 548–49 (1992). The lower federal appellate courts cast the inducement and predisposition variously, *see e.g.*, United States v. Rivera-Ruperto, 846 F.3d 417, 428–29 (1st Cir. 2017) ("A defendant seeking to present an entrapment defense at trial must satisfy an 'entry-level burden of production.' He must 'produce evidence which fairly supports the claims' that: (1) the government agents not only induced the crime but did so improperly, and (2) that he was not already predisposed to commit the crime." (quoting United States v. Sánchez-Berrios, 424 F.3d 65, 76–77 (1st Cir. 2005)); United States v. Combs, 827 F.3d 790, 796 (8th Cir. 2016) ("To successfully raise a defense of entrapment, the defendant must first produce sufficient evidence that the government induced him to commit the offense. The burden then shifts to the government to prove beyond a reasonable doubt that the defendant was predisposed to commit the crime.").

[58] United States v. Mohamud, 843 F.3d 420, 432 (9th Cir. 2016). *See also* United States v. Rutgerson, 822 F.3d 1223, 1235 (11th Cir. 2016) ("We have rejected creating a 'fixed list of factors' for evaluating an entrapment defense, but we have posited 'several guiding principles': Predisposition may be demonstrated simply by a defendant's ready commission of the charged crime. A predisposition finding is also supported by evidence that the defendant was given opportunities to back out of illegal transactions but failed to do so. Post-crime statements will support a jury's rejection of an entrapment defense. Existence of prior related offenses is relevant, but not dispositive. Evidence of legal activity combined with evidence of certain non-criminal tendencies, standing alone, cannot support a conviction. Finally, the fact-intensive nature of the entrapment defense often makes jury consideration of demeanor and credibility evidence a pivotal factor." (quoting United States v. Brown, 43 F.3d 618, 625 (11th Cir. 1995)); United States v. Macedo-Flores, 788 F.3d 181, 187 (5th Cir. 2015) ("In examining a defendant's predisposition to commit the offense, the court is to look at, *inter alia*, (1) the defendant's 'eagerness to participate in the transaction,' and (2) the defendant's 'ready response to the government's inducement offer.' Further, '[p]redisposition ... focuses upon whether the defendant was an unwary innocent" or, instead, an "unwary criminal" who readily availed himself of the opportunity to perpetrate the crime.'" (alterations in original) (first quoting United States v. Chavez, 119 F.3d 342, 346 (5th Cir. 1997); and then quoting Mathews v. United States, 485 U.S. 58, 63 (1988)).

[59] Examples of unsuccessful claims appear in United States v. Williams, 720 F.3d 674, 697 (8th Cir. 2013); United States v. al Kassar, 660 F.3d 108, 119–20 (2d Cir. 2011); United States v. Ogle, 328 F.3d 182, 185 (5th Cir. 2003); and United States v. Spriggs, 102 F.3d 1245, 1260–62 (D.C. Cir. 1996).

Concealment

Like promotional money laundering, concealment money laundering comes in three varieties; concealment associated with a financial transaction, concealment associated with foreign transportation or transmission, and concealment associated with a sting.[60]

Financial Transactions

Concealment in violation of § 1956(a)(1)(B)(i) occurs when anyone:

> [K]nowing 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 ... knowing that the transaction 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.[61]

The concealment offense tracks the promotion offense closely and shares several common elements with the other offenses in § 1956.[62] Thus, the defendant must have known that the transaction, designed to conceal, involved crime-tainted proceeds, but need not have known the precise offense or its specifics.[63] Gross receipts of a predicate offense may serve as qualifying "proceeds," for concealment as well as for promotional offenses.[64] The actions that amount to "conduct[ing] or attempt[ing] to conduct" a proscribed transaction—for either concealment or promotional purposes—"include[] initiating, concluding, participating in initiating, or concluding a transaction."[65] The broad definition of "financial transaction" found in § 1956(c)(4) ("sale.... transfer, delivery, or other disposition" involving a monetary instrument or a financial institution) applies throughout the section.[66] As with the promotion offenses, the government must show

[60] 18 U.S.C. § 1956(a)(1)(B)(i), 1956(a)(2)(B)(i), 1956(a)(3).

[61] *Id.* § 1956(a)(1)(B)(i); United States v. Stewart, 854 F.3d 472, 476 (8th Cir. 2017) (Conviction "requires proof that '(1) defendant conducted ... a financial transaction which in any way or degree affected interstate commerce ... ; (2) the financial transaction involved proceeds of illegal activity; (3) defendant knew the property represented proceeds of some form of unlawful activity; and (4) defendant conducted ... the financial transaction knowing the transaction was "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."'" (alterations in original) (quoting United States v. Slagg, 651 F.3d 832, 844 (8th Cir. 2011)); *see e.g.*, United States v. Grady, 88 F.4th 1246, 1261 (8th Cir. 2023), *cert. denied*, 144 S. Ct. 2648 (mem.), and *cert. denied sub nom.* Dillon v. United States, 145 S. Ct. 209 (2024) (mem.), *reh'g denied*, 145 S. Ct. 1155 (2025) (mem.); United States v. Fallon, 61 F.4th 95, 116 (3d Cir. 2023); United States v. Esformes, 60 F.4th 621, 638 (11th Cir. 2023), *cert. denied*, 144 S. Ct. 485 (2023) (mem.).

[62] United States v. Stanford, 823 F.3d 814, 850 (5th Cir. 2016) ("Concealment money laundering, which violates § 1956(a)(1)(B)(i), is identical to promotional money laundering, which violates § 1956(a)(1)(A)(i), except that concealment money laundering requires knowledge 'that the transaction's design was to conceal or disguise the nature or source of the illegal proceeds,' while promotional money laundering requires an 'intent to promote or further illegal actions.'" (quoting United States v. Cessa, 785 F.3d 165, 174 n.6 (5th Cir. 2015)); *see also* United States v. Ayala-Vazquez, 751 F.3d 1, 14–15 (1st Cir. 2014).

[63] 18 U.S.C. § 1956(c)(1).

[64] 18 U.S.C. § 1956(c)(9). United States v. Abbas, 100 F.4th 267, 287 (1st Cir.), *cert. denied*, 145 S. Ct. 319 (2024) (mem.); United States v. Tolliver, 949 F.3d 244, 248 (6th Cir. 2020) (per curiam).

[65] 18 U.S.C. § 1956(c)(2).

[66] *E.g.*, Fakhuri v. Garland, 28 F.4th 623, 629 (5th Cir. 2022); United States v. Costanzo, 956 F.3d 1088, 1092 (9th Cir. 2020); United States v. Ledée, 772 F.3d 21, 35 n.19 (1st Cir. 2014); United States v. Harris, 666 F.3d 905, 909 n.2 (5th Cir. 2012); United States v. Jenkins, 633 F.3d 788, 804 (9th Cir. 2011).

more than a financial transaction; proof that the defendant spent tainted funds, without more will not do.[67]

The concealment offense requires "a design" to conceal. It is the purpose of the scheme and not its effect that the element condemns.[68] A financial transaction that offers neither the accused nor the property involved any apparent enhanced secrecy protection cannot be said to satisfy the intention to conceal element of the offense.[69] The fact the defendant made no effort to conceal his identity is no defense, however, when the transactions were intended to conceal the nature, location, or origin of the property involved.[70]

As a general matter:

> Evidence that may be considered when determining whether a transaction was designed to conceal includes ... [deceptive] statements by a defendant probative [o]f intent to conceal; unusual secrecy surround[ing] the transactions; structuring the transaction to avoid attention; depositing illegal profits in the bank account of a legitimate business; highly irregular features of the transaction; using third parties to conceal the real owner; a series of unusual financial moves cumulating in the transaction; and expert testimony on practices of criminals."[71] Although the government need not always prove that a transaction was designed to create the appearance of legitimate wealth, efforts to create such an appearance often signal a money laundering violation.[72]

International Transportation or Transmission

The international concealment offense of § 1956(a)(2)(B)(i) penalizes anyone who:

> transports, transmits, or transfers, or attempts to transport, transmits, or transfer a monetary instrument or funds from a place in the United States to or through a

[67] United States v. Esformes, 60 F.4th 621, 638–39 (11th Cir. 2023), *cert. denied*, 144 S. Ct. 485 (2023) (mem.); United States v. Singh, 995 F.3d 1069, 1075 (9th Cir. 2021); United States v. Slagg, 651 F.3d 832, 845 (8th Cir. 2011); United States v. Warshak, 631 F.3d 266, 323 (6th Cir. 2010); United States v. Shepard, 396 F.3d 1116, 1120 (10th Cir. 2005); United States v. Stephenson, 183 F.3d 110, 121 (2d Cir. 1999).

[68] United States v. Valdez, 726 F.3d 684, 690 (5th Cir. 2013); United States v. Heid, 651 F.3d 850, 855 (8th Cir. 2011).

[69] *Valdez*, 726 F.3d at 690; United States v. Blankenship, 382 F.3d 1110, 1128–31 (11th Cir. 2004); *cf. Adefehinti*, 510 F.3d at 323–24.

[70] United States v. Delgado, 653 F.3d 729, 737 (8th Cir. 2011); *see also* United States v. Tekle, 329 F.3d 1108, 1113–14 (9th Cir. 2003); *cf.* United States v. Dvorak, 617 F.3d 1017, 1022 (8th Cir. 2010) ("The financial transactions identified in the indictment were Dvorak's 'withdrawal[s] of cash from his Wells Fargo Bank account.' The provision of §1956(a)(1)(B)(i) with which we are principally concerned there is whether Dvorak's withdrawals were 'designed in whole or in part [ ] to conceal or disguise ... *the location*' of the illegal proceeds. Although cases addressing §1956(a)(1)(B)(i) often focus upon whether the transaction was intended to conceal the 'nature' or 'source' of the funds, a transaction intended to conceal the location of the funds is also a violation of the money laundering statute." (alterations in original) (first quoting Indictment at 11, *Dvorak*, 617 F.3d 1017 (8th Cir. 2010), and then quoting 18 U.S.C. § 1956(a)(1)(B)(i)).

[71] United States v. Magluta, 418 F.3d 1166, 1176 (11th Cir. 2005) (second and third alterations in original) (quoting United States v. Majors, 196 F.3d 1206, 1213 n.18 (11th Cir. 1999); *see also* United States v. Fallon, 61 F.4th 95, 117 (3d Cir. 2023); *Singh*, 995 F.3d at 1076; United States v. Baldridge, 559 F.3d 1126, 1141 (10th Cir. 2009); *Adefehinti*, 510 F.3d at 323 (listing cases illustrating various deceptive devices).

[72] United States v. Law, 528 F.3d 888, 896 (D.C. Cir. 2008) (per curiam) (Cuellar v. United States, 553 U.S. 550 (2008), held that "§ 1956(a)(2)(B)(i), which prohibits transportation designed to conceal certain attributes of illegally obtained funds, does not require proof that [the] defendant attempted to create [the] appearance of legitimate wealth, but recogniz[ed] [that] such attempt may signal [a] violation of [the] money laundering statute and indeed is [a] manner in which 'classic money laundering' occurs.").

> place outside the United States or to a place in the United States from 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 ... to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity."[73]

The standard definitions and construction apply to several of the elements of § 1956(a)(2)(B)'s international concealment offense. It is the deceptive laundering of the proceeds of state, federal, and foreign predicate offenses that the section proscribes,[74] but only when the proceeds come in the form of "a monetary instrument or funds."[75]

The Supreme Court has made it clear that the concealment proscribed refers to the purpose for the transportation, not its method.[76] In 2008, the Court in *Cuellar* held that evidence that the defendant attempted to smuggle cash out of the United States was insufficient to support a prosecution for violation of § 1956(a)(2)(B)(i), absent evidence of a design to conceal the ownership, source, nature, or ultimate location of the funds.[77] It made it equally clear, however, that violations are not limited to those instances where the government can establish that the transportation was intended to create the appearance of legitimate wealth.[78]

A drafting quirk raises some question concerning the first knowledge element of the § 1956(a)(2)(B) international transfer offense ("knowing that the ... *funds* involved ... represent the proceeds of some form of unlawful activity").[79] Elsewhere, the statute uses the phrase "knowing that the *property* in a financial transaction."[80] The statute then goes on to say that the phrase "'knowing that the *property* involved in a financial transaction'" means that the defendant need not know that the "unlawful activity" that generates the laundered proceeds constitutes a money laundering predicate offense; it is enough that he knows that a state, federal, or foreign offense generates the proceeds.[81] For international transfer offenses, the statute provides no comparable caveat for the phrase, "knowing that the ... *funds* involved." Nevertheless, at least one court has

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[73] 18 U.S.C. § 1956(a)(2)(B)(i); Cuellar v. United States, 553 U.S. 550 (2008); United States v. Sherman, 128 F.4th 224, 230–31 (3d Cir. 2025); United States v. Raymundi-Hernández, 984 F.3d 127, 144 (1st Cir. 2020).

[74] 18 U.S.C. § 1956(c)(7).

[75] *Id.* § 1956(a)(2)(B).

[76] *Cuellar*, 553 U.S. at 563, 566 ("We agree with petitioner that merely hiding funds during transportation is not sufficient to violate the statute, even if substantial efforts have been expended to conceal the money. Our conclusion turns on the text of §1956(a)(2)(B)(i), and particularly on the term 'design.' In this context, 'design' means purpose or plan; i.e., the intended aim of the transportation.... 'There is a difference between concealing something to transport it and transporting something to conceal it; that is, *how* one moves the money is distinct from *why* one moves the money. Evidence of the former, standing alone, is not sufficient to prove the latter." (quoting United States v. Cuellar, 478 F.3d 282, 296 (5th Cir. 2007), *rev'd*, 553 U.S. 550 (2008)).

[77] *Cuellar*, 553 at 566.; United States v. Day, 700 F.3d 713, 723–25 (4th Cir. 2012); United States v. Slagg, 651 F.3d 832, 845 (8th Cir. 2011) ("[T]he Supreme Court held in *Cuellar v. United States* that the statute's 'design' element 'requires proof that the purpose—not merely effect—of the transportation was to conceal or disguise a listed attribute' of the funds. Thus, the Government must show that concealment is an 'intended aim' of the transaction [or transportation]" (citations omitted) (quoting *Cuellar*, 553 U.S. at 567)); United States v. Faulkenberry, 614 F.3d 573, 584–86 (6th Cir. 2010).

