

1 IN THE SUPREME COURT OF THE UNITED STATES

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3 HUMBERTO FIDEL REGALADO :

4 CUELLAR, :

5 Petitioner :

6 v. : No. 06-1456

7 UNITED STATES. :

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9 Washington, D.C.

10 Monday, February 25, 2008

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12 The above-entitled matter came on for oral  
13 argument before the Supreme Court of the United States  
14 at 10:02 a.m.

15 APPEARANCES:

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20 behalf of the Respondent.

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P R O C E E D I N G S

(10:02 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument first today in Case 06-1456, Cuellar versus United States. Mr. Beard.

ORAL ARGUMENT OF JERRY V. BEARD

ON BEHALF OF THE PETITIONER

MR. BEARD: Thank you, Mr. Chief Justice, and may it please the Court:

Section 1956, the money laundering statute, requires an intent to minimize the criminal taint of unlawful proceeds. But the statute does not criminalize concealing money's existence. In this case, Mr. Cuellar's conviction should be reversed for two reasons. First, while the method of the transportation involved may have been designed to conceal, the transportation itself was not. Secondly, while Cuellar may have in fact concealed money itself, he did not conceal the nature, source, location, ownership or control of the unlawful proceeds.

CHIEF JUSTICE ROBERTS: Well, he certainly concealed the location. They were secreted in the car, under the goat hair and everything else. The location of the money was certainly concealed.

MR. BEARD: Chief Justice, in the broader

1 sense location was concealed. The point to be taken  
2 here I think is this: An examination of the text itself  
3 reveals particular listed attributes, and "location"  
4 numbers among them. But what this suggests, the  
5 requirement that there be a design to conceal or to  
6 disguise these particular attributes, necessarily means  
7 a plan, if you will, for those -- excuse me -- for those  
8 attributes to be presented either to law enforcement if  
9 they intercept the money or inject it into legitimate  
10 commerce later. In other words, they'll be observed  
11 later. "Location" has independent meaning, but it's also  
12 understood within the context of the words that surround  
13 it. All money changes location, whether concealed or  
14 not. "Location" in this context means more than the  
15 location that the money was found in the car.

16 JUSTICE BREYER: Maybe I should ask you this  
17 now because you've probably thought about it and I can't  
18 work it out. I don't see any problem here with the word  
19 "location." I thought what you would say is it isn't  
20 the transportation in this instance that concealed the  
21 location, it's the method of transportation that sealed  
22 the location.

23 MR. BEARD: Yes, Justice --

24 JUSTICE BREYER: And if you read it that  
25 literally, then there is no problem in getting to your

1 interpretation of the statute, or is there? Because  
2 since you didn't advance that argument, I thought maybe  
3 there's something I've not seen here.

4 MR. BEARD: No, Justice Breyer; you're  
5 correct. There is a huge difference between the method  
6 of transportation and the transportation itself. And in  
7 this particular case, the difference is certainly  
8 implicated. What we understand the government to be  
9 arguing is that the method of the transportation  
10 satisfies the listed attributes. But if that were the  
11 case it would effectively render all transportation of  
12 funds necessarily to be money laundering.

13 JUSTICE STEVENS: May I just ask, what do  
14 you mean by "method of transportation" in this case?  
15 You mean it was in a car or the fact it was wrapped up  
16 in dirty -- in a dirty kind of container, and so forth  
17 and so on?

18 MR. BEARD: Justice Stevens, what I'm  
19 referring to is certainly that it was in a car, but  
20 there was a secret compartment, goat hair was sprinkled  
21 around to try to throw off drug-detection dogs, and  
22 those type of characteristics.

23 JUSTICE STEVENS: But isn't that all just  
24 evidence that there was a motive to conceal the  
25 ownership?

1           MR. BEARD: No, I don't think so,  
2 Justice Stevens. What we're looking at here is that the  
3 design of the -- the fact Mr. Cuellar may or may not  
4 have known, for example, who owned -- where the money  
5 was coming from or who owned it, that doesn't go to the  
6 design of the transportation. The design of the  
7 transportation itself is just to get the money to  
8 Mexico. I can say that abstractly, but in this case in  
9 particular because we know from the government's  
10 evidence that what this was was essentially the last leg  
11 of a drug-trafficking deal. We know that this was  
12 repayment. So in this particular case at least, the  
13 purpose of this transportation was to get this money  
14 back as repayment money.

15           JUSTICE GINSBURG: If he were a courier  
16 bringing the marijuana into the United States, what would  
17 be the crime and the penalty?

18           MR. BEARD: Justice, if he was bringing --

19           JUSTICE GINSBURG: If he was bringing  
20 marijuana into the United States instead of returning  
21 with the proceeds?

22           MR. BEARD: Well, presumably, Your Honor, it  
23 would be a drug-trafficking crime. But of course, as I  
24 understand your hypothetical, he would possess marijuana  
25 at that time.

1 JUSTICE GINSBURG: But now he possesses  
2 money. And you're not saying this is innocent behavior.  
3 It is criminal behavior, so what is the crime if it's  
4 not money laundering?

5 MR. BEARD: We have suggested that  
6 Mr. Cuellar's liability -- liability or culpability --  
7 lie more properly under the bulk cash smuggling statute.

8 JUSTICE GINSBURG: But that requires knowing  
9 that it's illegal to take out more than X amount of  
10 money, and there's nothing that indicates that the  
11 common courier would know anything about such a  
12 provision.

13 MR. BEARD: Yes, you're correct that it  
14 would require inference as opposed to direct evidence.  
15 This is why in our reply brief, we gave an example of  
16 where the identical type behavior arose, not in Texas  
17 but in Alabama, and in fact the individual pleaded  
18 guilty to bulk cash smuggling.

19 So I suppose my response would be this. The  
20 same weak inferences that supported the money laundering  
21 conviction in the government's eyes would be the same  
22 inferences that would support the cash smuggling.

23 JUSTICE KENNEDY: If we take it that you  
24 concede -- I don't want to say that you concede. If we  
25 take it the government had a very strong case under the

1 smuggling statute, wouldn't it have an equally strong  
2 case under (i) of the statute that we're considering  
3 here, which doesn't require concealing or disguising the  
4 nature, just to avoid a transportation reporting  
5 requirement. That's the same as the smuggling statute.

6 MR. BEARD: No, I don't think --

7 JUSTICE KENNEDY: I know the government  
8 didn't indict under (ii).

9 MR. BEARD: But I don't think it is the  
10 same, Your Honor, because the cash smuggling -- the bulk  
11 cash smuggling statute speaks to currency and of course  
12 this speaks to transactions. So I think that there  
13 is in fact --

14 JUSTICE KENNEDY: You mean as proceeds  
15 of an illegal transaction?

16 MR. BEARD: Well, I'm distinguishing between  
17 "currency" and "transaction" because as I understand it,  
18 at least, "transaction" might implicate in a banking  
19 context, but cash is cash, if you will. So --

20 JUSTICE GINSBURG: And it doesn't matter for  
21 purposes of the bulk cash statute that it was illegal.  
22 It could be perfectly lawful money.

23 MR. BEARD: Yes, Your Honor, absolutely.  
24 That's certainly true. But --

25 CHIEF JUSTICE ROBERTS: Why -- why isn't



1 this transporting to conceal the location or the  
2 ownership in this sense? Suppose you have someone the  
3 police suspect of engaging in drug activities. They  
4 know he sold, you know, so much marijuana or whatever  
5 and got cash back. They think it's there, and they're  
6 going to investigate it, but this fellow comes in and  
7 they transport the proceeds across the border.

8           Isn't that transportation to conceal the  
9 location or the ownership?

10           MR. BEARD: As I understand it, Mr. Chief  
11 Justice, if the police are aware of it and then the  
12 flush, if you will, takes the money across, I think  
13 that's -- that's much closer. That's --

14           CHIEF JUSTICE ROBERTS: Well, they think  
15 it's there, but they're not sure, and they -- you know,  
16 that would help them make their case, to find out that  
17 the guy they think sold the drugs has \$80,000. So they  
18 get a search warrant or whatever, and it turns out he  
19 doesn't, because it's been transported to conceal the  
20 location or ownership.

