COMBATING TRANSNATIONAL ORGANIZED CRIME: INTERNATIONAL MONEY LAUNDERING AS A THREAT TO OUR FINANCIAL SYSTEMS

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

FEBRUARY 8, 2012

Serial No. 112–86

Printed for the use of the Committee on the Judiciary

Available via the World Wide Web: http://judiciary.house.gov

U.S. GOVERNMENT PRINTING OFFICE

72–786 PDF WASHINGTON : 2012

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON THE JUDICIARY

LAMAR SMITH, Texas, *Chairman*

F. JAMES SENSENBRENNER, JR., Wisconsin
HOWARD COBLE, North Carolina
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
DANIEL E. LUNGREN, California
STEVE CHABOT, Ohio
DARRELL E. ISSA, California
MIKE PENCE, Indiana
J. RANDY FORBES, Virginia
STEVE KING, Iowa
TRENT FRANKS, Arizona
LOUIE GOHMERT, Texas
JIM JORDAN, Ohio
TED POE, Texas
JASON CHAFFETZ, Utah
TIM GRIFFIN, Arkansas
TOM MARINO, Pennsylvania
TREY GOWDY, South Carolina
DENNIS ROSS, Florida
SANDY ADAMS, Florida
BEN QUAYLE, Arizona
MARK AMODEI, Nevada

JOHN CONYERS, JR., Michigan
HOWARD L. BERMAN, California
JERROLD NADLER, New York
ROBERT C. "BOBBY" SCOTT, Virginia
MELVIN L. WATT, North Carolina
ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
STEVE COHEN, Tennessee
HENRY C. "HANK" JOHNSON, JR., Georgia
PEDRO R. PIERLUISI, Puerto Rico
MIKE QUIGLEY, Illinois
JUDY CHU, California
TED DEUTCH, Florida
LINDA T. SÁNCHEZ, California
JARED POLIS, Colorado

SEAN MCLAUGHLIN, *Majority Chief of Staff and General Counsel*
PERRY APELBAUM, *Minority Staff Director and Chief Counsel*

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

F. JAMES SENSENBRENNER, JR., Wisconsin, *Chairman*
LOUIE GOHMERT, Texas, *Vice-Chairman*

BOB GOODLATTE, Virginia
DANIEL E. LUNGREN, California
J. RANDY FORBES, Virginia
TED POE, Texas
JASON CHAFFETZ, Utah
TIM GRIFFIN, Arkansas
TOM MARINO, Pennsylvania
TREY GOWDY, South Carolina
SANDY ADAMS, Florida
MARK AMODEI, Nevada

ROBERT C. "BOBBY" SCOTT, Virginia
STEVE COHEN, Tennessee
HENRY C. "HANK" JOHNSON, JR., Georgia
PEDRO R. PIERLUISI, Puerto Rico
JUDY CHU, California
TED DEUTCH, Florida
SHEILA JACKSON LEE, Texas
MIKE QUIGLEY, Illinois
JARED POLIS, Colorado

CAROLINE LYNCH, *Chief Counsel*
BOBBY VASSAR, *Minority Counsel*

CONTENTS

FEBRUARY 8, 2012

Page

OPENING STATEMENTS

The Honorable F. James Sensenbrenner, Jr., a Representative in Congress from the State of Wisconsin, and Chairman, Subcommittee on Crime, Terrorism, and Homeland Security 1

The Honorable Robert C. "Bobby" Scott, a Representative in Congress from the State of Virginia, and Ranking Member, Subcommittee on Crime, Terrorism, and Homeland Security 2

WITNESSES

Jennifer Shasky Calvery, Chief, Asset Forfeiture and Money Laundering Section, Criminal Division, Department of Justice

Oral Testimony 5

Prepared Statement 7

Luke A. Bronin, Deputy Assistant Secretary for Terrorist Financing and Financial Crimes, U.S. Department of the Treasury

Oral Testimony 23

Prepared Statement 25

David B. Smith, Chair, Forfeiture Committee, National Association of Criminal Defense Lawyers

Oral Testimony 33

Prepared Statement 35

COMBATING TRANSNATIONAL ORGANIZED CRIME: INTERNATIONAL MONEY LAUNDERING AS A THREAT TO OUR FINANCIAL SYSTEMS

WEDNESDAY, FEBRUARY 8, 2012

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to call, at 10 a.m., in room 2141, Rayburn Office Building, the Honorable F. James Sensenbrenner, Jr., (Chairman of the Subcommittee) presiding.

Present: Representatives Sensenbrenner, Goodlatte, Chaffetz, Marino, Scott, Pierluisi, Chu, Jackson Lee, Quigley, Polis

Staff present: (Majority) Caroline Lynch, Subcommittee Chief Counsel; Tony Angeli, Counsel; Arthur Radford Baker, Counsel; Lindsay Hamilton, Clerk; (Minority) Bobby Vassar, Subcommittee Chief Counsel; Joe Graupensberger, Counsel; and Veronica Eligan, Professional Staff Member.

Mr. SENSENBRENNER. The Subcommittee will come to order.

Today's hearing examines the subject of transnational organized crime, specifically how international money laundering is a threat to our financial and banking systems. As a part of its overall national security strategy, the Administration has proposed a strategy to combat transnational organized crime.

TOC is organized crime coordinated across national borders for the purpose of attaining power, influence, or financial gain, wholly or in part by illegal means. These criminal networks protect their activities through a pattern of corruption and violence, while exploiting transnational commerce. The networks can take many forms, such as cells, clans, or cartels, and may involve into other criminal structures.

Although the crimes they commit vary, these criminal organizations share the similar primary goal of financial gain, and they use similar methods to achieve their profits. The use of violence to intimidate or threaten, the exploitation of differences between countries, and the influence of government, politics, and commerce through corrupt and legitimate means.

Part of the Administration's transnational organized crime, or TOC, strategy focuses on ensuring that our anti-money laundering and anti-organized crime statutes reach criminal enterprises that

target the United States, but operate globally, often outside of the U.S. Transnational criminals are more sophisticated than ever, and their growing infiltration of lawful commerce fundamentally threatens free markets and financial systems that are critical to the stability of the global economy. TOC syndicates acquire an unfair competitive advantage by disregarding the laws and norms that legitimate businesses respect.

This proposal purports to expose and close emerging vulnerabilities that could be exploited by terrorist organizations and other elicit financial networks manipulated by transnational criminals. Now, more than ever, money laundering is a global phenomenon.

Transnational criminal organizations maintain the same goal as most legitimate transnational corporations: increased revenue and profit. The return of these profits to the legitimate corporation or illicit organization is one point at which the common goal deviates. The illicit organization undertakes the launderant's profits and avoid detection by law enforcement, including the payment of taxes.

The increase of global commerce has brought an increase in cross-border movement of financial instruments, both physical and electronic. The presumptive goal of the TOC strategy is distinguished between the legal and illegal transactions, and to stop the illegal transactions which threaten our financial security, as well as the integrity of our Nation's banking systems.

This hearing will focus on the current trends in money laundering by transnational criminal organizations and the mechanisms they use to launder illegal profits of any kind, and the legal enterprises that they use to hide and/or launder income.

We will also learn how international money laundering threatens the financial and banking systems of the United States. We then will ascertain whether there may be loopholes in current Federal law which may need to be closed to better protect our national security.

I look forward to hearing more about the proposals advanced by the Department of Justice for implementing the TOC strategy and how these matters are important to our national security.

I would like to thank our witnesses for participating in today's hearing.

It is now my pleasure to recognize for his opening statement, the Ranking Member of the Subcommittee, gentleman from Virginia, Mr. Scott?

Mr. SCOTT. Thank you, Mr. Chairman. And I thank you for convening the hearing. I look forward to discussing money laundering and its role in transnational organized crime.

It is important for this Subcommittee to learn about crime that is taking place internationally that yields or relies upon funds that are laundered to avoid detection by law enforcement. True money laundering takes the proceeds from crime and converts them into funds which may be used by criminals in ways that appear legitimate, as they try to enjoy the fruits of their schemes.

Of course, one of the great harms is that funds taken from crime victims become obscured and difficult for law enforcement to find and make the victims whole.

The title of the hearing refers to the potential threat money laundering poses to our financial systems. Challenges to find ways to combat real money laundering and protect the integrity of our financial system, while protecting the principles which are no less important, due process, individual liberty, privacy of law-abiding citizens, and the fairness of our criminal justice system.

For example, it is often difficult to separate the money laundering from the actions which constitute the underlying crime, and prosecutors have sometimes brought charges for both, when the conduct was virtually indistinguishable, such as instances of mail and wire fraud, and conspiracy to commit those offenses.

And we were concerned about these issues when we enacted the Fraud Enforcement Recovery Act of 2009, and included a sense of Congress that Federal prosecutors need to obtain high-level approval for certain types of money laundering prosecutions.

While we want to do what we can to ensure the criminals don't hide and keep the proceeds of illegal activity, we need to make sure that the anti-money laundering regulation and criminal prosecution initiatives don't fall into the same traps that we have stepped into in some of our other efforts to enforce our criminal laws.

The statutory maximum penalty for violations of principle and money launderings, the principle money laundering statute, section 1956 of the Federal criminal code, is 20 years. This is a case whether someone is a corrupted banker, who hides money for international drug kingpins or someone who is a low-level courier with small amounts of money, with no knowledge of the overall money laundering scheme or underlying crimes.

And there is cause for concern where it is possible for someone to receive a greater prison sentence for laundering money than for committing the underlying crime. This scheme sends the wrong message for—to our prosecutors, and has a negative impact on the allocation of resources within our system.

It is the case of other crime problems, over-incarceration is not the answer. In fact, when we find that overcharging and over-incarceration is taking place, it is usually a sign that we are frustrated, because we have not done a better job at preventing or prosecuting the underlying crimes for occurring in the first place.

We need to increase our focus on the crimes that produce the proceeds which are laundered, such as financial crimes, identity theft, organized retail theft, and cybercrime. For example, few instances of individual identity theft are even being investigated. When the crimes being committed are so lucrative that the volume of cash accumulated presents enough of a logistical problem for a criminal operation that they seek to launder it, we are already behind the curve.

With those thoughts in mind, I look forward to our witnesses telling us more about the nature of the threats, particularly the dimensions of the transnational organized crime. And I hope we will discuss the ways in which we can better focus our resources on solving the crimes that yield the proceeds that are laundered, as well as how we can focus on the key players in international money laundering schemes, without enacting additional measures that scoop in unwary law-abiding citizens.

Thank you, Mr. Chairman. I yield back.

Mr. SENSENBRENNER. Yes. I thank the Ranking Member. Without objection, other Member's opening statements will be made part of the record at this point.

And without objection, the Chair will be authorized to declare recesses during votes on the House floor.

It is now my pleasure to introduce today's witnesses. Jennifer Shasky was appointed Chief of the Asset Forfeiture and Money Laundering Section of the U.S. Department of Justice in July 2010. Ms. Shasky first joined the Department through the Attorney General's honors program in 1997.

For most of her first decade with the Department, she served as a trial attorney in the organized crime and racketeering section. Prior to her current job, she served as the criminal division's office of the Attorney General, and then in the office of the Assistant Attorney General, and then in the office of the Deputy Attorney General.

She received her undergraduate degree in international affairs from George Washington University in 1993, and her law degree from the University of Arizona College of Law, 1997.

Luke Bronin is the Deputy Assistant Secretary for Terrorist Financing and Financial Crimes at the U.S. Department of the Treasury. Before joining the Treasury Department, he was an international affairs fellow with the Counsel on Foreign Relations, hosted by the Institute for Financial Management and Research, in Shani, India.

Prior to his time with the Counsel on Foreign Relations, Mr. Bronin worked at the Hartford Financial Services Group as chief of staff to the president and chief operating officer of the property and casualty operations, and he also served as associate counsel and special assistant to the general counsel.

He received his bachelor of arts in philosophy from Yale College and masters of science and economic and social history, and his jurist doctor, from Yale Law School.

He is an officer in the U.S. Navy Reserve, and recently returned to the Treasury following a deployment to Kabul, Afghanistan, in support of Operation Enduring Freedom.

David Smith served 8 years as a prosecutor for the criminal division of the U.S. Department of Justice, and at the U.S. attorney's office in Alexandria, Virginia. At Justice, he served in the appellate and narcotics sections of the criminal division, and as the first deputy chief to the asset forfeiture office.

From 1995 through 1996, he served as a part-time associate independent counsel in the investigation of Michael Espy, the former secretary of agriculture. Mr. Smith's practice includes Federal criminal defense and criminal appeals.

He received his bachelor of arts from the University of Pennsylvania in 1970, and is jurist doctor from Yale Law School in 1976.

Without objection, all of the witnesses' written testimony will be entered into the record in its entirety. I ask that each of you summarize his or her testimony in 5 minutes or less.

And we have the lights all in front of you. The yellow light tells you to wrap it up. The red light tells you to finish. And the Chair is known for his strict enforcement of time limitations, as the Members of the Committee know. Ms. Shasky, why don't you start?

TESTIMONY OF JENNIFER SHASKY CALVERY, CHIEF, ASSET FORFEITURE AND MONEY LAUNDERING SECTION, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

Ms. SHASKY. Mr. Chairman, Ranking Member Scott, distinguished Members of the Committee, thank you for the opportunity to testify about the threats posed by transnational organized crime and the use of our money laundering laws to stop these groups.

This is a topic that is very personal to me. I spent 8 years as a prosecutor fighting and bringing cases against the very transnational organized crime groups about which this hearing is focused.

I then moved to the Office of the Deputy Attorney General. The Office of the Deputy Attorney General leads the Department's effort to craft a comprehensive strategy to confront these same groups. During that time, I initiated and then became the first head of the International Organized Crime Intelligence and Operations Center, which gives law enforcement the capacity to share information and coordinate multidistrict cases.

I can tell you from experience, the threat posed by transnational organized crime to our people, our businesses, and our institutions is real, and it is sobering. We are talking about groups, some of which have billions of dollars at their disposal. They have the money to engage in corruption on a global scale and at the highest levels of government. They have the money to pay the brightest business and technical experts to develop their criminal schemes.

They move into legitimate business, they corrupt markets, and they undermine competition. They perpetrate a broad array of crimes significantly impacting the average U.S. citizen. These include crimes ranging from cybercrime, drug trafficking, and the associated violence, identity theft, intellectual property theft, and sophisticated frauds, which include schemes targeting government programs, like Medicare or tax fraud. Perhaps, most alarmingly, they develop alliances with foreign intelligence services and terrorist organizations operating against U.S. interests.

In some, they pose a uniquely modern threat to our economy and our national security. Yet, through my experiences combating transnational organized crime, one thing has become increasingly and unmistakably clear: Money is what motivates, and it is what empowers these groups. But it is also their Achilles heel.

Transnational organized crime is a business, and like any business, profit is their primary motivation. Because money is the foundation on which these criminal organizations operate, our money laundering laws are our primary means to stop them. It is their core vulnerability. By taking their operating capital through money laundering prosecutions and forfeiture, we undermine their ability to harm our people, our businesses, and our institutions.

So, it is with this conviction and a desire to get back on the frontlines in a meaningful way that just over a year ago I left the Deputy Attorney General's office to become Chief of the Criminal Division's Asset Forfeiture and Money Laundering Section.

Since that time, I have seen firsthand the sophisticated means used by transnational criminal organizations to move and launder money. I have seen international drug trafficking organizations use trade-based money laundering schemes to move illegal proceeds.

First, in bulk cash, and then through the formal banking system, disguised as legitimate trade transactions.

Consistently, we see them exploit shell companies, front companies, offshore financial centers, and free trade zones. I have seen Eurasian organized crime groups transmit the proceeds of healthcare fraud, identity theft, and cybercrime, by exploiting alternate channels outside the mainstream banking system, such as check cashers, money remitters, and prepaid access devices. I explain all of these methods in more depth in my testimony.

The Department of Justice is part of a multifaceted effort to disrupt the ability of these criminal organizations to commit crimes and access their funds, and together, we have achieved some successes. But in far too many instances, investigations have revealed deficiencies in our current legal regime, exposing our failure to stay current with the realities of globalization and technology.

Accordingly, the Administration has put forward a number of legislative proposals that would modernize our legal regime and enhance our ability to combat transnational organized crime. These include making all foreign crimes money laundering predicates, if the criminal proceeds are moved through the U.S.; extending our money laundering law to cover a wider range of money transmitting businesses operating outside the main street banking system; preventing criminals from evading money laundering laws, by comingling clean and dirty money; clarifying the extraterritorial application of RICO, and holding drug traffickers, who had reason to believe their drugs would be sent to the United States accountable, an issue upon which I understand Mr. Marino, of this Subcommittee, has recently introduced legislation.

Another important legislative fix, which we have been developing with the Department of Treasury, would negate the utility of shell companies as money laundering instruments, by requiring the disclosure of beneficial ownership information.

Finally, while money laundering is the focus of today's hearing, I think it is important to also acknowledge the importance of permanently depriving these organizations of their money and criminal tools, and thus, their capacity to operate.

I would be happy to answer any questions that the Committee may have.

