

Internet Gambling: An Overview of Federal Criminal Law

Charles Doyle
Senior Specialist in American Public Law

January 24, 2012

Congressional Research Service
7-5700
www.crs.gov
97-619

CRS Report for Congress
Prepared for Members and Committees of Congress

c11173008

Summary

This is a summary of the federal criminal statutes implicated by conducting illegal gambling using the Internet. Gambling is primarily a matter of state law, reinforced by federal law in instances where the presence of an interstate or foreign element might otherwise frustrate the enforcement policies of state law. State officials and others have expressed concern that the Internet may be used to bring illegal gambling into their jurisdictions.

Illicit Internet gambling implicates at least seven federal criminal statutes. It is a federal crime (1) to conduct an illegal gambling business under the Illegal Gambling Business Act, 18 U.S.C. 1955; (2) to use the telephone or telecommunications to conduct an illegal gambling business involving sporting events or contests under the Wire Act, 18 U.S.C. 1084; (3) to use the facilities of interstate commerce to conduct an illegal gambling business under the Travel Act, 18 U.S.C. 1952; (4) to conduct the activities of an illegal gambling business involving either the collection of an unlawful debt or a pattern of gambling offenses, the Racketeer Influenced and Corrupt Organizations (RICO) provisions, 18 U.S.C. 1962; (5) to launder the proceeds from an illegal gambling business or to plow them back into such a business under money laundering provisions of 18 U.S.C. 1956; (6) to spend more than $10,000 of the proceeds from an illegal gambling operation at any one time and place under the money laundering provisions, 18 U.S.C. 1957; or (7) for a gambling business to accept payment for illegal Internet gambling under the Unlawful Internet Gambling Enforcement Act (UIGEA), 31 U.S.C. 5361-5367.

Enforcement of these provisions has been challenged on constitutional grounds. Attacks based on the Commerce Clause, the First Amendment's guarantee of free speech, and the Due Process Clause have enjoyed little success. The commercial nature of a gambling business seems to satisfy doubts under the Commerce Clause. The limited First Amendment protection afforded crime facilitating speech encumbers free speech objections. The due process arguments raised in contemplation of federal prosecution of offshore Internet gambling operations suffer when financial transactions with individuals in the United States are involved.

Citations to state and federal gambling laws, and the text of the statutes cited above, are included. This report appears in abridged form, without footnotes, full citations, or supplementary material, as CRS Report RS21984, *Internet Gambling: An Abridged Overview of Federal Criminal Law*. Related CRS reports include CRS Report RS22749, *Unlawful Internet Gambling Enforcement Act (UIGEA) and Its Implementing Regulations*, and CRS Report R41614, *Remote Gaming and the Gambling Industry*.

Contents

Introduction 1
The Wire Act 2
Illegal Gambling Businesses 8
Travel Act 13
Unlawful Internet Gambling Enforcement Act (UIGEA) 16
Racketeer Influenced and Corrupt Organizations (RICO) 24
Money Laundering 27
Laundering the Proceeds 28
- Promotion 28
- Concealment 31
- Tax Evasion and Report Evasion 33
- Spending the Proceeds 33

Constitutional Considerations 36
- Commerce Clause 36
- First Amendment 37
- Due Process 38

Selected Federal Anti-Gambling Laws (Text) 40
- Wire Act (18 U.S.C. 1084) 40
- Illegal Gambling Business Act (18 U.S.C. 1955) 41
- Travel Act (18 U.S.C. 1952) 42
- Unlawful Internet Gambling Enforcement Act (31 U.S.C. 5361 et seq.) 42
- RICO (18 U.S.C. 1961 et seq.) 48
- Money Laundering (18 U.S.C. 1956, 1957) 50

Federal Anti-Gambling Laws (Citations) 56
State Anti-Gambling Laws (Citations) 58

Contacts

Author Contact Information 58

Introduction

Internet gambling is gambling on, or by means of, the Internet. It encompasses placing a bet online with a bookie, betting shop, or other gambling enterprise. It also includes wagering on a game played online. A few states ban Internet gambling per se.[1] Most states, however, rely upon their generally applicable gambling laws.[2] Gambling that is unlawful when conducted in person is ordinarily unlawful when conducted online.[3] There are many federal gambling laws, most enacted to prevent unwelcome intrusions of interstate or international gambling into states where the activity in question has been outlawed.[4]

In very general terms, it is a federal crime

- to use wire communications to place or receive bets on, or to transmit gambling information relating to, sporting contests or events;[5]
- to conduct a large-scale gambling business in violation of state law;[6]
- to travel interstate or overseas, or to use any other facility of interstate or foreign commerce, to facilitate the operation of an illegal gambling business;[7]
- to conduct a gambling business and accept payment for illegal Internet gambling participation;[8]
- to systematically commit these crimes in order to acquire or operate a commercial enterprise;[9]
- to launder the proceeds of an illegal gambling business or to plow them back into the business;[10]
- to spend or deposit more than $10,000 of the proceeds of illegal gambling in any manner;[11] or
- to conspire with others, or to aid and abet them, in their violation of any of these federal laws.[12]

---

[1] E.g., ILL.COMP.STAT.ANN. ch. 720 §5-28-1(a)(12); IND.CODE ANN. §35-45-5-2; LA.REV.STAT.ANN. §14:90.3; MICH.COMP. LAWS ANN. §§750.301, 752.796; MONT.CODE ANN. §23-5-112; ORE.REV.STAT. §167.109; S.D.COD.LAWS ANN. §§22-25A-1 to 22-25A-15; WASH.REV.CODE ANN. §9.46.240; WIS.STAT.ANN. §§945.01, 945.03.

[2] The citations to the various state anti-gambling laws are listed at the end of this report. The particulars of those laws are generally beyond the scope of this report.

[3] E.g., *People ex rel. Vacco v. World Interactive Gaming Corp.*, 185 Misc.2d 852, 859-60, 714 N.Y.S.2d 844, 850-51 (2010)(the New York gambling statutes apply to online betting in New York); *United States v. Cohen*, 260 F.3d 68, 73 (2d Cir. 2001)(same); OP. TEX. ATT'Y GEN. DM-344 (1995)(state gambling laws apply to online gambling); OP. FLA. ATT'Y GEN. 95-70 (1995)(same).

[4] Citations to federal anti-gambling statutes are listed at the end of this report.

[5] 18 U.S.C. 1084.

[6] 18 U.S.C. 1955.

[7] 18 U.S.C. 1952.

[8] 31 U.S.C. 5363.

[9] 18 U.S.C. 1962.

[10] 18 U.S.C. 1956.

[11] 18 U.S.C. 1957.

The Wire Act

Commentators most often mention the Wire Act[13] when discussing federal criminal laws that outlaw Internet gambling in one form or another.[14] Early federal prosecutions of Internet gambling generally charged violations of the Wire Act.[15] In fact, *Cohen*, perhaps the most widely known of federal Internet gambling prosecutions, involved the Wire Act conviction, upheld on appeal, of the operator of an offshore, online sports book.[16]

In general terms, the Wire Act outlaws the use of interstate telephone facilities by those in the gambling business to transmit bets or gambling-related information. Offenders are subject to imprisonment for not more than two years and/or a fine of the greater of not more than twice the gain or loss associated with the offense or $250,000 (not more than $500,000 for organizations).[17] They may have their telephone service canceled at law enforcement request,[18] and conduct that violates the Wire Act may provide the basis for a prosecution under the money laundering statutes, the Travel Act, the Illegal Gambling Business Act, RICO, or the Unlawful Internet Gambling Enforcement Act.[19]

(...continued)

[12] 18 U.S.C. 371, 2.

[13] 18 U.S.C. 1084.

[14] Gottfried, *The Federal Framework for Internet Gambling*, 10 RICHMOND JOURNAL OF LAW AND TECHNOLOGY 26, 46 (2004)("[T]he Wire Act ... is the federal act most often applied in efforts to prosecute Internet gambling.... "); Keller, *The Game's the Same: Why Gambling in Cyberspace Violates Federal Law*, 108 YALE LAW JOURNAL 1569, 1580 (1999)("It is the breadth of the Wire Wager Act that has attracted the most attention in the Internet gambling context because notwithstanding the possible applicability of other federal laws, it directly prohibits the use of a wire transmission facility to foster a gambling business"); *Do Not Bet on Unilateral Prohibition of Internet Gambling to Eliminate Cyber-Casinos*, 1999 UNIVERSITY OF ILLINOIS LAW REVIEW 1045, 1057; *Gambling On-Line: For a Hundred Dollars, I Bet You Government Regulation Will Not Stop the Newest Form of Gambling*, 22 UNIVERSITY OF DAYTON LAW REVIEW 163, 180 (1996); Goldstein, *On-Line Gambling: Down to the Wire?* 8 MARQUETTE SPORTS LAW JOURNAL 1, 18 (1997); General Accounting Office [now the Government Accountability Office], *Internet Gambling: An Overview of the Issues* 11 (Dec. 2002).