[78] *Cuellar*, 553 U.S. at 557–61; *id.* at 555 n.1 (noting earlier that "[s]everal Courts of Appeals have considered this requirement as relevant, or even necessary in the context of 18 U.S.C. 1956(a)(1)(B)(i)").

[79] 18 U.S.C. § 1956(a)(2)(B) (emphasis added)).

[80] "[K]nowing that the *property* involved in a financial transaction represent the proceeds of some form of unlawful activity." *Id.* § 1956(a)(1) (emphasis added)).

[81] *Id.* § 1956(c)(1).

held that the same caveat applies to § 1956(a)(2)(B) international offenses notwithstanding the differences in terminology.[82]

Stings

The sting concealment offense in § 1956(a)(3)(B) is much like the promotional sting offense and occurs when an offender:

> [W]ith the intent ... to conceal or disguise the nature, location, source, ownership, or control of property believed to be the proceeds of specified unlawful activity ... conducts or attempts to conduct a financial transaction involving property represented to be the proceeds of specified unlawful activity, or property used to conduct or facilitate specified unlawful activity."[83]

For purposes of the concealment element of § 1956(a)(3)(B), exchanging small bills for larger ones may evidence an intent to conceal the location of the proceeds of a predicate offense since a large bill is more easily concealed than the small bills representing an equal amount.[84] Other indicia of an intent to conceal include (1) "unusual secrecy surrounding the transaction," (2) "structuring the transactions to avoid attention," (3) "depositing illegal funds with a legitimate enterprise," (4) "highly irregular features of the transaction," (5) "using third parties to conceal the real owner of the funds," and (6) "unusual financial moves."[85]

The sting proscriptions are based on a belief rather than knowledge that the proceeds involved are those of a predicate offense.[86] Nevertheless, the doctrine of conscious avoidance precludes a defendant from turning a blind eye to representations indicating that the proceeds may have a predicate offense taint.[87]

The "financial transaction" element of the offense demands, as in other § 1956 offenses, either a transaction that affects interstate or foreign commerce or a transaction involving the use of a financial institution engaged in or whose activities affect interstate or foreign commerce.[88] To satisfy the "financial institution" prong of the "financial transaction" element of the offense, the government need only establish that the transaction involved "the use of a financial institution" with an interstate or foreign commerce nexus, not that the institution was itself an integral or essential part of the transaction.[89] To satisfy the "transaction" prong, the government need only establish a minimal effect on interstate commerce.[90]

The representational element does not require undercover agents to have told the defendant in so many words that the transaction involves the proceeds of a predicate offense; it is enough that

[82] United States v. Carr, 25 F.3d 1194, 1204 (3d Cir. 1994) (alteration in original) (quoting 18 U.S.C. § 1956(a)(2)(B)).

[83] 18 U.S.C. § 1956(a)(3)(B). *E.g.*, United States v. Johnson, 105 F.4th 988, 991 (7th Cir. 2024); United States v. George, 761 F.3d 42, 53 (1st Cir. 2014); United States v. Hosseini, 679 F.3d 544, 558–59 (7th Cir. 2012); United States v. Chaplin's, Inc., 646 F.3d 846, 848–49 (11th Cir. 2011).

[84] United States v. Farese, 248 F.3d 1056, 1060 (11th Cir. 2001).

[85] United States v. Wolny, 133 F.3d 758, 760–61 (10th Cir. 1998).

[86] United States v. Nektalov, 461 F.3d 309, 314 (2d Cir. 2006).

[87] *Id.* at 314–16; United States v. Estrada-Lopez, 259 F. Supp. 3d 1358, 1368 (M.D. Fla. 2017).

[88] 18 U.S.C. § 1956(c)(4) ("As used in this section ... (4) the term 'financial transaction' means.... ").

[89] United States v. Oliveros, 275 F.3d 1299, 1303–04 (11th Cir. 2001).

[90] United States v. Blair, 661 F.3d 755, 764 (4th Cir. 2011) (per curiam); United States v. Gotti, 459 F.3d 296, 336 (2d Cir. 2006); United States v. Ables, 167 F.3d 1021, 1029 (6th Cir. 1999); United States v. Owens, 167 F.3d 739, 755 (1st Cir. 1999).

they "made the defendant aware of circumstances from which a reasonable person would infer that the property was [the proceeds of a predicate offense]."[91]

Evading Reporting Requirements (Smurfing)

Early anti-money laundering efforts sought to enlist the assistance of financial institutions. They were to report large cash transactions to the government.[92] To avoid disclosure of their activities, money launderers sent forth a swarm of subordinates ("smurfs") who scurried from bank to bank where they engaged in layered or structured transactions so that no single transaction exceeded the threshold amount of the financial institution's reporting requirements.[93] There are three anti-structuring 18 U.S.C. § 1956 offenses: one involving financial institutions; one involving international transactions; and one involving stings.[94] The volume of case law, however, suggests that structuring prosecutions are more often brought under 31 U.S.C. § 5324, discussed *infra*.

Financial Transactions

The most common of the structuring offenses is one that involves a financial transaction. Section 1956(a)(1)(B)(ii), which penalizes someone who:

> [K]nowing 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 ... avoid a transaction reporting requirement under State or Federal law.[95]

Implicit in the intent element is the obligation of the government to establish that the defendant knew of the reporting requirements.[96] Section 1956's definitions apply to each offense, including the Section 1956(a)(1)(B)(ii) structuring offense. The phrase "knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity" means that the offender must know that the proceeds are derived from some violation of state, federal, or foreign law, but need not know they come from a predicate offense.[97] "Conducts" includes the initiation or participation in a transaction.[98] The required "financial transaction" is any disposition that either affects interstate or foreign commerce or involves either a financial institution engaged

[91] United States v. Starke, 62 F.3d 1374, 1382 (11th Cir. 1995); United States v. Wydermyer, 51 F.3d 319, 327 (2d Cir. 1995) (quoting United States v. Kaufmann, 985 F.2d 884, 893 (7th Cir. 1993)); *Kaufmann*, 985 F.2d at 892–93.

[92] Act of Oct. 26, 1970, Pub. L. No. 91-508, 84 Stat. 1122, 31 U.S.C. §§ 1051–1122 (1970 ed.).

[93] Sarah N. Welling, *Smurfs, Money Laundering, and the Federal Criminal Law: The Crime of Structuring Transactions*, 41 FLA. L. REV. 287, 288 (1989) ("[T]he government's opening salvo against laundering, [was] a statute requiring financial institutions to report cash transactions over $10,000 to the government. To skirt this law, launderers began to conduct multiple cash transactions just below the $10,000 reporting threshold. The army of persons who scurried from bank to bank to accomplish these transactions became known as 'smurfs' because, like their little blue cartoon namesakes, they were pandemic." (footnote omitted)).

[94] 18 U.S.C. § 1956(a)(1)(B)(ii), 1956(a)(2)(B)(ii), 1956(a)(3)(C).

[95] *Id.* § 1956(a)(1)(B)(ii); United States v. Bowman, 235 F.3d 1113, 1117 (8th Cir. 2000); United States v. Morales, 108 F.3d 1213, 1221 (10th Cir. 1997); *see also* United States v. Lopez, 75 F.4th 1337, 143–44 (11th Cir. 2023).

[96] *Bowman*, 235 F.3d at 1118.

[97] 18 U.S.C. § 1956(c)(1); United States v. Spia, 136 F.4th 1296, 1304 (11th Cir. 2025); United States v. George, 761 F.3d 42, 48 n.7 (1st Cir. 2014); United States v. Flores, 454 F.3d 149, 155 (3d Cir. 2006); United States v. Hill, 167 F.3d 1055, 1065–68 (6th Cir. 1999).

[98] 18 U.S.C. § 1956(c)(2).

in, or whose activities affect, interstate or foreign commerce.[99] The "specified unlawful activities" that must in fact have produced the proceeds involved in the transaction are the same state, federal, and foreign predicate offenses that trigger liability for other offenses in Section 1956.[100]

International Transportation or Transmission

The international smurfing offense of § 1956(a)(2)(B)(ii) is unusual in that it does not require the presence of proceeds of a predicate offense, as long as the funds are proceeds of some criminal offense. It penalizes anyone who:

> [T]ransports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from 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 ... to avoid a transaction reporting requirement under State or Federal law.[101]

Stings

The sting structuring provision, in contrast, has a predicate offense element:

1. with the intent to avoid a state or federal transaction reporting requirement
2. A. conducts or
   B. attempts to conduct
3. a financial transaction
4. involving property represented to be
   A. the proceeds of specific unlawful activity or
   B. property used to conduct or facilitate specified unlawful activity.[102]

The representation element may be satisfied by "hints" from undercover officers that the property involved in the transaction comes from a predicate offense; the officers need not have said so in so many words.[103]

Tax Evasion

The tax evasion money laundering offense must be tethered to a financial transaction, 18 U.S.C. § 1956(a)(1)(A)(ii); there is no international or undercover counterpart.

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[99] *Id.* § 1956(c)(3), (4).

[100] *Id.* § 1956(c)(7).

[101] *Id.* § 1956(a)(2)(B)(ii); United States v. Morales, 108 F.3d 1213, 1221 (10th Cir. 1997). The want of recently reported cases on point suggests infrequent prosecution.

[102] 18 U.S.C. § 1956(a)(3)(C); United States v. Nelson, 66 F.3d 1036, 1040 (9th Cir. 1995) ("To prove a violation of this section, the government must prove (1) that the defendant conducted or attempted to conduct a financial transaction, (2) with the intent to avoid a transaction reporting requirement, and (3) that the property involved in the transaction was represented by a law enforcement officer to be the proceeds of specified unlawful activity." (quoting United States v. Breque, 964 F.2d 381, 386–87 (5th Cir. 1992)).

[103] *Nelson*, 66 F.3d at 1041 (citing other representation cases to the same effect).

Financial Transactions

Money laundering for tax evasion purposes occurs whenever a person:

> [K]nowing 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 intent to engage in conduct constituting a violation of section 7201 [attempt to evade or defeat tax] or 7206 [tax fraud or false tax statements].[104]

A tax evasion, laundering prosecution requires the government to show that the defendant acted intentionally rather than inadvertently, but not that the defendant knew that his conduct violated the tax laws.[105]

Conspiracy, Attempt, Aiding and Abetting

Each of the ten criminal proscriptions found in § 1956 outlaws both the completed offense and the attempt to commit it.[106] Attempt eliminates the need to proof each of the elements of the underlying offense. It requires no more than intent to violate the underlying offense and a "substantial step" towards that end.[107]

Conspiracy to commit a federal crime is a separate federal offense punishable by imprisonment for not more than five years.[108] In addition, § 1956(h) declares that "[a]ny person who conspires to commit any offense defined in this section or section 1957 shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy."[109] A casual reading might indicate that § 1956(h) simply changes the penalty to match the other penalties for violating § 1956. Section 1956(h), however, creates a separate crime.[110] The distinction matters because violation of the general conspiracy statute is not complete until one of the conspirators commits an overt act in furtherance of the scheme.[111]

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[104] 18 U.S.C. § 1956(a)(1)(A)(ii); *e.g.*, United States v. Christy, 916 F.3d 814, 844–45 (10th Cir. 2019); United States v. Morris, 791 F.3d 910, 913–14 (8th Cir. 2015); United States v. Zanghi, 189 F.3d 71, 77 (1st Cir. 1999).

[105] *Id.* at 77–88.

[106] "Whoever ... conducts or attempts to conduct such a financial transaction ... " 18 U.S.C. § 1956(a)(1); "Whoever ... transfers or attempts to ... transfer a monetary instrument ... "; *id* .§ 1956(a)(2); "Whoever ... conducts or attempts to conduct a financial transaction involving property represented to be ... " *Id.* § 1956(a)(3).

[107] United States v. Choy, 309 F.3d 602, 605 (9th Cir. 2002) (attempt to commit promotional money laundering in violation of § 1956(a)(1)(A)(i)); United States v. Barnes, 230 F.3d 311, 314–15 (7th Cir. 2000) (attempt to commit concealment money laundering with an undercover officer in violation of § 1956(a)(3)(B)); *Nelson*, 66 F.3d at 1042–44 (attempt to commit the offense of avoiding reporting requirements with an undercover officer in violation of section 1956(a)(3)(C)).

[108] 18 U.S.C. § 371. See CRS Report R41223, *Federal Conspiracy Law: A Brief Overview*, by Charles Doyle.

[109] "To prove a conspiracy to launder money, the government must 'demonstrate that [the defendant] was knowingly involved with two or more people for the purpose of money laundering and that the defendant knew the proceeds used to further the scheme were derived from an illegal activity,'" United States v. Turner, 400 F.3d 491, 496 (7th Cir. 2005) (alteration in original) (quoting United States v. Gracia, 272 F.3d 866, 873 (7th Cir. 2001); United States v. Greenidge, 495 F.3d 85, 100 (4th Cir. 2007). When the defendant joins an existing conspiracy, however, he cannot be held criminally liable for offense committed in the name of the scheme before it joined it. *Cf.* United States v. Rice, 776 F.3d 1021, 1026 (9th Cir. 2015) ("The government concedes that the sentence, restitution, and forfeiture imposed by the district court were based on a loss amount that included money laundered before Rice joined the conspiracy. In light of this concession, we remand for resentencing and recalculation of restitution and forfeiture.").

[110] Whitfield v. United States, 543 U.S. 209, 214–18 (2005).

[111] "If two or more persons conspire either to commit any offense against the United States, or to defraud the United

(continued...)

Section 1956(h) has no such overt act requirement.[112] Conspiracy to violate § 1956 carries with it the prospect of liability for any foreseeable offenses committed by co-conspirators in furtherance of the scheme.[113]

The confluence of the language of § 1956(h) and that of the substantive offenses in § 1956, each of which contains an attempt component, raises the possibility of a prosecution of conspiracy to attempt a violation of one of the substantive offenses. Although the case law is sparse, the courts appear to have acknowledged that "conspiracy to attempt" may constitute an indictable offense both as a general matter and in the case of § 1956.[114] The cases, however, do not discuss the offense's precise elements. Attempt ordinarily requires proof of an intent to commit the underlying offense and a substantial step towards that objective; conspiracy to attempt, whether in the absence of an overt act requirement or not, presumably requires something less.