[The prepared statement of Ms. Calvery follows:]

Department of Justice

STATEMENT FOR THE RECORD OF

JENNIFER SHASKY CALVERY
CHIEF
ASSEST FORFEITURE AND MONEY LAUNDERING SECTION
CRIMINAL DIVISION

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

ENTITLED

"COMBATING TRANSNATIONAL ORGANIZED CRIME: INTERNATIONAL MONEY LAUNDERING AS A THREAT TO OUR FINANCIAL SYSTEMS"

FEBRUARY 8, 2012

Statement for the Record
Jennifer Shasky Calvery
Chief
Asset Forfeiture and Money Laundering Section
Criminal Division
U.S. Department of Justice

Subcommittee on Crime, Terrorism, and Homeland Security
Committee on the Judiciary
United States House of Representatives

"Combating Transnational Organized Crime: International Money Laundering as a Threat to Our Financial Systems"
February 8, 2012

INTRODUCTION

Mr. Chairman, Ranking Member Scott, and distinguished Members of the Subcommittee, thank you for inviting me to speak with you this morning about transnational organized crime, and specifically the threat international money laundering poses to our financial system. In my testimony, I will describe the nature of this threat, the variety of methods transnational organized crime groups use to generate and launder money, the efforts of the Department of Justice to address the threat, and steps Congress can take that will assist in these efforts.

In his recent testimony on worldwide threats, Director for National Intelligence Clapper characterized transnational organized crime as "an abiding threat to U.S. and national security interests." Therefore, the fight against transnational organized crime is one of the highest enforcement priorities of the Department of Justice and the Administration. As chief of the Department of Justice's Asset Forfeiture and Money Laundering Section (AFMLS), I know firsthand the seriousness of the danger posed by transnational organized crime generally, and to our financial system in particular.

Transnational organized crime represents a uniquely modern threat to our financial and national security. While global markets and technology combine to make the world seem smaller, transnational criminal organizations have exploited these advancements to expand their operations and influence and to evade justice. As a result, these organizations are growing increasingly more sophisticated in both their ability to commit revenue-generating crime and to subsequently launder the proceeds of that crime. I commend you for holding this hearing and shining a spotlight on an often overlooked and underappreciated threat that demands the full attention of the U.S. government.

Transnational Organized Crime Threatens U.S. and International Security

In December 2009, the United States government completed a comprehensive review of transnational organized crime (TOC) – the first such assessment since 1995. The Administration concluded that TOC networks continue to expand dramatically in size, scope, and influence,

posing significant new and increasing threats to U.S. national security. Striking new and powerful alliances and engaging in a range of illicit activities as never before, transnational organized criminals threaten our interests in a variety of new and sinister ways. In years past, TOC was largely regional in scope and hierarchically structured. Today's TOC groups have adapted to the realities and opportunities of globalization, and have evolved from traditional hierarchical structures toward looser networks that are more complex, volatile, and destabilizing.

TOC groups have also become increasingly sophisticated in penetrating financial systems, manipulating securities and commodities markets, harnessing cyberspace to perpetrate high-tech crimes, and carrying out numerous other schemes that exploit our institutions, and threaten the national security of the United States. TOC in its highest form is far removed from the streets. The use of fast-paced trading, the Internet and electronic payments – money, communications and inducements can be exchanged in milliseconds – allows leaders of TOC groups to operate from foreign safe havens to exploit international borders and regulatory gaps. Transnational organized criminals perpetrate a broad array of crimes significantly impacting the average U.S. citizen, ranging from cyber crime, drug trafficking and associated violence, identity theft, intellectual property theft, and sophisticated frauds which include schemes targeting government programs like Medicare. In October 2010, the Department of Justice announced charges against 73 members and associates of an Armenian-American organized crime group, with ties abroad, in five states for a scheme responsible for more than $163 million in fraudulent billing to Medicare. Among those convicted of racketeering was Armen Kazarian, who is alleged to be a "Vor," a term translated as "Thief-in-Law" and refers to a member of a select group of high-level criminals from former Soviet Union countries, including Armenia. This was the first time a Vor had been convicted of racketeering in the United States.

In some jurisdictions, transnational criminal organizations also undermine political institutions and stability, by insinuating themselves into the political process through bribery, even becoming alternate providers of governance, security, and livelihoods to win popular support. TOC penetration of foreign governments is deepening, leading to co-option in some jurisdictions and weakening of governance in many others. The nexus in some jurisdictions among TOC groups and elements of government – including intelligence services personnel – and big business figures threatens the rule of law and transparent business practices, and undermines our ability to compete in key world markets.

Crime, in general, and TOC, in particular, have always been an important source of funding for some terrorist organizations and their deadly acts. In FY 2010, the Department of Justice identified 29 of the 63 top drug trafficking organizations as having links to terrorist organizations. In July 2011, the Department announced charges resulting from a DEA narco-terrorism undercover operation, charging three defendants with conspiring to provide various forms of support to Hizballah, the PKK, and Pejak. Two defendants were arrested in Bucharest, Romania, where they were detained pending extradition to the United States; the third was arrested in the Republic of the Maldives. This investigation was supported by Romanian authorities who identified Kurdish PKK members that were selling heroin to support their terrorist organization. It also identified Pejak elements in Iran that were utilizing the drug trade to finance operations and Hizballah elements that were attempting to purchase military-grade weaponry. This investigation is continuing.

TOC Strategy and the Threat to the U.S. and Global Economy

In response to the growing threat posed by TOC, in July, 2011, the Administration released its Strategy to Combat Transnational Organized Crime ("TOC Strategy"), which sets forth a whole-of-government response to these pervasive threats. Among the threats identified in the TOC Strategy, the most relevant for this hearing is the threat to the U.S. and world economy. Through the profits of its illicit activities, TOC is increasing its subversion of legitimate financial and commercial markets, threatening U.S. economic interests, and raising the risk of significant damage to the world financial system.

As evidence of TOC's global economic might, one need only consider the most recent estimates of the amount of money laundered in the global financial system - $1.6 trillion, of which an estimated $580 billion is related to drug trafficking and other TOC activities, according to the United Nations Office on Drugs and Crime's Research Report published in 2011. These staggering amounts of money in the hands of some of the worst criminal elements create a terrifyingly vicious cycle – money enables TOC to corrupt the economic and political systems in which they operate, thereby allowing them to consolidate and expand their power and influence, which gives rise to more opportunity to commit crime and generate revenue.

To cite just one example of an elaborate TOC financial scheme, in August 2009, Italian police and prosecutors thwarted a multi-billion dollar securities scheme orchestrated by the Sicilian Mafia which targeted financial firms in the United States and elsewhere. The local authorities arrested as many as twenty people across the globe, including in Italy, Spain, Venezuela and Brazil. Among those arrested was Leonardo Badalamenti, son of a famous organized crime boss who died in a U.S. prison in 2004. According to investigators, Badalamenti and his crew planned to use phony securities to obtain credit lines totaling as much as $2.2 billion from several reputable financial firms, including HSBC in London, and the Bank of America in Baltimore. As part of the scheme, false Venezuelan bonds were allegedly authenticated by corrupt officials within the Central Bank of Venezuela.

But while the ability to generate vast sums of money motivates, sustains, and empowers TOC, it can also be their Achilles heel. Transnational organized crime is a business, and like any business, profit is the primary motivation. Profit drives their diversification into whatever area of criminal activity and with whatever criminal alliance generates proceeds. Those proceeds then fuel the organizations as operating capital and allow them to continue to grow their criminal activity, their personal wealth, their influence, and their ability to corrupt on a national scale. Because money is the foundation on which these criminal organizations operate, our money laundering laws are our primary means to stop them. It is their core vulnerability. By taking their operating capital through money laundering prosecutions and forfeiture, we take away their ability to operate.

Specific TOC Money Laundering Techniques

Generally speaking, money laundering involves masking the illegal source of criminally derived proceeds so they appear legitimate, or masking the source of monies used to promote illegal conduct. This process is of critical importance, as it enables criminals to enjoy these profits without compromising themselves or jeopardizing their ongoing criminal activities. To

accomplish this, money laundering generally involves three stages. It begins with the placement of illicit proceeds into the financial system. For cash proceeds, placement usually happens either via direct placement through structured deposits or indirectly by smuggling illicit proceeds out of the U.S. and back in order to allow the money to be deposited in U.S. banks. The next stage is layering, which is the process of separating the proceeds of criminal activity from their origin. The final stage is integration, which is the process of using an apparently legitimate transaction to disguise the illicit proceeds. Once illegal proceeds have entered the banking system the integration and layering stages make it very difficult to track and trace the money as it moves globally, often through a web of shell companies.

Money launderers have what seems like an infinite number of ways to disguise and move money, and there appears to be no limit to their ingenuity. Disguised in the trillions of dollars that is transferred between banks each day, banks in the U.S. are used to funnel massive amounts of illicit funds. But rather than address the full landscape of money laundering techniques employed by today's criminals and the critical role that our banking system plays in that landscape, I will instead focus on those methods most frequently utilized by TOC networks to move money around the globe, including into and out of the United States, and where we have specific vulnerabilities that we need Congress to address.

Tools for Concealment

There are countless variations on money laundering schemes and they are only limited by the imaginations of those who perpetrate them. Nonetheless, there are certain tools for concealment that are common to such schemes.

i. Shell Companies

One common vehicle used to conceal the source, ownership, and control of illegal proceeds as they move through the financial system is a shell company. A shell company can be loosely defined as a legal entity that exists primarily on paper, with no place of business or significant operations or assets. Many jurisdictions around the world – including the United States – allow individuals to form and operate such companies without providing any information about the beneficial owner. Organized criminals exploit this weakness and establish bank accounts in the names of shell companies, and then send money globally from one financial institution to the next, disguised as legitimate business activity, which may include import-export or other trade transactions.

In addition to the United States, the British Virgin Islands, Seychelles, Belize, and Panama are some other popular jurisdictions for the creation of shell companies with little or no information about who owns or controls the entity. None of these countries are fully compliant with the international standards set forth by the Financial Action Task Force on the transparency of legal entities. This marks an unfortunate role reversal for the United States, which historically has led by example when it comes to the implementation of rigorous anti-money laundering standards.

ii. Front Companies

TOC groups also use front companies to mask their crimes and conceal their profits. Unlike shell companies, which are merely an artifice, front companies are actual functioning businesses that may be wholly or in part legitimate, but are controlled or operated on behalf of criminals. Front companies serve not only to obscure the source, ownership, and control of illegal proceeds involved in trade transactions, but the commingling of legitimate money with illegal proceeds can frustrate our ability to untangle the legitimate monies from the criminal proceeds. Such commingling is a purposeful technique used by some of the most advanced money launderers as a means to confuse law enforcement and exploit gaps in anti-money laundering regimes.

iii. Offshore Financial Centers

An offshore financial center is a country or jurisdiction that provides financial services to nonresidents on a scale that is disproportionate with the size and the financing of its domestic economy. Typically associated with strict commercial and bank secrecy laws and a low tax environ, offshore financial centers specialize in providing corporate and commercial services to non-resident companies. Because money is taxed at a low rate and the identities of bank accounts holders are strictly protected, such offshore havens are a magnet for TOC to hold their illegal proceeds for the long-term. Thus, it is not uncommon to see the money trail for any particular series of money laundering transactions end in such a locale.

iv. Free Trade Zones

Free trade zones (FTZs) are designated areas within a country in which incentives are offered to support the development of exports, foreign direct investment, and local employment. Along with the positive aspect of boosting economic opportunity comes the unfortunate reality that these incentives also create opportunities for money laundering. Some of the systemic weaknesses that make FTZs vulnerable to abuse include: weak procedures to inspect goods and register companies, including inadequate record-keeping and information technology systems; lack of adequate coordination and cooperation between zone and Customs authorities; relaxed oversight; and a lack of transparency.

v. Jurisdictions Offering an Air of Legitimacy

One of the goals in using any money laundering scheme is to conceal the money's illegal past. However, money that moves through certain offshore havens or originates in certain high crime jurisdictions is likely to garner more law enforcement and regulatory attention. In order to avoid this unwanted attention and give their money an air of legitimacy, transnational organized criminals commonly design transactions so that money flows through jurisdictions that are active in foreign trade and have a reputation for integrity in their financial systems. The United States, in particular, is popular for this reason. It is far easier for TOC groups needing to move significant amounts of money to hide it in the wide stream of legitimate U.S. commerce. The efficiency of our banking system and the ease of obtaining anonymous U.S. shell companies add to the popularity of the United States as a place to and through which to launder money.

Trade-Based Money Laundering

One of the most popular methods used by TOC groups to move their money around the world is through trade-based money laundering schemes. Trade-based money laundering is a method by which criminals move illegal proceeds, often through the formal banking system, disguised as legitimate trade transactions. In the process, criminal organizations are able to exploit the complex and sometimes confusing documentation that is frequently associated with legitimate trade transactions.

This method is utilized extensively by Colombian drug cartels to repatriate drug proceeds through a trade-based scheme commonly referred to as the Black Market Peso Exchange. These organizations can accomplish settlement by purchasing commodities in one country and then transferring them to another country where the commodity is sold and the proceeds remitted to the intended recipient. The Black Market Peso Exchange has been copied and adapted to local conditions by numerous criminal organizations all across the globe. Recently, we have also seen evidence of a trade-based money laundering schemes involving the illegal trade of pirated goods.

The Ayman Joumaa DTO/Lebanese Canadian Bank case illustrates a trade-based money laundering scheme. Cocaine shipments were sent from South America, through West Africa, and on to markets in Europe and the Middle East. Proceeds from the drug sales, in the form of millions of dollars in bulk currency, were sent back to West Africa and on to Lebanon via money couriers. These undeclared cash shipments were then transferred to exchanges houses throughout Lebanon, and later deposited into Lebanese banks. Wire transfers were then sent to the United States to purchase used vehicles, which were in turn shipped to West Africa and sold. Proceeds from the car sales were co-mingled with drug proceeds and the cycle began anew.

In addition, wire transfers were also sent throughout the world to pay for goods that were subsequently shipped to Colombia and Venezuela and sold. These payments are representative of the Black Market Peso Exchange, and the Black Market Bolivar Exchange trade-based schemes.

Money Remitters

Despite the continuing prevalence of money laundering through banks, criminals also use non-bank, financial institutions, such as money remitters, check cashers, and issuers of prepaid access. Unregistered money transmitters that settle through the transfer of value, which masks that they are in the business of transferring funds through the international financial system, have been a particular challenge for the Department of Justice to prosecute. These remitters often relay transaction information to foreign counterparts only through e-mails or text that without wiretap authority make it difficult for investigators to follow the money and connect to underlying criminal activity and organizations.

Money transmitting businesses, or money remitters, receive money from customers to send to the place or person designated by the customer. The transmission can be domestic or foreign and can be sent through a variety of means. Money remitters are particularly attractive as money launderers for a variety of reasons. They are subject to far less regulatory scrutiny than banks, generally have a more fleeting and limited relationship with their customers, and provide

the anonymity vital to criminal activities for lower value transactions. Money remitters therefore represent a key law enforcement vulnerability in the financial system because they are gateways to our financial system. They can be in the business of laundering money themselves, they can knowingly provide assistance to money launderers, and money launderers can use their services without the remitters' knowledge.

Because of this vulnerability, and to promote greater transparency for these businesses, the law requires that they register with the Financial Crimes Enforcement Network (FinCEN), in addition to many state licensing requirements to remit money. The registration requirement is intended to assist law enforcement and supervisory agencies and to prevent these businesses from engaging in illegal activities. Under 18 U.S.C. § 1960, a money laundering statute, it is a federal crime to operate a money transmitting business without registering with FinCEN, or complying with state licensing requirements, or to be involved in the transportation or transmission of funds the defendant knows are derived from a criminal offense or intended to be used to promote unlawful activity.

Check Cashers

Another trend is criminals using the check cashing industry as a method of money laundering. In particular, check cashing stores around the country are being used to cash large checks or a series of smaller checks on behalf of professional criminals. This is particularly prevalent in the health care arena, where check cashers are becoming a prime mechanism to convert billions of dollars in fraudulently obtained Medicare reimbursement checks into cash – which is in turn used to pay kickbacks to complicit doctors, durable medical equipment providers, and for profit. Many of those identified as laundering proceeds of healthcare fraud through check cashing companies have been linked to Eurasian organized crime groups.

In summary, the scheme works as follows: federal regulations require a report to be filed anytime a check is cashed for over $10,000. This report is known as a Currency Transaction Report or a "CTR." The reporting obligation falls on the person or entity receiving and providing cash for the check – such as a check cashing business. Specifically, the check cashing company receiving a check to be cashed over $10,000, or series of checks exceeding $10,000, must fill out a CTR that contains the identity of the person cashing the check, and the identity of the person or entity on whose behalf the check is being cashed. Once this information and other background information is obtained, the CTR is filed with FinCEN at the Department of Treasury and used by law enforcement to detect money laundering activities.

In order to avoid detection, check cashers are either knowingly filing CTRs that include false identifying information, or are avoiding filing CTRs altogether. Because they are exempt from Suspicious Activity Report and recordkeeping requirements, check cashers can purport to be blind to fraudulent activity even as they process inherently suspicious transactions. The money laundering of healthcare fraud checks is just one example of how check cashers are being utilized by professional criminals. More often than not, the same check cashers who launder the proceeds of health care fraud are also involved in the laundering of proceeds of other crimes as well.

Prepaid Access Devices

In the past decade, the use of electronic transactions, both for personal and business purposes, has increased dramatically. While only a few years ago most payments went through some type of banking institution, that is no longer the case today. Mobile payments, virtual and digital currencies, online payment systems, mobile wallets, and prepaid cards have emerged as the payments vehicles of the future. These new payments offer TOC the ability to move money easily and expeditiously across jurisdictions that may not have effective regulations.

