No. 06-

IN THE

Supreme Court of the United States

HUMBERTO FIDEL REGALADO CUELLAR,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

RICHARD ANDERSON
(*Counsel of Record*)
JERRY V. BEARD
KEVIN JOEL PAGE
FEDERAL PUBLIC
DEFENDER'S OFFICE
NORTHERN DISTRICT OF TEXAS
819 Taylor Street, Suite 9A10
Fort Worth, Texas 76102
(817) 978-2753

WALTER DELLINGER
MARK S. DAVIES
SUSAN M. MOSS*
O'MELVENY & MYERS LLP
1625 Eye Street, N.W.
Washington, D.C. 20006
(202) 383-5300

* *Admitted in Idaho only*

Attorneys for Petitioner

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QUESTION PRESENTED

Whether merely hiding funds with no design to create the appearance of legitimate wealth is sufficient to support a money laundering conviction.

PARTIES TO THE PROCEEDING

Petitioner is Humberto Fidel Regalado Cuellar, defendant-appellant below.

Respondent is the United States of America, plaintiff-appellee below.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Humberto Fidel Regalado Cuellar respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The en banc court of appeals decision is reported at 478 F.3d 282 and is reprinted in the Appendix to the Petition ("App.") at 1a-44a. The panel decision is reported at 441 F.3d 329 and is reprinted at App. 45a-56a. The district court's judgment is unreported and is reprinted at App. 57a-62a.

JURISDICTION

The en banc court of appeals issued its decision on February 2, 2007. App. 1a-2a. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTES INVOLVED

The relevant statutory provisions are reproduced in the appendix. App. 63a-74a.

STATEMENT OF THE CASE

This case involves legal uncertainty about the scope of the principal federal money laundering statute, 18 U.S.C. § 1956. Petitioner was arrested while traveling towards Mexico with a large sum of cash hidden in the car. App. 45a. He was convicted of money laundering. *Id.* A divided panel of the Fifth Circuit, per Judge Smith, reversed the conviction because "the government failed to prove the necessary design to conceal" – petitioner "was not trying to 'create the appearance of legitimate wealth' by smuggling drug money across the border.'" *Id.* at 52a. The dissenting judge argued that petitioner's "hiding" of the funds sufficed, and stated that "the Second and Third Circuits dealing with fac-

tual situations substantially similar to these have found this concealment element satisfied." *Id.* at 56a.

The Fifth Circuit granted en banc review. Affirming the conviction, the en banc court noted that petitioner had taken various steps to hide the money, rejected the view that money laundering requires a design to create the appearance of legitimate wealth, and expressly aligned the Fifth Circuit with the view of the Second and Third Circuits. *Id.* at 11a-13a. Now in dissent, Judge Smith observed that there is a "circuit split" on whether the money laundering "statute requires a design to create the appearance of legitimate wealth." *Id.* at 38a-39a.

1. The principal federal money laundering statute, 18 U.S.C. § 1956(a), has separate transaction and transportation paragraphs. The transaction money laundering provision, Section 1956(a)(1), makes it a crime to, among other things, engage in "a financial transaction" with "the proceeds of some form of unlawful activity" "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 specified unlawful activity." 18 U.S.C. § 1956(a)(1)(B). Similarly, the transportation money laundering provision, Section 1956(a)(2), makes it a crime to transport "from a place in the United States to or through a place outside the United States" "the proceeds of some form of unlawful activity" "knowing that such transportation" "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 specified unlawful activity." 18 U.S.C. § 1956(a)(2)(B). Violation of either provision is punishable by twenty years imprisonment.

2. In July 2004, Petitioner Humberto Cuellar was travelling south on State Highway 77 in Texas, approximately one hundred miles from the Mexican border. App. 2a. A police officer from the Schleicher County Sheriff's Department

stopped Cuellar, apparently because his car was travelling slowly and had swerved onto the shoulder. *Id.* A translator and a drug- detecting dog were requested. *Id.* at 2a-3a. Ultimately, the "officers found a hidden compartment underneath the floorboard containing $83,000 wrapped in duct tape bundles inside blue Walmart sacks and marked with a Sharpie as to the amounts in each bundle." *Id.* at 4a.