21           MR. BEARD: I would -- no, I think that  
22 the -- if the police were aware, if the police were  
23 aware and the kingpin were aware and put in place some  
24 type of design, if you will, to flush the money and  
25 perhaps to -- to Mexico under the circumstances you

1 described, then you would be closer to -- to having money  
2 laundering liability, although certainly I don't know  
3 that the courier necessarily would.

4           However, I think it's very important to  
5 consider that the money laundering statute necessarily  
6 contemplates this notion of -- of detection or the money  
7 resurfacing, if you will. And the reason I think that's  
8 important is because it gives a particular meaning to  
9 those listed attributes. If the police were just --  
10 well, in this case, just stumbled upon it, and nothing  
11 was -- had been done and there was no evidence on the  
12 record to suggest that there was going to be anything  
13 done in this case other than repayment, money laundering  
14 liability is simply not going to arise.

15           Now, I think that --

16           JUSTICE BREYER: I still don't see why isn't  
17 what the Chief Justice said absolutely right? If you  
18 are transporting this money to get it out of town so the  
19 police can't find it, you're transporting it to conceal  
20 it. That falls right within the statute.

21           MR. BEARD: I --

22           JUSTICE BREYER: If you're transporting it  
23 simply to pay some courier somewhere else, you're not  
24 transporting it to conceal it. And if in fact the  
25 transportation is done in a way that conceals it, that's

1 beside the point because the statute is interested in  
2 transporting it in order to conceal it.

3 MR. BEARD: I think that --

4 JUSTICE BREYER: What is wrong with that?

5 MR. BEARD: I think what's wrong, Your  
6 Honor, is that the -- the statute focuses on the  
7 transportation or some of the other transfers or  
8 transmission and specifically is coupled, if you will,  
9 with this notion of -- of the attributes themselves. I  
10 don't know that it's -- it's simply too broad, in fact,  
11 to say that all transportations will necessarily incur  
12 the money laundering liability.

13 JUSTICE SCALIA: Maybe I didn't understand  
14 the -- I thought he was helping you, but maybe --

15 (Laughter.)

16 JUSTICE SCALIA: Were you helping him? I  
17 thought so.

18 (Laughter.)

19 JUSTICE BREYER: I thought the Chief Justice  
20 was helping him.

21 JUSTICE GINSBURG: It sounds like he was  
22 making the distinction that didn't the dissenting judge  
23 make between -- the dissenting judge said, transporting  
24 to conceal is no good, but concealing to transport is  
25 okay.

1           MR. BEARD: That -- you're correct, Your  
2 Honor, and that is, I think, a point to be made. The --  
3 Judge Smith below did try to highlight the fact that if  
4 you transport to conceal, then you're beginning to  
5 implicate money laundering liability.

6           JUSTICE ALITO: Suppose someone transports  
7 money across a border and is recorded surreptitiously on  
8 tape explaining exactly why the person did it, and the  
9 person says: The reason why I'm transporting this  
10 across the border is because I know that when I get it  
11 to the destination country, that's a place where people  
12 use huge amounts of cash for bank deposits, for  
13 purchases; and, therefore the act of transporting it  
14 from the United States to the other country will  
15 disguise the nature of the cash as drug money.

16                     Would that fall within the statute?

17           MR. BEARD: No, I don't think so,  
18 Justice Alito, and the reason I don't is because that  
19 -- what you've described implicates potential money  
20 spending, this notion that the money is easier spent.  
21 But without more, money spending would not equate to  
22 money laundering. That's --

23           JUSTICE ALITO: Why wouldn't that fit the  
24 literal language of the statute? It's a transportation  
25 across the border with the design to conceal the nature,

1 i.e., that it's drug money, of this money?

2 MR. BEARD: I'm not sure, Justice, that  
3 you've actually concealed the nature. If the money was  
4 going -- if the money was dirty and going across dirty,  
5 it remained dirty and just happened to be spent. But --

6 JUSTICE SOUTER: Yes, but it doesn't remain  
7 dirty simply because it goes to a place in which the  
8 appearance of this kind of cash does not have the dirty  
9 appearance that it does at home. Why -- why isn't  
10 that the correct answer?

11 MR. BEARD: I --

12 JUSTICE SOUTER: Why doesn't that make it  
13 laundering?

14 MR. BEARD: Again, I don't know that there  
15 has been -- as I understood the hypothetical, I don't  
16 think that there's been any suggestion of a design to  
17 conceal, the why. You're just taking dirty and you're  
18 --

19 JUSTICE SOUTER: No, but the design to  
20 conceal -- maybe I misunderstood the hypo, but I thought  
21 the design to conceal was you conceal the dirty  
22 character of the money by taking it to a place and using  
23 it in that place where use of large amounts of cash,  
24 whether for bank deposits or spending in luxury stores,  
25 does not have the dirty implication, the dirty

1 appearance that it does in the United States.

2 So, why doesn't that therefore satisfy the  
3 concealment?

4 MR. BEARD: I -- Justice Souter, I think  
5 that the answer to the question is here. The statute is  
6 designed to take -- or purposed to take these dirty  
7 proceeds, unlawful proceeds, and to cleanse them so as  
8 to prevent their injection into streams of legitimate  
9 commerce.

10 What you've described as spending is  
11 admittedly spending, but I don't think that the spending  
12 that's -- that you've contemplated there basically  
13 implicates the core concern, if you will. The money --

14 JUSTICE SCALIA: You don't have any evidence  
15 like that here anyway, do we? Do we know that this was  
16 going to "Spendy Land" where everybody has a lot of  
17 money? Did we know that?

18 MR. BEARD: Justice Scalia, what we know,  
19 because the government's evidence established it, is  
20 that the money was being sent back to Mexico to repay  
21 --

22 JUSTICE SCALIA: Does everybody have a lot  
23 of money in Mexico? Is that --

24 MR. BEARD: Well, I would hazard to say no,  
25 of course, but the record --

1 JUSTICE ALITO: Was there -- was there  
2 evidence about the nature of the Mexican economy?

3 MR. BEARD: There was. There was, Your  
4 Honor.

5 JUSTICE ALITO: What was the evidence?

6 MR. BEARD: I'm sorry?

7 JUSTICE ALITO: What was the evidence?

8 MR. BEARD: The evidence that you just asked  
9 about went to that it was easier to spend money in  
10 Mexico.

11 JUSTICE ALITO: Wasn't there an expert who  
12 said that Mexico has a cash economy?

13 MR. BEARD: Yes, yes. And it -- and --

14 JUSTICE ALITO: And what does that mean?

15 MR. BEARD: What I take it to mean --

16 JUSTICE ALITO: Does it mean people can  
17 spend a lot of cash without raising eyebrows?

18 MR. BEARD: Certainly more than here. That  
19 was what I think that the evidence was offered for. And  
20 the same expert, of course offered, you know,  
21 established -- or the government established through the  
22 same expert that the purpose of this particular  
23 transportation was to complete the transaction, the drug  
24 transaction.

25 JUSTICE ALITO: In your brief, you argue

1 that there has to be a design to create the appearance  
2 of legitimate wealth. Are you drawing back now from  
3 that argument?

4 MR. BEARD: No, and, of course, we are well  
5 aware that those words are not found in the statute, nor  
6 do we suggest that they were. But what we have  
7 suggested is simply this -- that's, if you will, shorthand  
8 for describing what necessarily occurs if the  
9 attributes, the listed attributes, are obfuscated. That  
10 is the cleansing mechanism.

11 JUSTICE ALITO: Well, why would that be so?  
12 Suppose -- I mean, take -- just modify my hypothetical.  
13 What this person says on the tape is: I'm sending this  
14 money across the border because I know that if it --  
15 once it gets there, it will be harder to establish my  
16 ownership of it. People will still know that it's drug  
17 money perhaps, but they -- it will be harder to  
18 establish my ownership of it.

19 Now, would that fall within the statute?

20 MR. BEARD: Well, at that point, yes,  
21 because I think --

22 JUSTICE ALITO: But there wouldn't be an  
23 attempt to create the appearance of legitimate wealth  
24 there then, would there?