Prepaid access devices essentially allow access to monetary value that is represented in digital format and that is stored or capable of being stored on electronic media in such a way as to be retrievable and transferable electronically – such as through prepaid cards or mobile wallets. While the most recognizable form of prepaid access in the United States is a prepaid card, it is becoming increasingly apparent that the plastic card entails only one possible method of enabling prepaid access. Today, prepaid access can be provided through a card, a mobile phone, a key fob or any other object to which relevant electronic information can be affixed. In some contexts, there may even be no physical object, as access to prepaid value can be enabled through the provision of information over the telephone or the Internet. Prepaid cards appear in many forms – the most recognizable being the ubiquitous gift cards that can be purchased almost anywhere. However, the prepaid card that is the most likely to be used in money laundering is the open system general purpose reloadable card. This card, which is normally branded using a Visa, MasterCard, American Express or Discovery logo, allows the user to make purchases and access the global payment networks through ATMs worldwide. These cards can be loaded with cash, drained, and then re-loaded.

The United States only began to define providers and sellers of prepaid access as money services businesses and to impose anti-money laundering obligations on these providers and sellers last year, and has yet to require the reporting of monies represented by prepaid cards to be declared when they are taken across the border in substantial amounts. Despite our new regulations, we believe prepaid cards present abundant opportunities for criminals to launder money. Prepaid cards can be purchased for currency, transferred from one person to another, reloaded, resold or monies transferred from one card to another with a telephone call or a computer stroke. Prepaid cards are often used in tandem with the digital or virtual currencies as a mechanism to either purchase the digital currency or to change the digital currency into a country's currency. Digital or virtual currencies are a form of online payment service that involves the transferring of value from one person to another through the Internet. These currencies may be backed by gold, silver, platinum, or palladium, such as the digital currencies offered by Liberty Reserve or Webmoney, or, as in the case of Bitcoin, they may be backed by nothing at all. Criminals use these currencies because they often allow anonymous accounts with no limit on either the account or the value of the transaction.

The Royal Bank of Scotland (RBS) case provides an example of how TOC hackers were able to manipulate a bank's internal accounting systems and then use prepaid cards and digital currencies to access the funds in tampered accounts and to launder money computer hackers operating in Estonia, Moldova, and Russia were able to infiltrate RBS's prepaid payroll card system and issue themselves 44 prepaid payroll cards with the loading limits removed. In just 12 hours, "cashers" used the cards to withdraw almost $9 million from 2100 ATMs throughout the

world. The cashers were allowed to keep a percentage of the cash but the remainder was moved into one of the digital currencies and transferred to the hackers.

While the vulnerabilities presented by the new payment methods vary by the type and provider, all present a high risk for money laundering, terrorist financing, and other financial crimes. The primary advantage that they give the criminal is speed with which to move illegal proceeds from one jurisdiction to another, often anonymously. This ability to move money so quickly from card to card, from card to phone, from phone to a digital currency, presents a significant challenge for law enforcement. Eventually our laws will need to be updated to give law enforcement the flexibility to respond to these ever evolving payment methods.

Updating our Anti-Money Laundering Laws to Combat TOC

Adopting the TOC Strategy's whole-of-government approach, the Department of Justice is part of a multifacted effort to disrupt the ability of these criminal organizations to move and access their funds. The Departments of Justice, Treasury, Homeland Security, and State all employ their unique authorities in anti-money laundering enforcement, forfeiture, sanctions, regulatory enforcement, customs, and international standard setting and engagement toward this end. Of course, the effort is not limited to the government, as we also rely on the private sector, and particularly the banking community, as a true partner in preventing criminal elements from exploiting our financial system. Only through a coordinated effort can we hope to succeed in diminishing the financial strength and resources of TOC.

By leveraging these coordinated efforts, and through aggressive use of our anti-money laundering laws, the Department of Justice can report some notable successes in combating the financial networks of TOC. But in far too many instances, investigations of TOC have revealed deficiencies in our current legal regime that limit or undermine completely our ability to dismantle these organizations, prosecute their members, and seize their assets. Accordingly, the Administration has put forward a comprehensive anti-money laundering and forfeiture legislative proposal entitled the Proceeds of Crime Act (POCA). As I will now discuss, POCA includes a number of provisions that would address existing gaps in our law and significantly enhance our ability to combat TOC.

Modernizing Anti-Money Laundering Laws to Account for Globalization of TOC

While TOC criminal conduct predominantly takes place abroad, the proceeds of those crimes are often directed toward the United States, as I have previously explained. The purpose may be to move the money through the U.S. financial system to cleanse it of the taint of illegality, to purchase real estate or other assets in the United States, or to promote further illegal conduct. While any of these scenarios amount to *de facto* money laundering, whether they actually constitute a violation of our money laundering laws depends on the nature of the underlying criminal conduct.

Congress has recognized certain foreign offenses as money laundering predicates under U.S. law, so long as the activity is a crime in the foreign jurisdiction. *See* 18 U.S.C. § 1956(c)(7)(B). Thus, an individual who commits one of the listed offenses abroad, for example, extortion, and then moves the proceeds of that offense into or through the United States, can be

charged with money laundering under U.S. law. A notable case brought under this provision involved Pavel Lazarenko, Ukraine's Prime Minister from 1996-1997, who in 2004 was convicted of money laundering in U.S. district court for moving the proceeds of his extortion crimes in Ukraine through the U.S. financial system.

Unfortunately, section 1956(c)(7)(B) does not cover the full range of foreign offenses, including a number of revenue-generating crimes favored by TOC, such as computer fraud and the trading of pirated goods. Indeed, in the Lazarenko case, although we could trace millions of dollars that he obtained from fraud in the Ukraine, we were unable to charge those transactions as money laundering because general fraud committed in a foreign jurisdiction is not a predicate under our money laundering statutes. The effect of such gaps, in both our domestic and foreign money laundering predicates, is to provide TOC and other criminals with a roadmap for how to launder money in the United States with impunity.

To address this gap we have put forward a legislative proposal that would make all domestic felonies, and foreign crimes that would be felonies in the United States, predicates for money laundering. This amendment would enable us to more readily prosecute trade-based money laundering schemes that rely on customs fraud and the trade of pirated goods, and in the process bring the United States into greater compliance with relevant international standards.

In addition to moving criminal proceeds into the United States, TOC is also able to exploit a gap in our law to launder proceeds of crime committed in the United States abroad. If criminal proceeds generated in the U.S. are deposited directly into a foreign account, and then laundered in the foreign country by a non-U.S. citizen with no part of the laundering occurring in the U.S., we lack jurisdiction to prosecute the money launderers. Our proposed amendment to section 1956 would extend extraterritorial jurisdiction to address this gap.

Harmonizing the Definition of Money Transmitting Businesses

Because the movement of money, particularly internationally, is an essential part of money laundering by TOC groups, money remitters play a vital role in their operations. The successful prosecution of Victor Kaganov for operating an illegal money transmitting business under 18 U.S.C. § 1960 illustrates how money transmitters are used by transnational organized criminals. Kaganov operated out of his residence in Oregon as an independent money transmitter without registering with FinCEN and without a state license. In order to move money into and out of the United States, Kaganov created various shell corporations under Oregon law and then opened bank accounts into which he deposited money he received from his Russian clients. He would then wire the money out of the accounts based on wire instructions he received from his clients. From July 2002 through March 2009, Kaganov conducted over 4,200 transfers, moving more than $172 million into and out of the United States.

Although section 1960 is a powerful tool to combat money laundering by TOC, some remitting businesses, such as check cashers, currency exchangers, and the providers of prepaid access devices, are not included in the scope of section 1960. Thus, while these remitters are still technically required to register with FinCEN, they are not subject to prosecution under section 1960 for failing to do so. Our proposed amendment closes this gap by harmonizing the

definition of "money transmitting business" in section 1960 with the full scope of the registration requirement.

Extending Wiretap Authority to Schemes Reliant on Electronic Communications

Our enforcement of money laundering activity is further hampered by a gap in our wiretap authority, which extends to virtually all money laundering offenses but not to section 1960. Arguably, it is section 1960 cases in which wiretap authority is *most* needed, given that remitting schemes invariably require telephonic or electronic communication among multiple individuals to direct the movement of the transmitted funds. Consider, for instance, the use of hawala to transfer money. Not only is the communication the only evidence of the transaction, but the communication effectively is the transaction. And yet because there is no wiretap authority for section 1960, law enforcement has no means of obtaining this critical evidence when this technique is used to launder money. Our proposed amendment would add section 1960 and bulk cash smuggling to the list of offenses for which we have wiretap authority.

Confronting the Problem of Commingled Funds

The use of front companies by TOC serves not only to obscure its criminal activity, but whatever legitimate money is generated by such companies can frustrate our ability to bring money laundering charges when it is commingled with illegal proceeds. Section 1957 of title 18 prohibits the spending of more than $10,000 of illegally derived money. In both the Fifth and Ninth Circuits, courts have held that when a defendant transfers over $10,000 from a commingled account containing clean and dirty money, the defendant is entitled to a presumption that the first money moved out of the account is legitimate. This "criminal proceeds -- last out" standard is contrary to all other accepted rules of tracing, and effectively prevents the government from pursuing section 1957 charges where illegal proceeds are moved through a commingled account – such as in the trade-based money laundering scheme discussed earlier.

To prevent this marginalization of section 1957, we have proposed an amendment that would clarify that when a defendant transfers funds from a bank account containing commingled funds, the presumption is that the transfer involves the illegally obtained money.

Promoting Corporate Transparency

The final legislative proposal I would like to highlight is not in POCA but is necessary to identify a problem specifically identified in the TOC Strategy – the lack of beneficial ownership information about companies formed in the United States.

As previously noted, one way in which transnational criminal organizations are able to penetrate into the U.S. financial system is through the use of shell companies. For example, Viktor Bout, notoriously known as the "Merchant of Death" and recently convicted of conspiracy to sell weapons to kill Americans, used U.S. shell companies to further his illegal arms trafficking activities. The Sinaloa Cartel, one of the major Mexican drug trafficking organizations, is believed by U.S. law enforcement to use U.S. shell companies to launder its drug proceeds. And Semion Mogilevich, an individual based in Russia and named to the FBI's

Ten Most Wanted Fugitives List, and his criminal organization, are charged with using U.S. shell companies to hide their involvement in investment activities and money laundering.

We are also seeing an increase in the use of shell companies as vehicles to conduct human trafficking. In 2001, in a case in the Western District of Missouri, a number of individuals pleaded guilty to charges involving illegal importation and forced labor after establishing two shell companies to obtain work authorization for foreign nationals and to conceal the unlawful proceeds of the criminal enterprise.

These examples all involve the relatively rare instances in which law enforcement has been able to identify a criminal using a shell company to further a criminal enterprise. In the vast majority of cases, the lack of available ownership information means that investigations involving U.S. shell companies hit a dead end. This same lack of information also hampers our ability to respond to requests for assistance from our foreign counterparts, thus undermining the U.S. role in the global offensive against the financial networks of TOC.

We believe the solution to this problem is a legal requirement that mandates disclosure of beneficial ownership information in the company formation process that will enable us to identify the living, breathing beneficial owner of a legal entity in the United States at its incorporation.

Other TOC Legislative Fixes

Exterritorial application of the RICO and VICAR statutes

As I have stated, today's criminal activity does not respect boundary lines, and we are increasingly confronting serious criminal conduct that routinely crosses national borders. The United States is the target of criminal activity emanating from all parts of the world, as member and leaders of organized criminal groups direct and conduct criminal activity from abroad that threatens the United States, its citizens, its instrumentalities of commerce, its institutions, and its national security. Transnational organized crime groups engaged in drug trafficking, violent crimes, cybercrime, money laundering, smuggling, counterfeiting, and other criminal activity all reach into the United States from outside to commit their crimes and move and hide the proceeds of their crimes.

The Racketeer Influenced and Corrupt Organizations (RICO) (18 U.S.C. §§1961-1968) and Violent Crimes in Aid of Racketeering (VICAR), (18 U.S.C. § 1959), statutes have long been, and continue to be, among the most powerful tools in the fight against organized criminal conduct and other types of serious criminal activity. The United States has used the RICO and VICAR statutes in criminal prosecutions where part of the criminal conduct and/or some of the defendants were outside of the United States. Convictions under RICO in this context include the leaders and many members of several major international drug trafficking organizations responsible for multi-ton shipments of cocaine being imported and distributed in the United States; numerous members of smuggling schemes emanating from Asia that brought in millions of dollars of counterfeit United States currency and that agreed to bring in military-grade weaponry; individuals who embezzled millions of dollars from the Bank of China and laundered

the money in the United States; and members and leaders of an organization that trafficked in fraudulent identification documents and arranged for the commission of a murder in Mexico.

Pending indictments in this context include the 2003 indictment of the aforementioned Semion Mogilevich for directing from Eastern Europe a multi-million dollar securities fraud and money laundering scheme that targeted U.S. citizens; the indictment of leaders of MS-13 for, while incarcerated in El Salvador, ordering murders and other attacks by MS-13 members in the Washington, D.C., area by cellular telephone; and the indictment of leaders and members of the Barrio Azteca gang that operates on both sides of the U.S.-Mexico border selling drugs, laundering money, and committing acts of violence, including the murder of a U.S. consulate employee in Mexico.

Given the increasing cross-border nature of crime and the threats posed by transnational organized crime, it is vital that the RICO statute and its companion VICAR statute continue to be applicable to enterprise leaders and members who direct the affairs of a criminal enterprise from a foreign country and order criminal conduct, including violent crimes, in the United States, as well as enterprise leaders and members in the United States who order murders in foreign countries or send criminal proceeds to foreign countries. However, recent decisions in several United States District Courts and in the United States Court of Appeals for the Second Circuit in the context of private civil RICO cases have held that the RICO statute does not apply extraterritorially. While at least some of the courts have explicitly expressed no opinion on the extraterritoriality of RICO in cases brought by the government, these cases have the potential to create confusion and uncertainty as to the extraterritorial application of RICO in criminal prosecutions. Indeed, the United States Court of Appeals for the Second Circuit held that RICO does not apply extraterritorially even though Congress included in the definition of racketeering activity several statutes that themselves have extraterritorial application. In fact, some of these statutes apply *only* extraterritorially, such as Section 2332 relating to murder and other violence against United States nationals occurring *outside* of the United States.

Once these courts determine that RICO does not apply extraterritorially, they look at the particular case to determine if it involves a permissible territorial application or an impermissible extraterritorial application of the statute. In making this determination, some courts have held that the "nerve center," or upper level management and decision making authority of the enterprise, must be located within the United States or the case is dismissed as an impermissible extraterritorial application. The Department disagrees with this test and believes that a RICO claim involves a territorial application of RICO either if the enterprise is located or operating in the United States or if a pattern of racketeering activity occurs within the United States. Moreover the "nerve center" test is inconsistent with the Supreme Court's requirements relating to the attributes of an enterprise under RICO. Nevertheless, court holdings such as this have the potential to wreak havoc with our ability to prosecute leaders and members of some of the very groups that pose the greatest threat to the United States today. Leaders and members of terrorist groups, organized crime groups, violent gangs, cyber crime organizations, and drug trafficking groups would be able to escape prosecution under some of our most useful criminal statutes simply because the leadership of the group directed its activities from outside of the United States, even where the enterprise is itself operating in the United States and a pattern of racketeering activity is committed within the United States.

Among the Department's legislative proposals are clarifications that both the RICO and VICAR statutes have extraterritorial application in cases brought by the United States. The clarification of RICO's extraterritorial reach and the addition of some new types of racketeering activity will allow us to prosecute the members and leaders of transnational groups for the full range of their criminal activity. The proposed legislation includes provisions that this extraterritorial application of RICO is limited to cases brought by the United States and is not available in private civil RICO cases. The legislative proposal also includes several other amendments to update and clarify RICO and VICAR that the Department would be happy to discuss with you at a later date.

Narcotics

South America is the primary source of cocaine (and significant amount of the heroin) that is illegally imported into the United States. Particularly with regard to cocaine, international drug trafficking organizations (International DTOs or TOC) based in Colombia and Peru manufacture the illicit drug and then transport it to Central America and Mexico, where Mexican traffickers take possession. Another significant route includes the distribution of the drug from Colombia to buyers in the Caribbean. The Mexican or Caribbean traffickers then illegally import the drug shipment into the United States.

Under current law, to prosecute DTOs in the United States for their extraterritorial activities under the "long arm" statute, 21 U.S.C. § 959, we must demonstrate that the particular defendant manufactured or distributed the drug "knowing or intending" that the drug would be illegally imported into the United States. Years ago, the Colombian cartels controlled the routes from South America to the United States, and therefore, it was not a significant burden to acquire evidence in the course of the criminal investigation, and to present such evidence in court, that the defendants knew the ultimate destination of the cocaine. With the rise of the Mexican cartels, however, it has become much more difficult to prove that the South American traffickers knew the ultimate destination of the drugs that they have sold to their Mexican customers. In addition, because the traffickers have become much more sophisticated about how cases are prosecuted in the United States due to the success of our obtaining the extradition of foreign drug traffickers who have been prosecuted in the United States, the foreign traffickers now commonly avoid all discussion of the ultimate destination of their drug shipments.

The Targeting Transnational Drug Trafficking Act of 2011 addresses this problem by amending the Controlled Substances Act at 21 U.S.C. § 959 to render it unlawful for an individual to manufacture or distribute a controlled substance knowing, intending or "having reasonable cause to believe" that the substance will be illegally imported into the United States. This common sense amendment holds international drug traffickers accountable for their activities when the circumstances of the transaction would give them reasonable cause to believe that the ultimate destination of the illicit substance was the United States. For instance, if the drug transaction is financed using U.S. dollars, the package branding suggests a U.S. destination, and/or the drug route suggests that the ultimate destination is the United States, then the government can present that evidence to demonstrate that the traffickers violated the drug trafficking long arm statute.