[15] *United States v. Ross*, 1999 WL 782749 (S.D.N.Y. Sept. 16, 1999)(denying a motion to dismiss a four count indictment charging violations of 18 U.S.C. 1084 and 18 U.S.C. 371 (conspiracy) in connection with Internet gambling business operated out of Curacao in the Netherlands Antilles); *see also, People ex rel. Vacco v. World Interactive Gaming Corporation*, 185 Misc.2d 852, 861-62, 714 N.Y.S.2d 844, 852 (1999)(noting in dicta violations of the Wire Act in connection with an offshore Internet casino that accepted wagers from bettors in New York); cf., *United States v. D'Ambrosia*, 313 F.3d 987, 987-89 (7th Cir. 2002)(resolution of sentencing issues associated with Wire Act conviction of the operators "of an offshore internet-based sports bookmaking operation"); *United States v. Tedder*, 403 F.3d 836, 838 (7th Cir. 2005); see also, Indictment, *United States v. Kaplan*, No. 4:06-CR-337(CEJ)(E.D.Mo. June 1, 2006).

[16] *United States v. Cohen*, 260 F.3d 68 (2d Cir. 2001).

[17] 18 U.S.C. 1084(a), 3571(b),(d).

[18] "When any common carrier, subject to the jurisdiction of the Federal Communications Commission, is notified in writing by a Federal, State, or local law enforcement agency, acting within its jurisdiction, that any facility furnished by it is being used or will be used for the purpose of transmitting or receiving gambling information in interstate or foreign commerce in violation of Federal, State or local law, it shall discontinue or refuse, the leasing, furnishing, or maintaining of such facility, after reasonable notice to the subscriber, but no damages, penalty or forfeiture, civil or criminal, shall be found against any common carrier for any act done in compliance with any notice received from a law enforcement agency. Nothing in this section shall be deemed to prejudice the right of any person affected thereby to secure an appropriate determination, as otherwise provided by law, in a Federal court or in a State or local tribunal or agency, that such facility should not be discontinued or removed, or should be restored," 18 U.S.C. 1084(d).

[19] 18 U.S.C. 1956, 1957, 1084, 1955, 1962, and 31 U.S.C. 5363, respectively. Each of these statutes is discussed, *infra*, and the text of each appears at the end of this report.

Wire Act prohibitions apply to anyone who

I. being engaged in the business of betting or wagering

II. knowingly

III. uses a wire communication facility

IV. A. for the transmission in interstate or foreign commerce

1. of bets or wagers or
2. information assisting in the placing of bets or wagers on any sporting event or contest, or

B. for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or

C. for information assisting in the placing of bets or wagers.... 18 U.S.C. 1084(a).[20]

As a general matter, the Wire Act has been more sparingly used than some of the other federal gambling statutes, and as a consequence it lacks some of interpretative benefits which a more extensive case law might bring. The act is addressed to those "engaged in the business of betting or wagering" and therefore apparently cannot be used to prosecute simple bettors.[21]

The government must prove that the defendant was aware of the fact he was using a wire facility to transmit a bet or gambling-related information; it need not prove that he knew that such use was unlawful.[22] The courts have also rejected the contention that the prohibition applies only to those who transmit, concluding that "use for transmission" embraces both those who send and those who receive the transmission.[23]

---

[20] "In order to prove a §1084(a) violation, the government must show that (1) 'the defendant regularly devoted time, attention and labor to betting or wagering for profit,' (2) the defendant used a wire communication facility: (a) to place bets or wagers on any sporting event or contest; or (b) to provide information to assist with the placing of bets or wagers [*on any sporting event or contest*]; or (c) to inform someone that he or she had won a bet or wager and was entitled to payment or credit,' and (3) the transmission was made from one state to another state or foreign country," *United States v. Lombardo*, 639 F.Supp.2d 1271, 1278 (D.Utah 2007). A Justice Department Office of Legal Counsel opinion argues for inclusion of the language in italics; see *Whether Proposals by Illinois and New York to Use the Internet and Out-of-State Transaction Processors to Sell Lottery Tickets to In-State Adults Violate the Wire Act*, 35 Op. O.L.C. __, ___ (Sept. 20, 2011), available at http://www.justice.gov/OLC/2011/state-lotteries-opinion.pdf.

[21] *United States v. Scavo*, 593 F.2d 837, 843 (8th Cir. 1979)("If an individual performs only an occasional or nonessential service or is a mere bettor or customer, he cannot property be said to engage in the business"); *see also, Rewis v. United States*, 401 U.S. 808, 810-11 (1971)(noting that the absence of a Congressional intent to include "mere bettors" among those who, by operation of 18 U.S.C. 2, might be convicted of aiding or abetting a violation of the Travel Act, 18 U.S.C. 1952 (relating to interstate travel to carry on a gambling business, inter alia), *but see, United States v. Southard*, 700 F.2d 1, 20 n.24 (1st Cir. 1983) ("The district court held that the statute did not prohibit the activities of 'mere bettors.' We take no position on this ruling except to point out that the legislative history is ambiguous on this point at best").

[22] *United States v. Blair*, 54 F.3d 639, 642-43 (10th Cir. 1995); *United States v. Ross*, 1999 LW 7832749, Slip at 8-9 (S.D.N.Y. Sept. 16, 1999); *cf., United States v. Cohen*, 260 F.3d 68, 71-3 (2d Cir. 2001)(conviction for conspiracy to engage in conduct in violation the Wire Act does not require proof that the defendant knew that the conduct was unlawful); *contra, Cohen v. United States*, 378 F.2d 751, 756-57 (9th Cir. 1967).

[23] *United States v. Pezzino*, 535 F.2d 483, 484 (9th Cir. 1976). *United States v. Sellers*, 483 F.2d 37, 44-5 (5th Cir. 1973); *United States v. Tomeo*, 459 F.2d 445, 447 (10th Cir. 1972); *Sagansky v. United States*, 358 F.2d 195, 200 (1st Cir. 1966); *contra*, *United States v. Stonehouse,* 452 F.2d 455 (7th Cir. 1971).

Grammatically, interstate transmission appears as a feature of only half of the elements (compare, "for the transmission *in interstate or foreign commerce* of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest," (IV.A.1 & 2. above), with, "for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers," (4.B. & C. above). Nevertheless, virtually every court to consider the question has concluded that a knowing, interstate or foreign transmission is an indispensable element of any Wire Act prosecution.[24]

As a practical matter, the Justice Department appears to have resolved the question of whether the section applies only to cases involving gambling on sporting events (compare IV.A.1 & 2. with IV.B. & C. again). The vast majority of prosecutions involve sports gambling, but cases involving other forms of gambling under the Wire Act are not unknown.[25] One federal appellate panel concluded that the Wire Act applies only to sports gambling;[26] while a subsequent district court concluded that it applies to non-sports gambling as well.[27] The Justice Department's Office of Legal Counsel, however, ultimately opined that "interstate transmissions of wire communications that do not relate to a 'sporting event or contest,' 18 U.S.C. §1084(a), fall outside the reach of the Wire Act."[28]

Construction of the Wire Act is complicated by the defense available under subsection 1084(b) for the transmission of gambling information.[29] Read casually it might suggest a general defense, but the district court in the Internet gambling case in the Southern District of New York has highlighted its more restrictive scope, "the §1084(b) exemption by its terms applies only to the transmission of information assisting in the placing of bets, not to the other acts prohibited in §1084(a), *i.e.*, transmission of (1) bets or wages or (2) wire communications entitling the recipient to money or credit as a result of bets or wagers. With regard to transmissions of information assisting in the placing of bets, the exemption is further narrowed by its requirement that the betting at issue be legal in both jurisdictions in which the transmission occurs. No exemption applies to the other wire communications proscribed in §1084(a) even if the betting at issue is legal in both jurisdictions. *See United States v. McDonough*, 835 F.2d 1103, 1105 (5th Cir. 1988)."[30] The Second Circuit panel in *Cohen*, endorsed the court's construction.[31]

---

[24] *United States v. Southard*, 700 F.2d 1, 24 (1st Cir. 1983), citing *inter alia*, *Sagansky v. United States*, 358 F.2d 195, 199 n.4 (1st Cir. 1966); *United States v. Barone*, 467 F.2d 247, 249 (2d Cir. 1972); *Cohen v. United States*, 378 F.2d 751, 754 (9th Cir. 1967); *contra, United States v. Swank*, 441 F.2d 264, 265 (9th Cir. 1971).