25 MR. BEARD: Well, to the extent that the



1 individual who has been taped is contemplating the  
2 money's resurfacing, I think that there would be. It  
3 would be not legitimate wealth, though. And perhaps I  
4 need to drive this point home. It would be less dirty.  
5 In other words, there's not a requirement that the dirty  
6 money necessarily be made clean or a description, but  
7 that the dirty money be made less dirty. And that I  
8 think is -- is what we're talking about.

9 JUSTICE SCALIA: Does the statutory purpose  
10 have to be the only purpose or the principal purpose? I  
11 mean, I could conceive that the principal purpose of  
12 this transportation was to give the money back to the  
13 fellow who gave the drugs, to pay the provider of the  
14 drugs. I assume that would be the principal purpose.

15 But what if you know that when the -- when  
16 the provider of the drugs is paid, he'll be able to  
17 spend this cash easily in Mexico, which has a cash  
18 economy? And let's assume that the latter is enough to  
19 satisfy the purpose requirement of the statute. What  
20 -- what would be the result?

21 MR. BEARD: If we -- well, Justice Scalia,  
22 if we --

23 JUSTICE SCALIA: If you assume a primary  
24 purpose to pay off the --

25 MR. BEARD: Right. If we assume that the --

1 that the latter, as you just said, satisfies the  
2 statute, then you have a conviction.

3 But we certainly don't assume that, because  
4 that implicates money spending, and money spending  
5 hasn't -- hasn't been held to be money laundering.

6 JUSTICE SCALIA: Even though that wasn't the  
7 real purpose -- I mean, the real purpose was to pay off  
8 this fellow, who otherwise might come to hurt you.

9 MR. BEARD: Yes, absolutely.

10 JUSTICE SCALIA: But once you do pay him  
11 off, you know that the money is going to be readily  
12 spendable.

13 MR. BEARD: Well, certainly in this case, we  
14 don't have any evidence that Mr. Cuellar knew any such  
15 thing. If you were to remove it from the confines of  
16 the Cuellar case, I think you -- your hypothetical does  
17 come closer to implicating liability; but that's simply  
18 not what we have here. Now --

19 JUSTICE STEVENS: May I ask what you  
20 understand the language "disguise the nature of the  
21 proceeds of this specified unlawful activity" to mean,  
22 does that -- is that satisfied by merely proof that it  
23 is proceeds of unlawful activity? Or do you have to  
24 tell that -- what is the word "nature" talking about?

25 MR. BEARD: No, Justice Stevens. It would

1 again, I think, require more. If all that were required  
2 is to show that there was unlawful proceeds --

3 JUSTICE STEVENS: Yes, that's what it seems  
4 to say. What I'm asking is: What do you think it  
5 means?

6 MR. BEARD: Well, what I think it means is  
7 that there has to be some -- the transportation or what  
8 have you has to be purposed, designed, to take the  
9 nature and obfuscate it. And this --

10 JUSTICE STEVENS: But I'm just asking about  
11 the word -- the meaning of the word "nature." What is  
12 the nature, other than the fact it's proceeds of  
13 unlawful activity?

14 MR. BEARD: That it would -- I think that it  
15 would -- "nature" is perhaps the first and foremost of  
16 the attributes, but I think that it means -- that it  
17 means dirty, unclean.

18 JUSTICE STEVENS: "Dirty" in some sense  
19 other than being proceeds of specified unlawful  
20 activity?

21 MR. BEARD: Oh, okay. I don't know.

22 JUSTICE STEVENS: I just don't know what  
23 that means other than that it is proceeds of unlawful --

24 MR. BEARD: When I have -- when I read the  
25 attributes and contemplate --

1 JUSTICE STEVENS: I'm just talking about the  
2 one attribute, "nature."

3 MR. BEARD: Right.

4 JUSTICE STEVENS: I'm trying to understand  
5 what you think that means.

6 MR. BEARD: I have thought of it as meaning  
7 basically dirty.

8 JUSTICE STEVENS: And they're proceeds of  
9 unlawful activity.

10 MR. BEARD: Proceeds of unlawful activity  
11 are the --

12 JUSTICE STEVENS: It's always dirty.

13 MR. BEARD: There may be -- well, yes, I see  
14 where you're going. Is there -- what is the independent  
15 meaning of "nature." I think that --

16 JUSTICE GINSBURG: Why isn't it simply to  
17 change the nature from being drug money to look like  
18 it's apparently innocent? I mean the change of the  
19 nature -- the nature going in is it's always dirty.  
20 It's drug money. And the purpose of the concealment is  
21 to get it converted to some different nature, i.e.,  
22 clean money.

23 Isn't that what "disguise the nature" means?

24 MR. BEARD: I don't -- I brook no quarrel  
25 with that. I mean, yes. I'm just -- what I was simply

1 suggesting --

2 JUSTICE STEVENS: But the verb is not  
3 "transformed." The verb is "disguise" or "conceal."

4 MR. BEARD: That's true, and the meaning  
5 certainly of "conceal" would be to bring it forward with  
6 maybe no explanation of the taint, if you will. And, of  
7 course, "disguise" would be to maybe create a false  
8 explanation of where the money is --

9 JUSTICE KENNEDY: Was there a reporting  
10 requirement for -- for this shipment? If he had gone to  
11 the border, would he -- well, then, a lot of what you're  
12 arguing about isn't very important because they could  
13 just indict under (ii).

14 MR. BEARD: To avoid a transaction-reporting  
15 --

16 JUSTICE KENNEDY: To avoid a  
17 transaction-reporting requirement, and you wouldn't have  
18 to go through all this "nature" thing.

19 MR. BEARD: Your Honor, as I understand it  
20 he would have a currency reporting requirement, had he  
21 been going South.

22 JUSTICE KENNEDY: You indicated that there  
23 is such a requirement.

24 MR. BEARD: A currency reporting  
25 requirement, yes. I'm not sure that there is a

1 transaction-reporting requirement. I think that that --

2 JUSTICE KENNEDY: Oh, I see.

3 MR. BEARD: -- in fact, may implicate  
4 different considerations.

5 JUSTICE GINSBURG: And if he -- if he didn't  
6 know about the currency reporting requirement, then he's  
7 not guilty under that statute because it requires  
8 knowledge.

9 MR. BEARD: Yes, Your Honor, I understand.  
10 And so where we are left is he may not be guilty under  
11 money laundering and perhaps, perhaps not under bulk  
12 cash smuggling. But that in itself does not necessitate  
13 a broadly interpreted understanding of the money  
14 laundering statute.

15 JUSTICE GINSBURG: If he's not -- if he  
16 doesn't fit into either category, then there's no crime?

17 MR. BEARD: That's a possibility, yes,  
18 absolutely.

19 CHIEF JUSTICE ROBERTS: Counsel, can I ask  
20 you to go back to Justice Stevens' line of questioning?  
21 If -- do you conceal the nature of proceeds if you  
22 conceal the proceeds?

23 MR. BEARD: No, and I think that --  
24 Mr. Chief Justice, I think that it's important to  
25 understand, for example, that hiding money is not

1 necessarily the same thing as -- I mean, concealing  
2 money is not necessarily the same thing as concealing  
3 the location. And I think you could make the same type  
4 of analysis in the other --

5 CHIEF JUSTICE ROBERTS: Well, that -- that  
6 doesn't seem to follow. I understand the argument with  
7 "nature." In other words, you're not concealing the  
8 nature; it's just not there. But when you're hiding it,  
9 you are concealing the location.

10 MR. BEARD: Yes. But, again, I think that  
11 the term "location," which is understood in the context  
12 of the words surrounding it, if I take money and hide it  
13 in my --

14 CHIEF JUSTICE ROBERTS: Well, that gets me  
15 to a question that you -- several times you've referenced  
16 the attributes. Are you saying that the statute would  
17 have a different meaning if it just said "location"?

18 MR. BEARD: What I'm suggesting, Chief  
19 Justice, is that if the -- that the statute would have a  
20 particularly different meaning from the one that the  
21 government wants if the attributes just listed existence  
22 of the money. There is a huge difference between hiding  
23 money or hiding the location of the money.

24 If you just had "location" by itself, I'd be  
25 making the same argument; but there's a huge difference

1 between hiding money or hiding the location.