This piece of legislation also would amend section 959 to better address the international trafficking in chemicals used to make the controlled substances that are unlawfully introduced into the United States. Presently, the United States' extraterritorial authority extends only if the overseas manufacture or distribution of the chemical results in the smuggling of the chemical itself into the United States. The amendment will prohibit manufacture and distribution of the chemical when an individual intends or knows that the chemical will be used to make a controlled substance and intends, knows, or has reasonable cause to believe that the controlled substance will be unlawfully brought into the United States. Thus, those who provide such critical material support to drug traffickers based abroad who target the United States will incur a term of imprisonment of up to 20 years.

In addition, as part of the TOC Strategy, we have asked Congress to direct the U.S. Sentencing Commission to establish a better defined sentencing scheme for violations of the Foreign Narcotics Kingpin Designation Act (the Kingpin Act). The Kingpin Act (21 U.S.C. §§ 1901 – 1908, 8 U.S.C. § 1182), administered by the Department of the Treasury, prohibits transactions by U.S. persons, or U.S.-based transactions, that involve property or interests in property of designated foreign narcotics traffickers, including foreign persons designated for materially assisting in, providing financial or technological support for or to, or providing goods or services in support of a designated foreign narcotics trafficker, and foreign persons designated for being owned, controlled, or directed by, or acting on behalf of, a designated foreign narcotics trafficker. A violation of the Kingpin Act carries a statutory penalty of 10 years imprisonment generally, but it can reach up to 30 years in some circumstances, in addition to a range of fines. Currently, there is no established sentencing scheme in the guidelines. We propose guidelines that would result in a sentence of approximately three years, with enhancements in cases where individuals know or have reasonable cause to believe that the assistance will further drug trafficking activity and in certain cases that involve the provision of weapons such as firearms or explosives.

CONCLUSION

In closing, I would like to once again thank this Subcommittee for holding this hearing and bringing attention to the threat transnational organized crime poses to our financial system. The first step in combating this threat is to understand the nature and scope of TOC and the myriad ways in which it generates and then launders its vast profits. The term "TOC" encompasses a wide swath of organizations engaged in a diverse range of criminal activity all around the world, and yet what unites them all is their need for money. Going forward, with the help of this Committee, and in conjunction with our domestic and international partners, disrupting the financial infrastructures of TOC will remain a top priority of the Department of Justice.

Mr. SENSENBRENNER. Thank you, Ms. Shasky.
Mr. Bronin?

TESTIMONY OF LUKE A. BRONIN, DEPUTY ASSISTANT SECRETARY FOR TERRORIST FINANCING AND FINANCIAL CRIMES, U.S. DEPARTMENT OF THE TREASURY

Mr. BRONIN. Mr. Chairman, Ranking Member Scott, distinguished Members of this Subcommittee, thank you for the opportunity to testify today.

Transnational organized crime networks, TOC networks, have become increasingly globalized, sophisticated, and powerful. Today, they represent not just large-scale criminal enterprises, but a real and increasing threat to national security.

Last summer, President Obama announced a national strategy to combat this growing threat. The strategy is comprehensive and aggressive. And most important for today's hearing and for the Department of Treasury, the strategy emphasizes the importance of disrupting the financial networks on which transnational criminal organizations, TCOs, depend.

Access to the international financial system gives TCOs the ability to hide, move, and make use of ill-gotten games on a massive scale. To combat the threat of international money laundering by TCOs, the Department of Treasury takes both a systemic and a targeted approach.

On the systemic front, we work to promote transparency and to strengthen the anti-money laundering architecture domestically and globally. The U.S. has one of the strongest and most effective anti-money laundering regimes in the world. Suspicious activity reporting and currency transaction reporting play a vital role, shining a light on elicit activity and supporting financial investigations by law enforcement.

But we do believe that there are places where even our own framework can be strengthened. The most basic AML precept for financial institutions is know your customer. The criminal actors can easily disguise their activities by operating in the name of shell companies and front companies. We believe that the absence of a general obligation to collect beneficial ownership information, along with the lack of a clear customer due diligence framework, has created some confusion and inconsistency across financial sectors. Accordingly, we intend to clarify, consolidate, and strengthen customer due diligence requirements.

One of the greatest challenges that both financial institutions and law enforcement face when trying to identify and disrupt elicit activity is the lack of transparency and the beneficial ownership of legal entities. That is why we strongly support the passage of beneficial ownership legislation, which has been introduced both in the House and in the Senate.

Beneficial ownership legislation would make it easier for financial institutions to conduct appropriate customer due diligence, easier for law enforcement to follow leads, and more difficult for criminals to hide behind front companies and shell companies.

We believe these potential changes in law and in regulation will significantly strengthen our system's AML defenses. But I do want to note that the effectiveness of the U.S. anti-money laundering regime ultimately depends on vigorous implementation. And when banks let down their guard, the financial system can be compromised.

In one recent case that highlights that risk, a large finance institution failed to monitor effectively more than $420 billion in cross-border financial transactions, with high-risk Mexican currency exchange houses, including millions of dollars subsequently used to purchase airplanes for narcotics traffickers. Because of the size, efficiency, and legitimacy of the U.S. banking system, criminal organizations will always probe at its weak points, and we need to stay vigilant.

As we work to promote transparency and to strengthen the AML architecture domestically and around the world, we will continue to use our targeted authorities to disrupt the financial networks of TCOs.

Since June of 2000, over 1,000 individuals and entities have been designated under the Foreign Narcotics Kingpin Designation Act. Last summer, President Obama signed Executive Order 13581, identifying and imposing sanctions on four significant TCOs, the Brother's Circle, also known as the Moscow Center, the Camorra, the Yakuza, and Los Zetas. We are working to designate entities and individuals related to those TCOs.

Finally, we will continue to use section 311 of the Patriot Act, a powerful tool that, in practical terms, enables us to cut off from the U.S. financial system foreign financial institutions that pose a significant money laundering risk. You may be familiar with and I will be happy to talk about Treasury's February 2011 identification of the Beirut-based Lebanese-Canadian bank, under section 311, a perfect illustration both of the threat we face, and of the tools we can use.

To break the economic power of transnational criminal organizations, and to protect the U.S. financial system from penetration and abuse, we must continue to attack the financial underpinnings of TOC networks, strip them of their elicit wealth, sever their access to the financial system, expose their criminal activities hidden behind legitimate fronts, and protect the integrity of the U.S. financial system.

Thank you.

[The prepared statement of Mr. Bronin follows:]

Luke A. Bronin
Deputy Assistant Secretary for Terrorist Financing and Financial Crimes
U.S. Department of the Treasury

Hearing entitled: "Combating Transnational Organized Crime: International Money Laundering as a Threat to our Financial Systems"

U.S. House of Representatives
Subcommittee on Crime, Terrorism and Homeland Security
Committee on the Judiciary

February 8, 2012

Chairman Sensenbrenner, Ranking Member Scott, distinguished members of this Subcommittee, thank you for the opportunity to appear before you today to discuss Transnational Organized Crime (TOC) and the threat that international money laundering poses to the integrity of our financial system.

In my testimony today, I would like to discuss, first, the nature and scope of the threat, second, the key vulnerabilities in the U.S. financial system that are being exploited, and finally, what we are doing about it.

The Nature and Scope of the Threat

In 2009, the United States completed a comprehensive interagency assessment of transnational organized crime. The assessment concluded that since 1995, TOC networks have expanded in scope and sophistication and are today taking advantage of the increasingly integrated international financial system to facilitate criminal activity and launder the proceeds of their crimes.

Transnational criminals engage in a wide range of illicit activity, including trafficking in drugs, persons, and weapons, as well as identity theft, financial fraud, cyber crime, and intellectual property theft. Transnational crime is a threat to national security, with clear links to other national security threats. We see terrorists and insurgents turn increasingly to crime and criminal networks for funding and logistics. We see proliferators and arms traffickers use the same methods as TCOs to pursue their illicit ends.

To combat the growing threat of TOC, President Obama announced in July 2011 a national Strategy to Combat Transnational Organized Crime (the "TOC Strategy"). The TOC Strategy observes that, "[n]ot only are criminal networks expanding, but they also are diversifying their activities, resulting in the convergence of threats that were once distinct and today have explosive and destabilizing effects."

Most important for today's hearing, the 2009 assessment and TOC Strategy also highlight the extent to which these groups have infiltrated legitimate commerce and economic activity. This infiltration of legitimate economic activity threatens the integrity of the international financial

system through subversion, exploitation, and distortion of legitimate markets. The scale of the threat is significant, as hundreds of billions of dollars of illicit proceeds are generated each year through transnational organized crime in the United States.

Vulnerabilities in the Financial System

Access to the international financial system gives criminal organizations the ability to hide, move and make use of ill-gotten funds on a massive scale. The challenges in identifying and recovering proceeds of crime laundered through the U.S. and global financial system may be attributed in large part to ongoing and substantial criminal abuse of legal entities and a lack of insight into the beneficial ownership of those legal entities. In particular, TCOs make aggressive use of *shell companies* and *front companies* to facilitate illicit financial activity.

Shell companies are business entities without active operations or significant assets. Although shell companies can have legitimate commercial uses, the ease of formation and the absence of ownership disclosure requirements make them an attractive vehicle for those seeking to launder money or conduct illicit activity. TCOs also make aggressive use of front companies, which often conduct legitimate business activity, to disguise the deposit, withdrawal, or transfer, of illicit proceeds that are intermingled with legitimate funds.

In 2007, the Departments of Justice, Homeland Security and the Treasury jointly issued the National Money Laundering Strategy (2007 Strategy), which in part, identifies current and emerging trends in money laundering, as well as specific vulnerabilities. The 2007 Strategy specifically emphasizes the risks associated with shell companies and trusts, noting that the use of these entities for illicit purposes has become increasingly popular with criminal actors because of the "ability to hide ownership and mask financial details." As asserted by a representative of the Asset Forfeiture and Money Laundering Section of the United States Department of Justice (AFMLS), law enforcement faces "considerable difficulties when investigating U.S. shell corporations due to the lack of beneficial ownership information available in the United States."

The abuse of legal entities is an international problem; both foreign and domestic legal entities can be used for illicit purposes. Viktor Bout, an international arms merchant who was designated by the Treasury Department's Office of Foreign Asset Control (OFAC), used U.S. shell companies to mask his ownership and facilitate his illegal arms trafficking activities. Law enforcement believes that the Sinaloa Cartel, one of the major Mexican drug trafficking organizations, uses both U.S. and Colombian shell companies to launder drug proceeds. Additionally, illicit actors use foreign shell companies to mask the involvement of designated persons and circumvent U.S. sanctions programs relating to Iran and North Korea.

In addition to abusing shell companies and front companies, TCOs exploit the following vulnerabilities to advance their criminal activity:

Money services businesses (MSBs), including money transmitters, check cashers and currency exchangers, are vital service providers for millions of Americans. They are, however, vulnerable to exploitation. While the role of registered money services businesses in the U.S. economy is small relative to banks, as is their relative threat, U.S.-based MSBs are exploited by criminals for

many of the same reasons the transmitters are popular with their main customer base of legitimate consumers – competitive pricing, transmission speed, broad network reach, and in select cases, agent complicity and deficient anti-money laundering (AML) controls.

Gatekeepers, such as attorneys, accountants, and company formation agents, provide access to a variety of financial services and the means by which TCOs can use their ill-gotten gains. Gatekeepers can be used to create shell corporations, open bank accounts, acquire real estate, and make investments to conceal illicit assets and activity. While the vast majority of gatekeepers are legitimate and play a critical role in safeguarding the financial system from abuse, complicit or careless gatekeepers are vital to sustain criminal enterprises.

Under-regulated jurisdictions with weak AML oversight procedures and controls, or strict privacy laws, allow TCOs an easy entry point to the global financial system. TCOs also use free trade zones with lax safeguards to facilitate trade-based money laundering schemes. Of particular concern are jurisdictions that do not adequately supervise exchange houses that have direct or indirect access to the U.S. financial system.

Exploitation of the Banking Sector

TCOs seeking to move and launder funds regularly exploit the vehicles and vulnerabilities discussed thus far. It is important to recognize, however, that shell companies, front companies, complicit or careless gatekeepers and lax jurisdictions are not alternatives to the regulated U.S. financial system, but rather points of access into the regulated financial system. Indeed, the most important battleground in the fight against money laundering remains the banking sector itself.

The U.S. has one of the strongest and most effective anti-money laundering regimes in the world, anchored by the customer due diligence and transaction recordkeeping and reporting required of financial institutions under the Bank Secrecy Act. Suspicious activity reporting and currency transaction reporting play a vital role, shining a light on illicit activity and supporting financial investigations by law enforcement.

To cite just one recent example, suspicious activity reports filed by banks helped law enforcement pursue a multi-million dollar drug trafficking investigation against a classic front company: a Texas retailer that had accepted tens of millions of dollars in cash from the sale of drugs over a two-year period, comingled those funds with legitimate earnings, and deposited them into a number of commercial bank accounts.

Despite the strength of the U.S. anti-money laundering regime, however, its effectiveness depends on vigorous implementation. And when banks let down their guard, the financial system can be compromised. A recent money laundering case that involved just one predicate crime – drug trafficking – in just one jurisdiction – Mexico – highlights the risk.

In 2010, the Department of Justice (DOJ), the Office of the Comptroller of the Currency (OCC) and the Financial Crimes Enforcement Network (FinCEN) took coordinated enforcement action against a major U.S. financial institution. As outlined in the 2010 Deferred Prosecution Agreement (DPA) between DOJ and the financial institution, the financial institution failed to

effectively monitor more than $420 billion in cross-border financial transactions with thirteen high-risk Mexican currency exchange houses, commonly known as *casas de cambio* (*casas*), from 2004-2007, including millions of dollars that were subsequently used to purchase airplanes for narcotics traffickers.

This example should not necessarily be taken to suggest that all of those transactions were in fact illegitimate. But this case does illustrate a key vulnerability: when banks let AML/CFT controls slip, criminals operating in cash can potentially place large amounts of that cash through foreign financial institutions and integrate illicit funds into the regulated financial system through correspondent relationships with U.S. banks.

Other coordinated enforcement actions against U.S. banks similarly demonstrate that failure to implement effective AML programs can permit the introduction of illicit funds into the financial system. Most recently, in August 2011, DOJ, FinCEN, the FDIC and the Florida Office of Financial Regulation took coordinated enforcement against another U.S. bank for failing to establish an AML program. From 2001 to 2009, the U.S. bank processed more than $40 million in suspicious activities in just five accounts, including accounts of three *casas* controlled by DTOs, at least $10.9 million of which is known to be narcotics proceeds and all of which should have been identified as high-risk.

Strengthening the System's Defenses

Let me stress again that the U.S. anti-money laundering regime is unparalleled. And the vast majority of banks implement their AML safeguards diligently and effectively. What the few examples noted just now tell us, however, is that even as the money laundering threat evolves, and even as TCOs become increasingly sophisticated, we should continue to remain focused on the "basics" of the anti-money laundering fight: promoting financial transparency and ensuring the effective implementation and enforcement of Bank Secrecy Act obligations.

Accordingly, Treasury has identified the following priorities in the fight to promote transparency in the financial system and to make it harder for TCOs to conceal their illicit activity:

Clarifying Customer Due Diligence (CDD) Obligations. The most basic AML precept of all for financial institutions is "know your customer." However, as highlighted above, criminal actors can easily disguise their activities by operating in the name of shell companies and front companies. When U.S. financial institutions open an account for a business, they are only explicitly required to identify the beneficial owner(s) of the legal entity in specific and narrow instances. We believe that the absence of a general obligation to collect beneficial ownership information, along with the lack of a clear CDD framework, has created some confusion and inconsistency across financial sectors.

To address this challenge, Treasury intends to clarify, consolidate and strengthen CDD requirements for financial institutions, including an obligation to collect beneficial ownership information. Such a requirement will harmonize the minimum expectations with respect to CDD policies, procedures, and processes, and make explicit the fundamental elements necessary for an

effective CDD program. As we work to clarify CDD requirements, we will continue to engage closely with regulators, with the private sector, and with our international counterparts.

Passing Beneficial Ownership Legislation. As highlighted earlier, one of the greatest challenges that both financial institutions and law enforcement face when trying identify and disrupt illicit criminal activity is the lack of transparency in the beneficial ownership of legal entities.

That is why the President's TOC Strategy includes a commitment to work with Congress to adopt legislation that would require disclosure of beneficial ownership information in the company formation process. Treasury is working closely with our interagency partners, private sector stakeholders, and members of Congress to advocate for passage of such legislation. Passage of beneficial ownership legislation would make it easier for financial institutions to conduct appropriate customer due diligence, easier for law enforcement to follow leads generated by suspicious activity reports, and more difficult for criminals to hide behind front companies and shell companies.

Protecting the International Gateways to the U.S. Financial System. Foreign correspondent accounts – established by a U.S. financial institution to receive deposits from, or to make payments or other disbursements on behalf of, a foreign financial institution – are the most important international gateway to the U.S. financial system. That gateway must be protected.

Recent civil and criminal enforcement actions detail the misuse of, correspondent accounts at U.S. banks by TCOs to launder criminal proceeds. To protect this gateway, Treasury's Financial Crimes Enforcement Network (FinCEN) issued final rules implementing Section 312 of the USA PATRIOT Act, which requires certain U.S. financial institutions to apply due diligence to correspondent accounts maintained for certain foreign financial institutions. My office is focusing intensely on the risks posed by such foreign correspondent accounts, and considering whether additional guidance or information could be helpful to the private sector.