[25] *E.g., AT&T Corp. v. Coeur d'Alene Tribe*, 45 F.Supp.2d 995 (D.Idaho 1998) (lottery); *United States v. Smith*, 390 F.2d 420, 421 (4th Cir. 1968); *United States v. Chase*, 372 F.2d 453, 457 (4th Cir. 1967). *Smith* and *Chase* both involved "numbers" and seem to have arisen under the same facts. None of these cases specifically reject, or even mention, a "sporting event" limitation.

[26] *In re MasterCard International Inc.*, 313 F.3d 257, 262 (5th Cir. 2002)("The district court concluded that the Wire Act concerns gambling on sporting events or contests and that the [RICO] plaintiffs had failed to allege that they had engaged in internet sports gambling. We agree ... ").

[27] United States v. Lombardo, 639 F.Supp.2d 1271, (D.Utah 2007).

[28] *Whether Proposals by Illinois and New York to Use the Internet and Out-of-State Transaction Processors to Sell Lottery Tickets to In-State Adults Violate the Wire Act*, 35 Op. O.L.C. __, ___ (Sept. 20, 2011), available at http://www.justice.gov/OLC/2011/state-lotteries-opinion.pdf.

[29] "Nothing in this section shall be construed to prevent the transmission in interstate or foreign commerce of information for use in news reporting of sporting events or contests, or for the transmission of information assisting in the placing of bets or wagers on a sporting event or contest from a State or foreign country where betting on that sporting event or contest is legal into a State or foreign country in which such betting is legal," 18 U.S.C. 1084(b).

[30] *United States v. Ross*, 1999 WL 782749 (S.D.N.Y. Sept. 16, 1999).

An accomplice who aids and abets another in the commission of a federal crime may be treated as if he had committed the crime himself.[32] The classic definition from *Nye & Nissen* explains that liability for aiding and abetting attaches when one "in some sort associates himself with the venture, participates in it as in something that he wishes to bring about, [and] seeks by his action to make it succeed."[33] The Department of Justice advised the National Association of Broadcasters that its members risked prosecution for aiding and abetting when they provided advertising for the online gambling operations.[34] In addition to such accomplice liability, a conspirator who contrives with another for the commission of a federal crime is liable for conspiracy, any completed underlying crime, and for any additional, foreseeable offense committed by a confederate in furtherance of the common scheme.[35]

There is some dispute over the application of the Wire Act to certain horse racing activities. Some contend that the Wire Act was amended sub silentio by an appropriations rider rewording a

(...continued)

[31] 260 F.3d at 73 (emphasis added) ("Cohen appeals the district court for instructing the jury to disregard the safe harbor provision contained in §1084(b). That subsection provides a safe harbor for transmissions that occur under *both* of the following two conditions: (1) betting is legal in both the place of origin and the destination of the transmission; *and* (2) the transmission is limited to mere information that assists in the placing of bets, as opposed to including the bets themselves").

[32] "Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal," 18 U.S.C. 2(a).

[33] *Nye & Nissen v. United States*, 336 U.S. 613, 619 (1949); see also *United States v. George,* 658 F.3d 706, 708 (7th Cir. 2011); *United States v. Devries*, 630 F.3d 1130, 1133 (8th Cir. 2011); *United States v. Petersen*, 622 F.3d 196, 208 (3d Cir. 2010); *United States v. Hungerford*, 465 F.2d 1113, 1117 (9th Cir. 2006).

[34] *Advertising for Internet Gambling and Offshore Sportsbook Operations*, Letter from United States Deputy Attorney General John G. Malcolm to the National Association of Broadcasters dated June 11, 2003, filed as Exhibit A with the complaint in *Casino City, Inc. v. United States Department of Justice*, Civil Action No. 04-557-B-M3 (M.D.La.), *quoted in*, *First Amendment as Last Resort: The Internet Gambling Industry's Bid to Advertise in the United States*, 50 ST. LOUIS UNIVERSITY LAW JOURNAL 1289, 1290 (2006).

In other related developments, U.S. marshals seized $3.2 million that Discovery Communications had accepted for ads from Tropical Paradise, a Web casino operation based in Costa Rica, *The Wall Street Journal - Europe*, A5 (Aug. 2, 2004), and the federal prosecutors apparently warned PayPal, a money transfer service, that it risked prosecution under 18 U.S.C. 1960 (transmission of funds intended to be used to promote or support unlawful activity) by providing services to online gambling operations, *American Banker*, 1 (April 2, 2003); *see also,* Smith, *Interbet, It's Illegal, But Online Gambling Mushrooms Anyway*, ROCKY MOUNTAIN NEWS 1B (Jan. 30, 2006)("the Sporting News earlier this month agreed to pay a $4.2 million fine and launch a $3 million public-service campaign to settle federal charges it had run illegal online gambling advertising"); *Internet Gambling Prohibition Act of 2006: Hearing Before the Subcomm. on Crime, Terrorism, and Homeland Security of the House Comm. on the Judiciary*, 109th Cong. 13 (2006) (*Hearing)* (statement of Bruce G. Ohr, Chief of the Organized Crime and Racketeering Section, Criminal Division, United States Department of Justice)("[I]n January 2006, the United States Attorney's Office in St. Louis announced a $7.2 million settlement with the Sporting News to resolve claims that the Sporting News promoted illegal gambling ... by accepting fees in exchange for advertising illegal gambling").

[35] *Pinkerton v. United States,* 328 U.S. 640, 645-48 (1946); *Salinas v. United States*, 522 U.S. 52, 62-3 (1997)("The partners in the criminal plan must agree to pursue the same criminal objective and may divide up the work, yet each is responsible for the acts of each other"). The conspiratorial agreement is itself a separate crime under 18 U.S.C. 371 ("If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both. If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor"); *United States v. Bingham*, 653 F.3d 983, 997 (9th Cir. 2011); *United States v. Vazquez-Castro,* 640 F.3d 19, 24 (1st Cir. 2011); *United States v. Matias*, 465 F.3d 169, 173 (5th Cir. 2006).

provision in the civil Interstate Horseracing Act.[36] The Justice Department does not share this view.[37]

The Interstate Horseracing Act is the product of the emergence of state licensed off-track betting parlors.[38] The parlors accepted wagers on races conducted both within the state and without. Race tracks and those dependent upon their success objected that the tracks were losing customers who lived proximate to both an in state track and an off-track betting parlor in a neighboring state.[39] The Horseracing Act provides for compensation agreements. More precisely, it prohibits acceptance of interstate off-track wagers except as it provides,[40] but permits such acceptance with the consent of various horse racing associations, state horse racing commissions, state off-track racing commissions, and horse racing track operators.[41] It affords aggrieved states, horse racing associations and horsemen's groups a cause of action against violators of its provisions.[42] It neither provides criminal penalties nor explicitly addresses its relationship to other federal and state gambling laws.[43] Although the act calls for the consent of the operators of any track located within 60 miles of an off-track betting office,[44] it does not give track operators a cause of action for failure to comply with this or any of its other requirements.[45]

One track operator attempted unsuccessfully to invoke the Wire Act and federal racketeer influenced and corrupt organization (RICO) provisions to overcome this limitation.[46] *Suffolk* claimed that the defendant, who operated an off-track betting site within 60 miles of *Suffolk*, accepted wagers on interstate races without its consent and that these activities involved the patterned interstate transmission of gambling-assisting information (race results) from the track to the off-track betting parlor in violation of the Wire Act and consequently constituted a RICO violation, *id.* at 1272. The First Circuit affirmed the lower court's rejection of the claim on the basis of the Wire Act exception found in 18 U.S.C. 1084(b) that exempts the interstate

---

[36] Cabot & Christiansen, Why the Future of Horseracing Is at Risk: The WTO Decision and Senator Kyl, 9 GAMING LAW REVIEW 201, 204-5 (2005).

[37] *Hearing,* at 146 (statement of Bruce G. Ohr, Chief of the Organized Crime and Racketeering Section, Criminal Division, United States Department of Justice).

[38] 15 U.S.C. 3001-3007.

