No. 03-___

IN THE
Supreme Court of the United States

Haywood Eudon Hall,
Petitioner,

v.

United States of America.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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March 10, 2004

QUESTION PRESENTED

Is commission of an overt act an element of the crime of conspiracy to commit money laundering under 18 U.S.C. 1956(h)?

PARTIES TO THE PROCEEDINGS BELOW

In addition to the parties named in the caption, the following parties were indicted along with petitioner and were co-defendants in the proceedings below: Gerald Payne; Betty Payne; Patrick Talbert; and David Whitfield. Andrew J. Krishak and James R. Chambers were indicted with the above-named parties, but pleaded guilty and were therefore not co-defendants at trial. See Pet. App. 2a n.1.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Haywood Eudon Hall respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit, Pet. App. 1a-11a, is published at 349 F.3d 1320. The district court's amended judgment of conviction, Pet. App. 12a-26a, is unpublished.

JURISDICTION

The judgment of the court of appeals was entered on November 10, 2003. Justice Kennedy subsequently extended the time to file this petition to and including March 10, 2004. App. No. 03-651. This Court has jurisdiction pursuant to 28 U.S.C. 1254(1).

RELEVANT STATUTORY PROVISION

18 U.S.C. 1956(h) provides:

> Any person who conspires to commit any offense defined in this section or section 1957 shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

STATEMENT

Petitioner, who was acquitted of all ten counts of money laundering and unlawful monetary transactions with which he was charged, was nonetheless convicted under 18 U.S.C. 1956(h) for conspiracy to commit money laundering. Petitioner's conviction was in error: The government failed to allege any overt acts in furtherance of the conspiracy, and the judge refused, over petitioner's timely objection, to instruct the jury that commission of an overt act was necessary for conviction. On appeal, the Eleventh Circuit affirmed petitioner's conviction, holding that commission of an overt

act is not an element of section 1956(h). The court of appeals' decision wrongly disagreed with the five circuits that require proof of an overt act for conviction under section 1956(h) and sided instead with the two circuits holding that the statute has no overt act requirement.

1. Petitioner and six co-defendants were indicted in the Middle District of Florida in March 1999. Pet. App. 2a. Petitioner was named in Counts One to Seventeen of the twenty-count indictment for activities in connection with the Greater Ministries International ("GMI") "Faith Promises Program" ("investment program"). Indictment, Count One, ¶¶ 1-2. The Indictment described petitioner as a Director of GMI, and alleged that petitioner and his co-defendants "solicit[ed] victim investors to place money into the fraudulent investment program." Indictment, Count One, ¶¶ 5, 11.

Count One alleged a conspiracy to commit mail and wire fraud in violation of 18 U.S.C. 1341 and 1343, and conspiracy to transport property taken by fraud across state lines in violation of 18 U.S.C. 2314. It specifically alleged that petitioner attended a fundraising meeting in Philadelphia for the investment program on or about April 25, 1997 and that petitioner attended a similar meeting in Ohio on or about June 6, 1997. Indictment, Count One, ¶¶ 26(16), 26(18).

Count Two – the count in question here – alleged a conspiracy to commit money laundering in violation of 18 U.S.C. 1956(h). This Count incorporated by reference Count One's introductory material and the description of the "manner and means" by which the conspiracy was carried out. Indictment, Count Two, ¶¶ 1, 3. However, this Count conspicuously failed either to incorporate the overt acts set out in Count One or to allege any other overt acts in furtherance of the conspiracy, even though it was unclear under the precedents of this Court and the Eleventh Circuit whether commission of an overt act is an element of the crime under section 1956(h). See Pet. App. 5a.

The remainder of the indictment brought substantive charges against the defendants. Counts Three through Seven charged mail fraud based on five acts of mailing newsletters, statements of accounts, and U.S. currency to participants in the investment program. Counts Eight through Twelve charged money laundering offenses in violation of 18 U.S.C. 1956(a)(1)(A)(i) based on five check-cashing transactions. Finally, Counts Thirteen through Seventeen charged unlawful monetary transactions in violation of 18 U.S.C. 1957 based on five separate check-cashing transactions.