2 CHIEF JUSTICE ROBERTS: Well, you better  
3 explain that a little more for me.

4 MR. BEARD: All right, then. If I --

5 CHIEF JUSTICE ROBERTS: Because they seem to  
6 me the same.

7 MR. BEARD: If I -- no. I think that the --  
8 hiding the location suggests that the individual is  
9 contemplating the money resurfacing later, either for  
10 injection into commerce or for -- perhaps if the police  
11 discover it, and they're trying -- the launderer, if you  
12 will, is trying to make sure that the money would  
13 survive that subsequent --

14 CHIEF JUSTICE ROBERTS: Okay, so hiding  
15 location assumes it's going to come up later.

16 MR. BEARD: Yes.

17 CHIEF JUSTICE ROBERTS: And if you just hide  
18 the money, you assume he's just going to leave it  
19 somewhere and forget about it?

20 MR. BEARD: No. No, Mr. Chief Justice. If  
21 you just hide the money, that would encompass just  
22 hiding money, for example, in the back yard of your  
23 house with -- with -- or in a tin can or under a  
24 mattress or whatever. It's a much broader -- broader  
25 concept.



1           And I think that's really what is at  
2 play here because, to the extent that the government is  
3 focusing on the method or -- of the concealment here,  
4 they're -- they're implicating that type of behavior, if  
5 you will, and saying it's sufficient to support a money  
6 laundering conviction.

7           JUSTICE ALITO: But what if there is a wire  
8 transfer to a bank in another country because that bank  
9 has bank secrecy laws that will make it impossible to  
10 ascertain the location of the money once it is there?

11                   Does that fall within the statute?

12           MR. BEARD: At this point, no, Justice,  
13 because you haven't suggested that there was any type of  
14 design, any intent to disguise or conceal. You've just  
15 suggested it went to another place. If I sent it to an  
16 account --

17           JUSTICE ALITO: If that's the purpose.  
18 The person says: I'm sending this to blank country  
19 because they've got bank secrecy laws there that make it  
20 impossible to find this money once it gets into their  
21 banking system.

22           MR. BEARD: No.

23           JUSTICE ALITO: That's not --

24           MR. BEARD: On those facts, no, I don't  
25 think so. Now, if I were sending money to accounts in

1 the jurisdiction you've described, and perhaps with a  
2 little bit more, different names on the accounts or what  
3 have you, then I -- then I think a different result.  
4 But if I'm just sending from my account here to my  
5 account there, then no.

6 JUSTICE GINSBURG: Would you say the same  
7 thing for -- if you just put it in a safe deposit box in  
8 a bank in the Bahamas?

9 MR. BEARD: I would make the same -- my  
10 answer would be the same without more, Your Honor.

11 CHIEF JUSTICE ROBERTS: Well, the "more" is  
12 they don't hold it under your name. They hold it under  
13 a numerical account number. Then that changes  
14 everything?

15 MR. BEARD: It very well may. At least -- I  
16 don't know that it changes everything, but it very well  
17 may lead to a different result. But you just modified  
18 the hypothetical.

19 What I'm -- what I'm suggesting is that if  
20 you're just putting money in a safety deposit box or  
21 this account or under the mattress or in the hole in the  
22 back yard --

23 JUSTICE SCALIA: Because the police can't  
24 find it in that account even if it is still under your  
25 name. In an account here the police would be able to

1 find it. In an account in the Cayman Islands, they  
2 won't be able to. Isn't that -- isn't that transporting  
3 it in order to conceal -- to conceal it?

4 MR. BEARD: Justice, no, I don't think so,  
5 and I'll briefly answer and try to come back to you in  
6 rebuttal.

7 But I think that it's important to  
8 understand the money laundering statute is not a  
9 detection statute. That's not where the focus of the  
10 statute rests.

11 Mr. Chief Justice, if I can reserve the  
12 balance of my time.

13 CHIEF JUSTICE ROBERTS: Thank you, Mr.  
14 Beard.

15 JUSTICE SCALIA: I don't understand that, so  
16 I hope you will explain it later. It doesn't mean  
17 anything if it's not a detection statute.

18 CHIEF JUSTICE ROBERTS: Ms. Schertler.

19 ORAL ARGUMENT OF LISA H. SCHERTLER

20 ON BEHALF OF THE RESPONDENT

21 MS. SCHERTLER: Mr. Chief Justice, and may  
22 it please the Court:

23 The international concealment money  
24 laundering statute contains no appearance-of-legitimate-  
25 wealth requirement, nor does it demand proof that the

1 illegal proceeds will be cleansed after they cross the  
2 United States border. Petitioner's construction of the  
3 statute is not supported by its text and would defeat  
4 its purpose.

5           What the statute does require is proof  
6 beyond a reasonable doubt that the defendant knows that  
7 he has illegal proceeds and that he knows that the  
8 transportation across the border of those known illegal  
9 proceeds is designed in whole or in part to conceal or  
10 disguise one -- at least one -- of the facts in the  
11 statute about those proceeds. The phrase "designed in  
12 whole or in part" directs a full examination of the plan,  
13 of the way in which the cross-border transportation of  
14 these known illegal proceeds was planned out.

15           JUSTICE ALITO: Does the word  
16 "transportation" mean the act of transportation across  
17 the border or the method of transportation?

18           MS. SCHERTLER: The word "transportation"  
19 itself means the carrying of something from one place to  
20 another. The phrase "designed in whole or in part"  
21 suggests that one should look at the entire plan, the  
22 way that this transportation was conceived or planned  
23 out in the mind, which would include, we would submit,  
24 the method that was -- that was chosen to be used for  
25 this transportation, the individual who was designated

1 to conduct this transportation of known illegal proceeds  
2 across the United States border, and, yes, reasons for  
3 conducting that transportation as well.

4 But it is not limited, as Petitioner would  
5 suggest, to just one fact, that being what's going to  
6 happen to the funds after the transportation is over.

7 JUSTICE BREYER: You go back to  
8 Justice Alito's question. I agree with you that you  
9 could read this as including a prohibition against a  
10 method of transportation which method is to hide the  
11 money. You could. But you could also read it the way  
12 that the question suggests, to refer only to the  
13 transportation. So you transport it physically in order  
14 later to hide it.

15 Now, the difference between the two is if we  
16 accept yours, which is the broader, this statute  
17 includes everything that has nothing to do with the  
18 common word "money laundering." Any time you hide  
19 something, for whatever reason you hide it, to take it  
20 to pay the couriers, you're money laundering. Any time  
21 you run a gambling operation and the people stick the  
22 money in the wad of their shoe, they're money  
23 laundering.

24 I mean, why would you think Congress would  
25 want that narrow reading when it can be read to focus

1 much more closely on money laundering just by reading it  
2 literally for what it says?

3 MS. SCHERTLER: Your Honor, several  
4 responses to that -- to that question.

5 First of all, what the purpose -- if we  
6 want to look beyond the words "designed in whole or in  
7 part" in the context of the international money  
8 laundering statute to try to discern what the purpose  
9 was of the statute, the purpose of this statute was to  
10 prevent criminals from taking their proceeds abroad  
11 where they would be outside the reach of all of these  
12 controls that have been set up in the United States in  
13 order to detect illegal proceeds and use those proceeds  
14 to trace back to the crimes and the criminals that  
15 generated them.

16 JUSTICE SOUTER: But if that's all they were  
17 getting at, they wouldn't have to have this  
18 international component at all, because if you totally  
19 eliminated the "to or through" requirement and you were  
20 able to focus or properly focus solely on the method of  
21 the transportation, et cetera, then you would cover not  
22 only cases in which the concealment ultimately would  
23 take place by crossing a border, but you would pick up  
24 cases in which the concealment would take place even  
25 within the United States; and that would certainly be in

1 the government's interest.

2 But if you add, if you say, well, but this  
3 is limited by a "to or through" requirement, then it  
4 suggests, it seems to me, as Justice Breyer's question  
5 does, that it must -- the statute must be getting at  
6 what happens when it crosses the border as opposed to  
7 the means of crossing.