[39] S.Rept. 95-554, at 3-5 (1977); *see also,* S.Rept. 95-1117, at 4 (1978); H.Rept. 95-1733, at 4 (1978).

[40] 15 U.S.C. 3003.

[41] 15 U.S.C. 3004.

[42] 15 U.S.C. 3005, 3006.

[43] The legislative history, however, suggests the absence of an intent to preempt state gambling laws, S.Rept. 95-1117, at 3 (1978) ("This procedure is intended to conform with the prevailing view that these matters are generally of State concern and that the States' prerogatives in the regulation of gambling are in no [way] preempted by this or other Federal law"); *see also*, H.Rept. 95-1733, at 3 (1978); *Kentucky Division, Horsemen's Benevolent & Protective Ass'n, Inc. v. Turfway Park Racing Ass'n*, 20 F.3d 1406, 1414 (6th Cir. 1994)("Under the Act, each state may prohibit interstate off-track wagering within its borders, and may prohibit a resident racetrack from contracting with an off-track wagering facility in another state").

[44] 15 U.S.C. 3004(b).

[45] 15 U.S.C. 3005, 3006 (limiting liability to, and a cause of action for the benefit of, "the host State, the host racing association and the horsemen's group").

[46] *Sterling Suffolk Racecourse Ltd. v. Burrillville Racing Ass'n, Inc.*, 989 F.2d 1266 (1st Cir. 1993). RICO prohibits the acquisition or operation of an enterprise whose activities affect interstate or foreign commerce through the patterned commission of two or more "racketeering activities," that is, two or more other specifically designated offenses (such as violations of 18 U.S.C. 1084(a)(the Wire Act)), 18 U.S.C. 1961-1968. Anyone injured in his business or property by a RICO violation enjoys a cause of action for treble damages, 18 U.S.C. 1964(c).

transmission of sports gambling-assisting information to and from jurisdictions where gambling on such sporting events or contests is legal.[47] Summarizing in general terms, the court declared:

> To recapitulate, we think it clear that Congress, in adopting section 1084, did not intend to criminalize acts that neither the affected states nor Congress itself deemed criminal in nature. [The defendant's] acts fall into this chiaroscuro category—perhaps not right, but certainly not felonious. It follows that these acts, not indictable under section 1084, cannot constitute a pattern of racketeering activity within RICO's definitional parameters. *Id.* at 1273.

The operator of an off-shore Internet gambling site subsequently seized upon this "Congress-did-not-intend-to-criminalize" language when challenging his conviction under the Wire Act. The Second Circuit in *Cohen* rejected the challenge with the observation that unlike *Suffolk* where the transmission of gambling-related information came within the safe harbor of section 1084(b), Cohen's case involved the online (i.e., wire) transmission of wagers themselves, a transmission that falls outside the safe harbor provision of the section 1084(b).[48]

The facts that gave rise to *Suffolk* and *Cohen*, however, occurred prior to the 2000 amendments to the Interstate Horseracing Act. P.L. 106-553, which made appropriations for the District of Columbia as well as for the Departments of Commerce, Justice and State, and which amended the definition of "interstate off-track wager" in the Interstate Horseracing Act to read:

> "interstate off-track wager" means a legal wager placed or accepted in one State with respect to the outcome of a horserace taking place in another State *and includes pari-mutuel wagers, where lawful in each State involved, placed or transmitted by an individual in one State via telephone or other electronic media and accepted by an off-track betting system in the same or another State, as well as the combination of any pari-mutuel wagering pools*. 15 U.S.C. 3002(3); sec. 629, P.L. 106-533, 114 Stat. 2762-108 (2000) (language of the amendment in italics).

The language in italics was added for the first time in conference with the simple accompanying explanation which in its entirety declares, "the conference agreement includes a new section 629, to clarify the Interstate Horseracing Act regarding certain pari-mutuel wagers."[49] A critic objected to the amendment during floor debate.[50] Otherwise the only reference was "inserted or appended, rather than spoken, by a Member of the House on the floor."[51]

---

[47] *Id.* at 1272 ("Conceding, withal, that wagering of the sort transacted at [defendant's] facility is permissible under the relevant laws of all interested states, appellant pins its RICO-related hopes on section 1084(a). But section 1084(a) carves out a specific exception for circumstances in which wagering on a sporting event is legal in both the sending and receiving state. See 18 U.S.C. 1084(b). That exception applies here").

[48] *United States v. Cohen*, 260 F.3d 68, 73 (2d Cir. 2001).

[49] H.Rept. 106-1005, at 317 (2000).

[50] "I want Members of this body to be aware that section 629 of the conference report would legalize interstate pari-mutual gambling over the Internet. Under the current interpretation of the Interstate Horse Racing Act in 1978, this type of gambling is illegal, although the Justice Department has not taken steps to enforce it. This provision would codify legality of placing wages over the telephone or other electronic media like the Internet," 146 Cong.Rec. 24938 (2000)(remarks of Rep. Wolf).

[51] "The conference report contains a provision (Section 629) which clarifies that the Interstate Horseracing Act permits the continued merging of any wagering pools and wagering activities conducted between individuals and state-licensed and regulated off-track betting systems located in one or more states, whether such wages are conducted in person, via telephone or other electronic media, provided such wages are placed on a closed-loop subscriber-based service, which would include an effective customer and age verification process to ensure that all federal state requirements and (continued...)

Proponents claim the amendment permits tracks to accept online, out-of-state bets from states where pari-mutuel betting is legal (although not necessarily where either off-track or online betting is legal);[52] the Justice Department disagrees.[53] Uncertainty over the issue apparently led an Appellate Body of the World Trade Organization (WTO) to conclude that the United States may permit domestic entities to offer Internet gambling on horse racing, but denies offshore entities such an opportunity.[54] During hearings on the Unlawful Internet Gambling Enforcement Act, the Justice Department indicated that to confirm its understanding of the law it was conducting "a civil investigation relating to a potential violation of law regarding this activity."[55]

Illegal Gambling Businesses

Section 1955, which outlaws conducting an illegal gambling business, appears on its face to reach any illegal gambling business conducted using the Internet. Commentators seem to concur.[56] However, early prosecutions under the Wire Act were more prevalent.[57]

(...continued)

appropriate data security standards are net to prevent unauthorized use by a minor or non-subscriber. The amendment clarifies that the Interstate Horseracing Act permits wagers made by telephone or other electronic media to be accepted by an off-track betting system in another state provided that such types of wages are lawful in each state involved and meet the requirements, if any, established by the legislature or appropriate regulatory body in the state where the person originating the wager resides," 146 *Cong.Rec*. 24979 (2000)(Rep. Rogers)(this statement appears in type face used to "indicate[] words inserted or appended, rather than spoken by a Member of the House on the floor, 146 *Cong.Rec.* 24908 (2000)").

[52] Cabot & Christiansen, *Why the Future of Horseracing Is at Risk: The WTO Decision and Senator Kyl*, 9 GAMING LAW REVIEW 201, 204-5 (2005).

[53] *Hearing,* at 146 (statement of Bruce G. Ohr, Chief of the Organized Crime and Racketeering Section, Criminal Division, United States Department of Justice).

[54] "[T]he United States has not shown, in light of the Interstate Horseracing Act, that the prohibitions embodied in those measures [*i.e*., the Wire Act, the Travel Act, and the Illegal Gambling Business Act] are applied to both foreign and domestic service suppliers of remote betting services for horse racing," *United States—Measures Affecting the Cross-Border Supply of Gambling and Betting Services (AB-2005-1)*, WT/DS285/AB/R, at 126 (April 7, 2005), available at http://www.wto.org/english/tratop_e/disput_e/cases_e/ds285_e.htm. See generally, CRS Report RL32014, *WTO Dispute Settlement: Status of U.S. Compliance in Pending Cases*, at 74-83.

[55] *Hearing* at 14 (statement of Bruce G. Ohr, Chief of the Organized Crime and Racketeering Section, Criminal Division, United States Department of Justice).