As a general matter, anyone who commands, counsels, or aids and abets the commission of a federal crime by another is equally culpable and equally punishable.[115] "In order to aid and abet another to commit a crime it is necessary that a defendant in some sort associated himself with the venture, that he participated in it as in something that he wishes to bring about, that he seek by his action to make it succeed."[116]

Consequences

Prison terms, fines, restitution, confiscation, and civil penalties may follow as a consequence of conviction of a money laundering offense.

Imprisonment

Any violation of § 1956 is punishable by imprisonment for not more than twenty years.[117] The first sentencing guidelines reflected the fact that § 1956 was a twenty-year felony and the anticipation that the section would apply primarily in cases in which drug trafficking and organized crime offenses were the predicate offenses.[118] Thereafter, the Sentencing Commission

States, or any agency thereof in any manner or for any purpose, *and one or more of such persons do any act to effect the object of the conspiracy*, each shall be fined under this title or imprisoned not more than five years, or both." 18 U.S.C. § 371 (emphasis added).

[112] *Whitfield*, 543 U.S. at 219; *see also* United States v. Toll, 804 F.3d 1344, 1358 (11th Cir. 2015); United States v. Fishman, 645 F.3d 1175, 1191 (10th Cir. 2011) (citing in accord *Whitfield* and United States v. Green, 599 F.3d 360, 372 (4th Cir. 2010)); United States v. Prince, 618 F.3d 551, 553 (6th Cir. 2010).

[113] United States v. Alaniz, 726 F.3d 586, 614 (5th Cir. 2013); United States v. Moreland, 622 F.3d 1147, 1169 (9th Cir. 2010) (each citing Pinkerton v. United States, 328 U.S. 640, 645–48 (1946)).

[114] United States v. Mowad, 641 F.2d 1067, 1074–75 (2d Cir. 1981) (conspiracy to attempt to export a firearm illegally in violation of 18 U.S.C. § 371 and 22 U.S.C. § 2778); United States v. Clay, 495 F.2d 700, 710 (7th Cir. 1974) (conspiracy to attempt to burglarize a federally insured bank in violation of 18 U.S.C. §§ 371 and 2113); United States v. Sierra-Garcia, 760 F. Supp. 252, 258 (E.D.N.Y. 1991) (conspiracy to attempt money laundering in violation of 18 U.S.C. §§ 371, 1956).

[115] 18 U.S.C. § 2

[116] Nye & Nissen v. United States, 336 U.S. 613, 619 (1949); *see also* United States v. Seng Tan, 674 F.3d 103, 110 (1st Cir. 2012); United States v. Blair, 661 F.3d 755, 765 (4th Cir. 2011).

[117] 18 U.S.C. § 1956(a).

[118] U.S.S.G. § 2S1.1, 52 FED. REG. 44714 (Nov. 20, 1987). The sentencing guidelines were originally considered binding, 18 U.S.C. § 3553(b)(1), but now only guide the court's sentencing discretion, United States v. Booker, 543 U.S. 220, 258–59 (2005); Gall v. United States, 552 U.S. 38, 49 (2007) ("[A] district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range.... [T]he appellate court must review the sentence under an abuse-of-discretion standard. It must first ensure that the district court committed no significant procedural (continued...)

became concerned about the application of the initial guidelines in cases involving less severely punished predicate offenses such as mail fraud.[119] Subsequent amendments to the guidelines[120] and penalty increases in some of the predicate offenses[121] address that concern. Defendants sentenced to a term of imprisonment may also be subject to a term of supervised release of up to three years to be served upon their release from prison.[122]

Fines and Civil Penalties

Violations of § 1956(a)(1) and (a)(2), the financial institution and interstate or foreign transmission offenses, are punishable by a fine of no more than the greater of $500,000 or twice the value of the property involved in the offense.[123] Sting violations are punishable by a fine of not more than the greater of $250,000 ($500,000 for an organization) or twice the amount involved in the offense.[124] Violators of any provisions of § 1956 are subject to a civil penalty of no more than the greater of $10,000 or the value of the property involved in the offense.[125]

Forfeiture

Forfeiture is the confiscation of property to the government as a consequence of the property's proximity to some form of criminal activity.[126] The government's claim to the property can be secured by default or through judicial proceedings conducted either civilly and ordinarily *in rem* (against the property itself) or as part of the criminal proceedings against the property owner.[127] The proceeds of a confiscation are generally shared among the law enforcement agencies that participate in the investigation and prosecution of the forfeiture.[128]

Section 1956 provides a vehicle for civil or criminal confiscation in two very distinct ways. First, the "proceeds" of any § 1956 predicate offense (and any property traceable to such proceeds) are subject to confiscation without the necessity of proving any actual violation of § 1956.[129] This

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error, such as failing to calculate (or improperly calculating) the Guidelines range.... "). For a discussion of the operation of the guidelines, see CRS Report R41696, *How the Federal Sentencing Guidelines Work: An Overview*, by Charles Doyle.

[119] U.S. SENT'G COMM'N, REPORT TO THE CONGRESS: SENTENCING POLICY FOR MONEY LAUNDERING OFFENSES, INCLUDING COMMENTS ON DEPARTMENT OF JUSTICE REPORT (1997), https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/money-laudering-topics/19970918_RtC_Money_Laundering.pdf https://perma.cc/VKQ6-DHZ3.

[120] U.S.S.G. § 2S1.1.

[121] *E.g.*, Mail fraud, once a five-year felony, 18 U.S.C. § 1341 (2000 ed.), is now punishable by imprisonment for not more than twenty years, 18 U.S.C. § 1341; *see also id.* § 641 (theft of more than $1000 in federal property, maximum term of imprisonment: ten years); *id.* § 201 (bribery of federal officials, maximum term of imprisonment: fifteen years).

[122] *Id.* § 3583.

[123] *Id.* § 1956(a)(1), 1956(a)(2).

[124] *Id.* §§ 1956(a)(3), 3571, 3581.

[125] *Id.* § 1956(b)(1).

[126] *See generally* CHARLES DOYLE, CONG. RSCH. SERV., R. 97-139, CRIME AND FORFEITURE (2023).

[127] *E.g.*, 21 U.S.C. §§ 881, 853 (relating to the civil and criminal confiscation of certain property associated with violations of the Controlled Substances Act).

[128] 18 U.S.C. §§ 981(e), 982(b); 21 U.S.C. §§ 881(e), 853(i)(4); 19 U.S.C. § 1616a.

[129] "The following property is subject to forfeiture to the United States ... (C) Any property, real or personal which constitutes or is derived from proceeds traceable to ... any offense constituting 'specified unlawful activity' (as defined in section 1956(c)(7) of this title), or conspiracy to commit such an offense." 18 U.S.C. § 981(a)(1)(C); 28 U.S.C. § 2461(c) ("If a forfeiture of property is authorized in connection with a violation of an Act of Congress, and any person is charged in an indictment or information with such violation but no specific statutory provision is made for criminal (continued...)

permits the confiscation of property derived from crimes that might form the basis for a money laundering offense without having to prove that a money laundering offense occurred.[130] Second, property "involved" in a § 1956 money laundering offense (or property traceable to such involved property) may be confiscated.[131] Involved property obviously includes more than the proceeds of the predicate offense, since the proceeds are separately forfeitable already. "Property eligible for forfeiture under 18 U.S.C. § 982(a)(1) includes that money or property which was actually laundered ... , along with 'any commissions or fees paid to the launderer[ ] and any property used to facilitate the laundering offense.'"[132]

In theory, confiscation might dip into both sides of a tainted transaction, the proceeds from the predicate offense and the cashier's check, real estate, jewelry, or sports car purchased with the proceeds in a laundering transaction. In practice, however, involved property has been construed to mean untainted property joined with the proceeds of a predicate offense as part of the laundering transaction.[133] Property acquired in exchange for the proceeds or for the proceeds and other involved property is forfeitable as traceable property. The government may confiscate the property on either side of the transaction, but not the property on both sides.[134]

The Eighth Amendment of the U.S. Constitution prohibits excessive fines. Fines are excessive if they are grossly disproportionate to the gravity of the offender's misconduct.[135] While the Excessive Fines Clause may impose limits upon the permissible extent of the confiscation for failure to comply with anti-money laundering reporting statutes,[136] forfeitures under § 1956 are not ordinarily considered excessive because of the gravity of the offense and of its predicate offenses.[137]

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forfeiture upon conviction, the government may include the forfeiture in the indictment or information ... and upon conviction, the court shall order the forfeiture of the property.... ").

[130] United States v. Newman, 659 F.3d 1235, 1239–40 (9th Cir. 2011) ("18 U.S.C. § 981(a)(1) states: The following property is subject to forfeiture to the United States ... (C) Any property, real or personal, which constitutes or is derived from proceeds traceable to ... any offense constituting 'specified unlawful activity (as defined in section 1956(c)(7) of this title)'.... In turn 18 U.S.C. § 1956(c)(7) provides that 'the term 'specified unlawful activity' means—(D) an offense under ... section 2113 or 2114 (relating to bank and postal robbery and theft).' Because Newman pleaded guilty to violating 18 U.S.C. § 2113, criminal forfeiture is available pursuant to § 981(a)(1) (C) and 28 U.S.C. § 2461(c)."); *see also* United States v. Omidi, 125 F.4th 1283, 1286 (9th Cir. 2025); United States v. Bodouva, 853 F.3d 76, 77–78 (2d Cir.) (per curiam), *aff'd*, 684 F. App'x 5 (2d Cir. 2017); United States v. Hernandez, 803 F.3d 1341, 1342–43 (11th Cir. 2015) (per curiam); United States v. Khan, 771 F.3d 367, 379 (7th Cir. 2014).

[131] 18 U.S.C. § 981(a)(1)(A).

[132] United States v. Seher, 562 F.3d 1344, 1368 (11th Cir. 2009) (second alteration in original) (quoting United States v. Puche, 350 F.3d 1137, 1153 (11th Cir. 2003).

[133] United States v. Huber, 404 F.3d 1047, 1058 (8th Cir. 2005); United States v. Baker, 227 F.3d 955, 970 (7th Cir. 2000); United States v. Tencer, 107 F.3d 1120, 1134 (5th Cir. 1997). The term also includes "'any commissions or fees paid to the launderer, and any property used to facilitate the laundering offense,'" United States v. Bornfield, 145 F.3d 1123, 1135 (10th Cir. 1998) (quoting *Tencer*, 107 F.3d at 1134.

[134] Stefan D. Cassella, *The Forfeiture of Property Involved in Money Laundering Offenses*, 7 BUFF. CRIM. L. REV. 583, 627 n.104 (2004) (citing United States v. Hawkey, 148 F.3d 920, 928 (8th Cir. 1998)) (The "government may get a money judgment for the amount involved in the conversion of [tainted] proceeds to consumer goods, or it may forfeit the converted property itself, but it cannot forfeit both.").

[135] United States v. Bajakajian, 524 U.S. 321, 334 (1998).

[136] *Bajakajian* found an attempted forfeiture, based on anti-money laundering reporting statute, excessive, *Id.*

[137] United States v. Seher, 562 F.3d 1344, 1371 (11th Cir. 2009) (quoting *Bajakajian*, 524 U.S. at 337) ("A forfeiture order violates the Excessive Fines Clause if it 'is grossly disproportional to the gravity of a defendant's offense.' To make this determination, we principally look at three factors: (1) whether the defendant falls into the class of persons at whom the criminal statute was principally directed; (2) other penalties authorized by the legislature (or the Sentencing Commission); and (3) the harm caused by the defendant." (quoting *Bajakajian*, 524 U.S. at 337)); *see also* United (continued...)

Venue

The Constitution guarantees the accused the right to trial in the state in which the crime charged was committed and before a jury from the state and district in which the crime was committed.[138] In *United States v. Cabrales*,[139] the defendant was tried in Florida for laundering the proceeds of a Missouri drug trafficking ring. The Supreme Court held that the Constitution requires money laundering charges to be tried in the state and district where the laundering occurred; trial in the state where the predicate offense drug trafficking occurred was not a permissible alternative. [140] The Court suggested, however, that trial in Florida would have been permissible if the launderer were a co-conspirator in drug trafficking scheme or if he had participated in the transfer of the laundered property from the place where the predicate offense occurred (Missouri) to the place where the laundering occurred (Florida).[141] Congress quickly expanded § 1956's venue provision, covering §§ 1956 and 1957, in light of the Court's decision.[142]

18 U.S.C. § 1957

Elements

Unless there is some element of promotion, concealment, or evasion, § 1956 does not make simply spending or depositing tainted money a separate crime. Section 1957 does.[143] It outlaws otherwise innocent transactions contaminated by the origin of the property involved in the transaction.[144] Using most of the same definitions as § 1956, the elements of § 1957 cover anyone who:

States v. Esformes, 60 F.4th 621, 640 (11th Cir. 2023); United States v. Aguasvivas-Castillo, 668 F.3d 7, 16–17 (1st Cir. 2012); United States v. Wyly, 193 F.3d 289, 303 (5th Cir. 1999).

[138] U.S. CONST. art. III, § 2, cl.3; amend. VI.

[139] 524 U.S. 1 (1998).

[140] *Id.* at 3–4.

[141] *Id.* at 9.

[142] Uniting And Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act) Act of 2001, P.L. 107-56, § 1004, 115 Stat. 392, now, 18 U.S.C. § 1956(i) ("(1) Except as provided in paragraph (2), a prosecution for an offense under this section or section 1957 may be brought in—(A) any district in which the financial or monetary transaction is conducted; or (B) any district where a prosecution for the underlying specified unlawful activity could be brought, if the defendant participated in the transfer of the proceeds of the specified unlawful activity from that district to the district where the financial or monetary transaction is conducted. (2) A prosecution for an attempt or conspiracy offense under this section or section 1957 may be brought in the district where venue would lie for the completed offense under paragraph (1), or in any other district where an act in furtherance of the attempt or conspiracy took place. (3) For purposes of this section, a transfer of funds from 1 place to another, by wire or any other means, shall constitute a transaction. Any person who conducts (as that term is defined in subsection (c)(2)) any portion of the transaction may be charged in any district in which the transaction takes place."). *See, e.g.*, United States v. Guerrero, 76 F.4th 519, 528 (6th Cir. 2023); United States v. Hoskins, 44 F.4th 140, 157 (2d Cir. 2022); United States v. Ojedokun, 16 F.4th 1091, 1107 (4th Cir. 2021).