8 What's your answer to that?

9 MS. SCHERTLER: My answer to that, Your  
10 Honor, is that that would have -- that would defeat the  
11 purpose for which this statute was enacted. The -- the  
12 premise of this statute was that once illegal proceeds  
13 are taken abroad, taken outside of the United States  
14 system, we lose control of them, we lose the ability to  
15 find them, and we will have no idea --

16 JUSTICE SOUTER: But that would be -- that  
17 would be equally true and an equally appropriate  
18 objective without the "to or through" requirement in  
19 there. In other words, you don't have to have the "to  
20 or through" requirement in order to give the government  
21 a tool for exactly the purpose that you describe.

22 MS. SCHERTLER: And there -- there could  
23 have been drafted a statute that was even broader than  
24 this one in that respect. But the way -- the reason  
25 that Congress imposed the "to or through" requirement is

1 that it knew -- is that that was when law enforcement in  
2 the United States would lose the ability to use ordinary  
3 investigative methods to find the proceeds of illegal  
4 fraud.

5 JUSTICE KENNEDY: Then what you're saying, I  
6 suppose, is that the movement of funds, if they're  
7 illegal proceeds, outside of the country is a per se  
8 concealment?

9 MS. SCHERTLER: No, Your Honor. We do not  
10 --

11 JUSTICE KENNEDY: Give me an example of when  
12 you take money outside of the country that's illegal  
13 money --

14 MS. SCHERTLER: Yes.

15 JUSTICE KENNEDY: -- that's not a  
16 concealment?

17 MS. SCHERTLER: Yes. Let's say you have a  
18 drug dealer who conducts a number of drug transactions  
19 on one side of the border, takes his daily take, puts it  
20 in his pocket or his wallet and crosses the border into  
21 Mexico. Based on that evidence alone, the government  
22 would not be able to show beyond a reasonable doubt that  
23 merely taking those illegal proceeds, known illegal  
24 proceeds, putting them in your pocket, that that was  
25 designed to conceal the location, that there was a



1 plan --

2 JUSTICE SCALIA: He puts it in his shoe,  
3 okay. Because it's a lot, he puts it in his shoe.

4 MS. SCHERTLER: That would --

5 JUSTICE SCALIA: That would be enough,  
6 wouldn't it?

7 MS. SCHERTLER: That would -- yes. Your  
8 Honor, that would permit the inference. Now, of course,  
9 ultimately --

10 JUSTICE SOUTER: What if he gives it to his  
11 brother and says take it across for me, will you?

12 MS. SCHERTLER: Well, I don't think that  
13 that alone is -- is enough, Your Honor.

14 What the statute asks is can you find --

15 JUSTICE SOUTER: If he tells his brother to  
16 put it in his shoe?

17 (Laughter.)

18 MS. SCHERTLER: That would -- that would --  
19 that would get close.

20 CHIEF JUSTICE ROBERTS: Why isn't that  
21 enough? If, for example, he's being -- he thinks he's  
22 being watched by law enforcement because they know he's  
23 up to something, but his brother isn't, why isn't that  
24 concealing?

25 MS. SCHERTLER: With that additional

1 evidence, absolutely. I think there would be a basis  
2 for a jury to find beyond a reasonable doubt that that  
3 was designed, that that was designed to conceal.

4 JUSTICE KENNEDY: Well then, let me back up.  
5 Then let me add this. It seems to me that you're  
6 saying, as you have to say, that any movement of illegal  
7 funds outside the country which is concealed is per se  
8 concealing a relevant attribute?

9 MS. SCHERTLER: We don't go that far, Your  
10 Honor. As I said --

11 JUSTICE KENNEDY: But if you do.

12 MS. SCHERTLER: -- you need to find --

13 JUSTICE KENNEDY: I think you have to go  
14 that far to make the case you're making.

15 MS. SCHERTLER: No, not at all. I mean,  
16 what -- Congress could have said every cross-border  
17 transportation of illegal proceeds is covered. And they  
18 did not. What they did was they set up this filter  
19 for the ones --

20 JUSTICE KENNEDY: But you're always  
21 concealing the control. You're always concealing the  
22 ownership. You're always concealing the location if  
23 it's in your shoe or in the bottom of the car.

24 MS. SCHERTLER: I don't -- you have -- they  
25 have to find a design to conceal, that he thought out a

1 plan.

2 JUSTICE BREYER: He purposely puts it in his  
3 shoe, okay.

4 MS. SCHERTLER: Yes.

5 JUSTICE BREYER: It's a design. He knows  
6 he's going to do it. So -- and you're saying, I take  
7 it, 100 percent of the time that's illegal. If you're  
8 not saying that, I don't understand what you're saying.

9 MS. SCHERTLER: No --

10 JUSTICE BREYER: If you are saying that, I  
11 don't know why they call this statute "Laundering of  
12 Monetary Instruments." Why didn't they call it "shoe  
13 hiding"?

14 (Laughter.)

15 JUSTICE SCALIA: And you're basically  
16 confronting face-on the dissent here, which drew a  
17 distinction between transporting to conceal and  
18 concealing to transport. And all you have here is  
19 concealing to transport, and the question is whether  
20 that violates the statute.

21 I agree with Justice Breyer that if this is  
22 a statute directed at concealing to transport, it's a  
23 funny name for it to think that it's a money laundering  
24 statute.

25 MS. SCHERTLER: Your Honor, the title of

1 this statute, "Money Laundering," this is exactly  
2 what -- among the conduct that Congress had in mind when  
3 it enacted and when it confronted money laundering in  
4 1986. It saw money laundering as the variety of ways in  
5 which criminals prevent the detection of their illegal  
6 proceeds and thus are able to profit from their crimes.  
7 It covered a wide range of conduct that included  
8 converting, yes, illegitimate wealth into legitimate  
9 forms through very complex means.

10 But Congress was also concerned about  
11 criminals taking their proceeds across the border  
12 surreptitiously, in a way --

13 JUSTICE GINSBURG: Were they concerned that  
14 this -- what is it, a 20-year penalty? -- not with you're  
15 talking about, the person who gets -- who is the drug  
16 dealer, but all that this evidence shows is that we have  
17 a courier. We don't even know if he knows who put the  
18 money in the car. We don't know if he knows the -- who  
19 the person is that he's to deliver the money to.

20 So on your theory, all you have to prove is  
21 that this defendant drove a car in which illicit money  
22 was hidden in order to get it out of the country. No  
23 grand design. All he is is a courier.

24 MS. SCHERTLER: He needs to know that part  
25 of the design, part of the plan of that transportation,

1 was to conceal or disguise --

2 JUSTICE GINSBURG: That's a -- that's a lot  
3 of fancy language. All he knows, in fact, if he's just  
4 a courier is that somebody gave him money to take this  
5 car in which drug money is hidden across the border.

6 MS. SCHERTLER: And the use of that courier  
7 also was part of a design to conceal or disguise the  
8 ownership and control --

9 JUSTICE GINSBURG: Not his design. His  
10 design is only -- I mean, he's just a drug courier, and  
11 I think that's what -- that's a problem with your  
12 interpretation of the statute. One can think of the  
13 kingpin having this elaborate plan, and when it gets to  
14 Mexico it's going to go into this bank and that place.  
15 But here the defendant is simply a courier, and on the  
16 government's theory anyone who transports hidden money  
17 to get it out of the country, who drives the car, just  
18 the driver, is a money launderer.

19 MS. SCHERTLER: Justice Ginsburg, the --  
20 Congress's purpose here was in getting at exactly this  
21 kind of conduct by third parties in particular, because  
22 when you use a third party, that violates another purpose  
23 at which the statute is directed: using third parties  
24 to conceal who the true owner in control of the proceeds  
25 is.

1 JUSTICE ALITO: Well, suppose then --

2 JUSTICE SOUTER: Then the brother should  
3 be -- giving the money to the brother should satisfy  
4 the statute.

5 MS. SCHERTLER: It --

6 JUSTICE SOUTER: Because if I'm -- if I'm in  
7 the drug business and my -- my brother is an  
8 international social worker or something, I'm certainly  
9 going to conceal when I give it to him and he carries it  
10 across the border.

11 MS. SCHERTLER: Yes, Justice Souter, that  
12 would be another example of using a third party so that  
13 a -- so that one part of the design of that  
14 transportation is to conceal the ownership and control  
15 of the proceeds.