2. At the close of the evidence, counsel for petitioner asked the judge to instruct the jury that, to convict the defendants under section 1956(h), it was required to find an overt act in furtherance of the alleged money laundering conspiracy. The judge rejected this request, instead instructing the jury that the only two elements of money laundering conspiracy are "[f]irst, that two or more persons, in some way or manner, came to a mutual understanding to try to accomplish a common and unlawful plan, as charged in the indictment; and [s]econd, that the defendant under consideration knowingly and willfully became a member of such conspiracy." Transcript 155.

The jury acquitted petitioner of Counts Three (substantive mail fraud) and Eight through Seventeen (substantive money laundering and unlawful monetary transactions). Pet. App. 13a. It convicted petitioner of Counts One (conspiracy to commit mail fraud), Two (conspiracy to commit money laundering), and Four, Six, and Seven (substantive mail fraud). *Id.* Petitioner was sentenced to 185 months in prison – including sixty-five months for money laundering conspiracy, *id.* 15a – and thirty-six months' supervised release, *id.* 17a.

3. Petitioner appealed his conviction to the Eleventh Circuit, claiming legal error in the failure to instruct the jury that commission of an overt act is an element of the offense

under section 1956(h).[1] The court of appeals found no error in the instructions, however. It began its analysis by noting, "[w]hile neither this Court nor the Supreme Court has determined whether commission of an overt act is an essential element of a conviction under § 1956(h), other circuits are split on the issue." Pet. App. 5a. Rather than siding with the five circuits that have held that section 1956(h) requires proof of an overt act, see *infra* at 6, the court below sided with the two that analogize section 1956(h) to 21 U.S.C. 846 – the drug conspiracy statute that this Court held in *United States* v. *Shabani*, 513 U.S. 10 (1994), requires no proof of an overt act. Pet. App. 6a-7a. On that basis, the court of appeals affirmed petitioner's conviction, concluding that "an overt act is not an essential element for conviction of conspiracy to commit money laundering." *Id.* 7a.

This petition followed.

REASONS FOR GRANTING THE WRIT

There is an acknowledged circuit conflict over whether commission of an overt act is an element of the offense of conspiracy to commit money laundering under section 1956(h). This split, which has profound effects upon the consistent administration of criminal justice throughout the United States, will not resolve itself. Despite the conflict's ongoing importance, it has persisted throughout the ten years since this Court decided *United States* v. *Shabani* – the case on which the minority circuits rely – in part because there are few if any opportunities for the courts of appeals to revisit their prior precedents on the question.

Moreover, the Eleventh Circuit's decision is wrong on the merits. First, section 1956(h) was enacted solely to

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[1] Petitioner also appealed his two-level sentencing enhancement under U.S.S.G. 3B1.3 for abusing a position of trust. The court of appeals agreed that the enhancement was in error, and remanded the case to the trial court for resentencing. Pet. App. 11a. That issue is not presented in this petition.

increase the penalties for money laundering conspiracy beyond those authorized by the general federal conspiracy statute, 18 U.S.C. 371. Section 371 provided for a five-year maximum sentence and required commission of an overt act as an element of the offense. Congress merely intended for section 1956(h) to increase the maximum penalty for money laundering conspiracies to twenty years – the same sentence authorized under 18 U.S.C. 1956 for substantive money laundering offenses; Congress had no intent to remove the overt act requirement that had always been an element of the crime. Second, the specific reference to commission of overt acts in section 1956(i)'s venue provisions, added in 2001, illustrates that Congress still considers overt acts to be an important element of money laundering conspiracy.

This Court has a "normal practice" of remanding cases to the court of appeals, after determining that something is an element of a crime, so that the lower court may "consider in the first instance whether the jury-instruction error was harmless." *Neder* v. *United States*, 527 U.S. 1, 25 (1999). As in *Neder*, in which this Court remanded to the court of appeals for a harmless error analysis after determining that materiality is an element of federal mail, wire, and bank fraud offenses, this case should be remanded to the Eleventh Circuit for harmless error analysis in light of the fact that commission of an overt act is an element of the crime of conspiracy to commit money laundering.