[143] "[Section] 1957 is often called the 'money spending statute.' Its purpose is to make the criminal's money worthless, by making it a felony for him to spend it, or for anyone else to take it, if he knows of its illegal source," Stefan D. Cassella, *The Forfeiture of Property Involved in Money Laundering Offenses*, 7 BUFF. CRIM. L. REV. 583, 614 (2004).

[144] United States v. Rutgard, 116 F.3d 1270, 1291 (9th Cir. 1997) ("The description of the crime [under section 1957] does not speak to the attempt to cleanse dirty money by putting it in a clean form and so disguising it. This statute applies to the most open, above-board transaction."); United States v. Gabriele, 63 F.3d 61, 65 (1st Cir. 1995) ("The crux of the argument is that section 1957 is a rather novel statute, in that it criminalizes conduct by a person once removed from that of the person who generated the criminally derived property. Thus, he argues, the proscribed (continued...)

1. A. in the United States,
   B. in the special maritime or territorial jurisdiction of the United States, or
   C. outside the United States if the defendant is an American,
2. "knowingly"
3. A. "engages or"
   B. "attempts to engage in"
4. "a monetary transaction"
5. A. "in or affecting U.S. interstate or foreign commerce", or
   B. committed by a U.S. national outside the U.S.
6. "in criminally derived property of a value"
   A. "greater than $10,000" and
   B. "is derived from specified unlawful activity."[145]

The courts often supply an abbreviated statement of the crime's elements. So, it is said that "In order to be found guilty of money laundering, 'a defendant must (1) knowingly engage, or attempt to engage in a monetary transaction, (2) know that the funds involved in the transaction are criminally derived, (3) use criminally derived funds in excess of $10,000 in the transaction, and (4) use funds derived from specified unlawful activity.'"[146]

At the heart of any § 1957 offense lies a monetary transaction. A monetary transaction for purposes of § 1957 is any deposit, withdrawal, or transfer of funds, in or affecting interstate or foreign commerce, and involving a financial institution.[147] Numbered among the qualifying financial institutions are banks and credit unions, but also car dealerships, jewelers, casinos, stockbrokers, travel agents, and pawnbrokers, to mention a few.[i] Section 1957 only applies to transactions involving $10,000 or more *at the time of the transaction*.[148] The government's jurisdictional burden is comparable to the one it must bear for § 1956 (a transaction in or affecting interstate or foreign commerce) and demands evidence of only a slight impact on commerce.[149]

conduct is not likely to appear unlawful to an ordinary citizen.... Section 1957 is but another in a substantial line of federal criminal statutes whose only *mens rea* requirement is 'knowledge' of the prior criminal conduct that tainted the property involved in the proscribed activity.").

[145] 18 U.S.C. § 1957.

[146] United States v. Persaud, 866 F.3d 371, 385 (6th Cir. 2017) (quoting United States v. Young, 266 F.3d 468, 476 (6th Cir. 2001)); *see also* Annor v. Garland, 95 F.4th 820, 828 (4th Cir. 2024); United States v. Ruan, 56 F.4th 1291, 1301 (11th Cir. 2023) (Section "1957 criminalizes the knowing execution of 'monetary transaction[s]' over $10,000 that use money 'derived from specified unlawful activity.'" (quoting § 1957(a)); United States v. Davis, 53 F.4th 833, 843 (5th Cir. 2022), *cert. denied*, 144 S. Ct. 72 (2023) (mem.).

[147] 18 U.S.C. § 1957(f)(1), *e.g.*, United States v. Ravenell, 66 F.4th 472, 488 (4th Cir. 2023), *cert. denied*, 144 S. Ct. 1344 (2024) (mem.); "[T]he term 'monetary instruments' means (i) coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, and money orders, or (ii) investment securities or negotiable instruments, in bearer form or otherwise in such form that title thereto passes upon delivery." 18 U.S.C. § 1956(c)(5), *e.g.*, United States v. Huff, 641 F.3d 1228, 1231 (10th Cir. 2011); "[T]he term 'financial transaction' means ... (B) a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree." 18 U.S.C. § 1956(c)(4)(B).

[148] United States v. Wright, 651 F.3d 764, 771–72 (7th Cir. 2011); *cf. Davis*, 53 F.4th at 843–44, *cert. denied*, 144 S. S Ct. 72 (2023) (mem.).

[149] United States v. Vega, 813 F.3d 386, 400 (1st Cir. 2016) ("Section 1957 requires only a *de minimus* effect on interstate commerce."); *see also* United States v. Ables, 167 F.3d 1021, 1030–31 (6th Cir. 1999); United States v. Aramony, 88 F.3d 1369, 1386 (4th Cir. 1996).

The government must prove that the defendant knew the funds or other property in the transaction was "criminally derived property," [150] that is, the proceeds, or funds derived from the proceeds, of criminal activity.[151] The government need not show that the defendant knew that proceeds were the product of a "specified unlawful activity,"[152] but the proceeds must in fact be derived from a specified unlawful activity (predicate offense).[153] The proceeds may consist of the gross receipts of crime (not merely its profits).[154]

When does spending money from a mixed pot (tainted and untainted funds) constitute a spending violation of § 1957? Must the government trace "dirty dollars" from criminal activity to a defendant's expenditures? A 2025 Sixth Circuit case suggests that the lower federal appeals courts have yet to agree on a single answer.[155]

Section 1957 contains an attorney's fee exception. It excludes from the "monetary transaction" element of the offense "any transaction necessary to preserve a person's right to representation as guaranteed by the sixth amendment to the Constitution."[156] The exception, however, reach no

[150] 18 U.S.C. § 1957(a); United States v. Erker, 129 F.4th 966, 969 (6th Cir. 2025); United States v. Freitekh, 114 F.4th 292, 308 (4th Cir. 2024); *Davis*, 53 F.4th at 843; United States v. Dingle, 862 F.3d 607, 614 (7th Cir. 2017).

[151] "[T]he term 'criminal derived property' means any property constituting, or derived from, proceeds obtained from a criminal offense." 18 U.S.C. § 1957(f)(2). United States v. Rivera-Izquierdo, 850 F.3d 38, 45 (1st Cir. 2017) ("To make the case that Rivera, in using money taken from those [gambling] winnings to buy the cars [the laundering monetary transaction], used 'criminally derived property,' the government needed to prove only that the money that he used from the gambling winnings constituted property 'derived from' the [predicate offense] fraud's 'proceeds.'").

[152] "In a prosecution for an offense under this section, the Government is not required to prove the defendant knew that the offense from which the criminally derived property was derived was specified unlawful activity." 18 U.S.C. § 1957(c); *Davis*, 53 F.4th at 844; United States v. Van Dorn, 800 F.3d 998, 1103 n.6 (8th Cir. 2015); United States v. Flores, 454 F.3d 149, 155 (3d Cir. 2006); United States v. Carucci, 364 F.3d 339, 343 (1st Cir. 2004); United States v. Foreman, 323 F.3d 498, 506 (6th Cir. 2003). Nor need the defendant be charged with or convicted of the predicate offense, United States v. Cherry, 330 F.3d 658, 667 (4th Cir. 2003); United States v. Richard, 234 F.3d 763, 768 (1st Cir. 2000). Moreover, "[k]nowledge may be demonstrated by showing that a defendant either had actual knowledge or 'deliberately closed his eyes to what otherwise would have been obvious to him concerning the fact in question,'" *Flores*, 454 F.3d at 155 (quoting United States v. Stewart, 185 F.3d 112, 126 (3d Cir. 1999).

[153] 18 U.S.C. § 1957(a); United States v. Abbas, 100 F.4th 267, 283 (1st Cir.), *cert. denied*, 145 S. Ct. 319 (2024) (mem.); Annor v. Garland, 95 F4th 820, 828 (4th Cir. 2024); United States v. Diamond, 378 F.3d 720, 728 (7th Cir. 2004) ("In order to find Diamond guilty of this offense [under § 1957], the government needed to prove that she 'derived property from a specified unlawful activity and that [s]he engaged in a monetary transaction.... '").

[154] "Criminally derived property" means "proceeds." 18 U.S.C. § 1957(f)(2). "Proceeds" includes "gross receipts." *Id.* §§ 1957(f)(3), 1956(c)(9); *e.g.*, *Abbas*, 100 F.4th at 283. For cases arising before the statutory "Santos fix" in § 1956(c)(9), some courts read narrowly the holding in *Santos* that "proceeds" meant "profits" at least in the case of some predicate offenses. *E.g.*, United States v. Kerley, 784 F.3d 327, 345 (6th Cir. 2015) (construing United States v. Santos, 553 U.S. 507 (2008)).

[155] United States v. Erker, 129 F.4th 966, 974–77 (6th Cir. 2025) ("In sum, modern private law doctrines have rejected a first-in-first-out approach and proportional method. What's left standing? The lowest intermediate balance test and the proceeds-first approach.... The Fifth Circuit requires prosecutors to prove that 'the aggregate amount withdrawn from an account containing commingled funds exceeds the clean funds.' ... Other circuits have come to different conclusions. The majority view is that § 1957 doesn't require any sort of tracing. Under this framework, courts assume that placing any dirty money in an account renders the whole account dirty. Indeed, the Second, Third, and Eleventh Circuits have made this rule explicit. And the First, Four, Seventh, Eighth, and Tenth Circuits have at least hinted they don't require tracing ... On balance, though, the majority rule is that the government doesn't have to trace funds at all. Instead, these circuits merely point to a withdrawal from an account that contains commingled funds.... All told, there's significant debate about what § 1957 means.... Despite that significant ambiguity, however, we find it easy to reject the Ninth Circuit's approach ... That court's precedent could be read to adopt a blanket presumption that the government must trace every charged transaction to 'criminally derived proceeds.' ... So, while we might not be entirely sure what § 1957 means, we can say with certainty that it does not require strict tracing." (citations and footnote omitted) (quoting United States v. Davis, 226 F.3d 346, 357 (5th Cir. 2000)).

[156] 18 U.S.C. § 1957(f)(1).

more than an individual's payment of services covered by the Sixth Amendment.[157] It creates a safe harbor against prosecutions for spending under § 1957, but is no defense to a charge of promotional, concealment, or evasive money laundering under § 1956.[158]

As noted earlier, § 1956(i) covers venue for either § 1956 or § 1957 offenses.[159]

Conspiracy, Attempt, Aiding and Abetting

Section 1957 proscribes attempts to violate its provisions.[160] As a general rule, attempt requires proof of an intent to commit the underlying offense and the commission of a substantial step towards its completion.[161] The general rules apply with respect to attempts to commit the offenses under § 1956,[162] and there is every reason to believe they apply to attempts to commit a violation of § 1957.

Section 1956(h) outlaws conspiracy to violate § 1957.[163] A conviction for conspiracy to violate the section requires the government to prove: "(1) there was an agreement between two or more persons to commit money laundering and (2) that the defendant joined the agreement knowing its purpose and with the intent to further the illegal purpose."[164] Section 1956(h) creates a crime which requires no proof of an overt act in furtherance of the conspiracy.[165] In addition to the conspiracy offense, conspirators are liable for the foreseeable offenses committed by co-

[157] United States v. Ravenell, 66 F.4th 472, 487 (4th Cir. 2023); ("'[T]he scope of the safe harbor provision is shaped by the Supreme Court's ongoing interpretation of the Sixth Amendment.' Thus, 'anyone seeking to benefit from § 1957(f) must tie his conduct to the Sixth Amendment right to counsel.'") (quoting United States v. Blair, 661 F.3d 755, 771 (4th Cir. 2011)), *cert. denied*, 144 S. Ct. 1344 (2024) (mem.)); United States v. Velez, 586 F.3d 875, 877 (11th Cir. 2009) ("Accordingly, the exemption is limited to attorneys' fees paid for representation guaranteed by the Sixth Amendment in a criminal proceeding and does not extend to attorneys' fees paid for other purposes."); United States v. Hoogenboom, 209 F.3d 665, 669 (7th Cir. 2000) ("Correctly read, the statute offers a defense where a defendant engages in a transaction underlying a money laundering charge with the present intent of exercising Sixth Amendment rights. This allows a defendant to preserve her rights without undermining the prosecution of those the statute seeks to punish. Since Hoogenboom did not clear out her accounts to pay her attorney—the evidence is that she engaged in the transaction to prevent the FBI from seizing the money—she cannot squeeze within the slim Sixth Amendment exception to the statute's broad definition of what constitutes a monetary transaction.").

[158] United States v. Elso, 422 F.3d 1305, 1309 (11th Cir. 2005); *cf. Ravenell*, 66 F.4th at 487 (the defense is only available with respect to payment for legal services).

[159] "18 U.S.C. § 1956(i); *see, e.g.*, *Abbas*, 100 F.4th at 174; United States v. Ojedokun, 16 F.4th 1091, 1107 (4th Cir. 2021).

[160] 18 U.S.C. § 1957(a) ("Whoever ... engages or attempts to engage.... ").

[161] *E.g.*, United States v. Resendez-Ponce, 549 U.S. 102, 107 (2007); *see also* United States v. Vavra, 127 F.4th 737, 743 (8th Cir. 2025); United States v. Howald, 104 F.4th 732, 742 (9th Cir.), *cert. denied*, 145 S. Ct. 781 (2024) (mem.); United States v. Hunt, 99 F.4th 161, 177 (4th Cir. 2024).

[162] *E.g.*, United States v. Anderson, 932 F.3d 344, 350 (5th Cir. 2019); United States v. Barnes, 230 F.3d 311, 314 (7th Cir. 2000); United States v. Nelson, 66 F.3d 1036, 1042 (9th Cir. 1995).

[163] 18 U.S.C. § 1956(h); *e.g.*, United States v. Vinson, 852 F.3d 333, 356–57 (4th Cir. 2017); United States v. Boedigheimer, 831 F.3d 954, 955–56 (8th Cir. 2016); United States v. Green, 818 F.3d 1258, 1279 (11th Cir. 2016).

[164] *Vinson*, 852 F.3d at 356; United States v. Shows Urquidi, 71 F.4th 357, 376 (5th Cir.), *cert. denied sub nom*, Iglesias-Villegas v. United States, 144 S. Ct. 268 (2023) (mem.); United States v. Ravanell, 66 F.4th 472, 490 (4th Cir. 2023), *cert. denied*, 144 S. Ct. 1344 (2024); United States v. Fallon, 61 F.4th 95, 115–16 (3d Cir. 2023); United States v. Jaimez, 45 F.4th 1118, 1124 (9th Cir. 2022).