[56] *Winner, Winner, No Chicken Dinner: An Analysis of Interactive Media Ent'mt & Gaming Ass'n v. Att'y Gen. of the U.S. and the Unjustified Consequences of the UIGEA*, 31 LOYOLA OF LOS ANELES ENTERMAINENT LAW REVIEW 55, 59 (2011)("[T]he Illegal Gambling Business Act ('IGBA') appear[s] to apply to Internet gambling*"); Geolocation and Federalism on the Internet: Cutting Internet Gambling's Gordian Knot*, 11 COLUMBIA SCIENCE AND TECHNOLOGY LAW REVIEW, 41, 45 (2010)("Currently, four federal statutes make up the principal Internet gambling prohibition regime in the United States: the Wire Act, the Travel Act, the Illegal Gambling Business Act, and the Unlawful Internet Gambling Enforcement Act (UIGEA). The first three of these statutes were enacted well before the rise of Internet gambling, though they have collectively been interpreted to make some, and perhaps all, forms of online gambling illegal"); Gottfried, *The Federal Framework for Internet Gambling*, 10 RICHMOND JOURNAL OF LAW AND TECHNOLOGY 26, 53 (2004)("While section 1955 has yet to be successfully used to prosecute an Internet gaming operation, its minimal requirements may make it a likely candidate for future use"); General Accounting Office [now the Government Accountability Office], *Internet Gambling: An Overview of the Issues* 11 (Dec. 2002); *Blackjack or Bust: Can U.S. Law Stop Internet Gambling?* 16 LOYOLA OF LOS ANGELES ENTERTAINMENT LAW JOURNAL 667, 675-77 (1996).

[57] But see, *United States v. Racing Services, Inc.*, 580 F.3d 710, 713-14 (8th Cir. 2009)("Here, in the federal prosecution, proof of a violation of state law was an element of the primary charge, that RSI and Bala violated 18 U.S.C. §1955 by conducting an 'illegal gambling business.' In reversing, we held that the government failed to prove a (continued...)

Violations are punishable by imprisonment for not more than five years and/or fines of the greater of not more than twice the gain or loss associated with the offense or $250,000 ($500,000 for an organization).[58] Moreover, the federal government may confiscate any money or other property used in violation of the section.[59] The offense may also provide the foundation for a prosecution under the Travel Act, the money laundering statutes, and RICO.[60]

The sanctions of the Illegal Gambling Business Act apply to anyone who

I. A. conducts,
   B. finances,
   C. manages,
   D. supervises,
   E. directs, or
   F. owns
II. all or part of an illegal gambling business that
III. A. is a violation of the law of a State or political subdivision in which it is conducted;
   B. involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and
   C. has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of $2,000 in any single day.[61]

"[N]umerous cases have recognized that 18 U.S.C. 1955 proscribes any degree of participation in an illegal gambling business except participation as a mere bettor."[62] Or as more recently described, "'[c]onductors' extends to those on lower echelons, but with a function at their level necessary to the illegal gambling operation."[63]

(...continued)

state law violation law turned lawful parimutuel account wagering into an illegal gamvling business. 489 F.3d at 340-41. But we noted that the 'government could have avoided this evidentiary insufficiency by proving that RSI entered the account wagering business never intending to distribute its net proceeds to charity[as state law required].' *Id*. at 341"); cf., *United States v. Hill*, 55 F.3d 1197, 1200 (6th Cir. 1995)("[U]nder §1955, it is quite obvious that bettors should not be held criminally liable either under the statute or under §2 and that local merchants who sell the accounting paper or the computers on which bets are registered are not sufficiently connected to the enterprise to be included even if they know that their goods will be used in connection with the work of the business. On the other hand, it seems similarly obvious that the seller of computer hardware or software who is fully knowledgeable about the nature and scope of the gambling business would be liable under §2 if he installs the computer, electronic equipment and cables necessary to operate a 'wire shop' or a parimutuel betting parlor, configures the software programs to process betting information and instructs the owners of the gambling business on how to use the equipment to make the illegal business more profitable and efficient. Such actions would probably be sufficient proof that the seller intended to further the criminal enterprise"); Superseding Indictment, *United States v. Scheinberg*, No. S3 10 Cr. 336 (LAK), S.D.N.Y. March 10, 2011)(charging individuals associated with Internet poker companies with violations of 18 U.S.C. 1955, of UIGEA, and with money laundering); Indictment, *United States v. K23 Group Financial Services*, CRIMINAL NO. CCB-11-0239 (D.Md. April, 26, 2011)(charging operators of Internet gambling sites with violations of 18 U.S.C. 1955 and with money laundering).

[58] 18 U.S.C. 1955(a), 3571(d).

[59] 18 U.S.C. 1955(d).

[60] 18 U.S.C. 1952, 1956, 1957, 1962, respectively.

[61] *United States v. Useni*, 516 F.3d 634, 647 (7th Cir. 2008)("[T]o establish a violation of §1955, the government must show that the defendant conducted, financed, managed, supervised, directed, or owned a gambling business that: (1) violated state law; (2) involved five or more persons; and (3) was either in substantial continuous operation for more than 30 days or had gross revenue of $2,000 or more in a single day").

[62] *Sanabria v. United States*, 437 U.S. 54, 70-1 n.26 (1978); *United States v. Atiyeh*, 402 F.3d 354, 372 (3d Cir. 2005).

[63] *United States v. O'Brien*, 131 F.3d 1428, 1431 (10th Cir. 1997). Perceptions of necessity are not always particularly (continued...)

The section bars only those activities that involve illegal gambling under applicable state law and that meet the statutory definition of such a business.[64] Illegal gambling is at the threshold of any prosecution under the section, and cannot to be pursued if the underlying state law is unenforceable under either the United States Constitution,[65] or the operative state constitution.[66]

The business element can be satisfied (for any endeavor involving five or more participants) either by continuity ("has been or remains in substantially continuous operation for period in excess of thirty days") or by volume ("has a gross revenue of $2,000 in any single day").[67] The volume prong is fairly self-explanatory and the courts have been fairly generous in their assessment of continuity.[68] They are divided, however, on the question of whether the jurisdictional five and continuity/volume features must coincide.[69]

There is no such diversity of opinion on the question of whether section 1955 lies within the scope of Congress's legislative authority under the Commerce Clause. The Supreme Court's decision in *United States v. Lopez*,[70] finding the Gun Free School Zone Act (18 U.S.C. 922(q)) beyond the bounds of Congress's Commerce Clause power, stimulated a host of appellate decisions here and elsewhere. In the case of section 1955, *Lopez* challenges have been rejected with the observation that, unlike the statute in *Lopez*, section 1955 (a) involves the regulation of a commercial activity (a gambling business), (b) comes with jurisdictional elements selected to reserve prosecution to those endeavors likely to substantially affect interstate commerce (five

---

(...continued)

demanding, *see, e.g., United States v. Heacock*, 31 F.3d 249, 252-53 (5th Cir. 1994)(may include "everyone from layoff bettors and line services to waitresses who serve drinks"); *United States v. Grey*, 56 F.3d 1219, 1221 (10th Cir. 1995) (bartenders and managers of establishments where the defendant placed his video poker machines and who recording winnings, made payoffs, and reset the machines were properly counted as conductors of the defendant's gambling business); *United States v. Mick*, 263 F.3d 553, 568-69 (6th Cir. 2001)("layoff bettors may be considered part of the requisite five members, so long as their dealings with the gambling business are regular and not just based on one contact"); *United States v. Febus*, 218 F.3d 784, 797 (7th Cir. 2000)(emphasis added) (conduct for purposes of section 1955 extends to the performance of "any act, function or duty which is necessary to *or helpful* in the ordinary operation of the business" including the owner of a bar who knowingly allowed gamblers to use the bar as a collection site); *United States v. Chance*, 306 F.3d 356, 379-80 (6th Cir. 2002)("regularly helpful or necessary to the operation of the gambling enterprise"); *Requirement of 18 U.S.C. §1955, Prohibiting Illegal Gambling Business, That Such Business Involve Five or More Persons*, 55 ALR FED. 778 (1981 & 2011 Supp.).

[64] *United States v. Bala*, 489 F.3d 334, 338 (8th Cir. 2007)(Section "1955) only prohibits gambling businesses that are 'in violation of state penal laws,' not [those in violation of] state administrative regulations)," citing accord *United States v. Gordon*, 464 F.2d 357, 357-58 (9th Cir. 1972).

[65] *Cf., United States v. Hill*, 167 F.3d 1055, 1063-64 (6th Cir. 1999).

[66] *Cf., United States v. Ford*, 184 F.3d 566, 582-83 (6th Cir. 1999).

[67] *Sikes v. Teleline, Inc.*, 281 F.3d 1350, 1366-367 (11th Cir. 2002).

[68] *E.g., United States v. Trupiano*, 11 F.3d 769, 773-74 (8th Cir. 1993)("Congress did not purport to require absolute or total continuity in gambling operations. Consistent with this, substantially continuous has been read not to mean every day. The operation, rather, must be one that was conducted upon a schedule of regularity sufficient to take it out of the casual nonbusiness category").