I. The Courts of Appeals Are Intractably Divided Over the Question Presented.

The Eleventh Circuit acknowledged a conflict among the circuits regarding the elements required for conviction under 18 U.S.C. 1956(h). Pet. App. 5a. The conflict is even deeper than the court of appeals recognized. Five circuits – the Third, Fifth, Sixth, Seventh, and Eighth – hold that to sustain a conviction under section 1956(h), a jury must find beyond a reasonable doubt that an overt act was committed in furtherance of the alleged conspiracy. See, *e.g.*, *United States*

v. *Evans*, 272 F.3d 1069, 1082 (CA8 2001), *reh'g en banc denied* (2002) (stating that "the government must establish that [the defendant] knowingly joined a conspiracy to launder money and that one of the conspirators committed *an overt act in furtherance of that conspiracy*") (citations omitted) (emphasis added); *United States* v. *Wilson*, 249 F.3d 366, 379 (CA5 2001) (listing the elements as "1) there was an agreement between two or more persons to launder money; 2) the defendant voluntarily agreed to join the conspiracy; and 3) one of the persons committed *an overt act in furtherance of the conspiracy*") (citations omitted) (emphasis added); *United States* v. *Ross*, 190 F.3d 446, 450 (CA6 1999) (stating that the government must prove "the alleged conspiracy existed, the defendant willfully became a member, and one of the conspirators knowingly committed *at least one alleged overt act in furtherance of some object or purpose of the conspiracy*") (citations omitted) (emphasis added); *United States* v. *Navarro*, 145 F.3d 580, 593 (CA3 1998) (stating that a 1956(h) charge "requires the government to establish (1) a conspiracy to launder money was entered into by two or more people; (2) one of the conspirators committed *an overt act in furtherance of the conspiracy*; (3) the defendant knew the purpose of the conspiracy; and (4) the defendant deliberately joined the conspiracy") (citation omitted) (emphasis added); *United States* v. *Emerson*, 128 F.3d 557, 561 (CA7 1997) (stating that the government "needed to show that there was an agreement between two or more people to launder money, that [the defendant] was a party to the agreement, and that one of the conspirators committed *an overt act in furtherance of the agreement*") (citations omitted) (emphasis added).[2]

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[2] Additionally, the Tenth Circuit has indicated in two unpublished opinions that it, too, would require proof of an overt act for a conviction under section 1956(h). See *United States* v. *Hand*, 1995 U.S. App. LEXIS 35321, at *6 (CA10 1995) (stating the elements as "(1) the existence of an agreement; (2) to break the law; *(3) an overt act; (4) in furtherance of the conspiracy's object;*

In contrast, three circuits – the Fourth, Ninth, and now Eleventh – allow a conviction to stand without the government even having to charge an overt act in the indictment. See Pet. App. 7a ("[W]e find that an overt act is not an essential element for conviction of conspiracy to commit money laundering."); *United States* v. *Bolden*, 325 F.3d 471, 491 (CA4 2003) ("[Section] 1956(h) does not require an overt act to be either alleged or proven."); *United States* v. *Tam*, 240 F.3d 797, 801 (CA9 2001) ("Defendants * * * also assert that the district court erred in finding that the money laundering conspiracy statute does not require the indictment to allege an overt act. This was not error.").

This Court's 1994 opinion in *United States* v. *Shabani*, 513 U.S. 10 (1994), did not resolve the circuit split. See *supra* (citing cases from five circuits post-dating *Shabani*). In *Shabani*, this Court interpreted the drug conspiracy statute, 21 U.S.C. 846, to have no overt act requirement. *Shabani*, 513 U.S. at 17. Although the conspiracy provisions in sections 1956(h) and 846 contain parallel language, the statutes otherwise differ significantly in both their express provisions and their histories. It is therefore not surprising that since this Court decided *Shabani*, the courts of appeals have continued to rely upon their pre-*Shabani* precedents in interpreting