[165] Whitfield v. United States, 543 U.S. 209, 211 (2005); *see also* United States v. Freitekh, 114 F.4th 292, 309 (4th Cir. 2024); United States v. Matthews, 31 F.4th 436, 447 (6th Cir. 2022); United States v. Toll, 804 F.3d 1344, 1358 (11th Cir. 2015).

conspirators in furtherance of the scheme.[166] Those who aid or abet the money laundering of another are likewise liable as though they had committed the offense themselves.[167]

Consequences

Imprisonment

Violation of § 1957 and conspiracy to violate § 1957 are each punishable by imprisonment for not more than ten years.[168] Under the recommendations of the Sentencing Guidelines, many offenders will be ineligible for a sentence of probation even as part of a split sentence.[169] Where probation is available and imposed, the term must be not less than one nor more than five years.[170] If imprisoned, offenders may also be subject to a term of supervised release of up to three years to be served after they leave prison.[171]

Fines

Violation of Section 1957 and conspiracy to violate Section 1957 are each punishable by a fine of not more than the greater of $250,000 ($500,000 for an organization) or twice the amount involved in the transaction.[172] Violators of Section 1957 are also subject to a civil penalty of no more than the greater of $10,000 or the value of the property involved in the offense.[173]

Forfeiture

Any property involved in a violation of § 1957 or traceable to property involved in a violation of § 1957 is subject to confiscation under either civil or criminal procedures, and the applicable law is essentially the same as in the case of § 1956.[174]

[166] United States v. Hills, 27 F.4th 1155, 1182 (6th Cir. 2022); United States v. Moran, 778 F.3d 942, 961 (11th Cir. 2015) (citing Pinkerton v. United States, 328 U.S. 640, 645–48 (1946)); United States v. Alaniz, 726 F.3d 586, 614 (5th Cir. 2013).

[167] 18 U.S.C. § 2; United States v. George, 761 F.3d 42, 50 (1st Cir. 2014) ("For those not in the know, an aider and abetter is (broadly speaking) someone who knowingly assisted a crime's commission, wanting it to succeed."); *e.g.*, United States v. Nsahlai, 121 F.4th 1052, 1057 (4th Cir. 2024); United States v. Carr, 83 F.4th 267, 271 (5th Cir. 2023).

[168] 18 U.S.C. §§ 1957(b)(1), 1956(h). However, the greater maximum penalties of 18 U.S.C. § 670 will apply if the offense involves an experimental drug or device ("pre-retail medical products"). The maximum sentences for theft of an experimental drug or device under § 670 range from three to thirty years in prison. *Id.* § 670(c).

[169] Offenders convicted of an offense carrying a maximum penalty of twenty-five years or more are ineligible for probation by statute,. *Id.* §§ 3561(a)(1), 3581(b). Under the guidelines, even a first-time offender whose offense level is more than ten is ineligible for probation and a first-time offender whose offense level is nine or ten is only eligible as part of a split sentence, U.S.S.G. § 5B1.1, Sentencing Table. The money laundering sentencing guideline calls for a base offense level equal to that of the predicate offense if ascertainable or otherwise a base offense level of 8; the base offense level is increased by one level for a violation of § 1957 and another two levels if offense involved sophisticated laundering, *id.* § 2S1.1.

[170] 18 U.S.C. § 3561(c)(1).

[171] *Id.* § 3583.

[172] *Id.* §§ 1957(b), 1956(h), 3571, 3559.

[173] *Id.* § 1956(b)(1).

[174] *Id.* §§ 981(a)(1)(A), 982(a)(1)(A).

18 U.S.C. § 1952: Travel Act

The Travel Act, 18 U.S.C. § 1952, is one of the money laundering related criminal statutes. While §§ 1956 and 1957 punish transactions involving promoting, concealing, spending, and depositing tainted funds, the Travel Act punishes interstate or foreign travel (or use of the facilities of interstate or foreign commerce) conducted with the intent to (1) distribute the proceeds of a more modest list of predicate offenses ("unlawful activity"), (2) promote or carry on such offenses when there is an overt act in furtherance of that intent, or (3) commit some violent act in their furtherance. The first two variants bear some resemblance to the concealment and promotion offenses of § 1956 and somewhat more remotely to the deposit/spending proscriptions of § 1957. The violent crime component of the Travel Act is only coincidentally related to money laundering and consequently will be covered in this report only in passing.

The Travel Act's elements cover anyone who:

1. A. "travels in interstate or foreign commerce," or
   B. uses "any facility in interstate or foreign commerce", or
   C. "uses the mail"
2. with intent
   A. to "distribute the proceeds of an unlawful activity", i.e.,
      i. "any business enterprise involving unlawful activities gambling, moonshining, drug dealing, or prostitution; or
      ii. "extortion, bribery, or arson"; or
      iii. "any act which is indictable" as money laundering; or
   B. commit an act of "violence to further an unlawful activity"; or
   C. "to otherwise"
      i. "promote,"
      ii. "manage,"
      iii. "establish,"
      iv." carry on," or
      v. "facilitate the promotion, management, establishment, or carrying on any unlawful activity;" and
3. thereafter
   A. distributes or attempts to distribute such proceeds, or
   B. commits or attempts to commit such act of violence, or
   C. promotes, manages, establishes, carries on, or facilitates the promotion, management, establishment, or carrying on such unlawful activities or attempts to do so.[175]

Distribution, Facilitation, and Violence

The courts often abbreviate their statement of the Travel Act's elements to encompass only whichever of the versions—distribution, promotion, or violence—is at issue:

> *Distribution*—The essential elements of a violation under section 1952(a) are: "(1) travel in interstate or foreign commerce; (2) with the specific intent to distribute

[175] *Id.* § 1952.

> the proceeds of an unlawful activity; and (3) knowing and willful commission of an act in furtherance of that intent."[176]
>
> *Promotion*—The government must prove that the defendant "(1) traveled in interstate or uses an interstate facility, (2) with the intent to promote, manage, establish, or carry on ... unlawful activity and (3) thereafter attempted to or did in fact engage in one of the proscribed activities."[177]
>
> *Violence*—"The statute required the government to prove (1) that Lott traveled in interstate commerce; (2) with the specific intent to commit any crime of violence to further unlawful activity; and (3) that Lott committed the crime of violence subsequent to the act of travel in interstate commerce."[178]

The accused need not have been guilty of the unlawful activities that generated the distributed proceeds.[179] "Distribution" in § 1952(a)(1) "carries a connotation of distribution of illegal proceeds to persons in organized crime conspiracies. Certainly the person receiving them must be entitled to them for reasons other than normal and otherwise lawful purchase and sale of goods at market prices."[180] Distribution, however, does include distribution to "pay off" criminal associates,[181] as well as the interstate transfer of criminal proceeds to a confederate for the purchase of a controlling interest in a bank in order to facilitate subsequent laundering.[182] Actual distribution is not necessary for conviction; the offense simply involves interstate commerce; intent to distribute; and a subsequent attempt to distribute, meaning some action—perhaps incomplete or unsuccessful—in furtherance of the intent to distribute.[183]

The dimensions of the promotional offense are comparable. In addition to interstate travel or the use of interstate facilities with the requisite intent, it requires the performance or attempted performance of some subsequent overt act in furtherance of the intent to "promote, manage, establish, carry on, or facilitate the promotion, management, establishment or carrying on" of a predicate offense such as a business enterprise involving drug dealing.[184] Since the statute

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[176] United States v. Hinojosa, 958 F.2d 624, 629 (5th Cir. 1992); *see also* United States v. Shah, 95 F.4th 328, 357 (5th Cir. 2024) ("The Travel Act prohibits use of a 'facility in interstate ... commerce with [the] intent to ... distribute the proceeds of an[ ] unlawful activity; or ... otherwise ... facilitate ... an[ ] unlawful activity.' To convict, the Government must prove that the defendant used facilities of interstate commerce with the specific intent to engage in or facilitate an unlawful activity in furtherance of a criminal enterprise.") (alterations in original) (footnote omitted) (quoting 18 U.S.C. § 1952(a), *cert. denied sub nom.*, Rimlawi v. United States, 145 S. Ct. 518 (2025) (mem.).

[177] United States v. Garcia Rodriguez, 93 F.4th 1162, 1166 (10th Cir. 2024).

[178] United States v. Lott, 53 F.4th 319, 322 (5th Cir. 2022).

[179] United States v. Corona, 885 F.2d 766, 773 (11th Cir. 1989).

[180] United States v. Lightfoot, 506 F.2d 238, 242 (D.C. Cir. 1974) (per curiam); *see also* United States v. Cole, 704 F.2d 554, 558 (11th Cir. 1983).

[181] United States v. Stewart, 854 F.3d 472, 474–75 (9th Cir. 2017) ("Schroeder testified that he gave Stewart his portion of the profits by various means—through the mail, by driving it or flying with it to California [from Nebraska], by wiring it, or by depositing it in a jointly-held bank account."); *see also* United States v. Lyons, 740 F.3d 702, 728–29 (1st Cir. 2014); United States v. Lignarolo, 770 F.2d 971, 980 (11th Cir. 1985).

[182] *Corona*, 885 F.2d at 774 ("Ray Corona helped Fernandez buy controlling interest in a bank under extremely dishonest circumstances with laundered drug money. Such a purchase is in reality part of the laundering process. For his role in the purchase and in running the bank for Fernandez, Ray received a percentage ownership without paying any of the purchase price. In essence, Fernandez bought the bank with drug proceeds and gave a portion of it to Ray.... Although Ray Corona was the *recipient*, he nonetheless was responsible under 18 U.S.C. § 2 as principal in the distribution of proceeds."); *see also* United States v. Garcia-Rodriguez, 93 F.4th 1162, 1166 (4th Cir. 2024).

[183] United States v. Jones, 909 F.2d 533, 539 (D.C. Cir. 1990).

[184] United States v. Burns, 298 F.3d 523, 538 (6th Cir. 2002) ("By associating with Green in Kentucky and by (continued...)

condemns attempt and promotion rather than commission of a predicate act, the overt act need not constitute a completed predicate offense.[185] The promotional travel offense encompasses forms of promoting, managing, and carrying on a predicate offense other than those that resemble money laundering, such as the interstate transportation of controlled substances or use of a cell phone (a facility in interstate commerce) to promote a predicate offense.[186]

Travel, etc.

Common to each of the three offenses is the jurisdictional element: interstate or foreign travel or the use of the mail or some other facility of interstate or foreign travel. When the Travel Act's jurisdictional element involves mail or facilities in interstate or foreign commerce, rather than interstate travel, evidence that a telephone was used,[187] the Internet,[188] or an ATM,[189] or the facilitates of an interstate banking chain[190] will do.[191] The government is not required to show that the defendant used the facilities himself or that the use was critical to the success of the criminal venture. It is enough that he caused them to be used[192] and that their employment was useful for his purposes.[193] "Substantive cases brought under [18 U.S.C.] § 1952 have been uniform in their

remaining in the car that Green intended to use to leave the scene of the drug sale at the Newport bar [following their trip from Ohio], Jordon placed himself in the position to (1) receive immediate payment from Green after the sale in Kentucky, (2) provide surveillance support, and (3) physically aid Green should any danger arise. Thus, Jordon acted, while in Kentucky, in furtherance of the intended unlawful act there."); United States v. Harris, 903 F.2d 770, 773 (10th Cir. 1990) ("[T]he illegal activity charged was possession of marijuana with intent to distribute. Defendant traveled into Oklahoma from Maryland, Virginia, and Tennessee. He performed various overt acts in furtherance of the crime charged after arriving in Oklahoma, including possessing and transporting a quantity of marijuana with the intent to distribute it.").

[185] *Welch*, 327 F.3d at 1092 ("[A]n individual may violate the Travel Act simply by attempting to perform a specified 'unlawful act' so long as that individual has the requisite intent."); United States v. Burns, 298 F.3d 523, 538 (6th Cir. 2002) ("[T]he *Zolicoffer* court made clear that its holding should not be interpreted 'to say that the government must prove that the defendant committed an illegal act after the travel, but only that a plain reading of the statute shows that it must prove *some conduct after the travel in furtherance of the unlawful activity*.'" (quoting United States v. Zolicoffer, 869 F.2d 771, 775 (3d Cir. 1989)).

[186] United States v. Robinson, 829 F.3d 878, 879 (7th Cir. 2016); United States v. Tovar, 719 F.3d 376, 389–90 (5th Cir. 2013). For other examples see United States v. Lustig, 830 F.3d 1075, 1079 (9th Cir. 2016) ("Lustig pled guilty to three counts of violating 18 U.S.C. § 1952(a)(3) by using a cell phone [i.e., a facility in interstate commerce] to facilitate a prostitution offense under 18 U.S.C. § 1591."); United States v. Brinson, 772 F.3d 1314, 1327 (10th Cir. 2014) (same); United States v. Mergen, 764 F.3d 199, 203 (2d Cir. 2014) ("Mergen ... agreed to plead guilty to a Travel Action violation (i.e., the trip to New Jersey [from New York] to get gasoline for the arson [committed in New York])").

[187] United States v. Halloran, 821 F.3d 321, 342 (2d Cir. 2016); United States v. Bencivengo, 749 F.3d 205, 214 (3d Cir. 2014); United States v. Nader, 542 F.3d 713, 717–22 (9th Cir. 2008); United States v. Nishnianidze, 342 F.3d 6, 15 (1st Cir. 2003); United States v. Baker, 227 F.3d 955, 962 (7th Cir. 2000); United States v. Graham, 856 F.2d 756, 760-61 & n.1 (6th Cir. 1988). Moreover, "[p]urely intrastate use of an interstate facility is sufficient to violate the Travel Act." *Halloran*, 821 F.3d at 342 (citing *Nader*, 542 F.3d at 717–22)).

[188] *Halloran*, 821 F.3d at 342; *Brinson*, 772 F.3d at 1327; United States v. Shah, 95 F.4th 328, 359 (5th Cir. 2024).

[189] United States v. Baker, 82 F.3d 273, 275 (8th Cir. 1996).

[190] United States v. Rogers, 387 F.3d 925, 935 (7th Cir. 2004); United States v. Auerbach, 913 F.2d 407, 410 (7th Cir. 1990).