Cuellar was convicted at trial of international money laundering. App. 6a-7a. He was not charged with bulk cash smuggling. *Id.* at 30a, n.10. Cuellar was sentenced to 78 months imprisonment and three years supervised release, eighteen months more prison time than the maximum punishment available under the bulk cash smuggling statute. Pet'r C.A. Brief at 4.

3. The Court of Appeals (Davis, Smith, Dennis, JJ.) reversed Cuellar's conviction and rendered a judgment of acquittal. App. 45a-46a. The panel began by finding that a "reasonable trier of fact could have concluded that the money hidden in the car was proceeds of drug trafficking and that Cuellar knew that." *Id.* at 49a. For a money laundering conviction, however, the court also "ask[s] whether Cuellar's transportation of the money was designed in whole or in part to conceal or disguise its nature, location, source, ownership or control and whether Cuellar knew that." *Id.* at 49a-50a. The panel noted the government's view that "it had proven this element merely by showing that the money was hidden in Cuellar's car." *Id.* at 50a. ("Throughout the trial, the government focused its attention on establishing that the money was most likely drug proceeds, essentially overlooking the equally important concealment prong."). But, the panel explained, Fifth Circuit precedent on the meaning of concealment in the transaction money laundering provision was equally applicable under the international transportation provision. *Id.* at 50a n.4. And that precedent required the government to show that the defendant's activities were de-

signed to "*create the appearance of legitimate wealth.*" *Id.* at 51a (citation omitted). Cuellar, the panel held, "was not trying to 'create the appearance of legitimate wealth' by smuggling drug money across the border" and thus could not be convicted of money laundering. *Id.* at 52a. The panel noted, however, "that the government may be able to make a case against Cuellar for bulk cash smuggling under 31 U.S.C. § 5332(a)." *Id.* at 52a n.5.

Judge Davis dissented. In his view, evidence that Cuellar "purposefully concealed drug proceeds and was transporting them to Mexico in a manner consistent with drug trafficking patterns for the region" was sufficient to convict him of money laundering. App. 55a. He noted that "[o]ther circuits have found on facts similar to ours that the government established the concealment prong of the money laundering statute." *Id.* at 54a. See also *Id.* at 56a ("[T]he Second and Third Circuits dealing with factual situations substantially similar to these have found this concealment element satisfied.").

The Fifth Circuit granted the government's petition for rehearing, vacated the panel opinion, and affirmed the conviction. *Id.* at 1a-2a. In upholding Cuellar's conviction, the en banc court expressly rejected the panel's view that a money laundering conviction "requires proof that the defendant's acts created the appearance of legitimate wealth." *Id.* at 12a. The court noted that the "Second Circuit in *United States v. Ness*, 466 F.3d 79 (2d Cir. 2006), expressly rejected this argument and the panel's position on this issue." *Id.* According to the en banc court, "although creating the appearance of legitimate wealth is one way of concealing illicit funds, it is not the only way concealment can be established." *Id.* And, in the en banc court's opinion, "Congress chose the broad, unqualified word 'conceal'" and thus "[i]t makes no sense to say that Congress only intended to prohibit concealment that is accomplished in a certain way." *Id.*

In addition to the Second Circuit, the en banc court aligned itself with the Third Circuit, *see United States v. Carr*, 25 F.3d 1194 (3d Cir. 1994), and the Eleventh Circuit, *see United States v. Johnson*, 440 F.3d 1286 (11th Cir. 2006). *Id.* at 13a, 15a.

Judges Smith, DeMoss and Dennis dissented. The dissent noted a "circuit split" as to whether "the statute requires a design to create the appearance of legitimate wealth." App. 38a-39a. In explaining why a money laundering conviction requires proof of a design to create the appearance of legitimate wealth, the dissent pointed to the statutory title, *id.* at 25a-27a, the legislative history, *id.* at 27a-31a, the rule of lenity, *id.* at 31a-32a, the canon against absurdities, *id.* at 32a-35a, and case law from other circuits, *id.* at 35a-39a. The dissent noted that "Cuellar likely committed a serious violation of the United States Code, but not of the section of which he was convicted." *Id.* at 44a. The dissent closed with a "call upon the Attorney General to confess error in this case of prosecutorial excess." *Id.*[1]