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and (5) that a defendant willfully entered the conspiracy") (citations omitted) (emphasis added); *United States* v. *Olson*, 1995 U.S. App. LEXIS 35320, at *5 (CA10 1995) (same). Though unpublished opinions of the Tenth Circuit have only limited precedential value, see 10th Cir. R. 36.3, district courts within the Tenth Circuit have nonetheless relied upon these opinions as an indication of the Tenth Circuit's position on this disputed point of law. See *United States* v. *Cline*, 2002 U.S. Dist. LEXIS 10001, at *11-*15 (D. Kan. 2002) ("The court is persuaded that the Tenth Circuit, as it has indicated in the unpublished opinions of *Olson* and *Hand*, would hold that an overt act is an essential element for a violation of 18 U.S.C. § 1956(h).").

section 1956(h). See, *e.g.*, *Ross*, 190 F.3d at 450 (citing *United States* v. *Lee*, 991 F.2d 343, 347-48 (CA6 1993)); *Navarro*, 145 F.3d at 593 (citing *United States* v. *Conley*, 37 F.3d 970, 976-77 (CA3 1994)); *United States* v. *Hildebrand*, 152 F.3d 756, 762 (CA8 1998) (citing *Conley*, 37 F.3d at 976-77); *Emerson*, 128 F.3d at 561 (citing *United States* v. *Santos*, 20 F.3d 280, 283 (CA7 1994)).

This Court's intervention is required because the circuit conflict is intractable. Once a circuit has established precedent regarding the elements of section 1956(h), future cases are litigated in such a way that the courts in that circuit will rarely have an opportunity to reconsider that precedent. Indeed, petitioner's case only presents this important issue so squarely because the Eleventh Circuit was one of the few remaining courts of appeals that had not yet decided the question presented.

In any of the five circuits that require proof of an overt act for a conviction under section 1956(h), the defendant will of course never challenge the rule, and it would be exceedingly difficult for the government to be in a position to raise such a challenge itself. Since the government cannot appeal a jury acquittal, *United States* v. *Scott*, 437 U.S. 82, 91 (1978), the only postures in which the government might conceivably be in a position to appeal would be after either the dismissal of an indictment, see 18 U.S.C. 3731, or an exceedingly rare judicial acquittal following a guilty verdict from the jury, *United States* v. *Wilson*, 420 U.S. 332, 344-45, 352-53 (1975). For either situation to arise, however, the government would either have had to disregard clear circuit precedent by proceeding on an indictment that failed to charge an overt act – a patently self-defeating strategy – or would have had to charge an overt act without having a sufficient quantum of proof to support a conviction. Either of these would be a violation of the government's stated policy not to charge when "the prosecutor has a good faith doubt, for legal or evidentiary reasons, as to the Government's ability to readily prove a charge at trial." Memorandum from John

Ashcroft, Attorney General, to All Federal Prosecutors, Department Policy Concerning Charging Criminal Offenses, Disposition of Charges, and Sentencing 2 (Sept. 22, 2003) ("Justice Department Policy Memorandum").

Conversely, in any of the three circuits that do *not* require proof of an overt act to sustain a conviction under section 1956(h), it would never be to the *government's* advantage to challenge the rule. But rarely will it be in the defendant's best interests to do so, either. If the government is not in position to prove the other elements of section 1956(h) beyond a reasonable doubt, the defendant will be acquitted, obviating the need for any appeal. If the government *is* in a position to prove these other elements, the defendant will likely follow the path taken by 96.6% of all criminal defendants and simply plead guilty (*see* U.S. Sentencing Comm'n, Sourcebook of Federal Sentencing Statistics, 2001 Fiscal Year, at 20, fig. C), rather than risk harsher punishment in order to mount a quixotic challenge to well-established circuit law.

By virtue of the fact that the Eleventh Circuit did not have a rule in place at the time petitioner was charged, he was in position to raise this issue at trial, focus upon it in his appeal, and preserve it for this Court's resolution. As the number of circuits in which this would happen is fast decreasing, and because the number of jurisdictions affected by the split grows ever wider, principles of sound judicial administration counsel strongly in favor of granting certiorari now.