[191] nterstate travel and interstate shipment will do, as well. United States v. Xiong, 262 F.3d 672, 676 (7th Cir. 2001); *cf*., Erlenbaugh v. United States, 409 U.S. 239, 240–42 (1972).

[192] *Halloran*, 821 F.3d at 342; *Baker*, 82 F.3d at 275; *Auerbach*, 913 F.2d at 410.

[193] *Baker*, 82 F.3d at 275–76; United States v. McNeal, 77 F.3d 938, 944 (7th Cir. 1996); United States v. Houlihan, 92 F.3d 1271, 1292 (1st Cir. 1996).

holdings that it is unnecessary to prove a defendant had actual knowledge of the jurisdictional element, and that he actually agreed and intended to use interstate facilities to commit a crime."[194]

Unlawful Activity

The Travel Act's proceeds-distribution, promotional, and violence-in-furtherance offenses all use the same list of predicate offenses ("unlawful activity"). The Travel Act's predicate offenses come in three stripes—money laundering offenses; extortion-bribery-arson offenses; and offenses of the gambling, prostitution, drug dealing, and bootlegging "businesses." The first, the money laundering predicate offenses include Sections 1956 and 1957 as well as the currency transaction reporting offenses.[195]

The second class of Travel Act predicate offenses consists simply of the crimes of extortion, bribery, or arson committed in violation of state or federal law.[196] The terms "extortion," "bribery," and "arson" as they appear in the Travel Act are generic; they mean what they were commonly understood to mean when the Travel Act was enacted, even if the common law definition is more restrictive or if the state law that proscribes them uses a different name.[197]

The final class of Travel Act predicates is more restrictive. It encompasses gambling, prostitution, drug dealing, and certain forms of tax evasion only when committed in conjunction with a "business enterprise."[198] A criminal business enterprise, as understood in the Travel Act, "contemplates a continuous course of business—one that already exists at the time of the overt act or is intended thereafter. Evidence of an isolated criminal act, or even sporadic acts, will not suffice,"[199] and it must be shown to be involved in an unlawful activity outlawed by a specifically identified state or federal statute.[200]

[194] United States v. Epskamp, 832 F.3d 154, 167 (2d Cir. 2016) (alteration in original) (quoting United States v. Herrera, 584 F.2d 1137, 1150 (2d Cir. 1978)).

[195] 18 U.S.C. § 1952(b)(3) ("any act which is indictable under subchapter II of chapter 53 of title 31, United States Code, or under section 1956 or 1957 of this title"); United States v. Jenkins, 943 F.2d 167, 173 (2d Cir. 1991); United States v. Al-Arian, 308 F. Supp. 2d 1322, 1353 (M.D. Fla. 2004).

[196] 18 U.S.C. § 1952(b)(2); *e.g.*, United States v. Lott, 53 F.4th 319, 322 (5th Cir. 2022); United States v. Ferriero, 866 F.3d 107, 113 (3d Cir. 2017); *Halloran*, 821 F.3d at 342.

[197] United States v. Buselli, 106 F.4th 1273, 1286 (11th Cir. 2024); United States v. Shen Zhen New World I, LLC, 115 F.4th 1167, 1182 (9th Cir. 2024), *cert. denied*, No. 24-855 (U.S. June 23, 2025), 2025 WL 1727387 (mem.); United States v. Nardello, 393 U.S. 286, 294–96 (1969); Perrin v. United States, 444 U.S. 37, 49 (1979); Scheidler v. NOW, Inc., 537 U.S. 393, 409–10 (2003).

[198] 18 U.S.C. § 1952(b)(1); United States v. Anderson, 932 F.3d 344, 348 (5th Cir. 2019); United States v. Dailey, 24 F.3d 1323, 1328 (11th Cir. 1994) ("Congress chose to attack organized crime through selectively defining the term 'unlawful activity.' Congress made certain offenses in areas typically associated with organized crime, *i.e.*, gambling, liquor, narcotics, and prostitution, 'unlawful activit[ies]' only if engaged in by a 'business enterprise.'" (alteration in original) (quoting 18 U.S.C. § 1952(b)(i)(1)).

[199] United States v. Roberson, 6 F.3d 1088, 1094 (5th Cir. 1993); *see also* United States v. James, 210 F.3d 1342, 1345 (11th Cir. 2000) (per curiam); United States v. Saget, 991 F.2d 702, 712 (11th Cir. 1993) ("If the defendant engages in a continuous course of cocaine distribution rather than a sporadic or casual course of conduct, then the statutory requirement of a business enterprise involving narcotics is satisfied."); United States v. Iennaco, 893 F.2d 394, 398 (D.C. Cir. 1990).

[200] United States v. Griffith, 85 F.3d 284, 287–88 (7th Cir. 1996); United States v. Campione, 942 F.2d 429, 433–36 (7th Cir. 1991); United States v. Jones, 909 F.2d 533, 536–39 (D.C. Cir. 1990).

Conspiracy, Aiding and Abetting

Attempting to violate the Travel Act is not a federal offense.[201] It is a crime to conspire to do so,[202] however, or to aid and abet another to do so.[203] The principles of accomplice and co-conspirator liability, discussed earlier, apply with equal force to the Travel Act. Coconspirators are liable for the crimes of their confederates committed in furtherance of the conspiracy.[204] "To support aider and abettor liability, [the] [d]efendant must have had 'general knowledge regarding the activities prohibited under the [Travel Act] and the intent to assist those activities.'"[205]

Consequences

The money laundering-like distribution and facilitation offenses of the Travel Act, § 1952(a)(1) and § 1952(a)(3), are punishable by imprisonment for not more than five years.[206] Offenders subject to a fine of the greater of not more than $250,000 ($500,000 for organizations) or twice the gain or loss associated with the offense.[207] If imprisoned, offenders may also be subject to a term of supervised release of up to three years to be served upon their release from prison.[208] Property associated with a violation of § 1952 is not subject to confiscation solely by virtue of that fact,[209] although the property may be confiscated by operation of the laws governing a § 1952 predicate offense or by operation of RICO or the money laundering provisions. For example, interstate travel conducted with the intent to distribute drug trafficking proceeds involving an act in furtherance of that intent is a violation of § 1952. The proceeds are not subject to forfeiture as a consequence, but they are subject to confiscation by operation of the forfeiture provisions of the Controlled Substances Act.[210] Moreover, Travel Act violations have been designated RICO predicate offenses and consequently qualify as money laundering predicates under §§ 1956 and 1957.[211] Thus, to the extent that Travel Act proceeds are involved in a financial transaction or monetary transaction in violation of § 1956 or § 1957, they are subject to confiscation.[212]

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[201] *Cf.* 18 U.S.C. § 1952.

[202] *Id.* § 371; *e.g.*, United States v. Unpradit, 35 F.4th 615, 622 (8th Cir. 2022); United States v. Halloran, 821 F.3d 321, 325 (2d Cir. 2016); United States v. Nouri, 711 F.3d 129, 133 (2d Cir. 2013).

[203] 18 U.S.C. § 2; *e.g.*, United States v. Law, 990 F.3d 1058, 1061 (7th Cir. 2021); United States v. Phea, 755 F.3d 255, 258 (5th Cir. 2014); United States v. Tragas, 727 F.3d 610, 618 (6th Cir. 2013).

[204] United States v. Childress, 58 F.3d 693, 721 (D.C. Cir. 1995) (per curiam); United States v. Auerbach, 913 F.2d 407, 410 (7th Cir. 1990).

[205] *Tragas*, 727 F.3d at 618 (third alteration in original).

[206] 18 U.S.C. § 1952(a)(A). The crime of violence offense is punishable by imprisonment for not more than twenty years, or by imprisonment for life or any term of years if death results. *Id.* § 1952(a)(B).

[207] *Id.* §§ 3571, 3559.

[208] *Id.* § 3583.

[209] *Id.* §§ 1952, 981, 982.

[210] 21 U.S.C. §§ 853, 881.

[211] 18 U.S.C. §§ 1961(1)(B), 1956(c)(7)(A), 1957(f)(3).

[212] *Id.* §§ 981((a)(1)(A), 982(a)(1); *see e.g.*, United States v. Reiner, 500 F.3d 10, 13, 18–19 (1st Cir. 2007) (upholding a forfeiture incurred as a consequence of conviction for "interstate travel to promote prostitution, 18 U.S.C. § 1952 (the Travel Act); inducement to instate travel to engage in prostitution, 18 U.S.C. § 2422(a) (the Mann Act); conspiracy to violate the Travel Act and the Mann Act, 18 U.S.C. § 371; and conspiracy to launder money, 18 U.S.C. §§ 1956(h) and 1957."); United States v. Saccoccia, 433 F.3d 19, 23 (1st Cir. 2005) (noting confiscation as a consequence of a conviction of "one count of RICO conspiracy, as well as numerous substantive ... counts of money laundering and related offenses under 18 U.S.C. §§ 1952, 1956, and 1957.").

31 U.S.C. § 5322: Reporting Requirements

Section 5322 penalizes willful violation of several monetary transaction reporting requirements found primarily in title 31 of the *United States Code*. The section's coverage extends to violations of the following sections and their attendant regulations:

> 31 U.S.C. § 5313—financial institution reports of cash transactions involving $10,000 or more;
>
> 31 U.S.C. § 5314—reports by persons in the U.S. of foreign financial agency transactions;
>
> 31 U.S.C. § 5316—reports by any person taking $10,000 in cash out of the U.S. or bringing it in;
>
> 31 U.S.C. § 5318—suspicious transaction reports by financial institutions;
>
> 31 U.S.C. § 5318A—special measures record keeping and reports by financial institutions relating to foreign counter-money laundering concerns;
>
> 31 U.S.C. § 5325—reports by financial institutions issuing cashier's checks in amounts of $3000 or more;
>
> 31 U.S.C. § 5326—cash transaction reports by financial institutions and/or various trades or businesses pursuant to Treasury Department geographical orders;
>
> 31 U.S.C. § 5331—reports of trades and businesses other than financial institutions of cash transactions involving $10,000 or more;
>
> 12 U.S.C. § 1829b—record keeping requirements of federally insured depository institutions; and
>
> 12 U.S.C. § 1953—record keeping by uninsured banks or similar institutions.

Section 5322 does not cover violations of § 5315 (relating to foreign currency transaction reports) which are subject to the civil penalty provisions of 31 U.S.C. § 5321 or of § 5324 (relating to structuring financial transactions), which carries its own criminal penalties.

In order to establish "willful" violation of § 5322, the government must prove that the accused knew that his breach of the statute was unlawful.[213]

Simple violations of § 5322 are punishable by imprisonment for not more than five years, a fine of not more than $250,000, or both.[214] Violations committed during the commission of another federal crime or as part of a pattern of illegal activity involving more than $100,000 over the course of a year are punishable by imprisonment for not more than ten years; a fine of not more than $500,000 (not more than $1 million for a special measures violation (31 U.S.C. § 5318A)) or a violation involving a breach of due diligence with respect to private banking for foreign customers or foreign shell banks (31 U.S.C. § 5318(i), (j)); or both.[215]

Section 5322 is a Travel Act predicate offense. It is also a RICO predicate offense,[216] but unlike most RICO predicates is not a § 1956 or § 1957 money laundering predicate offense.[217] Property associated with violations of two of the sections within its coverage is subject to confiscation.[218]

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[213] Ratzlaf v. United States, 510 U.S. 135, 137 (1994); United States v. Tatoyan, 474 F.3d 1174, 1177 (9th Cir. 2007).

[214] 31 U.S.C. § 5322(a).

[215] *Id.* §§§ 5322(b), (d).

[216] 18 U.S.C. §§ 1952(b)(3), 1961(1)(E). *See e.g.*, United States v. Brady, 644 F.3d 1213, 1294 (11th Cir. 2011).

[217] 18 U.S.C. §§ 1956(c)(7)(A), 1957(f)(3).

[218] 31 U.S.C. § 5317(c).

Under § 5317(c), property becomes forfeitable when it is involved in, or traceable to, a violation of 31 U.S.C. § 5313 (reports relating to cash transactions involving $10,000 or more) or of 31 U.S.C. § 5316 (reports relating to taking $10,000 or more out of the U.S. or to bring it into the U.S.). The confiscation, however, may be subject to a constitutional limitation on excessive fine limitation.[219] In *United States v. Bajakajian*,[220] the Supreme Court held that the confiscation of $357,144 for a violation of 31 U.S.C. § 5322 occasioned by a failure to comply with the reporting requirements of 31 U.S.C. § 5316 would constitute an unconstitutionally excessive fine—in the absence of evidence that the money was derived from, or destined to facilitate, some other criminal activity. In later cases involving the failure to report transported cash, the courts have occasionally ordered confiscation of less than all of the unreported cash if the total was substantial and the cash was otherwise untainted.[221] In most instances, however, *Bajakajian* appears to pose little obstacle to total or near total forfeiture.[222]

31 U.S.C. § 5324: Anti-Structuring

Structuring is organizing financial transactions or reports relating to financial transactions so as to evade reporting requirements, for example, by dividing a $12,000 bank deposit into three separate $4,000 deposits in order to evade the $10,000 reporting requirement. Section 5324 condemns three categories of structuring: one is devoted to transactions involving banks, credit unions, car dealerships, jewelers, casinos, and the other similar entities classified as financial institutions;[223] another to cash transactions of $10,000 or more involving nonfinancial institutions;[224] and a third to bringing $10,000 or more in cash into the country or taking it out of the country.[225] There is no requirement that the funds in question were derived from criminal activity,[226] or that the defendant knew that the structuring was illegal.[227] Moreover, § 5324 "focuses on an individual's

[219] United States v. Bajakajian, 524 U.S. 321, 324 (1998).

[220] 524 U.S. 321, 324 (1998).

[221] United States v. $100,348.00 in U.S. Currency, 354 F.3d 1110, 1123–24 (9th Cir. 2003) (affirming the confiscation of $10,000 of the $100,348 originally seized); United States v. Beras, 183 F.3d 22, 28 (1st Cir. 1999) (overturning as an excessive fine the forfeiture order for $138,794 in unreported cash); United States v. $120,856.00 in U.S. Currency More or Less, 394 F.Supp.2d 687, 692–96 (D.V.I. 2005) (holding that confiscation of more than $7500 of the unreported $120,856 would constitute an excessive fine); United States v. $293,316 in U.S. Currency, More or Less, 349 F.Supp.2d 638, 650 (E.D.N.Y. 2004) (ordering the confiscation of $48,000 of the $490,000 of unreported cash seized).