16 And in response to Justice Ginsburg's  
17 question, Congress also -- well, in the sentencing  
18 guidelines system now, the guideline takes account of  
19 whether you have the individual who is also engaged in  
20 the underlying offense or whether you have a third party  
21 who had not been involved in the underlying offense.

22 But no -- no matter how you see it, this was  
23 precisely the conduct that Congress was getting at. It  
24 saw that the only way to -- to get at crime -- one way  
25 that was very important to it was to get at the money

1 and in order to get at the money you need to be able to  
2 counteract the ways in which the criminals would prevent  
3 law enforcement from getting at the money.

4 JUSTICE ALITO: Suppose the person who set  
5 all this up lives in Mexico and the sole intent of that  
6 person was to bring the money back to him in the place  
7 where he lives? That would -- would that be money  
8 laundering by him, to start out with?

9 MS. SCHERTLER: If he had designed this  
10 transportation, yes, Your Honor, because the whole --  
11 the design of this transportation was to conceal or  
12 disguise all five of the attributes of these illegal  
13 proceeds.

14 JUSTICE ALITO: Isn't that a question of --  
15 isn't that a question of his intent?

16 MS. SCHERTLER: Uh --

17 JUSTICE ALITO: It's not the effect of the  
18 design, is it? It's the intent of the design.

19 MS. SCHERTLER: It -- it is -- what was --  
20 what was the plan? What was the conception? What  
21 decisions were made about why and how we get these  
22 proceeds from point A to point B.

23 JUSTICE SCALIA: Everybody knows he's a drug  
24 dealer, back in Juarez or wherever he lives in Mexico.

25 MS. SCHERTLER: But by --

1 JUSTICE SCALIA: He's famous in town. He's  
2 a well-respected man because he's a big drug dealer.  
3 And he has just arranged to get the money delivered to him  
4 so that he can spend it. What -- what's concealing  
5 there?

6 MS. SCHERTLER: And he's arranged it in a  
7 way, if we're assuming the transportation here, so that  
8 his ownership and control of those proceeds will be  
9 disguised --

10 JUSTICE SCALIA: It won't be disguised.

11 MS. SCHERTLER: -- and concealed during the  
12 course of the transportation by saying, I'm going to  
13 select a third party.

14 CHIEF JUSTICE ROBERTS: During the course of  
15 the transportation. That is not what you say in your  
16 brief. I'm looking at page 41 and what you say is: "If  
17 no independent evidence establishes that concealment or  
18 disguising of a pertinent attribute of the proceeds  
19 would occur at the point of destination, then a  
20 factfinder would lack a reasonable basis for inferring  
21 that the transportation was designed to conceal or  
22 disguise."

23 In other words, in the hypothetical  
24 Justice Scalia just gave -- in other words everybody  
25 knows he's a drug dealer, he spends the money -- there



1 is no concealment or disguising the pertinent attribute  
2 at the point of destination.

3 MS. SCHERTLER: That -- the sentence,  
4 Mr. Chief Justice, that you just read is the last in a  
5 series of "ifs" that we lay out in our brief, where we  
6 -- where we assert that at any point in the  
7 transportation a jury could find evidence of a design to  
8 conceal or disguise. And that last sentence says if  
9 they haven't found any evidence concerning the means and  
10 the method and the person used for the actual  
11 cross-border transportation, and if in addition there  
12 was no evidence of what would occur at the point of  
13 destination, then there would be no evidence.

14 CHIEF JUSTICE ROBERTS: So there is no money  
15 laundering if they conceal the proceeds in a suitcase  
16 that's in the trunk of the car? Is that enough?

17 MS. SCHERTLER: Well, that would --

18 CHIEF JUSTICE ROBERTS: Is that concealing  
19 the money?

20 MS. SCHERTLER: If we're talking about just  
21 the attribute of "location," use of a suitcase I would say  
22 provides some evidence that there was a design to  
23 conceal the location of those illegal proceeds during --  
24 as part of this cross-border transportation.

25 CHIEF JUSTICE ROBERTS: Does use of a

1 suitcase provide that evidence?

2 MS. SCHERTLER: I think it would provide  
3 basis for a jury to make --

4 CHIEF JUSTICE ROBERTS: When I use a  
5 suitcase I'm using it to carry my clothes, not to  
6 conceal them.

7 MS. SCHERTLER: And if the jury were  
8 presented with testimony that that was the design --  
9 that the only design, the only purpose, the only plan in  
10 using that suitcase was to use it to secure money for  
11 travel, then we would not have met our burden, but based  
12 solely on the circumstances.

13 JUSTICE KENNEDY: Well, your answer to  
14 Justice Scalia's hypothetical is still not clear to me.  
15 It -- it seems to me your answer should be yes, because  
16 he's concealing the ownership as of the time he goes  
17 across the border, which brings me to my earlier  
18 question, if once it's concealed, the statute is always  
19 -- is always valid.

20 Then you indicated that oh, well, what  
21 happens at the destination is very important. Then we  
22 had Justice Scalia's hypothetical. I'm not sure where  
23 you came out on that.

24 MS. SCHERTLER: Oh, our -- let me -- let me  
25 be clear. I think even if one were to hypothesize that

1 there would be no effort whatsoever to conceal the money  
2 at the point of destination, but a jury could find that  
3 the transportation itself was designed in other  
4 respects -- in its method, in its means -- to conceal or  
5 disguise an attribute of the proceeds, that would be  
6 enough to find that it was designed in whole or in part,  
7 in any part --

8 JUSTICE KENNEDY: So concealment,  
9 concealment during the transportation is always a  
10 concealment of an attribute under the statute. That has  
11 to be your position.

12 MS. SCHERTLER: Concealment -- yes. The  
13 only exception that we make would be in the Chief  
14 Justice's example, if the jury were to find that there  
15 was no design to conceal the location, for instance, to  
16 prevent its discovery; it was only -- my only design was  
17 to secure this for transport, like I put my money in my  
18 wallet to do that.

19 JUSTICE STEVENS: May I ask you a broader  
20 question, forgetting the text of the statute for just a  
21 minute, because the text is extremely broad. Do you  
22 think the question whether there's an attempt to create  
23 an appearance of legitimate wealth has anything to do  
24 with the analysis? The question presented is whether  
25 there must be such a --

1 MS. SCHERTLER: The question presented --

2 JUSTICE STEVENS: And you're arguing that's  
3 totally irrelevant and that -- and also does the  
4 familiar title, "Money Laundering," totally irrelevant?

5 MS. SCHERTLER: Your Honor, we disagree that  
6 there is any -- there is no appearance of legitimate  
7 wealth requirement in the statute. This --

8 JUSTICE STEVENS: There is no -- okay.

9 MS. SCHERTLER: This statute --

10 JUSTICE STEVENS: And the term "laundering"  
11 really should be totally ignored?

12 MS. SCHERTLER: The term "laundering" under  
13 -- when it is understood to mean the way Congress meant  
14 it and the way Congress was viewing this conduct is much  
15 broader than Petitioner suggests.

16 Laundering is the many ways in which  
17 criminals prevent detection of their proceeds. It would  
18 include and Congress certainly had evidence before it --

19 JUSTICE STEVENS: I understand you could  
20 find a violation of it, but what I'm really asking you:  
21 Is this just a total wild goose chase? We shouldn't  
22 even consider laundering at all? As I understand your  
23 argument, it's totally irrelevant.

24 MS. SCHERTLER: The title of the statute  
25 says -- but the terms of the statute are what matter

1 here.

2 JUSTICE STEVENS: So it is irrelevant?

3 MS. SCHERTLER: The terms are plain. But  
4 even if you were to look at the term "laundering," it  
5 would not support Petitioner's argument that that has a  
6 narrow meaning that includes only conduct that creates  
7 an appearance of legitimate wealth.

8 CHIEF JUSTICE ROBERTS: So if this fellow  
9 were driving to Canada would that be a different case,  
10 because Canada does not have the sort of cash economy  
11 we've heard about in Mexico?