FinCEN also recently published a new rule to protect another important international gateway – foreign money services businesses with access to the U.S. financial system. Recognizing the risk that foreign MSBs with deficient AML/CFT policies and procedures pose, last summer FinCEN published a rule requiring certain foreign MSBs to comply with the same legal requirements as U.S.-based MSBs, including registration with FinCEN and recordkeeping, reporting, and AML program requirements.

This new rule will make it easier for civil and criminal authorities to take enforcement actions against foreign MSBs that use their access to the U.S. financial system to facilitate illicit activity – and may also prove useful in addressing the risk presented by virtual currency providers, which sometimes offer an opaque and anonymous means of moving money.

Setting Standards for Gatekeepers. As noted earlier, gatekeepers play a vital role in protecting against international money laundering. Treasury is partnering with the American Bar Association, among other organizations, to develop a comprehensive self-regulatory framework for attorneys. In addition, Treasury supports efforts to make company formation agents subject to appropriate oversight, including registering with FinCEN, as proposed in recent legislation introduced by Senator Levin and Congresswoman Maloney, respectively.

Promoting Transparency Internationally. TCOs operate globally and money laundering often occurs across multiple jurisdictions. Countering TCOs' illicit financial networks effectively therefore requires international coordination and, to the greatest degree possible, harmonization of AML/CFT standards. The key to that coordination is the Financial Action Task Force (FATF), the premier policy-making and standard-setting body in the international effort against terrorist financing, money laundering, and other illicit finance.

With respect to under-regulated jurisdictions, the U.S. government is working with the FATF and partner governments to engage jurisdictions of concern. This process involves identifying jurisdictions with significant deficiencies in their AML/CFT regime and coordinating an action plan to address them.

On a systemic level, it is particularly important that we do not neglect this international effort as we move forward in addressing the issue of beneficial ownership in the United States. A unilateral solution is an incomplete and ineffective solution. Without a coordinated global approach, a customer excluded from dealing directly with a U.S. financial institution due to beneficial ownership risk might nevertheless seek to access the financial system through foreign correspondent channels.

We are therefore working globally with our partners in the FATF to clarify and enhance the global implementation of international standards regarding beneficial ownership, and we expect new guidance with respect to the transparency of legal entities and customer due diligence obligations be adopted this month as part of the revision of the FATF standards.

Taking Targeted Action

Even as we work to promote transparency and to strengthen the AML architecture both domestically and around the world, Treasury will continue to employ aggressively its targeted authorities to disrupt the financial networks of TCOs.

Foreign Narcotics Kingpin Designation Act. One authority specifically designed to target drug trafficking organizations is the Foreign Narcotics Kingpin Designation Act (the "Kingpin Act"). Since June 2000, over 1000 individuals and entities have been designated under the Kingpin Act, resulting in the blocking of millions of dollars worth of property in the United States.

Treasury has designated a significant number of exchange houses as part of a broader effort to target the financial networks of Mexican cartels. Outside of Latin America, and perfectly illustrating the nexus between TOC and other critical national security threats, Treasury last week used its Kingpin authority to designated three members of the Foreign Terrorist Organization, Partiya Karkerên Kurdistan (PKK). And last February, Treasury used its Kingpin authority to designate the Kabul-based New Ansari Money Exchange, a major money-laundering vehicle for Afghan narcotics trafficking organizations.

Executive Order 13581. To supplement and expand our authority to target transnational criminal organizations, last summer President Obama signed Executive Order 13581, "Blocking Property

of Transnational Criminal Organizations," imposing sanctions against significant TCOs that threaten the U.S. national security, foreign policy, or economy and granting the Treasury Department the authority to designate additional individuals or entities. In the annex of E.O. 13581, the President identified and imposed sanctions on four significant TCOs: the Brothers' Circle (a.k.a. Moscow Center), the Camorra, the Yakuza, and Los Zetas.

Treasury is working to designate entities and individuals related to the TCOs identified in the Executive Order. We are also working with our interagency and international partners to identify additional TCOs that pose a threat to the national security, foreign policy, and economy of the U.S. for potential designation.

Patriot Act Section 311. Finally, the Administration's TOC Strategy calls for the use of Section 311 of the USA PATRIOT Act to combat TOC. This powerful tool allows the Treasury Department to take action to protect the U.S. financial system from specific threats. It authorizes the Treasury Department to identify a foreign jurisdiction, foreign financial institution, type of account or class of transactions as a primary money laundering concern, and impose any one or a number of special measures in response. In practical terms, Section 311 enables the Treasury Department to cut off foreign financial institutions from the U.S. financial system on the grounds that they facilitate transnational organized crime or other illicit activity.

In February 2011, the Treasury Department identified the Beirut-based Lebanese Canadian Bank (LCB) as a financial institution of primary money laundering concern for its role in facilitating the activities of an international narcotics trafficking and money laundering network operating across five continents. The LCB action was the product of close coordination and cooperation with the Drug Enforcement Administration, and exposed a vast trade-based money laundering scheme that co-mingled profits of used car sales and consumer goods with narcotics proceeds and funneled them through West Africa and into Lebanon.

Treasury remains vigilant and is working to identify additional financial institutions or jurisdictions that may merit action using this powerful authority. We will not hesitate to employ Section 311, as well as the full range of available tools, to protect the U.S. financial system from abuse and to expose and to disrupt TCOs' illicit financial networks.

Conclusion

The United States has one of the strongest and most effective anti-money laundering systems in the world. However, the size of the U.S. economy and the global importance of the U.S. dollar make the U.S. financial system a prime target for TCOs, and recent enforcement actions against U.S. financial institutions are a reminder that challenges remain. These enforcement actions send a clear message that we will not tolerate the misuse of the U.S. financial system to launder illicit proceeds.

At the same time, Treasury has a role to play in clarifying requirements and expectations. Accordingly, we are working with the regulatory community to provide for additional rulemaking to clarify and strengthen CDD requirements. Recognizing that a lack of transparency concerning the beneficial ownership of corporate entities has hampered U.S. financial

institutions' ability to protect themselves and the financial sector as a whole from illicit actors, we strongly support legislation that would require the disclosure of meaningful beneficial ownership information at the time of company formation.

And as we seek to strengthen our financial system's defenses, we will continue to employ – wherever and whenever we can – our targeted authorities to disrupt and damage the facilitation networks on which TCOs depend. To complement our own targeted authorities, we strongly support the work of our colleagues at DOJ and the important role they play in combating money laundering. The U.S. government requires the tools necessary to address the threat of TOC and to maintain the United States' leadership position in the fight against money laundering. As such, the Department of the Treasury strongly supports the proposed Proceeds of Crime Act which, among other things, would make all domestic felonies, and foreign crimes that would be felonies in the United States, predicates for money laundering.

To break the economic power of TCOs and protect the U.S. financial system from TOC penetration and abuse, we must continue to attack the financial underpinnings of the transnational criminals; strip them of their illicit wealth; sever their access to the financial system; expose their criminal activities hidden behind legitimate fronts; and protect strategic markets and the U.S. financial system.

Thank you.

Mr. SENSENBRENNER. Thank you, Mr. Bronin.
Mr. Smith?

TESTIMONY OF DAVID B. SMITH, CHAIR, FORFEITURE COMMITTEE, NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

Mr. SMITH. Thank you, Mr. Chairman.

Although the money laundering laws were enacted with a narrow purpose in mind, to take the profit out of drug trafficking and organized crime, the laws were written so broadly in 1986 that they were made to cover many transactions that don't fit the common understanding of money laundering, since they don't conceal any transactions, and in some cases, even apply to clean money.

Many of these transactions that are criminalized by the money laundering statutes are routine and innocent in nature, such as depositing a check in your own bank account, and do not add anything to the social harm flowing from the underlying predicate crimes. Thus, no purpose is served by criminalizing those innocent transactions.

The last two decades have witnessed an alarming further expansion of the money laundering statutes by the Department of Justice and the Congress. Once a tool primarily intended for drug or racketeering cases, these laws are now applied to almost every Federal felony offense, and the current legislation on the table today would apply the money laundering laws to every single Federal felony, as well as a few misdemeanors.

I would like to quote something Attorney General Edwin Meese said in 2003. He was Attorney General when the Money Laundering Control Act became law. And in 2003, he said the money laundering laws have been used in circumstances that are considerably different from the original intent of the law. "When money laundering statutes are used simply to pile on charges where major financial manipulation was not the intent, nor was it related to syndicated crime, then I think the statutes would be misused."

We also quoted Deputy Attorney General Larry Thompson saying more or less the same thing in a Law Review article. And this statute has really become almost a Frankenstein monster in the criminal code. It is the most overused and abused statute in the code, and compounding the statute's over-breadth is the prosecutorial practice of piling on money laundering charges that are simply incidental to and indistinguishable from the underlying offense, the so-called merger cases, which gave the Supreme Court so much concern in the recent Santos decision, which, by the way, was written by Justice Scalia.

And prosecutors have also routinely charged money laundering where the defendant has done no more than deposit the proceeds of some unlawful activity into his bank account, even though the bank account is clearly identifiable as belonging to him. This is usually done under the promotion prong of section 1956, which serves no purpose, except to increase the penalties for the underlying predicate felony. Promotion offenses are not really money laundering at all, and do not increase the social harm from the underlying felony offense.

The courts have interpreted the promotion prong very broadly, so that all you have to do is deposit the proceeds of crime in your own bank account, and the money from the bank account is used in any way, such as in one actual case, to buy pencils for your secretarial

staff. That constitutes money laundering, because you have somehow promoted the criminal activity by supplying these pencils to your secretaries.

Given this unfortunate legal landscape, our primary message to the Committee today is that the Committee should exercise great caution when considering proposals to further expand the already vastly overbroad money laundering laws. And we do agree that the problems of combating transnational crime are serious, and that Congress should help the government do something about it, but we don't really see the connection between these proposals in this bill and helping the government combat transnational organized crime. Maybe it is explained in Ms. Shasky's written statement, which I haven't had a chance to read yet, but I don't see the connection.

But I go back quite a ways, and I have seen a lot of these bills, and time after time, we see the government trying to justify expansions of the criminal law by telling Congress, we need this to combat terrorism, or we need this to combat organized crime, and then the statute that is enacted is used 99.99 percent of the time to combat something else, that is ordinary individual criminals who are already covered by other laws.

Mr. SENSENBRENNER. The gentleman's time has expired.

Mr. SMITH. Thank you. Thank you.

[The prepared statement of Mr. Smith follows:]

Written Statement of
David B. Smith

on behalf of the

National Association of Criminal Defense Lawyers

Before the
U.S. House of Representatives
Subcommittee on Crime, Terrorism, and Homeland Security

Re: "Combating Transnational Organized Crime:
International Money Laundering as a Threat to our Financial Systems"

February 8, 2012

Mr. Chairman and Distinguished Members of the Committee:

I am honored to have this opportunity to appear before you today to give my views on the federal money laundering enforcement as well as recommended and opposed changes to those laws. I am a practicing criminal defense attorney specializing in federal criminal cases and, in particular, money laundering and federal forfeiture cases. I am the author of the leading two-volume treatise, *Prosecution and Defense of Forfeiture Cases* (Matthew Bender 2011), which also covers related aspects of money laundering law. I helped the House and Senate Judiciary Committees draft the Civil Asset Forfeiture Reform Act of 2000, an Act that brought about long-needed reforms of our civil forfeiture laws.

I began my legal career with the Department of Justice and served for a time as deputy chief of the Asset Forfeiture Office of the Criminal Division at Main Justice in the Reagan Administration. I have served for two decades as co-chair of the Forfeiture Committee of the National Association of Criminal Defense Lawyers (NACDL). I am currently serving on NACDL's Board of Directors as well. I previously testified before this Subcommittee on the subject of money laundering reform legislation in 2000 and a Senate-passed restitution bill in 2008.

Money laundering, commonly understood to involve the transfer of criminally derived money into legitimate channels, occurs in almost every crime in which there is a financial motive. Although federal money laundering laws were enacted with a narrow purpose in mind--to take the profit out of drug trafficking and organized crime—the laws were written incredibly broadly so that they cover many transactions that do not fit the common understanding of money laundering, since they conceal nothing and in some cases even apply to transactions with "clean" money. Many of these transactions are routine and innocent in nature and do not increase the

social harm from the underlying "predicate" crimes. Thus, no purpose was served by criminalizing them.

The last two decades have witnessed an alarming further expansion of the money laundering statutes — principally 18 U.S.C. §§ 1956 and 1957 — by the Department of Justice and the Congress. Once a tool primarily intended for drug or racketeering cases, these laws are now applied to almost every federal felony offense. The list of predicate offenses has been expanded year after year. During the same time, courts have minimized the evidentiary requirements for proving money laundering. As interpreted and applied, the current law is often a cruel trap for unwary individuals and businesses that inflicts felony convictions, harsh prison sentences,[1] and ruinous asset forfeiture.[2]

As former Deputy Attorney General Larry Thompson stated,

> The Anti-Money Laundering Statutes are overly broad because they potentially reach many legitimate business transactions. The result is that businesses are subject to overreaching investigations and prosecutions for conduct unrelated to drug trafficking or organized crime. These investigations and prosecutions are extremely disruptive for business and expensive to defend.

Elizabeth Johnson & Larry Thompson, Money Laundering: Business Beware, 44 Ala. L. Rev. 703, 719 (1993).

---

[1] Section 1956 provides for a sentence of up to twenty years, and a fine of the greater of $500,000 or twice the value of the property involved in the transaction. Section 1957 provides for a sentence of up to ten years, and includes the potential imposition of substantial fines as well. Both sections trigger severe sentences under the United States Sentencing Guidelines.

[2] Money laundering offenses trigger the broad forfeiture provisions of 18 U.S.C. § 981 and 982, which give prosecutors the authority to seize any property "involved in" or "traceable" to the alleged offense. This means that prosecutors can seize an entire business, bank account or other asset with little regard for the nature or magnitude of the money laundering activity. Prosecutors like to charge money laundering because of the exceptionally broad and harsh forfeiture provisions, which go beyond what is available under other forfeiture statutes.

Cases of unfair application of the money laundering laws are legion. Individuals and businesses who handle dirty money with no actual knowledge of the underlying offense are branded money launderers.[3] This is because courts have interpreted the knowledge requirement to include the concept of "willful blindness" or "conscious avoidance." Some courts have gone so far as to hold that willful blindness is shown where the defendant has suspicions and does not take action to confirm or disprove their truth; thus, the burden is on the defendant to investigate a suspicious situation, or be judged criminally culpable for her failure to inquire into the source of the funds.[4]

Compounding the statutes' over-breadth is the prosecutorial practice of piling on money laundering charges that are incidental to or virtually indistinguishable from the underlying offense. For example, prosecutors have charged money laundering where the defendant has done no more than deposit the proceeds of some "specified unlawful activity" into his bank account, even though the bank account is clearly identifiable as belonging to him.[5] This is usually done under the misconceived "promotion" prong of section 1956(a)(1), which serves no purpose except to increase the penalties for the underlying ("predicate") felony. "Promotion"

---

[3] Federal law permits juries to infer guilty knowledge from a combination of suspicion and indifference to the truth. See, e.g., United States v. Campbell, 977 F.2d 854, 856-59 (4th Cir. 1992) (reinstating the money laundering conviction of a real estate agent based upon the agent's "willful blindness" that her client was a drug dealer attempting to conceal proceeds by buying a house, when the client drove a Porsche, used a cellular telephone, and paid $60,000 in cash under the table).

[4] See United States v. Kaufman, 985 F.2d 884 (7th Cir. 1993) (upholding car dealer's money laundering conviction based on willful blindness theory, even though the undercover agents in the sting operation never told the defendant that the car purchase money was drug proceeds).

[5] Such "receipt and deposit" cases may be prosecuted under 18 U.S.C. § 1956 based on the contrived theory that the defendant "concealed" the proceeds. Some courts have found "concealment" to be proven when there was in fact no concealment whatsoever. See, e.g., United States v. Sutera, 933 F.2d 641 (8th Cir. 1991) (holding that deposit of three checks identified as gambling proceeds into business bank account, which bore the name of its owner, constituted concealment).

offenses are not really money laundering at all and do not increase the social harm from the underlying felony offense.

Given this unfortunate landscape, Congress should exercise extreme caution when considering proposals to further expand the vastly overbroad money laundering laws. While we recognize the serious challenges of combatting transnational crime, Congress should view skeptically claims that the extremely broad existing laws are insufficient and it should insist that any proposed expansion of those laws are narrowly tailored to the purported gap.

To reform the over broad and sometimes redundant money laundering laws that were implemented without this showing, NACDL has proposed several measures that would bring rationality and greater fairness to this area of federal law enforcement. To address the money laundering statutes' most serious flaws:

1. The promotion prong of 18 U.S.C. § 1956, which has been subject to absurd application and conflicting interpretations, serves no purpose and should be repealed;

2. The concealment prong of 18 U.S.C. § 1956 should be limited to financial transactions designed by the defendant with the intent to create the appearance of legitimate wealth; and

3. Congress should amend 18 U.S.C. § 1957, which broadly prohibits transactions involving illegal proceeds of a value greater than $10,000, to focus on professional money launderers, rather than one-time offenders. The monetary threshold should be raised and, unless the defendant engaged in a pattern of illegal transactions, the offense should be a misdemeanor.