[222] United States v. $293,316, 349 F. Supp. 2d at 648–49 (listing 168 instances where unreported cash was forfeited and noting that in a vast majority of cases, at least 90% of the cash was confiscated).

[223] 31 U.S.C. § 5324(a); *see, e.g.*, United States v. Nguyen, 854 F.3d 276, 278–79 n.1 (5th Cir. 2017); United States v. Simmerman, 850 F.3d 829, 831–32 (6th Cir. 2017); United States v. Leon, 841 F.3d 1187, 1190–91 (11th Cir. 2016) (describing the difference between an offense under § 5324(a)(1) and one under § 5324(a)(3)).

[224] 31 U.S.C. § 5324(b).

[225] *Id.* § 5324(c); United States v. Suarez, 966 F.3d 376, 383 (5th Cir. 2020) ("To prove a structuring offense the government must prove the defendant (1) engaged in structuring, (2) did so with the knowledge that the financial institutions involved in the transaction were obligated to report currency transactions involving more than $10,000, and (3) intended to evade this reporting requirement.").

[226] United States v. Thomas, 847 F.3d 193, 206–07 (5th Cir. 2017); United States v. Aunspaugh, 792 F.3d 1302, 1311 (11th Cir. 2015) (citing in accord Ratzlaf v. United States, 510 U.S. 135, 136 (1994)).

[227] *Thomas*, 847 F.3d at 205; United States v. Taylor, 816 F.3d 12, 22 (2d Cir. 2016) ("To violate § 5324, (1) the defendant must, in fact, have engaged in acts of structuring; (2) he must have done so with knowledge that the financial institutions involved were legally obligated to report currency transactions in excess of $10,000; and (3) he must have acted with the intent to evade this reporting requirement); United States v. Sweeney, 611 F.3d 459, 470 (8th Cir. 2010); United States v. Van Allen, 524 F.3d 814, 820 (7th Cir. 2008); United States v. MacPherson, 424 F.3d 183, 189 (2d Cir. 2005); United States v. Bringier, 405 F.3d 310, 314–15 (5th Cir. 2005).

intent to evade the reporting requirements, not on whether he succeeds in doing so," and thus success is not an element of the offense.[228]

Violations are punishable by imprisonment for not more than five years (not more than 10 years if committed in conjunction with another federal offense or if committed as part of a pattern of activity involving $100,000 or more) and a fine of not more than $250,000 (not more than $500,000 for organizations), with the fine maximum doubled if the offense is committed in conjunction with another federal crime or as part of a pattern of activity involving $100,000.[229] Any property involved in a structuring violation of the section is subject to confiscation.[230] Such forfeitures do not offend the Eighth Amendment's Excessive Fines Clause unless they are grossly disproportionate to the gravity of the offense.[231]

31 U.S.C. § 5332: Bulk Cash Smuggling

After the Supreme Court held in *Bajakajian* that the Excessive Fines Clause of the Eighth Amendment precluded confiscation of $300,000 of unreported, but otherwise untainted, cash,[232] Congress enacted the bulk cash smuggling provisions of 31 U.S.C. § 5332. The section outlaws carrying or attempting to transport more than $10,000 in unreported, "concealed" cash across a U.S. border with the intent to evade 31 U.S.C. § 5316 reporting requirements.[233] The section has been used to prosecute those who attempted to bring unreported cash into the United States, as well as those who attempted to smuggle cash out of the country.[234] The fact that the money was neither derived from criminal activity nor intended for criminal purposes may be relevant for purposes of the Eighth Amendment's Excessive Fines Clause, but it is no defense to the underlying offense.[235] The proscribed methods of concealment seem to envelop any method short of public display.[236] The offense carries a prison term of not more than five years, but also calls for confiscation of the cash and related property in lieu of a fine.[237] The section was apparently

[228] United States v. Souza, 749 F.3d 74, 84 (1st Cir. 2014) (citing in accord *Sweeney*, 611 F.3d at 471 and *Van Allen*, 524 F.3d at 825).

[229] 31 U.S.C. § 5324(d).

[230] *Id.* § 5317(c)(2); United States v. $79,650.00, 650 F.3d 381, 383 n.3 (4th Cir. 2011).

[231] United States v. Chaplin's, Inc., 646 F.3d 846, 851–55(11th Cir. 2011) (forfeiture order in the amount of almost $1.9 million was not excessive considering, among other factors, that the Sentencing Guidelines would permit a fine of $1.3 million).

[232] United States v. Bajakajian, 524 U.S. 321, 324 (1998).

[233] 31 U.S.C. § 5332(a).

[234] *E.g.*, United States v. Tenorio, 55 F.4th 465, 467 (5th Cir. 2022); United States v. Freitas, 904 F.3d 11, 16 (1st Cir. 2018); United States v. $132,245 in U.S. Currency, 764 F.3d 1055, 1057 (9th Cir. 2014); United States v. Zorrilla-Echevarria, 723 F.3d 298, 298 (1st Cir. 2013); United States v. Peleti, 576 F.3d 377, 380 (7th Cir. 2009); United States v. Ely, 468 F.3d 399, 400 (6th Cir. 2006).

[235] United States v. Tatoyan, 474 F.3d 1174, 1179 (9th Cir. 2007); *cf.*, *$132,245 in U.S. Currency*, 764 F.3d 1055, 1058–59 (9th Cir. 2014).

[236] 31 U.S.C. § 5332(b) ("For purposes of this section, the concealment of currency on the person of any individual includes concealment in any article of clothing worn by the individual or in any luggage, backpack, or other container worn or carried by such individual.") *See e.g.*, United States v. Morla, 123 F. Supp. 3d 382, 384 (E.D.N.Y. 2015). ("Those officers uncovered $370, 830 in U.S. currency in Morla's checked bags."). In fact, the Money Laundering Threat Assessment Working Group report noted in 2005 that the largest bulk cash smuggling seizures, both in terms of numbers of seizures and amount seized, involve cash that was "unconcealed," *U.S. Money Laundering Threat Assessment*, 39 (561 seizures ($243 million) of unconcealed cash versus the next highest category (515 seizures ($83.8) from luggage)), https://home.treasury.gov/system/files/246/mlta.pdf https://perma.cc/AN78-E5UD.

[237] 31 U.S.C. § 5332(b)(2)–(4), (c).

enacted to overcome the consequences of *Bajakajian*.[238] Initially, there may have been some question whether the effort had succeeded.[239]

18 U.S.C. § 1960: Money Transmitters

Section 1960 outlaws conducting or owning an unlicensed money transmitting business.[240] "Money transmitting" is defined broadly by way of a nonexclusive list of examples, such as checks and wire transfers,[241] and includes cryptocurrency.[242] The term "business" restricts the

[238] "[I]n response to the *Bajakajian* decision, the Department of Justice proposed making the act of bulk cash smuggling itself a criminal offense, and to authorize the imposition of the full range of civil and criminal sanctions when the offense is discovered. Because the act of concealing currency for the purpose of smuggling it out of the United States is inherently more serious than simply failing to file a Customs report, strong and meaningful sanctions, such as confiscation of the smuggled currency, are likely to withstand Eighth Amendment challenges to the new statute." H.R. REP. NO. 107-250, at 37 (2001); *see also* United States v. $293,316, 349 F. Supp. 2d 638, 643 (E.D.N.Y. 2004); "In 2001, Congress expressed its displeasure with the *Bajakajian* decision and created a new 'bulk cash smuggling' offense, 31 U.S.C. 5332, that is designed to permit forfeiture of one hundred percent of the smuggled currency in most circumstances, whether or not the government can establish a nexus between the smuggled money and another criminal offense. Enacted as part of the post-September 11 effort to address terrorist financing specifically, and intentional money laundering generally, in Title II of the USA PATRIOT Act, the new law recognizes the central role that bulk cash smuggling plays in the globalization of crime." Stefan D. Cassella, *Bulk Cash Smuggling and the Globalization of Crime: Overcoming Constitutional Challenges to Forfeiture Under 31 U.S.C. 5332*, 22 BERKELEY J. INT'L L. 98, 106 (2004).

[239] "This statute included a forfeiture provision that was a precursor of the present version of 31 U.S.C. 5332. The statutory language was modified as part of the USA PATRIOT Act in 2001, by moving the forfeiture provisions from 18 U.S.C. 982 (the statute authorizing the forfeiture in *Bajakajian*) to 31 U.S.C. 5332 (the statute authorizing Ely's forfeiture). The government advances this modification as a basis for us to find *Bajakajian* inapplicable. However, the forfeiture language of the two provisions is virtually identical, and even if Congress could circumvent the Eighth Amendment's limitations on excessive fines by modifying a statute, which would make little sense, cutting and pasting a provision of the United States Code from one chapter to another cannot be viewed as a meaningful change. *Ely*, 468 F.3d at 402 n.2 (6th Cir. 2006); *but see* United States v. Jose, "Congress, in enacting section 5332, responded to *Bajakajian* in a way that it believed would, in most circumstances, constitutionally permit the full forfeiture of currency not reported to authorities as required by section 5316 ... Section 5332 makes clear that Congress has now prohibited what it calls 'bulk cash smuggling,' and that it considers this to be a very serious offense. Congress has thus tipped the forfeiture equation in favor of the prosecution in bulk cash smuggling cases. *Bajakajian* itself stated that 'judgments about the appropriate punishment for an offense belong in the first instance to the legislature." 499 F.3d 105, 110–11(1st Cir. 2007); "A violation of 31 U.S.C. § 5316 is 'solely a reporting offense' and does not constitute a serious crime under the Excessive Fines Clause. In contrast, § 5332 criminalizes *the act* of bulk cash smuggling into or out of the United States ... Congress also attached purposes to § 5332, which included the need 'to emphasize the seriousness of the act of bulk cash smuggling. We refuse to second-guess Congress determination that bulk cash smuggling is a serious crime." *$132,245 in U.S. Currency*, 764 F.3d at 1058 (quoting *Bajakajian*, 524 U.S. at 325 and Pub. L. No, 107-56 § 371(b)(3)).

[240] 18 U.S.C. § 1960(a) ("Whoever knowingly conducts, controls, manages, supervises, directs, or owns all or part of an unlicensed money transmitting business shall be fined in accordance with this title and imprisoned for not more than 5 years, or both.").

[241] "'[M]oney transmitting' includes transferring funds on behalf of the public by any and all means including but not limited to transfers within this country or to locations abroad by wire, check, draft, facsimile, or courier." *Id.* § 1960(b)(2). "[O]n behalf of the public" refers to a transmission "'made for third-parties or customers as part of a commercial or business relationship instead of with one's own money or for family or personal acquaintances.'" United States v. Singh, 995 F.3d 1069, 1078 (9th Cir, 2021) (quoting United States v. $215,587.22 in U.S. Currency, 306 F. Supp. 3d 213, 218 (D.D.C. 2018)).

[242] United States v. Carter, 93 F.4th 581, 585 (1st Cir. 2024); United States v. Murgio, 209 F. Supp. 3d 698, 707–10 (S.D.N.Y. 2016) (citing, among others, S. REP. NO. 101-460 (1990) and United States v. Budovsky, No. 13-CR-368, at *14 (S.D.N.Y. Sept. 23, 2015).

offense to an enterprise conducted for profit and one engaged in more than a single qualifying transmission.[243]

The section recognizes three categories of transmitting businesses.[244] One consists of any transmission business operating in a state that requires it to be licensed and criminalizes the failure to do so.[245] Here, the government must prove that the defendant knew that he was conducting a money transmitting business and that it was unlicensed.[246] It need not prove the defendant knew that the state in which the defendant operated the business required him to seek a license or that the state outlawed transmission without a license.[247]

The second category of unlicensed money transmitting businesses consists of any transmitting business operating in a manner that fails to comply with Department of the Treasury regulations governing such enterprises.[248] Here, the government need not show that the defendant knew of federal regulatory requirements,[249] but it must show that the defendant knew that he was operating a transmitting business.[250] The third category consists of any licensed business that transmits money known to be derived from or intended to finance criminal activity even if the transmitter is duly licensed.[251]

Section 1960 offenses are punishable by imprisonment for not more than five years and/or a fine of not more than $250,000 (not more than $500,000 for organizations).[252] Property "involved in"

[243] United States v. Banki, 685 F.3d 99, 114 (2d Cir. 2012) (citations omitted) ("[T]o find a defendant liable for operating an unlicensed money transmitting business, a jury must find that he participated in more than a single, isolated transmission of money. Likewise, giving the term 'business' its plain and unambiguous meaning under § 1960 a business is an enterprise that is carried on for profit or financial gain.").

[244] 18 U.S.C. § 1960(b)(1).

[245] "[U]nlicensed money transmitting business' means a money transmitting business which affects interstate or foreign commerce in any manner or degree and—(A) is operated without an appropriate money transmitting license in a State where such operation is punishable as a misdemeanor or a felony under State law, whether or not the defendant knew that the operation was required to be licensed or that the operation was so punishable." 18 U.S.C. § 1960(b)(1)(A).

[246] United States v. Elfgeeh, 515 F.3d 100, 133 (2d Cir. 2008); United States v. Talebnejad, 460 F.3d 563, 568 (4th Cir. 2006); United States v. Mazza-Alaluf, 607 F. Supp. 2d 484, 489 (S.D.N.Y. 2009), *aff'd*, 621 F.3d 205 (2d Cir. 2010) (conviction requires proof beyond a reasonable doubt that "1.) Mazza knowingly conducted, controlled, managed, supervised, directed, or owned, 2.) a money-transmitting business that, 3.) affected interstate or foreign commerce, and 4.) was not in compliance with applicable licensing requirements under either state or federal law.").

[247] 18 U.S.C. § 1960(b)(1)(A).

[248] *Id.* § 1960(b)(1)(B) ("'[U]nlicensed money transmitting business' means a money transmitting business which affects interstate or foreign commerce in any manner or degree and ... (B) fails to comply with the money transmitting business registration requirements under section 5330 of title 31, United States Code, or regulations prescribed under such section."); United States v. Bankman-Fried, 680 F. Supp. 3d 289, 311 (S.D. N.Y. 2023) ("Thus, an 'unlicensed money transmitting business' comprises (i) 'a money transmitting business' that (ii) 'affects interstate or foreign commerce in any manner or degree' and (iii) 'fails to comply with the money transmitting business registration requirements.... '" (quoting 18 U.S.C. § 1960).