II. The Circuit Conflict Is Untenable Given the Importance of the Question Presented.

The importance of the conflict over whether 18 U.S.C. 1956(h) includes an overt act as an element of money laundering conspiracy merits this Court's attention. Sections 1956 and 1957 are very commonly charged statutes: In 2002 alone, a violation of one of these sections constituted the most serious count in the indictment of over 1300 federal criminal

defendants. See Federal Justice Statistics Resource Center, *at* http://fjsrc.urban.org/index.cfm. A conflict among the circuits as to the elements of conspiracy to commit one of these offenses effectively turns a single federal conspiracy statute into two distinct crimes, with the fate of similarly situated defendants regarding a potential twenty-year prison sentence dependent only upon geography.

"Much turns on the determination that a fact is an element of an offense * * * given that elements must be charged in the indictment, submitted to a jury, and proven by the Government beyond a reasonable doubt." *Jones* v. *United States*, 526 U.S. 227, 232 (1999). This circuit split thus plays itself out at all stages of the criminal justice system, from the charging decision, through the indictment, all the way to final judgment and sentencing.

At the inception of criminal proceedings, prosecutors in different circuits will make different decisions about whether to charge a potential defendant with a violation of section 1956(h). It is the policy of the Department of Justice that, except in very limited circumstances, "federal prosecutors must charge and pursue the most serious, readily provable offense or offenses that are supported by the facts of the case." See Justice Department Policy Memorandum, *supra*, at 2. When presented with a case in which there is no evidence of an overt act in furtherance of a money laundering conspiracy, adherence to this policy will create a different result depending upon the circuit law governing the United States Attorney's Office in question. In one of the three circuits that does not treat commission of an overt act as an element of conspiracy to commit money laundering, the United States Attorney is required to charge a violation of section 1956(h). In one of the five circuits with an overt act requirement, the defendant cannot, and will not, be charged under section 1956(h).

Additionally, a grand jury indictment that is sufficient in one circuit will be insufficient in another. To be sufficient, an

indictment must include "such a statement of the facts and circumstances as will inform the accused of the specific offence, coming under the general description, with which he is charged." *Hamling* v. *United States*, 418 U.S. 87, 117-18 (1974). Had petitioner been indicted in a circuit in which the governing law requires proof of an overt act, his indictment would have been subject to dismissal for failing even to allege that such an act had been committed. See, *e.g.*, *United States* v. *Cline*, 2002 U.S. Dist. LEXIS 10001, at *11-*15 (D. Kan. 2002) (dismissing an indictment under section 1956(h) for failure to allege an overt act).

Further, as this case starkly demonstrates, juries in different circuits will be instructed to consider the same set of facts differently for the purposes of determining a defendant's guilt or innocence. While it is true throughout the country that "[t]he Constitution requires a criminal conviction to rest upon a jury determination that the defendant is guilty of every element of the crime of which he is charged beyond a reasonable doubt," *Old Chief* v. *United States*, 519 U.S. 172, 199 (1997), this constitutional directive cannot be implemented uniformly when circuits disagree as to the elements of the underlying offense. Here, despite petitioner's timely objection, the overt act element was not included in the jury instructions. Thus, although in five other circuits the Constitution would require that the overt act element be "submitted to the jury" and "proven by the Government beyond a reasonable doubt," *Jones*, 526 U.S. at 232, those rights were denied to petitioner here.

The ultimate effect of the split will be to impose drastically different sentences upon individuals whose underlying conduct is identical. If convicted under section 1956(h), an offense with which he could not even have been *charged* in five circuits, a defendant in one of the three minority circuits faces a prison sentence of up to twenty years. 18 U.S.C. 1956(a). The conspiracy sentence can, and likely will, be consecutive to any other sentence he might receive for the underlying conduct. See *Callanan* v. *United*

States, 364 U.S. 587, 593-94 (1961). Petitioner, for example, had his sentence extended by sixty-five months simply because he had the misfortune to be charged in the Eleventh Circuit. Pet. App. 15a.