Twenty-five years of experience with the Money Laundering Control Act has led to the conclusion that the Department of Justice and the courts are incapable of controlling this blunderbuss.[6] These proposed reforms are not only necessary to bring rationality and fairness to

[6] See United States Sentencing Commission, Report to the Congress: Sentencing Policy for Money Laundering Offenses, Including Comments on Department of Justice Report 6-7 (1997)

the money laundering laws but are consistent with the aims of legitimate law enforcement. The proposed amendments would simplify and clarify current law, facilitate compliance efforts by individuals and businesses, and focus federal law enforcement on serious misconduct.

Proposal #1: Repeal promotion money laundering.

Far less drastic than it sounds, repealing the so-called promotion prong of 18 U.S.C. § 1956 serves the worthwhile goal of simplifying the federal criminal code — without creating a gap in federal law enforcement. The promotion prong of 18 U.S.C. § 1956 requires that the financial transactions were conducted "with the intent to promote the carrying on of a specified unlawful activity." One who intends to promote the underlying criminal activity and who participates in the commission of a financial transaction, the object of which is to further the underlying crime, is liable as either a conspirator or an aider and abettor of the underlying crime itself. There is simply no void in the law of criminal liability requiring the creation or application of the promotion prong of § 1956. There is no social harm (in addition to the harm of the underlying crime itself) that warrants a separate twenty-year sentence for participating in a financial transaction that is intended to promote the alleged criminal activity that itself is already prohibited and subject to punishment.

Proposal #2: Define and narrow the term "to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity."

In contrast to promotion, the concealment prong of 18 U.S.C. § 1956 encompasses the conduct commonly understood to constitute money laundering. It proscribes the conducting of a transaction "knowing that the transaction is designed in whole or in part-(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of

---

(concluding that money laundering sentences are still being sought and imposed "where the money laundering conduct is so attenuated as to be virtually unrecognizable as the type of conduct for which the money laundering sentencing guidelines were drafted.").

specified unlawful activity." Unfortunately, some courts have broadly interpreted the term "to conceal or disguise" to include virtually all transactions which involve the proceeds of unlawful activity.

Contrary to congressional intent, this "turn[s] the money laundering statute into a 'money spending statute.'"[7] Spending money from a specified unlawful activity is already punished by another money laundering statute, § 1957 — but only if the money exceeds $10,000. And even when this monetary threshold is satisfied, § 1957 caps the penalty at ten years' imprisonment, compared to the twenty-year maximum sentence authorized for concealment money laundering. Clearly, Congress intended more deliberate concealment efforts to trigger the higher maximum sentence.

Some courts have held that to convict under the concealment prong of § 1956, the government must establish that the transaction was engaged in to create the appearance of legitimate wealth.[8] In order to assure uniformity among the circuits, and to confine "concealment" prosecutions to true acts of money laundering, the money laundering statute should be amended to codify this limitation.

Proposal #3: Amend § 1957 to target significant third-party money laundering.

Section 1957 is essentially the same as § 1956 stripped of any requirement of promotion, concealment, or avoiding a transaction reporting requirement. Thus, § 1957 is not a money laundering statute, but rather a law against the depositing or withdrawal of more than $10,000 at

[7] United States v. Sanders, 928 F.2d 940, 946 (10th Cir. 1991) (quoting portions of the statute's legislative history that suggest that Congress did not intend to criminalize every transaction involving illegally obtained money).

[8] United States v. Stephenson, 183 F.3d 110 (2d Cir. 1999); United States v. Marshall, 248 F.3d 525 (6th Cir. 2001); United States v. Majors, 196 F.3d 1206 (11th Cir. 1999).

one time if you know it is the proceeds of crime.[9] The sole legitimate basis for such a law is to prevent third parties such as merchants from accepting dirty money in trade. This *theoretically* makes it more difficult for the criminal to spend his money and thus enjoy the fruits of his crimes.[10] The Justice Department's prosecution guidelines for § 1957 seem to target third parties who accept dirty money, not criminals who deposit or withdraw it.[11] That would reflect a sensible judgment about the appropriate use of the statute. But the reality is that 99% of the prosecutions brought under § 1957 are against the criminals who generated the dirty money, not third parties who accept their dirty money as payment.

If § 1957 is not simply eliminated, Congress should at least codify Justice Department policy so that § 1957 can only be used to prosecute the "money launderer" and not the criminal who is the source of the money. This would prevent the misuse of the statute to go after the criminal who generates the proceeds and who is already subject to penalties for the commission of the underlying crime. Congress should also require that the proscribed "monetary transaction" be part of a suitably defined "pattern" of similar transactions adding up to a high dollar threshold in order to incur felony liability.[12] If it is not part of a pattern or does not exceed some high dollar threshold, the merchant should, at most, face a misdemeanor penalty. There may be some

---

[9] For many years the Department of Justice barely used § 1957, reflecting the government's doubts about the rationale and fairness of the provision. G. Richard Strafer, Money Laundering: The Crime of the '90's, 27 Am. Crim. L. Rev. 149, 161 (1989) (noting the small number of prosecutions commenced under § 1957 by 1989).

[10] However, in practice, § 1957 does not effectively prevent criminals from spending their ill-gotten gains. It is easy for the criminal to turn his cash into some less suspicious monetary instrument, and it is easy for the criminal to find a merchant who will accept cash, no questions asked. Because § 1957 imposes no duty of inquiry on the merchant, he can safely accept cash except in the most extreme circumstances.

[11] See United States Attorney's Manual §9-105.400.

[12] See, e.g., 31 U.S.C. § 5322(b) (pattern of illegal activity involving more than $100,000 in a 12-month period); 31 U.S.C. § 5321(a)(6)(B) (pattern of negligent violations by a financial institution).

social utility in prosecuting merchants such as car dealers who *regularly* cater to the drug trade.[13] But there is no social utility in making a felon out of a merchant who engages in one such transaction. Further, Congress could make § 1957 more rational and less of a blunderbuss if it raised the dollar threshold from $10,000 to $25,000.

Proposals put forward and defended by the Justice Department and gaining the attention of some members of this committee are a giant leap in the wrong direction. I will address the most problematic of these proposals in turn.

Specified Unlawful Activity. An argument can be made that Congress did not intend that the money laundering statutes be used to combat offenses other than those associated with drug trafficking and organized crime. Teresa E. Adams, Tacking on Money Laundering Charges to White Collar Crimes: What Did Congress Intend, and What Are the Courts Doing?, 17 Ga. St. U. L. Rev. 531, 549-58 (2000). Nonetheless, the underlying crimes that serve as predicates for money laundering offenses, called "specified unlawful activities," have been expanded throughout the years to include everything from federal environmental crimes to copyright infringement. See 18 U.S.C. § 1956(c)(7). One Justice Department proposal on the table "simplifies the predicate offenses that give rise to money laundering offenses" by the expedient of including *all* federal felonies and some misdemeanors as predicates. If anything, the list of specified unlawful activities should be drastically condensed to conform to the statutes' original purposes.

Knowledge Requirement. Another Justice Department proposal would reverse the Supreme Court's unanimous decision in *Cuellar v. United States*, 128 S. Ct. 1994 (2008). At issue is the money laundering provision that prohibits international transportation of money

[13] Remember, if the merchant does anything to help conceal the source of the money or the ownership of the vehicle he can be prosecuted under § 1956.

designed to conceal the nature, location or ownership of criminal proceeds (18 U.S.C. § 1956(a)(2)(B)(i)). In *Cuellar*, the defendant was caught hiding drug proceeds in his vehicle while en route to Mexico. The Court held that secretive transportation is insufficient for conviction; the government must prove that the *purpose* of the transportation was to conceal the nature, location or ownership of criminal proceeds. This provision would reverse *Cuellar* so that a money laundering conviction could rest solely on evidence that the defendant concealed ill-gotten money during international transportation. NACDL believes that increasing the statute's scope to encompass mere money hiding casts the net far too wide. Given that the government can charge the underlying conduct and perhaps one of the numerous other money laundering, cash-reporting or anti-smuggling statutes, there is simply no justification for this.[14]

Illegal Money Transmitting Business. Proposed changes to 18 U.S.C. § 1960, the statute that makes it illegal to operate an unlicensed "money transmitting business," would vastly expand the statute's coverage to all sorts of check cashing and cambio businesses while eliminating whatever may be left of the government's burden to demonstrate that business owner knew he was required to have both state and federal licenses to operate his business.

The proposal would expand the current definition of "money transmitting business" to include any business that provides "check cashing, currency exchange, money transmitting or remittance services, or issues, sells or redeems money orders, travelers' checks, prepaid access devices, digital currencies, or other similar instruments or any other person or association of persons…engaging as a business in transporting, transferring, exchanging or transmitting currency, means to access funds or the value of funds, or funds in any form…" This would

[14] For example, defendant Cuellar might have been charged with bulk cash smuggling, 31 U.S.C. § 5332, because he intended to transport cash in excess of $10,000 across an international border without reporting it.

eliminate thousands of small businesses and the hundreds of thousands of jobs they provide by putting check cashing, currency exchange and other such services out of business. These businesses are essential for many workers who are among the tens of millions of hard-working Americans without bank accounts. They would be reclassified, absurdly, as "money transmitting businesses" under 18 U.S.C. 1960(b)(2) even though they do not "transmit" money to anyone. They should not be required to obtain both federal and state licenses to continue to operate. Such licenses would be denied to the vast majority of these businesses because they cannot afford to establish elaborate anti-money laundering programs – unlike large financial institutions.

Any small business, such as a check cashing service that continued to operate without the required dual licenses would be subject to draconian criminal and forfeiture penalties. This sweeping definition, combined with the fact that ignorance of the federal licensing requirements would not be a defense, would compound the statute's already overly expansive language and convert licensing violations (usually a state misdemeanor) into major federal crimes. Congress should amend section 1960 to require that a money transmitting business be given a clear written warning regarding the consequences of its failure to obtain the dual licenses before the business can be prosecuted or its assets seized.

Another DoJ proposal would eliminate any remaining mens rea requirement from the illegal money transmitting business statute, making it essentially a strict liability offense. Failure to comply with money transmitting business registration requirements or regulations would constitute a serious felony "whether or not the defendant knew that the operation was required to comply with such registration requirements or regulations." See *Without Intent: How Congress Is Eroding the Criminal Intent Requirement in Federal Law*, Heritage Foundation and National Association of Criminal Defense Lawyers (2010) (available online at

http://nacdl.org/withoutintent) (discussing how criminal laws with inadequate mens rea, or guilty mind, requirements endanger the innocent and undermine federal criminal justice system and the danger of relying upon regulations, promulgated by unelected officials, to trigger criminal punishment).

Bulk Cash Smuggling. This proposal would double the maximum penalty for bulk cash smuggling, the undeclared movement of more than $10,000 across U.S. borders, to 10 years without justification. It would also drastically raise the fines applicable to the offense. Bulk cash smuggling is not a money laundering offense; it applies to *clean* money that is not reported to Customs when leaving or entering the country. Nor is there any requirement that the person carrying the money have any criminal purpose. The bulk cash smuggling statute already includes broad authority to forfeit the clean money and any property or conveyances in cases involved in currency reporting violations. The Justice Department's primary purpose in requesting this doubling of the sentence and the drastic fines is to demonstrate to the courts that the offense is sufficiently "serious" to warrant draconian forfeitures and thus defeat any 8th Amendment claims that certain forfeitures are "excessive fines" (i.e., grossly disproportionate to the seriousness of the offense). This is hardly a justification for these drastic increases in penalties. Indeed, even the current penalties for bulk cash smuggling are too severe and they were enacted for exactly the same reason: to improperly defeat 8th Amendment excessive fine claims based on violations of 31 U.S.C. 5316-5317, the statutes involved in United States v. Bajakajian, 524 U.S.321, 118 S. Ct. 2028 (1998).

Making The International Money Laundering Statute Apply To Tax Evasion. Tax evasion through offshore banking and similar means would be a money-laundering predicate, subject to a twenty-year sentence of imprisonment and forfeiture. In the past, Congress has been

careful to exclude tax evasion from the list of money laundering predicates because of the unfairness that would result. Tax evasion is already a crime and doesn't need to be further punished by piling "money laundering" charges on top of tax charges.

Promotional Money Laundering. There is no justification for expanding 18 U.S.C. § 1957, as has been proposed, to add the completely gratuitous offense of engaging in a monetary transaction of more than $10,000 while carrying out a specified unlawful activity. While this offense is not money laundering – it applies to clean money – it would trigger the serious forfeiture consequences that should be reserved for actual money laundering offenses. The monetary transaction in the proposed offense adds no real societal harm to the specified unlawful activity, and it suffices to prosecute the individual for that offense. The underlying offenses all have their own, less draconian, forfeiture penalties. Because monetary transactions over $10,000 with clean money are common, this new offense could be gratuitously charged in almost any case.

Section 1957 Violations Involving Commingled Funds And Aggregated Transactions. Under this proposal, small transactions would be aggregated to trigger the harsh sentences and forfeitures authorized under 18 U.S.C. § 1957 (strict liability money laundering). This provision would also expand § 1957 (and forfeitures predicated on that conduct) to cases involving commingled funds in ways that are not justified. Section 1957, which does not require an intent to conceal dirty money or promote an illegal enterprise, is a trap for law-abiding persons and businesses that accept dirty money in otherwise legitimate transactions. As discussed earlier, this money laundering statute encompasses far too much conduct, results in unjust prosecutions and sentences, and should be abolished, not expanded.[15]

[15] We understand the Justice Department claims that without this provision it is unable to prosecute § 1957 violations when dirty money has been commingled with clean money. That is simply

Subpoenas in Money Laundering and Forfeiture Cases. One final proposal would authorize the government, under 18 U.S.C. § 986, to subpoena records from any (very broadly defined) "financial institution" **before the filing of a civil forfeiture complaint.** The government would not have to show any reason to think that the bank records would lead to the filing of a forfeiture action or that the government has any reason to believe that the account holder has committed a crime. This provision would invite endless government fishing expeditions in which it rummages through the bank records of innocent individuals and companies and burdens financial institutions with document production demands.

We have similar concerns about the Justice Department's proposal to allow the use of administrative subpoenas under 18 U.S.C. § 3486 for money laundering, § 1960 and certain Title 31 investigations. These subpoenas would be issued by law enforcement agencies rather than by prosecutors, and there would be no court involvement either. Again, such a provision invites abusive fishing expeditions and burdens the institutions and individuals who are required to produce the documents, in as little as 24 hours, and come testify to their production and authenticity. Subpoenas under § 3486 are not limited to financial institution documents; they may be sent to anyone at any time. The government should continue to obtain such documents through the traditional route of a grand jury or trial subpoena.

In conclusion, we urge you to view any proposals to expand federal money laundering laws in light of the subcommittee's demonstrated interest in simplifying the federal criminal code. While the Justice Department's amendments would exacerbate the complexity and redundancy of the criminal code, NACDL's recommendations to streamline the expansive and frequently duplicative money laundering laws are in line with the subcommittee's goals.

---

not true. Even if there is a problem with the commingling analysis in some cases, there is a much narrower "fix" for that problem than the proposed vast expansion of section § 1957.

Mr. SENSENBRENNER. Thanks to all of the witnesses. I will not recognize Members of the Committee under the 5-minute rule, beginning with myself.

Ms. Shasky and Mr. Bronin, when I was Chairman of the Committee, and we were more into terrorist funding and figuring out how to curtail or stop that, increasingly, the method of hawala

funding was a matter of concern. And for those who don't know what hawala funding is, that has been a very informal type of arrangement, where money can be transferred across national boundaries on a strictly honor code basis, meaning somebody whose son in another country had run out of money at college could get a few hundred dollars or a few hundred pounds from mom and dad to be able to keep them in business until the next raid on the parental ex-checker.

However, instead of being relative minor transactions, a couple hundred dollars or a couple hundred pounds, because this was strictly outside the banking system, was a cash-only transaction, and was done entirely on the honor system, there were increasing amounts of money that were transferred this way, which are very, very difficult to track down. But if you have a corrupt or a terrorist-infiltrated money system, that way, the terrorists that had been put underground in another country would have been able to be kept in business and, you know, kept the refrigerator full.

What are the Justice Department and the Treasury Department doing to increase scrutiny on this type of funding, and how effective has it been?

Ms. SHASKY. Mr. Chairman, the use of hawalas in laundering money outside of the formal banking system is something that the Department of Justice takes very seriously. And unfortunately, we see quite a bit of it.

These techniques that, as you mentioned, are used by transnational, or—I am sorry, by terrorist organizations have also bled over and are being used by transnational criminal organizations. We see transnational organized crime that one day is profit motivated, and the next day, starts to become ideological, and looks more like a terrorist organization.

We see terrorist organizations that were one day ideological start enjoying the profits that they are making from their crime, and become a little more like a criminal organization. So, sometimes it is hard to tell these apart, and their techniques bleed from one to the other.

As you mentioned, hawala, or an illegal money transmitting business, is very difficult to investigate, and to detect in the first place, because it is done outside of the formal banking system, for the most part. Oftentimes, the only evidence that the transaction is occurring would be the communication, the communication between the individual in one country and the other individual in the United States, who are talking and agreeing that they will make this exchange of value. That is why we believe it is so important to extend our wiretap authorities to include violations of section 1960, which would get right at this type of conduct.

Mr. SENSENBRENNER. Mr. Bronin?

Mr. BRONIN. Thanks, Mr. Chairman. It is an important question. And for the reasons you identify and Ms. Shasky identifies, it is a challenging issue as well.

