U.S. Anti-Money Laundering Laws in the Wake of *U.S. v. Santos*

by Carlos F. Gonzalez and Regan Kruse

Organized crime activities, such as drug trafficking, smuggling, prostitution rings, and illegal arms sales, can generate huge amounts of cash income. Seemingly legitimate business enterprises can also produce huge illicit profits though embezzlement, insider trading, bribery, and computer fraud schemes. The process by which one disguises illegal income to make it appear legitimate is an integral part of all proceeds-yielding crimes. Participants in illicit activities must create the illusion that their "dirty money" is actually clean, and thus, the moniker "money laundering" was coined.

In an attempt to combat this growing problem, Congress enacted the Money Laundering Control Act of 1986 to make money laundering a federal crime. More recently, in May of 2009, Congress amended the money laundering statute to provide clarity and uniformity in defining "proceeds" that fall under The Act. At the center of the 2009 Amendment was a case, *United States v. Santos*, argued before the United States Supreme Court in 2008.

Money laundering creates problems on many levels, the defense of which is no exception. Efrain Santos ran an illicit lottery operation in Indiana for over two decades. The Santos lottery operation involved runners who took a commission from the wagers, handed the remaining bet money over to collectors, who in turn delivered the money to Santos. Santos then used the bet money to pay salaries to his collectors and to pay off lottery winners. It was these salaries and payments to winners that landed Santos in federal prison on three counts of money laundering. And it was these payments that caused the court's conundrum. Were "proceeds" receipts or net profits?

The Supreme Court, in attempting to define what exactly were proceeds in an illicit operation, in a plural decision, caused multiple interpretations in the lower courts when trying money-laundering cases. The *Santos* decision permitted individuals to defend themselves by claiming that their illegal activities did not yield any profit. However, according to critics, it made no sense to exempt money launderers from prosecution merely because the property involved in the transaction involved "receipts" rather than "net profits" of their illegal conduct. Regardless of whether the dirty money was categorized as receipts or profit, "the money launderer acted with a guilty mind, intending to disguise the nature, source, ownership, or control of funds derived from criminal activity." Jimmy Gurulé, *Does "Proceeds" Really Mean "Net Profits"? The Supreme Court's Efforts to Diminish the Utility of the Federal Money Laundering Statute*, 7 AVE MARIA L. REV. 339, 357 (2009).

The Fraud Enforcement and Recovery Act of 2009 (FERA), signed by President Obama on May 20, 2009, closed the alleged loophole created by the plural decision of the Supreme Court in 2008 on what constitutes "proceeds." The Act of 2009 clarified the scope of the federal money laundering statute

and demonstrates a congressional response to *Santos*. FERA legislatively overruled *Santos* by adding a new paragraph to the federal money laundering statute, 18 U.S.C. § 1956(c)(9), which now defines "proceeds" to include the *gross receipts* of an unlawful activity.

To the dismay of money laundering defendants, this recent statutory amendment to Section 1956 has limited their possible defenses.

Please link here to read a complete briefing of the issues involved and case and publications cited in this article.

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