REASONS FOR GRANTING THE PETITION

This case presents a question of statutory interpretation involving the principal federal money laundering statute (18 U.S.C. § 1956) on which the circuits are deeply divided: Whether the money laundering statute requires a design to "conceal or disguise" funds for the purpose of creating the

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[1] Judge Smith, joined by Judge DeMoss, also authored an introductory section to the dissent observing that "[t]his is a case of a prosecution run amok." App. 22a. It noted that "instead of charging under a statute of which Cuellar (by his attorney's admission) is guilty, the government used the wrong law, and the majority has now blessed the government's missteps with a holding that makes 'money laundering' out of virtually any transfer of illicit proceeds across an international border." *Id.* at 23a. The dissent stated that the "majority ignores common sense, context, and accepted principles of statutory interpretation to reach an ultimately absurd and embarrassing result." *Id.* The dissent "decline[d] to rewrite the law judicially" in this way. *Id.*

appearance of legitimate wealth. The Sixth, Seventh, and Tenth Circuits require a design to create the appearance of legitimate wealth. In the decision below, the en banc Fifth Circuit joined the Second, Third and Eleventh Circuits in concluding just the opposite – *i.e.*, that a defendant's mere hiding of funds is sufficient to support a money laundering conviction and that no evidence of a design to create the appearance of legitimate wealth is required.

A circuit split on the substantive scope of the money laundering statute warrants this Court's review. This case presents a statutory interpretation question that is distinct but complementary to the question presented in the recently granted case, *United States v. Santos*, No. 06-1005 (cert. granted April 23, 2007). In *Santos*, the Court has agreed to resolve a circuit split as to whether "proceeds" as used in the principal federal money laundering statute, 18 U.S.C. § 1956, refers to "gross receipts" or "profits." In urging this Court to grant review, the Solicitor General of the United States wrote:

> This Court should grant review to resolve the conflict among the courts of appeals on the meaning of the money laundering statute. *A circuit conflict is particularly problematic when, as here, the courts of appeals disagree on the substantive meaning of a widely used federal criminal statute.* It is not acceptable for conduct to be money laundering in Boston and Philadelphia but not in Chicago.

Santos Gov't Pet. in No. 06-1005, at 25-26 (emphasis added). Just as the circuit split on the meaning of "proceeds" warrants review, so too the circuit split on the meaning of "conceal or disguise" warrants this Court's review.

A. The En Banc Court of Appeals Decision Incorrectly Expands The Scope of The Money Laundering Statute

Contrary to the holding of the en banc court below, the federal crime of money laundering requires the government to prove that the defendant concealed or disguised funds to create the appearance of legitimate wealth. There are countless methods by which a criminal may attempt to "launder" illegal proceeds and thereby profit from the crime. The criminal might disguise drug money as legitimate money by creating a fake business scheme that disguises the true nature of the money, or may create shell companies that disguise the true location or ownership of the funds. These methods for laundering proceeds are varied and numerous, but they are all captured by the Congressional prohibition of "conceal[ing] or disguis[ing]" the various attributes of the proceeds: their "nature," "location," "source," "ownership," or "control." 18 U.S.C. § 1956(a)(2)(B)(i).

The crime at issue here is "money laundering," as reflected in the title of the statute, "Laundering of monetary instruments." 18 U.S.C. § 1956. As a matter of plain English, to "launder" money "is to disguise illegally-obtained money by making it appear legitimate." App. 26a, *citing* 8 *Oxford English Dictionary* 702 (2d ed. 1989) (to launder money is "to transfer funds of dubious or illegal origin, usually to a foreign country, and then later to recover them from what seem to be 'clean' sources"); *The American Heritage Dictionary Of The English Language* 992 (4th ed. Houghton Mifflin Co. 2006) (to launder money is "to disguise the source or nature of (illegal funds, for example) by channeling through an intermediate agent"); *The New Oxford American Dictionary* 958 (2d ed. Oxford Univ. Press 2005) (to launder money is to "conceal the origins of (money obtained illegally) by transfers involving foreign banks or legitimate businesses"). *See also Black's Law Dictionary* 1027 (8th ed.