[69] *Compare, United States v. Nicolaou*, 180 F.3d 565, 568 (4th Cir. 1999)("the five-person requirement must be satisfied in conjunction with the third element. That is ... section 1955 covers only those gambling operations that involve at all times during some thirty day period at least five persons ... or that involve at least five persons on any single day on which it had gross revenues of $2,000"), *with, United States v. Boyd*, 149 F.3d 1062, 1064-65 (10th Cir. 1998)("the government is not required to demonstrate the involvement of five or more persons for a continuous period of more than thirty days to support a conviction under §1955, but rather need only demonstrate that the operation operated for a continuous period of thirty days and involved five or more persons at some relevant time").

[70] 514 U.S. 549 (1996).

participants in a substantial gambling undertaking), and (c) was preceded by Congressional findings evidencing the impact of substantial gambling operations upon interstate commerce.[71]

The accomplice and conspiratorial provisions attend violations of section 1955 as they do violations of the Wire Act. Although frequently difficult to distinguish in a given case, the difference is essentially a matter of depth of involvement. "[T]o be guilty of aiding and abetting a section 1955 illegal gambling business ... the defendant must have knowledge of the general scope and nature of the illegal gambling business and awareness of the general facts concerning the venture ... [and he] must take action which materially assists in 'conducting, financing, managing, supervising, directing or owning' the business for the purpose of making the business succeed."[72] Unlike conspiracy, one may only be prosecuted for aiding and abetting the commission of a completed crime; "before a defendant can be found guilty of aiding and abetting a violation of section 1955 a violation of section 1955 must exist ... [and] aiders and abettors cannot be counted as one of the statutorily required five persons."[73]

As a general rule, a federal conspiracy exists when two or more individuals agree to commit a federal crime and one of them commits some overt act in furtherance of their common scheme.[74] "A conspiracy may exist even if a conspirator does not agree to commit or facilitate each and every part of the substantive offense. The partners in the criminal plan must agree to pursue the same criminal objective and may divide up the work, yet each is responsible for acts of each other. If the conspirators have a plan which calls for some conspirators to perpetrate the crime and others to provide support, the supporters are as guilty as the perpetrators."[75] Conspiracy is a separate crime and thus conspirators may be convicted of both substantive violations of section 1955 and conspiracy to commit those violations.[76] In fact, under the *Pinkerton* doctrine, co-conspirators are liable for conspiracy, the crime which is the object of the conspiracy (when it is committed), and any other reasonably foreseeable crimes of their confederates committed in furtherance of the conspiracy.[77]

The application of the Illegal Gambling Business Act to offshore gambling operations that take wagers from bettors in the United States involves two questions. First, does state law proscribing the gambling in question apply when some of the elements of the offense are committed outside its jurisdiction? Second, did Congress intend the section to apply beyond the confines of the United States?

---

[71] *E.g., United States v. Riddle*, 249 F.3d 529, 538-39 (6th Cir. 2001); *United States v. Lee,* 173 F.3d 809, 810-11 (11th Cir. 1999); *United States v. Threadgill*, 172 F.3d 357, 371-72 & n.12 (5th Cir. 1999); *United States v. Ables*, 167 F.3d 1021, 1026-28 (6th Cir. 1999)(also rejecting the suggestion that section 1955 exceeded the reach of Congress under the Commerce Clause because it intruded into an area traditionally reserved to the states); *United States v. Boyd*, 149 F.3d 1062, 1066 (10th Cir. 1998); *United States v. Zizzo*, 120 F.3d 1338, 1350 (7th Cir. 1998); *United States v. Wall*, 912 F.3d 1444, 1445-452 (6th Cir. 1996).

[72] *United States v. Hill*, 55 F.3d 1197, 1201-202 (6th Cir. 1995).

[73] *Id.* at 1204.

[74] *United States v. Falcone*, 311 U.S. 205, 210 (1941); *United States v. Rizk*, 660 F.3d 1125, 1134 (9th Cir. 2011); *United States v. Cooper*, 654 F.3d 1104, 1115 (10th Cir. 2011); *United States v. Gore,* 636 F.3d 728, 730 (5th Cir. 2011).

[75] *Salinas v. United States*, 522 U.S. 52, 63-4 (1997).

[76] *Iannelli v. United States*, 420 U.S. 770 (1975); *United States v. Jimenez Recio*, 537 U.S. 270, 274 (2003).

[77] *Pinkerton v. United States,* 328 U.S. 640, 645-48 (1946); *United States v. Bingham*, 653 F.3d 983, 997 (9th Cir. 2011); *United States v. Vazquez-Castro,* 640 F.3d 19, 24 (1st Cir. 2011).

Section 1955 can only apply overseas when based on an allegation that the gambling in question is illegal under a state law whose reach straddles jurisdictional lines. For example, a statute that prohibits recording bets (bookmaking) in Texas cannot be used against a gambling business which records bets only in Jamaica or Dominican Republic, even if the bets are called in from Texas.[78] On the other hand, an overseas gambling business may find itself in violation of section 1955 if it accepts wagers from bettors in New York, because New York law considers the gambling to have occurred where the bets are made, inter alia.[79]

Whether a federal criminal statute applies overseas is a matter of Congressional intent.[80] The intent is most obvious where Congress has expressly stated that a provision shall have extraterritorial application.[81] Section 1955 has no such expression of intended overseas application. In the absence of an explicit statement, the courts use various interpretive aids to divine Congressional intent. Unless some clearer indication appears, Congress is presumed to have intended its laws to apply only within the United States.[82] The courts have recognized contrary indications under several circumstances.[83] Congress will be thought to have intended a criminal proscription to apply outside the United States where one of the elements of the offense, like the commission of an overt act in furtherance of a conspiracy, occurs in the United States.[84] Similarly, Congress will be thought to have intended to outlaw overseas crimes calculated to have an impact in the United States, for example, false statements made abroad in order to gain entry

[78] *United States v. Truesdale*, 152 F.3d 443, 446-49 (5th Cir. 1998) (rejecting the argument that the gambling was illegal under a provision of Texas law not mentioned in indictment or the jury charge).

[79] *People ex rel. Vacco v. World Interactive Gaming Corp.*, 185 Misc.2d 852, 859-60, 714 N.Y.S.2d 844, 850 (1999)("Respondents argue that the Court lacks subject matter jurisdiction, and that Internet gambling falls outside the scope of New York state gambling prohibitions, because the gambling occurs outside of New York state. However, under New York Penal Law, if the person engaged in gambling is located in New York, then New York is the location where the gambling occurred (See Penal Law §225.02(2)). Here, some or all of those funds in an Antiguan bank account are staked every time the New York user enters betting information into the computer. It is irrelevant that Internet gambling is legal in Antigua. The act of entering the bet and transmitting the information from New York via the Internet is adequate to constitute gambling activity within New York State").

[80] *EEOC v. Arabian American Oil Co.*, 499 U.S. 244, 248 (1991)("Congress has the authority to enforce its laws beyond the territorial boundaries of the United States. Whether Congress has in fact exercised that authority ... is a matter of statutory construction"); *Foley Brothers v. Filardo*, 336 U.S. 281, 284-85 (1949) ("The question . . is not the power of Congress to extend the ... law to ... foreign countries. Petitioners concede that such power exists. The question is rather whether Congress intended to make the law applicable"); *United States v. al Kassar*, 660 F.3d 108, 117-18 (2d Cir. 2011)("[A]s a general proposition, Congress has the authority to enforce its laws beyond the territorial boundaries of the United States"); *United States v. Martinez*, 599 F.Supp.2d 784, 796-97 (W.D.Tex. 2009); see generally, CRS Report 94-166, *Extraterritorial Application of American Criminal Law*.

[81] E.g., 18 U.S.C. 2381 (relating to treason committed in the United States "or elsewhere").

[82] "It is a 'long-standing principle of American law that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States,'" *Morrison v. National Australia*, 130 S.Ct. 2869, 2877 (2010), quoting, *EEOC. v. Arabian American Oil Co*., 499 U.S. at 248 (1991); see also, *Argentine Republic v. Amerada Hess Shipping*, 488 U.S. 428, 440 (1989); *Sale v. Haitian Centers Council, Inc.*, 509 U.S. 155, 173 (1993); *Smith v. United States*, 507 U.S. 197, 203 (1993); *Small v. United States*, 544 U.S. 385, 388-89 (2005)("This notion has led the Court to adopt the legal presumption that Congress ordinarily intends its statutes to have domestic, not extraterritorial application"); but see, *United States v. al Kassar*, 660 F.3d 108, 118 (2d Cir. 2011)(internal citations omitted)("The presumption that ordinary acts of Congress do not apply extraterritorially, does not apply to criminal statutes").