The fact that similarly situated criminal defendants receive disparate treatment at all stages of the criminal justice system due solely to their geography underscores the need for this Court to provide consistency to the interpretation of the federal criminal code.

III. In Adopting Section 1956(h), Congress Did Not Intend to End the Long-Standing Rule That an Overt Act Is Required For a Conviction of Money Laundering Conspiracy.

As five courts of appeals properly recognize, there is an overt act requirement for conspiracy to commit money laundering under 18 U.S.C. 1956(h). Congress enacted subsection (h) in 1992, but the crime of money laundering under sections 1956 and 1957 had existed for six years before that enactment. Conspiracy to commit money laundering was previously charged under 18 U.S.C. 371, the general conspiracy statute, which requires an overt act as an element of the offense. *Grunewald* v. *United States*, 353 U.S. 391, 396 (1956). The purpose of inserting subsection (h) was not to change the definition of money laundering conspiracy by omitting the overt act requirement, but rather to increase the maximum punishment for that offense from five years' imprisonment under section 371 to twenty years, the same penalty as that authorized for the substantive offense of money laundering. Compare 18 U.S.C. 371 (defining a five-year maximum sentence) with 18 U.S.C. 1956(a) (defining a twenty-year maximum sentence).

If Congress had indeed intended to remove the overt act requirement from the definition of money laundering conspiracy, it would have used more precise language. At the time that Congress adopted subsection (h), the language it used in the provision was *not* regarded by lower courts that

had considered the issue as clearly eliminating any requirement of an overt act. See *United States* v. *Stodola*, 953 F.2d 266, 272 (CA7 1992) (including overt act among 18 U.S.C. 1951 elements), cert. denied, 506 U.S. 834 (1992); *United States* v. *Villarreal*, 764 F.2d 1048, 1051 (CA5 1985) (same), cert. denied, 474 U.S. 904 (1985); *United States* v. *Magana-Olvera*, 917 F.2d 401, 409 (CA9 1990) (including overt act among 21 U.S.C. 846 elements).

The legislative history bears out the conclusion that the sole purpose of section 1956(h) was to increase punishment. Section 1956(h) does not abandon the requirement – which has existed since the time that the money laundering offense was created in 1986 – of an overt act for conviction. The conference report regarding the adoption of section 1956(h) sets forth as its exclusive purpose to "increase[] the penalty for the offense of conspiracy to commit money laundering under 19 [sic] U.S.C. 1956 or 1957 to the penalty for the substantive money laundering offense." Conference Report, 138 Cong. Rec. S17904. For this reason, the original House Resolution actually placed the new punishment provision in 18 U.S.C. 371. See H.R. 26, 102d Cong. (1st Sess. 1991).

To be sure, two years after Congress enacted section 1956(h), this Court held in *Shabani* that similar language in 21 U.S.C. 846 does not require proof of an overt act. But the context of section 1956(h) is sufficiently distinct that this Court should not retrospectively read the overt act requirement out of section 1956(h). See *Crandon* v. *United States*, 494 U.S. 152, 158 (1990) (stating that to interpret a statutory provision, the Court should "look not only to the particular statutory language, but to the design of the statute as a whole and to its object and policy").

First, the background overt act requirements before the statutes were passed were entirely different. Before 21 U.S.C. 846 created a separate crime of drug trafficking conspiracy, there was no overt act requirement for similar drug-related conspiracies. See 21 U.S.C. 174, 176a (repealed

by 84 Stat. 1291 (1970)). In contrast, before 18 U.S.C. 1956(h) was passed, there was an overt act requirement for money laundering conspiracy under 18 U.S.C. 371. Thus, while the Court in *Shabani* held that 21 U.S.C. 846 did not add an overt act element, there is nothing to suggest that the similar language in 18 U.S.C. 1956(h) would actually remove the element when it previously existed.[3] Such an interpretation would be inconsistent with the intent of Congress, which was simply to enhance the possible punishment for a particular kind of criminal conspiracy.