You know, this issue received a lot of attention around the attempted bombing in Times Square, when the terrorists involved in that attempt received two payments through two separate hawaladars. You know, I think it is important to emphasize that we do have the tools to go after that kind of activity. In that case,

both of those hawaladars ultimately pled guilty to operating as unregistered money service businesses. And, you know, I think that is an important part of the effort, both here and globally, is to try and bring those informal value transfer systems into the regulated sector by requiring them to register and subjecting them to appropriate regulation. That is something we spend a lot time promoting internationally as well.

There are other tools, you know. One hawala that had the characteristics that Ms. Shasky identified was the New Ansari money exchange in Afghanistan. This was a hawala that was involved in moving billions of dollars of narcotics money in and out of Afghanistan. And we used our targeted tools, the Kingpin Designation Act, to designate New Ansari network, and effectively shut it down. So, we also—you know, whenever we can, we take the opportunity to disrupt that kind of activity.

If I could just make one last quick point. Although hawalas operate on trust, as you say, they often do have to touch the banking sector. A lot of times they try to settle, you know, hawaladars settle their accounts through banks. And as a result, there are opportunities for banks to identify activity that looks suspicious and called to the attention of appropriate authorities.

Thank you.

Mr. SENSENBRENNER. Thank you very much. Gentleman from Virginia, Mr. Scott?

Mr. SCOTT. Thank you, Mr. Chairman. Ms. Shasky, you mentioned several of the kinds of crimes that you are trying solve. Cybercrime. I.D. theft. Intellectual property. Medicare fraud. Tax fraud. Organized retail theft is another one that I assume would be involved. It seems to me that waiting on an I.D. theft to try to solve I.D. theft, waiting for the illegal operation to make enough money so that the cash—so they have got so much cash that it creates a logistical problem, seems a little late in the process to try to solve I.D. theft.

Isn't it true that very few individual I.D. theft cases are even investigated?

Ms. SHASKY. We certainly, in any area of crime fighting, do not seek not to wait to allow criminal activity to continue before using our enforcement tools to stop it. So certainly, if we are in a position to prevent identity theft in the first place, we would do so,

or——

Mr. SCOTT. Do you have the resources to effectively deal with individual I.D. theft?

Ms. SHASKY. I am sorry. I didn't——

Mr. SCOTT. Do you have sufficient resources to effectively deal with I.D. theft?

Ms. SHASKY. We have many resources that are dedicated to dealing with identity theft.

Mr. SCOTT. I mean isn't it true that when people get somebody uses their credit card that nothing happens?

Ms. SHASKY. I am sorry?

Mr. SCOTT. That nothing happens, from the criminal law standard, when somebody steals someone's credit card information.

Ms. SHASKY. I don't think that is correct. I believe we have many cases and examples, and we would be happy to—I would be happy

to take it back and follow-up, where we have convicted individuals for engaging in identity theft, on a massive scale. So not just someone who is stealing one identity, but individuals that are stealing hundreds and thousands of identities, selling those, letting them be putting onto stored value cards, and then going to ATMs and taking those money out of ATMs.

In those cases, what we find to be one of the most effective tools is to use our money laundering and forfeiture tools to take that money away from the criminal organization and get it back to the victims. Last year, using these tools, we returned over $320 million to victims of crime in the United States.

Mr. SCOTT. Approximately how many cases of I.D. theft are there in the consumer-level I.D. theft are there in the United States every year?

Ms. SHASKY. I don't know the answer to that, but I would be happy to follow-up.

Mr. SCOTT. How much does it cost to launder money?

Ms. SHASKY. It can—it depends on who is laundering the money for you, and what type of laundering technique you need. But I hear numbers anecdotally, and through our cases, anywhere from 2 percent to 25 percent of the transaction.

Mr. SCOTT. And know your customer, how much due diligence should a banker do before they can do business with someone? And are they expected to turn into law enforcement anyone who comes in with suspicious transactions?

Ms. SHASKY. I would defer that question to my colleague from the Department of Treasury.

Mr. SCOTT. Mr. Bronin.

Mr. BRONIN. Thanks, Ranking Member Scott.

You know, just to start, you know, as highlighted in my testimony, we have the strongest AML regime in the world, and banks, you know, as a general matter, are extremely diligent and effective in carrying out their AML obligations. You know, there are a lot of different elements of an effective customer due diligence plan.

As I highlighted in the testimony, one of the things that we would like to do is sort of bring those various elements together in a clear way, put them in one place, so that there is, you know, less opportunity for confusion about what precisely those customer due diligence obligations are.

You know, you raised the question of their bank's obligation to notify law enforcement regulators of suspicious activity. You know, in general, financial institutions do have to identify all suspicious activity reports when they know or have reason to suspect that particular financial transaction is, you know, in some way related to a crime, to money laundering, to terrorist activity, to the broad range of threats that we are concerned about.

Mr. SCOTT. Okay. And Ms. Shasky, Mr. Smith indicated that depositing money in your own checking account can constitute money laundering. Is that true?

Ms. SHASKY. It depends on the facts and circumstances. If you deposit over $10,000 of criminal proceeds into your checking account, yes, that can be a money laundering offense. If you do that after you have allowed it to circulate the globe, going through free

trade zones, shell companies, and offshore centers, yes, that can be money laundering.

If you do it to promote a terrorist crime, yes, that can be a form of terrorism finance, which is a subset of money laundering.

Mr. SENSENBRENNER. The gentleman's time has expired. The gentleman from Utah, Mr. Chaffetz.

Mr. CHAFFETZ. Thank you. Thank you all for being here. Mr. Bronin, Ms. Shasky, I appreciate your efforts and the great work that you do.

Help me understand the cooperating countries and maybe the three countries that you are having the biggest challenges and problems with.

Ms. SHASKY. We have a number—we are actually quite fortunate. We have a number of very cooperative foreign partners throughout the world that help us on organized crime. Our biggest challenges, and that is from Western Europe, to Asia, to the continent of Africa, to Latin America. On every continent, we can rest assured that we have got good partners with whom we are working.

Unfortunately, that is not across the board. And the areas where we find the biggest challenges are the countries where corruption remains the systemic problem. And while cooperative many times, we still find challenges with countries that are offshore tax or financial havens, and countries that have free trade zones.

Mr. CHAFFETZ. Can you give me a few names?

Ms. SHASKY. Let's see. I would defer to my colleague from Treasury to talk about some of the countries that are on the Financial Actions Task Force list of non-cooperative countries. And several of them are in Asia. So I will let him answer. Put him on the hot seat.

Mr. CHAFFETZ. Good pass. Go ahead. [Laughter.]

Mr. BRONIN. Thank you, Ms. Shasky. And thank you, Congressman.

To the last point about the—I think the list that Ms. Shasky just mentioned is a good place to look. It is the list——

Mr. CHAFFETZ. When I say countries that aren't cooperating, what comes to mind? Name three.

Mr. BRONIN. If I could, what I would like to do is give you—I will get back to you with the full list.

Mr. CHAFFETZ. All right. I will look up the list.

Mr. BRONIN. There are a number of countries on that list. We are particularly concerned about the—let me—we are particularly concerned about the framework that they have in place, meaning that they are vulnerable to exploitation. You know, there are—you can put countries in a bunch of different categories. There are countries that don't have an adequate legal framework. There are countries where, you know, just don't think they are doing enough. They don't have quite enough political will.

And then, you know, there may be countries where we are, you know, concerned about their actual complicity in promoting crimes. I mean the most obvious one that falls into that category is Iran.

Mr. CHAFFETZ. Okay. And I guess that is my concern, Mr. Chairman, is understanding these countries and then what is it that we are doing to promote this. How we understand the cyber component

of it. Because I know these transactions can happen in fractions of seconds.

I worry about our ability to track that, to follow-up on that, how cybers—can you quantify the problem and the challenge that we are facing in this regard?

Ms. SHASKY. I can tell you that it is increasingly becoming a problem, and that we are seeing stored value cards, where individuals can move, or prepaid access devices where people can move money globally in seconds, where law enforcement does come on the scene, and does steal or sees the stored value card, the criminal can then transfer the value off that card with just a computer key stroke.

Mr. CHAFFETZ. And what is the range of value of these cards?

Ms. SHASKY. Some of them are unlimited. There—you know, when we are talking about prepaid access devices, we are talking about everything from the Starbucks card, that you can get and have 20—load $25 onto it, to the cards that look more like a Visa or a MasterCard, and have unlimited amounts that can be put on them. So they are a challenge for law enforcement.

We are looking at mobile payments, and the use of transferring money using a cell phone as the next wave with which to deal. But when you combine the advances in technology with globalization, money can move across the globe in just seconds.

Mr. CHAFFETZ. Where is online gambling on your radar, and how that affects the movement of money?

Ms. SHASKY. Well, online gambling, of course, is one of many crimes that is profit- driven, and involves both cyber and globalization. And we are seeing the value related to online gambling moving in the same ways that we see any of the cybercrime monies moving.

It is instantaneous. It is often through the stored value cards. It is often through the online payment methods. And so it is one more challenge for law enforcement.

Mr. CHAFFETZ. My time is about to expire, but particularly, Mr. Bronin, I would love to follow-up on this hawala, if there are insufficient laws to follow through on this.

The quick question for you, as I conclude, is: Are we seeing that those hawala-type transactions permeate into the United States, do you see them within the United States? I know it has been a lot in the Middle East, and other places, but are you seeing that with—you know, pop up or expand within the United States? And then very quickly, how many convictions are we getting in the course of a year? I am just not familiar with those numbers.

Thank you, Mr. Chair.

Mr. BRONIN. Sure. Thanks, Congressman.

You know, hawala is a very broad term, and it could cover a whole lot of activity that you might think of just informal value transfer. And, you know, it is no doubt happening quite a bit around the world.

Sometimes, you know, as already been mentioned, it is hard to identify. But we have seen it. And where we have seen it, you know, we have taken action, using—you know, taking advantage of the requirement that hawala is another money transmitter's register, with financial crimes enforcement network.

On a prosecutions convictions front, I defer to Justice.

Ms. SHASKY. We can get back to you with that information.

Mr. SENSENBRENNER. The gentleman's time has expired. The gentleman from Colorado, Mr. Polis.

Mr. POLIS. Thank you, Mr. Chairman.

The first question is: Are there still a set of countries that are problematic, in terms of transparency and sharing information? And is there a formal identification somewhere of which countries, in fact, are difficult to penetrate with regard to transparency into flows? I will go to Ms. Shasky?

Ms. SHASKY. There is. It is through the Financial Action Task Force.

Mr. POLIS. Good.

Ms. SHASKY. There is a list of such countries. There are international standards, by which all countries are meant to be judged. When it comes to money laundering, there are protections against money laundering. There are protections against terrorist finance. There are a number of recommendations.

If countries do not meet those recommendations, they can be put on this list and action can be taken.

Mr. POLIS. Are there any actions that are automatically associated with the list, or is it just merely for identification purposes?

Mr. BRONIN. Yes. So, one of the actions is that if a country is identified as being, you know, non-compliant with the FATAF standards. And I am sorry. The FATAF, it is a multilateral body. It is an international body. It is a standard setting and sort of peer, and peer implementation body that has been tremendously effective in promoting these standards internationally.

When a country is identified as being non-compliant, non-cooperative, you know, there are certain implications from the U.S. standpoint. Most important is that financial crimes enforcement network will notify U.S. financial institutions that they need to subject transactions with institutions in that jurisdiction to enhance due diligence. They need to be extra careful.

Mr. POLIS. Next set of questions are about drug trafficking. And I am wondering if one of you can give me just an estimate of about what percentage of money laundering activity is related to drug and narcotic trafficking-related activities. Is it the majority? Is it a third? Is it two-thirds? Kind of what ballpark would you say that is related to drug trafficking?

Ms. SHASKY. This is a very difficult question to answer. And there are all kinds of projections out there as to what these numbers look like.

I think the numbers that I focus on in approaching my job every day are the estimates that I see of what are the amounts of drug trafficking monies that are laundered in the United States. And I have seen estimates ranging from $85 billion a year, and upward.

Mr. POLIS. And so I just defer to that. And so as a percentage of overall laundering, is that a majority of overall money being laundered that derives from these sources, or approximately, you know, at that level, what would it be, relative to other sources?

Ms. SHASKY. Again, just looking at the various estimates out there, and not quite ever knowing their reliability, my sense is that

it is a very significant amount. Anywhere from a third, on upwards.

Mr. POLIS. Okay. So the $85 billion figure would be somewhere, a third, to half, or so of money that is being laundered. Obviously, the fact that money is begin laundered, we—is difficult to come up with objective data. But that is that my understanding as well.

Good. Thank you for your time, and appreciate your answers.

Yield back.

Mr. SENSENBRENNER. The gentleman from Pennsylvania, Mr. Marino.

Mr. MARINO. Thank you, Chairman. Good morning, ladies and gentleman. I apologize for being late. But I am going to get very specific here, if you don't mind. And Ms. Shasky, and anyone else who wants to follow-up. I am going to refer to your complete testimony, and particularly, the narcotics section.

In your testimony, you mentioned H.R. 3909, the "Targeting Transnational Drug Trafficking Act." It is legislation which I recently introduced here on the House side, and as an important tool for prosecutors to combat the foreign drug trade industry.

Can you describe to me a little more in detail, particularly for the Committee and my colleagues, why this legislation is important to the Department, and why we should pass the bill?

Ms. SHASKY. Thank you, Mr. Marino, for that important question. H.R. 3909 is very important to the Department. It relates to proposals we have made in the area of international drug trafficking. And particularly, it captures today's realities of the drug trade.

At one time, we were fighting Columbian cartels, who not only produce the drugs, but also traffic the drugs, and laundered the money. Today, we see much more networking between our international drug trafficking trade. You know, we have one group, such as the Columbian cartels, who might be involved in production. Maybe it is the Mexican drug cartels, who are then involved in the trafficking, and yet another group who is involved in the money laundering. And so what your legislation seeks to do is to deal with that reality, that specialization.

What we have been seeing is that because of this kind of bifurcated and specialization in the drug trafficking trade, is that we have individuals who are specifically trying to thwart U.S. laws, by trying to pretend that they don't know the final destination of the drugs. That is, that those drugs are going to the United States.

We actually hear them saying, "Don't tell me. I don't want to hear where the drugs are going."

Mr. MARINO. Exactly.

Ms. SHASKY. Because they know that is a loophole in U.S. law that they can exploit.

So what we are asking, and what is the legislation is that the standard be changed so that drug traffickers, or folks involved in the drug trade, had to know, intend, or have reason to believe that those illegal narcotics would be trafficked to the United States.

This is a question of evidence and something that is very important.

Mr. MARINO. Thank you. Anyone else? I am going to pose a scenario that is much less eloquent than you stated, but would you

describe this as being standard procedure now, because of the drug cartels, the business, the money they are making, they can afford people, attorneys from their countries, who are working for this organized crime, to figure out the loophole. And a loophole would be example of we know that we have to take that the drug dealers take the cocoa leaf, they have to break it down. But we have an individual who says, I am going to take a solvent. I am going to sell a solvent, such as acid, or a hydrochloride, or precursor chemicals, and I am going to sell it to someone in Mexico or Peru.

Now, I know that this chemical is used in the process of manufacturing cocaine. However, when I make this sale, trying to legitimize it, to whomever I'm selling it, I don't know what you are going to do with it. Don't talk to me about anything. Just place your order, pay me, and I will give you this chemical that he or she knows very well is used in, if not all the time, most the time, the production of cocaine.

Is that a good example of what takes place?

Ms. SHASKY. I think that is a very good example. And it raises a very important point. And that is, with international drug trafficking organizations, and non-drug organized crime, they have billions of dollars at their disposal. They have the ability to hire the best legal minds, the best business minds, the best cyber minds to help them craft their schemes, to exploit loopholes in the United States, and our laws, and to exploit loopholes and the laws of other countries. And the challenge for us is to try to make sure that we are keeping up with the times.

Mr. MARINO. Thank you. Mr. Chairman, do I have any more time?

Mr. SENSENBRENNER. 29 seconds.

Mr. MARINO. So, Mr. Smith, do you see a downside to this legislation? Are you opposed to it?

Mr. SMITH. Absolutely. As I said in my brief oral statement, I don't see the connection between this legislation and combating transnational organized crime. What this legislation would do, for example, in expanding section 1960, the money—businesses that are engaged in money transmitting, it would enormously expand that—that statute to cover every check cashing business in the United States, every money exchange, or cambio business in the United States, and—which employ thousands and thousands.

Mr. MARINO. Well, let me interrupt here for a moment.

Mr. SMITH. And basically shut them down.

Mr. MARINO. Let me interrupt.

Mr. SENSENBRENNER. Well, the gentleman's time is now expired.

Mr. MARINO. May I have 30 seconds.

Mr. SENSENBRENNER. Without objection.

Mr. MARINO. Thank you. You know darn well when you use the term "every," every scenario is not going to be utilized. It is scenarios where we are talking about we know, coming from Columbia and Peru, we know the large chemical transactions and the large cash transactions are taking place.

I, as a prosecutor for 18 years, and you as a defense lawyer, I cannot believe that you would not want to, if not completely eliminate this, curtail this, because it is the main focus of operation in the drug trafficking, and now it has become more sophisticated.

I yield my time.

Mr. SENSENBRENNER. Okay.

Mr. MARINO. You may respond.

Mr. SMITH. I don't disagree with what you have just said, but that is not in the bill. There is nothing to deal with precursor chemical scenarios.

Mr. SENSENBRENNER. Okay. The gentlewoman from California, Ms. Chu, has been very patient.

Ms. CHU. Thank you, Mr. Chair.