[83] *United States v. al Kassar*, 660 F.3d 108, 118 (2d Cir. 2011)(internal citations omitted)("When the text of a criminal statute is silent, Congressional intent to apply the statute extraterritorially must be inferred from the nature of the offense").

[84] *United States v. MacAllister*, 160 F.3d 1304, 1308 (11th Cir. 1998).

into the United States.[85] Finally, Congress will be thought to have intended extraterritorial application for a criminal statute where its purpose in enacting the statute would otherwise be frustrated, for instance, the theft of United States property overseas.[86]

There is a countervailing presumption interwoven among these interpretive devices. Congress is presumed not to have intended any extraterritorial application that would be contrary to international law.[87] International law in the area is a matter of reasonableness, of minimal contacts,[88] traditionally described as permitting geographical application of a nation's laws under five principles: a country's laws may be applied within its own territory (territorial principle); a country's laws may be applied against its own nationals wherever they are located (nationality principle); a country's laws may be applied to protect it from threats to its national security (protective principle); a country's laws may be applied to protect its citizens overseas (passive personality principle); and a country's laws may be applied against crimes repugnant to the law of nations such as piracy (universal principle).[89]

Section 1955 does not say whether it applies overseas. Yet an offshore illegal gambling business whose customers where located in the United States seems within the section's domain because of the effect of the misconduct within the United States.

Travel Act

The operation of an illegal gambling business using the Internet may easily involve violations of the Travel Act,[90] as several writers have noted.[91] Like the Illegal Gambling Business Act, Travel Act convictions result in imprisonment for not more than five years and/or fines of the greater of not more than twice the gain or loss associated with the offense or $250,000 ($500,000 for an

[85] *Ford v. United States*, 273 U.S. 593, 620-21 (1927)("Acts done outside a jurisdiction, but intended to produce and producing detrimental effects within it, justify a State in punishing the cause of the harm as if he had been present at the effect"); *United States v. Larsen*, 952 F.2d 1099, 1100-101 (9th Cir. 1991); *United States v. Hill*, 279 F.3d 731, 739-40 (9th Cir. 2002).

[86] *United States v. Bowman*, 260 U.S. 94, 98 (1922)("Other [crimes] are such that to limit their *locus* to the strictly territorial jurisdiction would be greatly to curtail the scope and usefulness of the statute and leave open a large immunity for frauds as easily committed by citizens ... in foreign countries as at home. In such cases, Congress has not thought it necessary to make specific provision in the law that the *locus* shall include ... foreign countries, but allows it to be inferred from the nature of the offense"); *Blackmer v. United States*, 284 U.S. 421, 438 (1932)("The jurisdiction of the United States over its absent citizen, so far as the binding effect of its legislation is concerned, is a jurisdictional *in personam*, as he is personally bound to take notice of the laws that are applicable to him and to obey them"); *United States v. Vasquez-Velasco*, 15 F.3d 833, 839 (9th Cir. 1994); *United States v. Delgado-Garcia*, 374 F.3d 1337, 1345-347 (D.C.Cir. 2004).

[87] *Weinberger v. Rossi*, 456 U.S. 25, 32 (1982)("It has been a maxim of statutory construction since the decision in *Murray v. the Charming Betsy*, that an act of Congress ought never to be construed to violate the law of nations, if any other possible construction remains"); *United States v. Dawn*, 129 F.3d 878, 882 (7th Cir. 1997); *United States v. Yousef*, 327 F.3d 56, 96 (2d Cir. 2003).

[88] RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES §§401 to 423 (1986 & 2006 Supp.).

[89] *Jurisdiction with Respect to Crime*, 29 AMERICAN JOURNAL OF INTERNATIONAL LAW (SUPP.) 439, 445 (1935).

[90] 18 U.S.C. 1952.

[91] Gottfried, *The Federal Framework for Internet Gambling*, 10 RICHMOND JOURNAL OF LAW AND TECHNOLOGY 26, 52 (2004); *Do Not Bet on Unilateral Prohibition of Internet Gambling to Eliminate Cyber-Casinos*, 1999 UNIVERSITY OF ILLINOIS LAW REVIEW 1045, 1057; Schwartz, *The Internet Gambling Fallacy Craps Out*, 14 BERKELEY TECHNOLOGY LAW JOURNAL 1021, 1028-29 (1999); General Accounting Office [now the Government Accountability Office], *Internet Gambling: An Overview of the Issues* 11 (Dec. 2002).

organization).[92] The act may serve as the foundation for a prosecution under the money laundering statutes[93] and RICO.[94] It has neither the service termination features of the Wire Act nor the forfeiture features of the Illegal Gambling Business Act.

The Travel Act's elements cover anyone who

I.A. travels in interstate or foreign commerce, or
B. uses any facility in interstate or foreign commerce, or
C. uses the mail

II. with intent
A. to distribute the proceeds of
i. any business enterprise involving unlawful activities (including gambling) in violation of the laws in which it is conducted or of the laws of the United States; or
ii. any act which is indictable as money laundering; or
B. to otherwise
i. promote,
ii. manage,
iii. establish,
iv. carry on, or
v. facilitate the promotion, management, establishment, or carrying on, of any business enterprise involving unlawful activities (including gambling) in violation of the laws in which it is conducted or of the laws of the United States, or any act which is indictable as money laundering; and

III. thereafter so
A. distributes the proceeds from any business enterprise involving gambling or from any act indictable as money laundering, or
B. promotes, manages, establishes, carries on, or facilitates the promotion, management, establishment, or carrying on of any business enterprise involving unlawful activities (including unlawful gambling) or any act indictable as money laundering.

The courts often abbreviate their statement of the elements: "The government must prove (1) interstate travel or use of an interstate facility; (2) with the intent to ... promote ... an unlawful activity and (3) followed by performance or attempted performance of acts in furtherance of the unlawful activity."[95]

[92] 18 U.S.C. 1955(a), 3571(d).

[93] 18 U.S.C. 1956 and 1957.

[94] 18 U.S.C. 1961-1963.

[95] *United States v. Escobar-de-Jesus*, 187 F.3d 148, 177 (1st Cir. 1999); *United States v. Bankston*, 182 F.3d 296, 315 (5th Cir. 1999); *United States v. Montford*, 27 F.3d 137, 138 n.1 (5th Cir. 1994); *United States v. Xiong*, 262 F.3d 672, 676 (7th Cir. 2001); *United States v. Welch*, 327F.3d 1081, 1090(10th Cir. 2003); *United States v. Nishnianidze*, 342 F.3d 6, 15 (1st Cir. 2003); *United States v. Driver*, 535 F.3d 424, 430 (6th Cir. 2008). When the violation is a distribution of profits rather than promotional offense, the second element in the abbreviated list of elements is changed to "with the intent to distribute the proceeds of an unlawful activity," *United States v. Hinojosa*, 958 F.2d 624, 629 (5th Cir. 1992).

The Supreme Court determined some time ago that the Travel Act does not apply to the simple customers of an illegal gambling business, although interstate solicitation of those customers may certainly be covered.[96]

When the act's jurisdictional element involves mail or facilities in interstate or foreign commerce, rather than interstate travel, evidence that a telephone was used,[97] or an ATM,[98] or the facilities of an interstate banking chain[99] will suffice.[100] The government is not required to show that the defendant used the facilities himself or that the use was critical to the success of the criminal venture. It is enough that he caused them to be used [101] and that their employment was useful for his purposes.[102] Moreover, intrastate telephone communications constitute the use of "facilities in interstate or foreign commerce."[103]

Thus in the case of Internet gambling, the jurisdictional element of the Travel Act might be established at a minimum either by reference to the telecommunications component of the Internet, to shipments in interstate or foreign commerce (in or from the United States) associated with establishing operations on the Internet, to any interstate or foreign nexus to the payment of the debts resulting from the gambling, or to any interstate or foreign distribution of the proceeds of such gambling.