Second, unlike section 846, the venue provision of 18 U.S.C. 1956 explicitly makes reference to overt acts. Specifically, a prosecution for money laundering conspiracy may be brought "in the district where venue would lie for the completed offense under paragraph (1), or in any other district where *an act in furtherance of the * * * conspiracy* took place." See 18 U.S.C. 1956(i)(2) (emphasis added). The addition of this venue provision in 2001 illustrates that Congress still assumes the existence of an overt act for money laundering conspiracy.

The reference to overt acts in section 1956(i) means that in cases in which there were no overt acts in furtherance of the conspiracy, it may be unclear whether venue is proper in *any* district. To establish proper venue without alleging any overt acts, the government would have to establish the judicial district in which the conspirators planned to engage in transactions with the funds, or the district in which the conspirators engaged in the illegal activity that generated the funds. See 18 U.S.C. 1956(i)(1); *United States* v. *Cabrales*, 524 U.S. 1, 6-9 (1998) (holding that in money laundering

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[3] Also of note is the fact that the legislative history behind 21 U.S.C. 846 shows that the goal was not to add punishment for an existing crime, but to make it so that "[a] conspiracy to commit violations of [certain existing drug laws] would be considered a specific offense." H.R. REP. NO. 82-635 (1951); S. REP. NO. 82-1051 (1951) (accepting and reproducing House report).

conspiracy case, venue is improper where the funds were unlawfully generated, unless the defendant is involved in the offense that generated the funds). Congress could have dispensed with this problem by allowing venue in the district where the agreement to launder money occurred. See *Hyde* v. *United States*, 225 U.S. 347 (1912) (allowing venue in conspiracy cases in the district where the agreement took place or where any overt acts occurred). The logical conclusion is that Congress provided for venue in the district where overt acts occurred – and not in the district where the agreement was reached – because Congress assumed that there would always be overt acts alleged for a charge of money laundering conspiracy.

Third, money laundering and drug trafficking differ in relevant respects. Money laundering necessarily involves a predicate crime that taints the funds involved. See 18 U.S.C. 1956(a). But the "laundering" can simply be any financial transaction that intends to promote or conceal the illegal activity, see *id.* § 1956(a)(1), or any monetary transaction with over $10,000 in illegal funds, see *id.* § 1957(a). And a "financial transaction" can be any transfer of funds that affects interstate commerce in any way. See *id*. § 1957. As a result, if conspiracy to commit money laundering has no overt act requirement, the conspiracy provision will be violated by virtually any money-related crime that involves a discussion of what to do with the funds. See, *e.g.*, *United States* v. *Conley*, 37 F.3d 970, 976-77 (CA3 1994) (noting that the agreement need only be an "understanding"). As a practical matter, conspiracy to commit money laundering would function as a lesser-included offense of conspiracy to commit the predicate offense, yet a defendant could be convicted of both conspiracies, and receive an additional twenty years in prison as a result. Moreover, in a case in which the predicate crime and the money laundering were planned at the same time, but no overt act was committed, a defendant might be guilty of conspiracy to commit money laundering, yet innocent of conspiracy to commit the predicate offense, since

conviction of the latter conspiracy would likely require an overt act under 18 U.S.C. 371. There is no evidence that Congress intended such an anomalous result.

Finally, the rule of lenity requires that doubts about section 1956(h) be interpreted in favor of the defendant. See *Moskal* v. *United States*, 498 U.S. 103, 108 (1990) (stating that a criminal statute must be narrowly construed if "reasonable doubt persists about a statute's intended scope even *after* resort to the language and structure, legislative history, and motivating policies of the statute") (internal quotation marks omitted); *Crandon*, 494 U.S. at 158. There are, at the very least, doubts here because (i) there is no clear statement in the statute or legislative history that Congress intended to eliminate the overt act requirement, which was an element of money laundering conspiracy under section 371; (ii) the language used in section 1956(h) was inconsistently interpreted at the time of its adoption; (iii) the venue provision of section 1956 specifically contemplates the existence of overt acts; and (iv) an overt act requirement is particularly important in the context of money laundering conspiracy. Accordingly, the ambiguity in section 1956(h) should be interpreted to require an overt act.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

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