The issue of transnational organized crime, in particular, money laundering, is important to me, since I am from Southern California, and we are affected by activities of the Mexican drug cartels. Last year, my colleague, Mr. Poe, and I worked on legislation that would allow U.S. law enforcement to more easily freeze the illicit proceeds of international criminal organizations and U.S. financial institutions, in the hopes of preserving those assets for future seizures. And fortunately, this legislation was signed into law in 2010, and ensures that U.S. courts can freeze assets once they determine that there is evidence of criminal activity, instead of having to wait to freeze assets after final decision has been made.

Can you give any indication as to what role this newly enacted law has played in stopping foreign criminal money laundering operations?

Ms. SHASKY. Absolutely. First of all, I would like to thank you, because we much appreciated the efforts that you made, Ms. Chu, and then Mr. Poe made to get this legislation passed on an emergency basis, to clarify what we believe was already this body's intent in enacting the initial legislation. That is, when a foreign country comes to the United States and asks us to freeze money on their behalf, because of one of their criminal cases, that we be able to do that at the outset, and not wait until a final conviction and a final order of forfeiture. By the time we all know that the money is going to be long gone.

Ms. CHU. Right.

Ms. SHASKY. And putting that legislation in place was crucial.

Since the time it has been there, we have already frozen more than $50 million for foreign countries under that legislation. We are engaged in conversations daily with countries around the world, talking about what we can do on their behalf, and how we might use this provision to help them. It is absolutely essential, as we work with our partners around the world, to confront transnational organized crime, that we are able to work together hand in hand to do so.

Thank you.

Ms. CHU. Thank you.

I would like to also ask about problems pertaining to cracking down on comingled funds, that include both clean and dirty money. And there is section 1957, which applies to the withdrawal of money from an account in which there is comingled money. But there is disagreement about how section 1957 applies, as you stated in your testimony.

And notably, both the Fifth and Ninth Circuit courts have held that when a defendant transfers over $10,000 from a comingled account, with both clean and dirty money, the defendant is entitled

to a presumption that the first money moved out of the account is legitimate. However, this presumption seems to be contrary to all other accepted rules of tracing.

So, can you explain how troubling this presumption is, especially in the Fifth and Ninth circuits, which rules over the Southwest border States that are the greatest targets for money laundering?

Ms. SHASKY. Absolutely. It is a good question. And I guess once I address the specifics, I would turn to my colleague from the Department of Treasury to give a very real example of trade-based money laundering scheme in the Lebanese-Canadian bank matter, that maybe can highlight this a bit more.

But essentially, the problem, or the loophole that we believe is out there, based on some of these court decisions, is that we see transnational organized crime every day. It is a common technique to comingle the clean money with the dirty money. It makes it harder for law enforcement to trace. It makes it harder for law enforcement to prosecute.

The law recognizes that in almost all instances that when such money is comingled, there is a transaction out of a bank account containing comingled money, that the government can take the presumption that that first money out, that transaction was with dirty money. Because money is fungible. You can't always tell. You don't know, you know, whether it is dirty money or clean money, but we get that presumption.

The one exception to that is with the statutes 1957, 18 United States Code, 1957. In the Fifth and the Ninth circuits, as you mentioned, there have been some cases that say that we don't get that presumption, and that instead it is the exact opposite. We have to assume that it is clean money coming out, which completely undermines our ability to go after these transnational organized crime groups.

So, we are asking and proposing that we fix that loophole, by making it clear that it—the presumption should be that it is clean money that comes out first. Or I am sorry. Dirty money that comes out first.

Ms. CHU. All right. And Mr. Bonin, could you respond to this?

Mr. BONIN. Sure. Well, I mean, first, as a general matter, this you know, the comingling of dirty money and clean money is sort of, you know, at the heart of money laundering. And it is one of the primary ways you conceal the origin of funds, the nature of funds.

Before I get to the example that Ms. Shasky just referenced, there was a recent example involving a Texas retailer that was depositing millions of dollars in cash in a bank account, mingled, you know, cash that was generated from the sale of drugs with cash that was generated from legitimate sales of, you know, the product they were selling. And, you know, fortunately, this activity was identified as suspicious, and, you know, able to take action. But it is a very common way of laundering money.

The specific example Ms. Shasky references, the example of the Lebanese-Canadian bank that I mentioned earlier, and, you know, there were sort of two elements of that, that you had drug money going in via West Africa, ultimately being deposited into a Lebanese-Canadian bank in Beirut.

Then you had money going back to purchase used cars in the U.S., which were then transferred to West Africa, and sold. And then, you know, that money was, in a sense, that was part of the cleaning process. The revenue generated from the sale of cars was then cleaner. Then you had other money that was used to purchase consumer goods in Asia, that were sent back to the Western Hemisphere, where they were sold to, you know, go back to the place where the drugs originated.

So, it is a perfect example of trade-based money laundering, a perfect example of sort of the intersection of, you know, what are apparently legitimate businesses, with illegitimate activity, and the use of those, you know, apparently legitimate businesses to cover the illicit activity.

Ms. SENSENBRENNER. The gentlewoman's time has expired. The gentleman from Virginia, Mr. Goodlatte.

Mr. GOODLATTE. Thank you, Mr. Chairman.

Let me ask each of you just to tell me, in general terms, how does money laundering affect business and job growth in the United States. Ms. Shasky, we will start with you

Ms. SHASKY. Sure. To the extent that criminals and transnational organized crime are able to continue and flourish, it is going to affect our average U.S. citizens, and our businesses, and job growth in the United States. So, let me try a more tangible example of that.

We have transnational organized crime groups that are targeting our U.S. businesses to steal their information, whether that be their customer lists, so that they can then steal their identities, whether that be their intellectual property, so that they can sell it abroad and have copyright goods made. They are targeting our businesses. We have insurance fraud, targeting our insurance companies, by filing fraudulent claims.

Any place they can get money, they are targeting. So to the extent we let them continue, we are going to have problems with our businesses. Our money laundering laws are a key way to stop these groups. They are motivated by money. If we can take away their motivation and their operating capital, we can help to dismantle them. And to the extent we are talking about crimes that have victims, like the ones just mentioned, we can take that money and get it back to its rightful owner.

Mr. GOODLATTE. Mr. Bonin, can you add anything to that?

Mr. BONIN. Thanks, Congressman. I mean I just echo what Ms. Shasky said. It is obviously difficult to quantify the impact, the economic impact. In fact——

Mr. GOODLATTE. To what extent do these organized criminals use the internet to perpetrate all of these crimes on U.S. businesses?

Mr. BRONIN. I will defer to Ms. Shasky on that one.

Ms. SHASKY. They use the internet just like a normal legitimate business uses the internet. It is a tool of the trade. And, you know, now it is Facebook and Twitter. So, we see them using every tool that a legitimate business uses to perpetrate their schemes.

Mr. GOODLATTE. Thank you.

Mr. Smith?

Mr. SMITH. Yes, Mr. Goodlatte. I like your question, because I think one—one aspect of—of this whole debate that tends to get

overlooked is how much the money laundering laws cost American business every year.

If you ask the American Bankers Association or other business organizations what do these anti-money laundering requirements cost them, they will tell you it costs them many billions of dollars every year to enforce these very strict money laundering laws. And it is very burdensome. And it also creates a competitive disadvantage for American banks and other financial institutions. And they complain about it, although, I don't think this Committee probably has heard them much.

But there is one provision in this bill that I think that I have emphasized. The vast expansion of section 1960, to cover all sorts of businesses, not just money transmitting businesses, which would create a huge burden on thousands and thousands of small businesses around the country that cash checks, provide currency exchange. Armored truck businesses.

Mr. GOODLATTE. Let me——

Mr. SMITH. And——

Mr. GOODLATTE. Let me interrupt you here, because I have got limited amount of time. And let me ask Ms. Shasky if she wants to respond to that, and, in particular, tell us what havens, financial or otherwise, is the United States providing for transnational organized crime.

Ms. SHASKY. Sure. Thank you.

I guess first, in answer to the Administration's proposal on making amendments to 1960, at the outset, I think it is important to note that the U.S. financial system is considered world class. And part of the reason for that is because of our efficiency and our integrity. We don't want the financial system to become the safe haven for the world's criminal proceeds, which will inevitably also give transnational organized crime groups not presently operating in the United States a toehold to do so.

Because of the vulnerabilities of the ability to move money through the financial system, it is regulated. It is regulated. Money transmitting businesses are regulated. Check cashers are regulated. Stored access devices are regulated. Or prepaid access devices, rather, are regulated. All we are asking is that the definition of those money transmitting businesses used by Treasury in its regulation be harmonized with the definition in section 1960, so that if folks are failing to get a license, that we can prosecute them for doing that. We are looking for harmonization of the definitions here. Nothing more. Not a significant expansion.

Mr. GOODLATTE. Mr. Bronin?

Mr. BRONIN. We agree entirely. That is why we are very supportive of the Proceeds of Crime Act.

If I could just respond briefly, again, echoing Ms. Shasky, I couldn't disagree more with the point made that our anti-money laundering laws put us at a competitive disadvantage. Our anti-money laundering laws are what help make us the most transparent system in the world. They are the foundation of the integrity of our financial system. They are why it is so attractive to criminals to try to get access to our financial system. Our financial system, if you can get into it, confers they are legitimacy, because

it is so legitimate, so transparent, and has such integrity. So, I couldn't disagree more.

And to highlight what is at stake, you know, I referenced in my oral testimony and the written testimony this case where a bank that failed to implement effectively its obligations, conducted $420 billion in transactions with entities that it should have recognized were obviously suspicious. If you didn't have those anti-money laundering laws, that problem that you know, minor problem, with a lack of implementation, would be a huge problem of a lack of framework.

Mr. SENSENBRENNER. The gentleman's time has expired. The gentleman from Puerto Rico, Mr. Pierluisi.

Mr. PIERLUISI. Good morning. I am sorry I was late. According to the 2011 drug market analysis report, published by DOJ's National Drug Intelligence Center, the Caribbean region is a major center for drug traffickers to move bulk cash. That report states that bulk cash smuggling surged in 2009, and remained high through 2010. For example, bulk cash seizures in Puerto Rico more than doubled, from $3.5 million, in 2008, to almost $7.4 million in 2009. And the amount is similar in 2010.

The report further states that the amount of bulk cash seized in Puerto Rico is much higher than the amount that can be generated through local drug sales, indicating that bulk cash is smuggled from the mainland U.S. to the island, which, as you know, is an American territory, and banking laws, Federal banking laws, apply pretty much the same as in any State.

These findings are consistent with increasing drug trafficking we have seen through Puerto Rico and the U.S. Virgin Islands over the past several years. It also makes sense that Puerto Rico and the Virgin Islands are attractive targets for laundering money. As I was kind of implying or saying, a shipment of cash on a commercial airline from the States to Puerto Rico does not have to clear Customs, unlike a shipment from the States to a foreign Caribbean nation.

Once in Puerto Rico or the VI, the cash can easily be transported via boats or aircraft, to neighboring Caribbean Islands. Not to talk about other types of transactions.

In light of these findings, I would like to ask Chief Shasky and Mr. Bronin what steps each of your offices is taking to address money laundering through Puerto Rico. We have seen these bulk cash seizures. So, I want to see—I want to know if you have increased both personnel and assets in your own agencies, but also if you have noticed that related agencies, such as DEA and ICE are doing the same.

There is a crisis in Puerto Rico. There is a violence crisis, but fueled by the drug trafficking issue, and the money laundering that goes along with it. So I would like to see some attention given to Puerto Rico and the VI.

Ms. SHASKY. Thank you. We bring cases in Puerto Rico like any judicial district throughout the United States. And where we have seen transnational organized crime operate, including the very drug trafficking organizations that you speak of, we will investigate and prosecute those crimes, and do so.

The Department of Justice is committed to enforcing our laws in the District of Puerto Rico. I understand that both the Attorney General and Director Mueller of the FBI recently made visits to show our commitment.

What we see in terms of the money laundering down there, my section has a proud history of dealing with that. One of the first big bank cases that was brought against a financial institution that did not have appropriate anti-money laundering controls in place was allowing drug trafficking money to be sent through the bank was a case that our section was involved in. And it was against Banco Popular back in 2003. And they entered into a deferred prosecution agreement, and made several changes as a result of that prosecution.

Since that time, we have seen bulk cash continue to go through Puerto Rico. And more recently, we have seen trade-based money laundering schemes as a problem there. I know that there have been some recent cases brought, focusing on that problem as well, in conjunction, as you mentioned, with our colleagues from ICE and the Department of Homeland Security.

Mr. PIERLUISI. Mr. Bronin?

Mr. BRONIN. Thanks, Congressman.

I don't have a lot to add to what Ms. Shasky just said, other than to say, you know, with respect to the Caribbean region, in general, we are very active working in partnership with the Caribbean Financial Action Task Force. It is the FATAF style regional body for that region. And we work closely with them in promoting, you know, the framework that can help address this problem, and, you know, I think we have found that we have very good partners in that group.

Mr. PIERLUISI. By the way, I am calling for a Caribbean border initiative set forth by ONDCP, the drug czar's office. Because I believe there should be an overall strategy in the Caribbean, particularly given that there are two American territories over there, similar to the one we have in the Southwest border. I hope to count on your offices', respective offices' support.

Thank you.

Mr. SENSENBRENNER. The gentleman's time has expired. The gentlewoman from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. I thank the Chairman and the Ranking Member for this hearing, and I think I will be somewhat global in my questions, just recognizing some of the challenges that we are facing with recent news announcement that Iran was opening or establishing a Spanish-speaking television show, that Hezbollah is in South America, and engaged in drug activity. And I imagine that because there might be a network, those dollars would find themselves in devastating locations, harming innocent persons. I balance that with making sure that we can work through the laws, through the respect of the judicial system that we have.

I just want to ask a general question to Jen Shasky. The effort that the Administration has put forward, has that been helpful? Has that allowed your efforts to be focused on the scourge of money laundering and using it for ill-conceived activities?

Ms. SHASKY. Thank you, Congresswoman.

The Administration's efforts in this area have been helpful. I think the big change that I see having occurred over the last several years is that we are now taking an all-of-government approach to fighting transnational organized crime. That means it is not just law enforcement that is focused on a crime problem. It is the entire U.S. Government that is focused on a national and economic security problem.

Our partners at Treasury are using their targeted authorities to help in this regard. Our friends at the State Department are helping us on the diplomatic front, and so on and so forth around the government. We are now working together.

Ms. JACKSON LEE. Before I ask my other question, I do want to publically say to Mr. Pierluisi that I want to be helpful. I think he mentioned his effort to me. And I want to join with him. I think that is initially important for his area and the whole previous work we have done on CBI, the Caribbean Basin Initiative.

Let me ask a question——

Mr. PIERLUISI. Thank you.

Mr. JACKSON LEE. Of the treasurer, and then I would like Mr. Smith to comment on it. I said I wanted a balanced approach. I want to know how Americans may be entrapped in this.

As you may recall, the issue in the Cuellar case was the money laundering provision that prohibits international transportation of money designed to conceal the nature, location, or ownership of criminal proceeds under 18 USC 1956. In Cuellar, the defendant was caught hiding drug proceeds in his vehicle while en route to Mexico. The court held that secretive transportation is insufficient for conviction. The court, the government must prove that the purpose of the transportation was to conceal the nation, the nature, location, or ownership of criminal proceeds.

Is the Justice Department's attempt to abrogate the Supreme Court's decision in Cuellar versus United States overreached? The question goes to Mr. Bronin and Mr. Smith.

Mr. BRONIN. Thanks very much, Congresswoman. I am afraid I have to defer to Justice on that question. I am not sufficiently familiar.

Ms. SHASKY. The Administration's proposal would merely seek to make a change to the law, as recommended in the Cuellar decision, and that where we are finding problems with the Cuellar decision, most interestingly, is not in the drug trafficking arena, but more in the fraud arena. And our ability to bring cases targeting transnational organized crime, when they commit significant frauds against individuals in the United States, has been thwarted by the Cuellar decision, because we need to show each individual member's specific knowledge that the design, the way they move the money was designed to conceal it. Not that they knew they were concealing it, not that they knew they were concealing criminal proceeds, which they do know, but they had to know that this was one part of an overall design that was meant for concealment.

We think that is too much, and is more than should be required by the law. We believe that we should be able to show that they knew they were moving criminal's proceeds and knew they were concealing them, and that is sufficient. It is very important for our

ability to get monies and return them to victims in the United States.

Ms. JACKSON LEE. Mr. Smith?

Mr. SMITH. Yes, Congresswoman.

I think the government overlooks the fact that they can usually prosecute folks like Ms. Shasky is mentioning by using conspiracy and aiding and abetting charges. If the person knows that they are transporting dirty money, and that that is helping the fraudulent organization, that is enough to make them a conspirator.

They don't need to be prosecuted under the money laundering statutes to put them in jail or to forfeit their property. This is just another example of, you know, when the government loses a case in the Supreme Court, the first thing they do is ask Congress to overrule the decision. They don't start thinking about, well, gee, maybe the Supreme Court is right, and the law is—has been interpreted too broadly, and we don't really need this.

This sort of a knee-jerk reaction, in my experience, of wanting to overrule the decision, and I think that they ought to think about it a little bit more, and make a bit more compelling case.

Mr. SENSENBRENNER. The gentlewoman's time has expired.

Ms. JACKSON LEE. Thank you.

Mr. SENSENBRENNER. That concludes our hearing today. I would like to thank the witnesses for their very pertinent testimony and answers to the questions.

Without objection, the Subcommittee stands adjourned.

[Whereupon, at 11:18 a.m., the Subcommittee was adjourned.]

○