2004) (to launder money is "the act of transferring illegally obtained money through legitimate people or accounts so that its original source cannot be traced").

Law enforcement agencies also define money laundering as creating the appearance of legitimate wealth. The influential President's Commission on Organized Crime, which spearheaded the legislative effort to enact the current money laundering statute, defined money laundering as "the process by which one conceals the existence, illegal source, or illegal application of income, *and then disguises that income* to make it appear legitimate." President's Comm'n On Organized Crime, *The Cash Connection: Organized Crime, Financial Institutions, And Money Laundering* 7 (Books for Bus. 2001) (1985) (emphasis added).[2] Similarly, the General Accounting Office defines money laundering as "the process of disguising or concealing illicit funds to make them appear legitimate." General Accounting Office, *Investigating Money Laundering and Terrorist Financing: Testimony Before the H. Subcomm. on Criminal Justice, Drug Policy, and Human Resources* (statement of Richard M. Stana, Director,

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[2] The report gave examples of the type of activity that a money laundering statute should reach:

> [P]ayments to the Gambino family that were transferred through three bank accounts, including one in Switzerland, then withdrawn and placed into a safe deposit box; secretion into Swiss bank accounts, by the head of the New Orleans family of La Cosa Nostra, of $1.8 million that had been extorted from the Teamsters; a drug trafficker's practice of making numerous small deposits, totaling over $500,000, into a casino account, gambling a small amount, and then withdrawing the balance from the account in the form of checks made out to third parties, which were deposited in a securities firm before withdrawal; and the Hell's Angels' use of drug proceeds to purchase, through front men, failing businesses and real estate to legitimize the cash.

App. 28a-29a.

Homeland Security and Justice Issues) (May 11, 2004), *available at* http://www.gao.gov/new.items/d04710t.pdf.[3]

The legislative history confirms that Congress intended the money laundering statute to apply to concealment designed to create the appearance of legitimate wealth. For example, the House Report accompanying the money laundering bill cites the President's Commission definition, *supra*, at 8. Comprehensive Money Laundering Prevention Act, H.R. Rep. No. 99-746 at 16 (1986). The Report goes on to explain: "In other words, laundering involves the hiding of the paper trail that connects income or money with a person in order for such person to evade the payment of taxes, avoid prosecution, or obviate any forfeiture of his illegal drug income or assets." *Id.* The Report also notes that "[t]here are as many ways of laundering money as there are individuals willing to do it." *Id.* at 17.

In addition to text and context, two other standard interpretive tools further establish that money laundering means creating the appearance of legitimate wealth. When construing a criminal statute, this Court avoids interpreting distinct statutes to reach the same conduct because of the potential for cumulative punishment unintended by Congress. *See, e.g., Simpson v. United States*, 435 U.S. 6 (1978). Furthermore, in determining Congressional intent, "ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity." *Id.* at 14, *quoting United States v. Bass*, 404 U.S. 336, 347 (1971); *Rewis v. United States*, 401 U.S. 808,

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[3] Similarly, law enforcement officials in other countries define money laundering as creating the appearance of legitimate wealth. For example, the Interpol General Assembly's working definition of money laundering is "any act or attempted act to conceal or disguise the identity of illegally obtained proceeds so that they appear to have originated from legitimate sources." See *Money Laundering: Funds derived from criminal activities*, http://www.interpol.int/Public/FinancialCrime/MoneyLaundering/default.asp (last visited May 1, 2007).

812 (1971). Here, interpreting the money laundering statute to require a design to create the appearance of legitimate wealth prevents the statute from criminalizing acts which are already illegal (*e.g.*, illegal drug sales) and does not unfairly punish conduct that the plain language of the statute does not reach.[4]

In upholding petitioner's money laundering conviction – even absent any design to create the appearance of legitimate wealth (App. 10a-11a) – the en banc court disregarded the plain statutory language, relevant legislative history, and standard interpretive tools. Under the decision below, any hiding of funds is money laundering on the theory that "Congress chose the broad, unqualified word 'conceal.'" App. 12a. But Congress did not merely require proof of concealment, but proof that the concealment or disguise would hide the nature, origin, source, control or location of the funds. 18 U.S.C. § 1956(a)(2). Those limitations on "conceal" were for the plain purpose of limiting the statute to money laundering, as commonly understood. The decision below reads these textual limitations out of the statute.