12 MS. SCHERTLER: If the method of  
13 transportation were exactly the same, it would make no  
14 difference, Your Honor. In this case, this -- this  
15 transportation method was designed, a jury could find  
16 beyond a reasonable doubt, to conceal or disguise the  
17 ownership and control of the proceeds through the third  
18 party, and if that were the case and they were going to  
19 Mexico it would be the same. The nature and the  
20 location of the proceeds through the use of this secret  
21 compartment and the goat hair to discuss the scent of  
22 the proceeds from the drug-detection dogs. We also had  
23 evidence --

24 CHIEF JUSTICE ROBERTS: So, what if the  
25 fellow says: You know, there are dangerous roads

1 between here and Mexico. I'm hiding the money so that  
2 if, you know, a gang comes up they don't find it. And  
3 you say: No, we think you're hiding it because it's  
4 illegal proceeds. Is that enough to get to the jury?

5 MS. SCHERTLER: I think that's enough to get  
6 to the jury, and that would be a jury question, Your  
7 Honor, yes.

8 JUSTICE SCALIA: Just to be clear, you  
9 affirmatively say that concealing to transport is  
10 enough, right?

11 MS. SCHERTLER: Yes, Your Honor. It's --  
12 that is enough. Concealing to transport when the jury  
13 -- when it is part of the design of the transportation  
14 to conceal the location, nature, source, ownership, or  
15 control, any single one of those things. And all of  
16 those are in here.

17 JUSTICE GINSBURG: Why do you make  
18 distinctions between methods of concealment? I mean, if  
19 the design is to get the money out of the country, why  
20 should it matter whether you put it in a travel bag, you  
21 put it in the glove compartment, you put it in your  
22 wallet, or you go through this elaborate disguise that  
23 we see here?

24 What -- if what's important is getting it  
25 beyond the border beyond the reach of law enforcement in

1 the United States, why should it make a difference how  
2 carefully it is concealed?

3 MS. SCHERTLER: That need not make a  
4 difference if there is evidence before the jury, if  
5 there is evidence that the ultimate design of the  
6 transportation is to conceal or disguise the proceeds at  
7 the point of destination.

8 JUSTICE KENNEDY: Well, then your only  
9 defense is to go across the border and before you go  
10 across you put all the money in your arms so the people  
11 can see it? That's the way you do it?

12 (Laughter.)

13 JUSTICE KENNEDY: Other than that?

14 MS. SCHERTLER: In that situation, there  
15 would no basis to find concealment or disguise of  
16 location. Now, some of the other attributes may be at  
17 issue if a third party is conducting that  
18 transportation, but location from the method alone. So  
19 the jury would need information about, well, what is the  
20 design, what is the purpose of this cross-border  
21 transportation? They could still find that the  
22 necessary design to conceal or disguise is satisfied by  
23 evidence that the whole purpose here is to get it to  
24 Mexico where it will be turned into legitimate wealth,  
25 for instance.

1 JUSTICE GINSBURG: That's transporting to  
2 conceal.

3 MS. SCHERTLER: That -- and I, for one --

4 JUSTICE GINSBURG: But you're saying this  
5 statute covers both?

6 MS. SCHERTLER: It covers both, Your Honor.  
7 It asks broadly what was this -- how was this  
8 transportation designed and planned out in whole or in  
9 part? In any part, was it designed to conceal or  
10 disguise? And that would encompass all of the stages  
11 that we are -- that we are discussing.

12 JUSTICE GINSBURG: In your brief, you said  
13 the bulk cash statute would not apply to a courier. Do  
14 you still take that position, that the government's  
15 choice is to indict for money laundering or nothing?

16 MS. SCHERTLER: The bulk cash -- well,  
17 the bulk -- in this case, there's no evidence in this  
18 record that a bulk cash smuggling statute charge would  
19 have been viable because there's no evidence in this  
20 record that this defendant knew of a currency reporting  
21 requirement and intended to evade it.

22 Petitioner's argument that the bulk cash  
23 smuggling statute shows that the conduct here was not  
24 intended to be covered by the money laundering statute  
25 is incorrect for the very reason that Justice Kennedy



1 has identified. The bulk cash smuggling statute could  
2 not have filled a gap in the money laundering statute  
3 for the conduct here because it has always contained a  
4 provision that covers the transportation of known  
5 illegal proceeds across the border to evade a --  
6 reporting requirement.

7 JUSTICE SCALIA: There's no principle that  
8 all criminal statutes have to cover every -- every bad  
9 act. Maybe Congress has left a gap. I'm willing to  
10 entertain the possibility that this individual,  
11 obviously doing something very bad, doesn't -- falls  
12 between the two stools. He is neither guilty under the  
13 taking-currency-out-of-the-country statute because he  
14 didn't know of the existence of the statute, and he's  
15 not guilty under this one because he was not transporting to  
16 conceal but was concealing to transport. And so there's  
17 a gap. The Justice Department can certainly get that  
18 gap filled readily enough. I don't know why we should  
19 torture either one of the statutes to close it.

20 MS. SCHERTLER: The plain reading of the  
21 money laundering statute covers this conduct, and  
22 Congress specifically had this conduct in mind. As  
23 Senator Biden said in questioning -- and he became one  
24 of the co-sponsors -- questioning a witness about this:  
25 Isn't it the truth that if we -- if we strengthen all

1 our domestic controls against money laundering, aren't  
2 the criminals going to resort to physically transporting  
3 their cash out of the United States? This is a --

4 CHIEF JUSTICE ROBERTS: How many co-sponsors  
5 were there?

6 MS. SCHERTLER: I don't know, Your Honor.

7 This is part of the core conduct at which  
8 this statute was directed, this international  
9 concealment money laundering statute.

10 JUSTICE BREYER: How does that show what you  
11 want it to show? I mean, what I just heard you say is  
12 that Senator Biden said if we make it very tough to  
13 launder money in the United States, then criminals will  
14 send their money abroad to be laundered.

15 MS. SCHERTLER: And --

16 JUSTICE BREYER: They'll transport it abroad  
17 in order to launder it. How does that help you?

18 MS. SCHERTLER: They will resort to taking  
19 their money physically out of the United States. And  
20 the Senate report says that this provision was designed  
21 to halt this flow.

22 JUSTICE BREYER: In order to launder it.  
23 Were they not talking about money laundering?

24 MS. SCHERTLER: If the premise --

25 JUSTICE BREYER: Or were they not talking

1 about it? I'm just going back -- I didn't read Senator  
2 Biden's statement, so I'm just curious.

3 MS. SCHERTLER: This provision was directed  
4 at preventing the illegal moneys from leaving the  
5 country. It would have made no sense for Congress,  
6 having understood that when money leaves the United  
7 States we have little if any ability to know what  
8 happens to it, to require in the statute proof beyond a  
9 reasonable doubt of what would happen to the money once  
10 it --

11 JUSTICE SCALIA: But if they're trying to  
12 prevent the money --

13 JUSTICE KENNEDY: But you, in response to  
14 one of my hypotheticals, said that it would be relevant  
15 in some cases to show that it was designed to create the  
16 appearance of legitimate wealth. So you put that back  
17 in --

18 MS. SCHERTLER: If --

19 JUSTICE KENNEDY: So you put that back into  
20 play.

21 MS. SCHERTLER: If we have that evidence,  
22 yes, Your Honor. But to take Petitioner's position that  
23 it would be necessary evidence in every case in which to  
24 prevail under this statute to know of future plans to  
25 launder abroad, when the premise of this statute is that

1 when the money leaves the country we cannot know what  
2 happens to it, makes no sense.

3 JUSTICE SCALIA: Why --- if that's what  
4 they're concerned about, taking the money out of the  
5 country, why do they have the concealment requirement?  
6 They could have just said, you know, if you take dirty  
7 money out of the country you're guilty.

8 MS. SCHERTLER: They --

9 JUSTICE SCALIA: They didn't say that. They  
10 have a concealment -- I can't understand why, if the  
11 money is hidden during the transportation, it's any  
12 worse than when the money is not hidden during the  
13 transportation. It isn't -- it isn't the hiding during  
14 the transportation they're concerned about. The statute  
15 doesn't make any sense that way.

16 MS. SCHERTLER: I think that it does, Your  
17 Honor.

18 The Court -- the Congress certainly could  
19 have written it in the broad way that you've suggested.  
20 It's not unlike the way that they wrote section 1957,  
21 which covers broadly all transactions in illegal money.