[249] *Talebnejad*, 460 F.3d at 568.

[250] United States v. Uddin, 365 F.Supp.2d 825, 828–30 (E.D. Mich. 2005).

[251] "'[U]nlicensed money transmitting business' means a money transmitting business which affects interstate or foreign commerce in any manner or degree and ... (C) otherwise involves the transportation or transmission of funds that are known to the defendant to have been derived from a criminal offense or are intended to be used to promote or support unlawful activity," 18 U.S.C. § 1960(b)(1)(C).

[252] 18 U.S.C. § 1960(a); 31 U.S.C. §§ 3571, 3553.

violation of the section is subject to civil and criminal forfeiture.[253] The section has withstood challenges arguing that it is unconstitutionally vague.[254]

Racketeer Influenced and Corrupt Organizations (RICO)

As noted earlier, all RICO predicate offenses are by definition money laundering predicate offenses under §§ 1956 and 1957.[255] The crimes that suggest the possibility of a RICO offense also suggest the possibility of money laundering. In some money laundering cases, although there is no separate RICO violation, prosecution is possible by virtue of the RICO shared predicate offense list.[256] In a number of other cases, money laundering is one of several predicate offenses of a larger RICO enterprise,[257] the RICO enterprise is devoted primarily to money laundering, [258] or the two are complimentary conspiracies. [259]

RICO makes it a federal crime for any person to:

1. conduct or participate, directly or indirectly, in the conduct of
2. the affairs of an enterprise
3. engaged in or the activities of which affect, interstate or foreign commerce
4. A. through the collection of an unlawful debt, or
   B. through a pattern of racketeering activity (predicate offenses).[260]

In other words, "[f]or a defendant to convicted of a substantive RICO offense [under § 1962(c)], the government must prove the following elements beyond a reasonable doubt: (1) the existence of an enterprise; (2) that affected interstate commerce; and (3) that the defendant associated with

[253] 18 U.S.C. §§ 981(a)(1)(A), 982(a)(1); *see e.g.*, United States v. Approximately $252,140 in U.S. Currency, 532 F. Supp. 3d 344, 340 (W.D. N.C. 2021); United States v. $715,031.27, 587 F. Supp. 2d 1275, 1277–78 (N.D. Ga. 2008).

[254] United States v. Dimitrov, 546 F.3d 406, 414–15 (7th Cir. 2008); *Talenejad*, 460 F.3d at 568.

[255] 18 U.S.C. §§ 1956(c)(7)(A), 1957(f)(3). For a general discussion of RICO see, CRS Report 96-950, *RICO: A Sketch*, by Charles Doyle.(2025).

[256] Mail fraud and wire fraud, 18 U.S.C. §§ 1341, 1343, are RICO predicates, 18 U.S.C. § 1961(1)(B), but are not individually listed as money laundering predicates under §§ 1956 and 1957, 1956(c)(7)(B). Nevertheless, as RICO predicates, they are by definition money laundering predicates and permit prosecution under §§ 1956 and 1957, *see e.g.*, United States v. George, 761 F.3d 42, 48 (1st Cir. 2014); United States v. Lazarenko, 564 F.3d 1026, 1032 (9th Cir. 2009); United States v. Freeman, 434 F.3d 369, 374 (5th Cir. 2005); United States v. Yousuf, 536 F.3d 178, 182 (9th Cir. 2008); United States v. Boscarino, 437 F.3d 634, 636 (7th Cir. 2006) ("Section 1956 makes it a crime to engage in financial transactions with the proceeds of 'specified unlawful activity.' That phrase, a defined term, includes 'any act or activity constituting an offense listed in section 1961(1) of this title.'").

[257] *E.g.*, United States v. Ponzo, 853 F.3d 558, 567 (1st Cir. 2017); United States v. Godwin, 765 F.3d 1306, 1322 (11th Cir. 2014); United States v. Fiander, 547 F.3d 1036, 1037 (9th Cir. 2008); United States v. Ghilarducci, 480 F.3d 542, 545 (7th Cir. 2007); United States v. Gotti, 459 F.3d 296, 301 (2d Cir. 2006); United States v. Edwards, 303 F.3d 606, 612 (5th Cir. 2002).

[258] *E.g.*, United States v. Rosse, 320 F.3d 170, 173 (2d Cir. 2003); United States v. Farese, 248 F.3d 1056, 1058 (11th Cir. 2001).

[259] *E.g.*, United States v. Olivas, 150 F.4th 1107, 1110 (9th Cir.2025); United States v. Shows Urquidi, 71 F.4th 357, 365 (5th Cir. 2023); United States v. Abdelaziz, 68 F.4th 1, 11n.1 (1st Cir. 2023).

[260] 18 U.S.C. § 1962(c). Other subsections of § 1962 outlaw acquiring, or maintaining control of, a commercial enterprise through collection of an unlawful debt or a pattern of racketeering and proscribe conspiracy to commit a RICO offense. *Id.* § 1962(a), (b), (d).

the enterprise; (4) and conducted or participated in the conduct of the enterprise; (5) through a pattern of racketeering activity."[261]

The "person" who commits a RICO offense need not be a human being, but may be "any individual or entity capable of holding a legal or beneficial interest in property."[262] The "enterprise" element is defined with comparable breadth, embracing "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity."[263] In spite of their sweeping scope, the elements are distinct, and a single defendant may not be simultaneously charged as both the "person" and the "enterprise" under 18 U.S.C. § 1962(c).[264] Subject to this limitation, however, a RICO enterprise may be formal or informal, legal or illegal. In order for a group associated in fact to constitute a RICO enterprise, the group need not have obvious hierarchical or business-like structure; it need only be characterized by "at least three structural features: a purpose, relationships among those associated with the enterprise, and longevity sufficient to permit those associates to pursue the enterprise's purpose."[265]

The interstate commerce element of the RICO offense may be established by evidence that the enterprise either has conducted its affairs in interstate commerce or foreign commerce or has engaged in activities that affect interstate commerce or foreign commerce.[266] Even a de minimis effect will suffice.[267]

The "pattern of racketeering activity" element demands the commission of at least two predicate offenses,[268] which must be of sufficient relationship and continuity to be described as a "pattern."[269] Related crimes, for pattern purposes, are marked by "the same or similar purposes,

[261] United States v. Brandao, 539 F.3d 44, 50–51 (1st Cir. 2008), *see also* UMB Bank, N.A. v. Guertin, 89 F.4th 1047, 1053 (8th Cir. 2024); United States v. Muñoz-Martinez, 79 F.4th 44, 50 (1st Cir. 2023); United States v. Camez, 839 F.3d 871, 873 (9th Cir. 2016).

[262] 18 U.S.C. § 1961(3); *e.g.*, United States v. Mongol Nation, 56 F.4th 1244, 1251–52 ((9th Cir. 2023).

[263] 18 U.S.C. § 1961(4); United States v. Kelly, 128 F.4th 387, 408 (2d Cir. 2025); United States v. McArthur, 850 F.3d 925, 934 (8th Cir. 2017).

[264] *Kelly*, 128 F.4th at 412; Llacuna v. Western Range Ass'n, 930 F.3d 1161, 1176 (10th Cir. 2019); Cedric Kushner Promotions, Ltd. v. King, 533 U.S. 158, 161 (2001) (holding, however, that the "person" and the individual through whom a corporate enterprise acts may be the same and need not be distinct).

[265] Boyle v. United States, 556 U.S. 938, 946 (2009); *see also Kelly*, 128 F.4th at 408; United States v. Graham, 123 F.4th 1197, 1271 (11th Cir. 2024); United States v. Pinson, 860 F.3d 152, 161 (4th Cir. 2017); *McArthur*, 850 F.3d at 934; United States v. McGill, 815 F.3d 846, 930 (D.C. Cir. 2016).

[266] United States v. Robertson, 514 U.S. 669, 671 (1995); United States v. Rich, 14 F.4th 489, 492 (6th Cir. 2021); *cf.* United States v. McClaren, 13 F.4th 388, 402 (5th Cir. 2021) ("Drug-trafficking is a type of economic activity that has been recognized to substantially affect interstate commerce in the aggregate").

[267] United States v. Ramos-Baez, 86 F.4th 28, 49 (1st Cir. 2023); United States v. Barronette, 46 F.4th 177, 203 (4th Cir. 2022).

[268] 18 U.S.C. § 1961(5); United States v. Andino-Morales, 73 F.4th 24, 33 (1st Cir. 2023); United States v. Melgar-Hernandez, 832 F.3d 261, 264 (D.C. Cir. 2016); United States v. Rios, 830 F.3d 403, 424 (6th Cir. 2016).

[269] "A pattern is not formed by sporadic activity.... [A] person cannot be subjected to the sanctions [of RICO] simply for committing two widely separate and isolated criminal offenses. Instead, the term 'pattern' itself requires the showing of a relationship between the predicates and of the threat of continuing activity. It is this factor of continuity plus relationship which combines to produce a pattern." H.J., Inc. v. Nw. Bell Tele. Co., 492 U.S. 229, 239 (1989); United States v. Torres, 124 F.4th 84, 95 (2d Cir. 2024); D&T Partners, L.L.C. v. Baymark Partners Management, L.L.C., 98 F.4th 198, 205 (5th Cir. 2024); United States v. Pinson, 860 F.3d 152, 161 (4th Cir. 2017); United States v. McArthur, 850 F.3d 925, 934 (8th Cir. 2017); *Ramirez-Rivera*, 800 F.3d at 20. Prior conviction of a predicate offense, however, is not required or even usual, BancOklahoma Mortgage Corp. v. Capital Title Co., 194 F.3d 1089, 1102 (10th Cir. 1999). *Cf.* Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 488–93 (1985) (a private cause of action under RICO does not require the prior conviction of a defendant).

results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events."[270]

The "continuity" of predicate offenses may be shown in two ways, either by proof of the regular occurrence of related misconduct over an extended period of time in the past (closed ended) or by evidence of circumstances suggesting that if not stopped by authorities, they would have continued in the future (open ended).[271]

The courts have been reluctant to find the continuity required for a RICO pattern for past, closed ended enterprises (those with no threat of future predicate offenses) unless the enterprise's activities spanned a fairly long period of time.[272] Open ended continuity (found where there is a threat of future predicate offenses) is nowhere near as time sensitive and is often found where the predicates consist of murder, drug dealing or the like, or are part of the enterprise's regular way of doing business.[273]

Section 1962(d) outlaws conspiracy to violate any of § 1962's substantive prohibitions; in the case of conspiracy to violate § 1962(c), it outlaws any agreement of two or more to conduct the affairs of an enterprise through a pattern of RICO predicate offenses.[274] The RICO conspiracy offense has no overt act requirement; the crime is complete upon the agreement to commit a RICO violation.[275]

RICO violations are punishable by imprisonment for not more than twenty years (not more than life imprisonment if any of the applicable predicate offenses carries a life sentence).[276] Offenders also face fines of up to $250,000 (up to $500,000 for organizations) as well as the confiscation of any property associated with the offense.[277]

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[270] *H.J., Inc*., 492 U.S. at 240 (quoting 18 U.S.C. § 3575(e)); *see also D&T Partners*, 95 F.4th at 205; *Pinson*, 860 F.3d at 161; *McArthur*, 850 F.3d at 934.

[271] *H.J., Inc*., 492 U.S. at 241("'[C]ontinuity' is both a closed- and open-ended concept, referring either to a closed end period of repeated conduct, or to past conduct that by its nature projects into the future with a threat of repetition."); *see also D&T Partners, LLC*, 98 F.4th at 205 (5th Cir. 2024); UMB Bank, N.A. v. Guerin, 89 F.4th 1047, 1056 (8th Cir. 2024); United States v. Stepanets, 989 F.3d 107–08 (1st Cir. 2021).

[272] Reich v. Lopez, 858 F.3d 55, 60 (2d Cir. 2017) Criminal activity that occurred over a long period of time in the past has closed-ended continuity regardless of whether it may extend into the future ... [I]t requires that the predicate crimes extend 'over a substantial period of time.' Predicate acts separated by only a few months will not do; this Circuit generally requires that the crimes extend over at least two years; *Stepanets*, 989 F.3d at 108; Malvino v. Delluniversita, 840 F.3d 223, 231–32 (5th Cir. 2016); Empress Casino Joliet v. Balmoral Racing Club, 831 F.3d 815, 828 (7th Cir. 2016); Home Orthopedics Corp. v. Rodriguez, 781 F.3d 521, 530 (1st Cir. 2015).

[273] *Empress Casino Joliet*, 831 F.3d at 828–29 ("Our circuit has noted three situations that satisfy open (1) a specific threat of repetition exists, (2) the predicates are a regular way of conducting an ongoing legitimate business, or (3) the predicates can be attributed to a defendant operating as part of a long term association that exists for criminal purposes."); *see also* United States v. Chin, 965 F.3d 41, 48 (1st Cir. 2020); *Home Orthopedics Corp*., 781 F.3d at 531; United States v. Torres, 191 F.3d 799, 808 (7th Cir. 1999) ("As other courts of appeals have noted, 'in cases where the acts of the defendant or the enterprise were inherently unlawful, such as murder or obstruction of justice, and where in pursuit of inherently unlawful goals, such as narcotics trafficking or embezzlement, the courts generally have concluded that the requisite threat of continuity was adequately established by the nature of the activity, even though the period spanned by the racketeering activity was short.'" (quoting United States v. Aulicino, 44 F.3d 1102, 1111 (2d Cir. 1995)); United States v. Richardson, 167 F.3d 621, 626–27 (D.C. Cir. 1999); Jackson v. BellSouth Telecomm., 372 F.3d 1250, 1267 (11th Cir. 2004); United States v. Connolly, 341 F.3d 16, 30 (1st Cir. 2003).

[274] United States v. Foston, 108 F.4th 934, 936 (7th Cir. 2024); United States v. Ramos-Baez, 86 F.4th 28, 48 (1st Cir. 2023); *cf.* United States v. Graham, 123 F.4th 1197, 1269 (11th Cir. 2024).

[275] Salinas v. United States, 522 U.S. 52, 63 (1997); *Graham*, 123 F.4th at 1276; United States v. Ravenell, 66 F.4th 472, 481 (4th Cir. 2023).

[276] 18 U.S.C. § 1963(a).

[277] *Id*. § 1963(a), (b).

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