Indeed, the Fifth Circuit's understanding of money laundering is of breathtaking scope. As Judge Smith noted in his

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[4] Moreover, Congress has enacted a separate law to address international transportation of a large sum of cash that does *not* involve efforts to launder the money. Under 31 U.S.C. § 5332, bulk cash smuggling targets "[w]hoever, with the intent to evade a currency reporting requirement under section 5316, knowingly conceals more than $10,000 in currency or other monetary instruments on the person of such individual or in any conveyance, article of luggage, merchandise, or other container, and transports or transfers or attempts to transport or transfer such currency or monetary instruments from a place within the United States to a place outside of the United States." The penalty for bulk cash smuggling is 5 years imprisonment (rather than the up to 20 years for money laundering), reflecting that it is aimed at the "typically low-level employees of large criminal organizations" who attempt to smuggle cash out the United States. Pub. L. No. 107-56, § 371(a)(5), (b)(1), 115 Stat. 272, 335 (2001).

dissent, "a young petty thief who pickpockets a small sum of cash from an unsuspecting Laredo tourist and intends to spend it on an enjoyable evening at the bars of Nuevo Laredo, just across the Mexican border" would commit money laundering under the en banc majority's interpretation if the youth is found to have concealed the cash in his shoe. App. 33a. This "minor miscreant is now guilty of money laundering and faces up to 20 years' imprisonment and a fine of $500,000," an absurd result that Congress plainly did not intend. *Id.*

B. The Decision Of The En Banc Court Of Appeals Deepens An Existing Circuit Split

As recognized by the dissent below, App. 38a-39a, and as expressly noted in *United States v. Ness*, 466 F.3d 79, 81 (2d Cir. 2006), the circuits are divided as to whether a money laundering conviction requires a design to create the appearance of legitimate wealth.

1. The Sixth, Seventh, and Tenth Circuits Require a Design To Create The Appearance Of Legitimate Wealth

Three circuits have correctly and squarely held that money laundering requires a design to create the appearance of legitimate wealth. As the dissent noted, the decision below implicates a "circuit split" with decisions from the Sixth, Seventh, and Tenth Circuits. See App. 38a n.16 (collecting cases).

Consistent with its rejection of the government's overly broad view of "proceeds" that is on review in *Santos*, the Seventh Circuit insists that money laundering requires proof of concealment to create the appearance of legitimate wealth.[5] In *United States v. Esterman*, 324 F.3d 565 (7th

[5] The holding on review in *Santos* is, in substance, *United States v. Scialabba*, 282 F.3d 475 (7th Cir. 2002) (Easterbrook, J.). *Scialabba*

Cir. 2003), the court observed that the Money Laundering Control Act was "meant to target the transformation of funds derived from illegal activities into a clean or useable form," and thus reversed the money laundering conviction of a defendant who transferred money from a joint account he shared with a Russian business partner into a series of personal accounts in the United States. *Id.* at 570. Because there was an "absence of efforts to transform ill-gotten funds into apparently innocent assets or funds that the criminal can use later with impunity," *id.* at 572, the court vacated the defendant's conviction. See also *United States v. Jackson*, 935 F.2d 832, 843 (7th Cir. 1991) ("the government must prove that the transaction was designed to conceal one or another of the enumerated attributes of the proceeds involved").

The Tenth Circuit's leading case is *United States v. Dimeck*, 24 F.3d 1239 (10th Cir. 1994) (Ebel, J.). *Dimeck*, like this case, involved the covert transportation of drug proceeds. *Id.* Dimeck was to collect drug funds in Detroit and deliver them to another driver in Detroit, who would then deliver them to California. *Id.* at 1243. Dimeck used his company van to deliver the proceeds in a company box to the second driver, and then he suggested further concealment in a suitcase or taped box before the next leg of the trip. *Id.* A jury convicted Dimeck of international money laundering, but the Tenth Circuit reversed.