22 They chose to not cover everything and to  
23 cover cross-border transportations where there's  
24 evidence of some intent on the part of that individual  
25 to conceal or disguise. And when you think about it,

1 they had set up regulatory provisions like the  
2 transaction reporting requirement when there's no  
3 conceal or disguise. There were other controls in place  
4 as, say, the first line of defense against money  
5 laundering to say, \$10,000 or more is leaving the  
6 country, we're going to know about it because we have  
7 reporting requirements.

8 Here the Senate report says that they made  
9 the decision to require evidence of concealment.  
10 "Evidence of concealment of a crime" is what the report  
11 says. And any time one of these attributes of illegal  
12 proceeds is being concealed or disguised, that is  
13 concealing a crime in a way that impairs law enforcement  
14 from finding those proceeds.

15 JUSTICE STEVENS: May I ask -- may I ask  
16 this question? If the statute did include -- and I know  
17 you think it does not -- a requirement of trying to  
18 create an appearance of legitimate wealth, you would  
19 lose? In this case.

20 MS. SCHERTLER: I don't think so, Your  
21 Honor, and I would -- I would go back to the evidence  
22 that Justice Alito has pointed out that is in this  
23 record, that there's evidence in this record that --  
24 that the -- by taking the funds to Mexico, they would be  
25 able to be used in a way that would not raise suspicion.

1 JUSTICE STEVENS: Well, but it's also  
2 consistent with the evidence, they want to pay the drug  
3 dealer for the drugs. And then a jury -- you can't say  
4 it's clear beyond a reasonable doubt that that was not  
5 what was going on.

6 MS. SCHERTLER: There was -- I would not --  
7 I would not disagree with that. I think that we do -- I  
8 see that my red light is on.

9 CHIEF JUSTICE ROBERTS: Why don't you finish  
10 your answer?

11 MS. SCHERTLER: Your Honor, there was --  
12 there was evidence in this case that the proceeds were  
13 removed -- this is expert testimony -- removed from the  
14 United States to conceal so as not to go through  
15 reporting requirements, so that the money would not be  
16 identified to U.S. law enforcement. We believe the jury  
17 could also infer that further efforts to conceal and  
18 disguise those proceeds would occur at the point of  
19 destination.

20 Thank you, Your Honor.

21 CHIEF JUSTICE ROBERTS: Thank you,  
22 Ms. Schertler.

23 Mr. Beard, you have four minutes remaining.

24 REBUTTAL ARGUMENT OF JERRY V. BEARD

25 ON BEHALF OF THE PETITIONER

1           MR. BEARD: Justice Scalia, when I left we  
2 were discussing --

3           JUSTICE SCALIA: I forget what it was that I  
4 didn't understand.

5           (Laughter.)

6           MR. BEARD: Happily I've been thinking about  
7 it. Disruption versus detection I had told you, told  
8 the Court that this was not a detection statute as much  
9 as it is a disruption statute.

10           I think it is important for the Court to  
11 recall that the very broad interpretations that the  
12 government advances today are essentially the very broad  
13 interpretations that the Congress rejected explicitly 20  
14 years ago. The Congress rejected the notion that the  
15 transportation of illicit funds in and of itself created  
16 money laundering liability. And we've discussed that.

17           I think it's important, Justice Scalia, in  
18 particular, in response to your question to bring this  
19 up, because the Congress recognized that detection would  
20 be harder in rejecting that type of legislation, but  
21 rejected that they did.

22           The Congress has also shown itself capable  
23 of -- of -- in the 1957 context of taking transactions  
24 involving unlawful proceeds and making those per se  
25 illegal. They could have easily done the same thing in

1 the transportation context if they had wanted to, but  
2 instead they were looking at the separate behavior that  
3 comprises money laundering. I mean, it is the notion  
4 that you're taking money somewhere else and you're doing  
5 something else and it gives rise to separate liability.

6 I think the true harm in the government's  
7 interpretation, it basically conflates liability for  
8 money laundering with the underlying offense, because  
9 all of the underlying offenses involve concealment.

10 JUSTICE STEVENS: May I ask the same basic  
11 question of you? Do you think that -- "a design to  
12 create an appearance of legitimate wealth" is an  
13 essential element of the offense?

14 MR. BEARD: It is not an element,  
15 Justice Stevens. As I said, that --

16 JUSTICE STEVENS: So that's -- your question  
17 presented raised that question, you're walking away from  
18 that question?

19 MR. BEARD: We have spoken in the question  
20 presented in that broad term, because we think that that  
21 language encapsulates what's taking place.

22 JUSTICE STEVENS: But it is not an essential  
23 element of the offense. You concede that.

24 MR. BEARD: It's not an element. But what  
25 is an essential element is the need for the



1 transportation -- the transportation to be designed to  
2 accomplish the same thing, to obfuscate those  
3 attributes. It's -- and that's -- and therein is the  
4 reason why --

5 JUSTICE ALITO: It's not the same thing;  
6 appearance of legitimate wealth goes to one of the  
7 attributes, the nature of what's being transported. It  
8 doesn't go to all the other attributes.

9 MR. BEARD: The Congress had identified,  
10 Justice Alito, those particular attributes as being key  
11 to allowing the launderer to inject the money back into  
12 commerce. It may be that nature is implicated more  
13 often, but the Congress chose to list the others because  
14 they thought that those were the particular attributes  
15 that, broadly speaking, allowed for the laundering  
16 process.

17 This notion of --

18 JUSTICE KENNEDY: Suppose the evidence is  
19 clear that he knew he was taking it across the border  
20 and it was to pay the drug dealer. Would that suffice?

21 MR. BEARD: For liability under the statute,  
22 Justice? No, because the purpose there was not to  
23 obscure the attributes. It is simply repayment. It's  
24 the final leg, if you will --

25 JUSTICE KENNEDY: Well, but -- no, no. He

1 conceals it, in order to pay the drug dealer.

2 MR. BEARD: Yes. I'm saying -- I may have  
3 misunderstood. Are you saying if Mr. Cuellar were to  
4 know that he was paying the drug dealer?

5 JUSTICE KENNEDY: Yes.

6 MR. BEARD: That wouldn't give rise to  
7 laundering, because all you have there basically is  
8 money spending. It's the conduct of the underlying --

9 JUSTICE KENNEDY: It's concealing who owns  
10 and controls.

11 MR. BEARD: No, I don't think so. I think  
12 what you would have under these circumstances is merely  
13 the final step, if you will, in the underlying unlawful  
14 activity.

15 JUSTICE SCALIA: Mr. Beard, can't you give  
16 us something we can get this guy on?

17 (Laughter.)

18 MR. BEARD: I'm not comfortable doing that.

19 JUSTICE SCALIA: He's carrying dirty money.  
20 It even smells of drugs.

21 (Laughter.)

22 JUSTICE SCALIA: Can't we get him as an  
23 accessory to drug dealing or something? You say he has  
24 to walk?

25 MR. BEARD: Well, Justice, I'm not

1 uncomfortable with the notion of him walking, because  
2 I'm not uncomfortable with the notion you brought up  
3 earlier with that there may indeed be a gap. If there  
4 is a gap, then there's a remedy for that. But I think  
5 that if --

6 JUSTICE GINSBURG: The point -- the point  
7 about aiding and abetting something, this money reeks of  
8 marijuana, and that was very puzzling to me. Why this  
9 is the standard operating procedure to take this money  
10 and wrap it in containers that had contained the drug.  
11 So if the police find it, they know it's drug money.

12 MR. BEARD: Justice, I know that the --  
13 initially the way this went down was the money that was  
14 in his pocket. That's what triggered the -- that's what  
15 they said smelled like raw marijuana. And then  
16 eventually, they found the drug money. And I can't tell  
17 you why they did it this way. But I think that your  
18 question underscores they were concerned not with  
19 obfuscating any attributes, obviously, they were  
20 concerned with getting this money back to repay the  
21 person who had sent the drugs north under the  
22 government's theory. I thank the Court.

23 CHIEF JUSTICE ROBERTS: Thank you,  
24 Mr. Beard. The case is submitted.

25 (Whereupon, at 11:04 a.m., the case in the

Official

1 above-entitled matter was submitted.)

2

3

4

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