The Tenth Circuit posed the legal question as "whether the transportation and delivery of illegal proceeds by couriers to the seller of the drugs constitute[s] money laundering under § 1956(a)(1)(B)(i)." 24 F.3d at 1244. The court emphasized that "[t]o violate the [money laundering] statute, it was necessary that the transaction be motivated significantly by a desire to create the appearance of legitimate wealth or otherwise to conceal the nature of the funds so that they

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holds that "proceeds" in the money laundering statute means "net income," and not all the money involved in the crime.

might enter the economy as legitimate funds." *Id.* at 1245. Pointing to the text of the statute, the Tenth Circuit explained that the "section only prohibits financial transactions designed to conceal or disguise certain *listed attributes* of the proceeds: 'the nature, the location, the source, the ownership, or the control of the proceeds.'" *Id.* at 1246. In Dimeck's case, the Tenth Circuit explained that he had hidden the money but had not sought to "confuse or mislead anyone as to the characteristics" of the funds. *Id.* When a drug courier delivers funds, "it is not necessary for those involved to conceal or disguise the attributes of the money as it passes from one set of hands to another because the people expected to handle the money know it is illegal drug money." *Id.* at 1247. Because Dimeck, as a drug courier, had not concealed the funds for the purpose of "allowing these proceeds to enter into legitimate commerce," the money laundering conviction was reversed. *Id.* at 1246-1247.

Like the Seventh and Tenth Circuits, the Sixth Circuit requires proof of a design to create the appearance of legitimate wealth. In *United States v. McGahee*, 257 F.3d 520 (6th Cir. 2001), the court reversed a concealment money laundering conviction premised on payments made from a bank account containing illegal proceeds. It held that "[t]he checks drawn on the account were not intended to conceal how he got the funds, but merely to convert them to liquid assets." *Id.* at 528. Without evidence that the transactions were designed "to create the appearance of legitimate wealth," the court ruled, the conviction could not stand. *Id.*[6]

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[6] The First Circuit recently approved of *Dimeck*. In *United States v. Morales-Rodriguez*, 467 F.3d 1 (1st Cir. 2006), the court reiterated *Dimeck*'s rule that "mere transportation of concealed drug money [does] not constitute money laundering because the money laundering statute 'was designed to punish those . . . who thereafter take the additional step of attempting to legitimize their proceeds so that observers think their money is derived from legal enterprises.'" *Id.* at 13.

2. Like the Fifth Circuit, the Second, Third, and Eleventh Circuits Do Not Require A Design To Create The Appearance Of Legitimate Wealth

In addition to the Fifth Circuit en banc decision below, the Second, Third and Eleventh Circuits have squarely held that a money laundering conviction does not require proof of a design to create the appearance of legitimate wealth.

This disagreement among the circuits was recognized by the Second Circuit in *United States v. Ness*, 466 F.3d 79 (2d Cir. 2006) (Calabresi, J.). In *Ness*, the court acknowledged that its decision to affirm a money laundering conviction was inconsistent with the approaches taken by other courts of appeals. *Id.* at 81. The defendant there, an armored car service operator, was convicted for transporting drug proceeds overseas at the behest of drug traffickers. *See id.* at 80-81. In affirming the convictions, the Second Circuit relied exclusively on "the level of secrecy that attended Ness's dealings with the traffickers," without considering whether any evidence showed that the transportation in question was undertaken to create the appearance of legitimate wealth or otherwise "cleanse" the drug proceeds. *See id.* at 81. In so doing, the court of appeals observed that "[s]ome other circuits that have decided money laundering appeals would find this evidence legally insufficient." *See id.* at 82 (citing Tenth Circuit's *Dimeck* decision and Fifth Circuit's panel decision in this case). The court concluded, however, that Second Circuit precedent required affirmance. *See id.*, *citing*, *e.g.*, *United States v. Hurtado*, 38 F.App'x. 661, 664 (2d Cir. 2002) (upholding international money laundering conviction where defendant "had attempted to cross into Canada with over a half-million dollars in cash – carried in bags that bore a residual odor of either narcotics or firearms").

In addition to the Second Circuit, the decision below is also aligned with the Third Circuit. In *United States v. Carr*,

25 F.3d 1194, 1199-1200, 1205 (3d Cir. 1994), the defendant hid illegal drug proceeds in a bag, intending to fly internationally. His cash was seized and he was arrested for money laundering. *Id.* at 1200. In upholding his conviction, the Third Circuit explained that the government was required to prove that the defendant "knew the transportation was undertaken to disguise or conceal the money in some material fashion." *Id.* at 1206. The court found sufficient evidence even though there was no design to create the appearance of legitimate wealth. See App. 13a (en banc majority relying on *Carr*).

The decision below also expressly adopted the view of the Eleventh Circuit, which has sustained a money laundering conviction in the absence of any design to create the appearance of legitimate wealth. In *United States v. Abbell*, 271 F.3d 1286, 1298 (11th Cir. 2001), the Eleventh Circuit stated that "the text of the statute is not [so] restrictive" as to require proof of concealment to create the appearance of legitimate wealth. Most recently, the Eleventh Circuit, following both *Carr* and the en banc Fifth Circuit below, reiterated its position that money laundering does not require a design to create the appearance of legitimate wealth, finding that money laundering includes "hid[ing] [drug] money in the cars to prevent the authorities from finding it." *United States v. Garcia-Jaimes*, 2007 U.S. App. LEXIS 8963 (11th Cir. Apr. 19, 2007) (discussing the decision below, *Carr*, and *Johnson*).

In summary, in four circuits (the Second, Third, Fifth, and Eleventh) merely hiding illegal proceeds is sufficient to support a money laundering conviction. In at least three other circuits (the Sixth, Seventh, and Tenth), courts require concealing or disguising funds to create the appearance of legitimate wealth. This is precisely the type of well developed circuit split that warrants this Court's resolution. Currently, for example, drug couriers apprehended in New Mex-

ico will get no more than a five-year sentence for bulk cash smuggling, *supra*, at p. 10 n.4, while drug couriers apprehended in Texas can get up to a twenty year sentence under the money laundering statute for the same conduct. Punishment of the same conduct should not depend on which route a drug courier takes through the Southwest.

C. The Issue Is Recurring, Well Presented, and Timely

In addition to the well-developed circuit split, review is also warranted because the factual scenario raising the question presented is recurring. As cases like *Dimeck*, *Carr*, *Hurtado*, and *Garcia-Jaimes* illustrate, individuals are often found carrying hidden money from an illegal drug deal. In the view of four circuits, every such courier can be convicted of money laundering. Moreover, eliminating the requirement that there be a design to create the appearance of legitimate wealth for a money laundering conviction subjects a host of other types of common crime – even, as Judge Smith illustrated, petty theft, *see* App. 33a; *see also supra*, at p. 11 – to a money laundering conviction. The meaning of "conceal or disguise" in the money laundering statute is thus a recurring issue warranting this Court's review.

This case is an ideal vehicle with which to resolve this important circuit split. There is no dispute that illegal funds were hidden. Nor is there any dispute that petitioner is guilty of a crime (bulk cash smuggling). The sole question presented here is whether merely hiding funds with no design to create the appearance of legitimate wealth is sufficient to support a money laundering conviction. There are no other legal issues that could complicate the analysis. Moreover, the decision below provoked four lengthy opinions that articulate all the various competing arguments. When considered with the views of six other circuits, there is no need to wait for additional appellate consideration of the question.

Finally, judicial economy is well served by granting review here while the Court is also considering *Santos*. As noted above, recently the Court granted certiorari in *Santos*. The question presented in *Santos* is whether, under the money laundering statute, "proceeds" from unlawful activities means gross receipts or only profits. Here, the question is the meaning of "conceal or disguise" under the same money laundering statute. The Court should grant this petition so that it can together resolve the circuit splits on the meaning of the money laundering statute and thereby restore clarity to this important criminal statute.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

RICHARD ANDERSON
(*Counsel of Record*)
JERRY V. BEARD
KEVIN JOEL PAGE
FEDERAL PUBLIC
DEFENDER'S OFFICE
NORTHERN DISTRICT OF TEXAS
819 Taylor Street, Suite 9A10
Fort Worth, Texas 76102
(817) 978-2753

WALTER DELLINGER
MARK S. DAVIES
SUSAN M. MOSS*
O'MELVENY & MYERS LLP
1625 Eye Street, N.W.
Washington, D.C. 20006
(202) 383-5300

* *Admitted in Idaho only*

May 3, 2007

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