A criminal business enterprise, as understood in the Travel Act, "contemplates a continuous course of business—one that already exists at the time of the overt act or is intended thereafter. Evidence of an isolated criminal act, or even sporadic acts, will not suffice,"[104] and it must be shown to be involved in an unlawful activity outlawed by a specifically identified state or federal statute.[105] Finally, the government must establish some overt act in furtherance of the illicit business committed after the interstate travel or the use of the interstate facility.[106]

---

[96] Unlike 18 U.S.C. 1953 (interstate transportation of certain gambling paraphernalia), section 1952 does not exclude the interstate or foreign shipment of newspapers (whether soliciting customers or otherwise) from the activities that may trigger the section's jurisdictional element, *see, e.g.*, *Erlenbaugh v. United States*, 409 U.S. 239 (1972)(upholding a conviction for violation of section 1952 which took the form of interstate delivery newspapers "scratch sheets" to out of state bookies).

[97] *Rewis v. United States*, 401 U.S. 808, 811 (1971); *United States v. Nishnianidze*, 342 F.3d 6, 15 (1st Cir. 2003); *United States v. Baker*, 227 F.3d 955, 962 (7th Cir. 2000); *United States v. Jenkins*, 943 F.2d 167, 172 (2d Cir. 1991); *United States v. Graham*, 856 F.2d 756, 760-61 & n.1 (6th Cir. 1988).

[98] *United States v. Baker*, 82 F.3d 273, 275 (8th Cir. 1996).

[99] *United States v. Rogers*, 387 F.3d 925, 935 (7th Cir. 2004); *United States v. Auerbach*, 913 F.2d 407, 410 (7th Cir. 1990).

[100] Of course, interstate travel will also suffice, *United States v. Xiong*, 262 F.3d 672, 676 (7th Cir. 2001).

[101] *United States v. Baker*, 82 F.3d at 275; *United States v. Auerbach*, 913 F.2d at 410.

[102] *United States v. Baker*, 82 F.3d at 275-76; *United States v. McNeal*, 77 F.3d 938, 944 (7th Cir. 1996); *United States v. Houlihan*, 92 F.3d 1271, 1292 (1st Cir. 1996).

[103] *United States v. Nader*, 542 F.3d 713, 718-20 (9th Cir. 2008).

[104] *United States v. Roberson* 6 F.3d 1088, 1094 (5th Cir. 1993); *see also*, *United States v. James*, 210 F.3d 1342, 1345 (11th Cir. 2000); *United States v. Saget*, 991 F.2d 702, 712 (11th Cir. 1993)("If the defendant engages in a continuous course of cocaine distribution rather than a sporadic or casual course of conduct, then the statutory requirement of a business enterprise involving narcotics is satisfied"); *United States v. Iennaco*, 893 F.2d 394, 398 (D.C.Cir. 1990).

[105] *United States v. Griffin*, 85 F.3d 284, 287-88 (7th Cir. 1996); *United States v. Campione*, 942 F.2d 429, 433-36 (7th Cir. 1991); *United States v. Jones*, 909 F.2d 533, 536-39 (D.C.Cir. 1990).

[106] *United States v. Jenkins*, 943 F.2d 167, 173 (2d Cir. 1991); *United States v. Admon*, 940 F.2d 1121, 1125 (8th Cir. 1991); *United States v. Burns*, 298 F.3d 523, 537-38 (6th Cir. 2002); *United States v. Nishnianidze*, 342 F.3d 6, 15 (1st Cir. 2003).

Accomplice and co-conspirator liability, discussed earlier, apply with equal force to the Travel Act.[107]

The act would only apply to "business enterprises" involved in illegal gaming, so that e-mail gambling between individuals would likely not be covered. And *Rewis*, *supra,* seems to bar prosecution of an Internet gambling enterprise's customers as long as they remain mere customers.[108] But an Internet gambling venture that constitutes an illegal gambling business for purposes of section 1955, *supra*, and is engaged in some form of interstate or foreign commercial activity in furtherance of the business will almost inevitably have included a Travel Act violation.

Unlawful Internet Gambling Enforcement Act (UIGEA)

The Wire Act, the Illegal Gambling Business Act, and the Travel Act implicitly outlaw Internet gambling and related activity. The Unlawful Internet Gambling Enforcement Act (UIGEA) does so explicitly. More exactly, it prohibits those who engage in a gambling business from accepting payments related to unlawful Internet gambling.[109] Violations are punishable by imprisonment for not more than five years and/or a fine of not more than $250,000 (not more than $500,000 for organizations).[110] Offenders may be subject to civil and regulatory enforcement actions as well.[111]

The Unlawful Internet Gambling Enforcement Act declares that

I. No person

II. engaged in the business of betting or wagering

III. may knowingly accept

IV. in connection with participation of another person

V. in unlawful Internet gambling

[107] *United States v. Driver*, 535 F.3d 424, 431 (6th Cir. 2008)(aiding and abetting); *United States v. Childress*, 58 F.3d at 721 (D.C.Cir. 1995)(citing the *Pinkerton* principle of co-conspirator liability); *see also*, *United States v. Auerbach*, 913 F.2d at 410 (7th Cir. 1990) (co-conspirator liability); *United States v. Rogers*, 387 F.3d 925, 935 (7th Cir. 2004) (aiding and abetting); *United States v. Lee*, 359 F.3d 194, 209 (3d Cir. 2004)(aiding and abetting); *United States v. Pardue*, 983 F.2d 943, 945-46 (8th Cir. 1993)(aiding and abetting); *United States v. Dischner*, 974 F.2d 1502, 1521 (9th Cir. 1992) (aiding and abetting).

[108] *Contra, Blackjack or Bust: Can U.S. Law Stop Internet Gambling?* 16 LOYOLA OF LOS ANGELES ENTERTAINMENT LAW JOURNAL at 675 ("The Travel Act applies not only to Internet casinos, but it also seems to apply to players who use interstate facilities for the transportation of unlawful activities [*i.e.*, their wagers]")(the JOURNAL article does not discuss *Rewis*).

[109] 31 U.S.C. 5363.

[110] 31 U.S.C. 5366(a), 18 U.S.C. 3571.

[111] 31 U.S.C. 5364, 5364.

> VI. a. credit, or the proceeds of credit, extended to or on behalf of such other person (including credit extended through the use of a credit card; or
>
> b. an electronic fund transfer, or funds transmitted by or through a money transmitting business, or the proceeds of an electronic fund transfer or money transmitting service, from or on behalf of such other person; or
>
> c. any check, draft, or similar instrument which is drawn by or on behalf of such other person and is drawn on or payable at or through any financial institution; or
>
> d. the proceeds of any other form of financial transaction, as the Secretary and the Board of Governors of the Federal Reserve System may jointly prescribe by regulation, which involves a financial institution as a payor or financial intermediary on behalf of or for the benefit of such other person.[112]

UIGEA's proscription draws meaning from a host of definitions, exceptions, and exclusions—some stated, others implied. It does not define "person." Nevertheless, as elsewhere in the *United States Code*, "persons" for purposes of UIGEA means individuals as well as "corporations, companies, associations, firms, partnerships, societies, and joint stock companies."[113]

It does not define the "business of betting or wagering," although it defines what it is not and defines the terms that provide the grist for such a business: bets or wagers. The business of betting or wagering does not encompass the normal business activities of financial or communications service providers,[114] unless they are participants in an unlawful Internet gambling enterprise.[115] On the other hand, Congress chose the term "business of betting or wagering" rather than the term "illegal gambling business," found in the Illegal Gambling Business Act.[116] This implies that UIGEA covers businesses regardless of whether they met the threshold requirements of Illegal Gambling Business Act, that is (1) five participants and (2) continuous operations for at least thirty days or gross revenues in excess of $2,000 a day.

To come within the statute's reach, a business must involve "bets or wagers" and must accept payment relating "unlawful Internet gambling." To bet or wager is to stake something on the outcome of a game or event. More exactly, "[t]he term 'bet or wager'—(A) means the staking or risking by any person of something of value upon the outcome of a contest of others, a sporting

---

[112] 31 U.S.C. 5363.

[113] 1 U.S.C. 1.

[114] 31 U.S.C. 5362 (2)("The term 'business of betting or wagering' does not include the activities of a financial transaction provider, or any interactive computer service or telecommunications service").

[115] 31 U.S.C. 5367 ("Notwithstanding section 5362(2), a financial transaction provider, or any interactive computer service or telecommunications service, may be liable under this subchapter if such person has actual knowledge and control of bets and wagers, and—(1) operates, manages, supervises, or directs an Internet website at which unlawful bets or wagers may be placed, received, or otherwise made, or at which unlawful bets or wagers are offered to be placed, received, or otherwise made; or (2) owns or controls, or is owned or controlled by, any person who operates, manages, supervises, or directs an Internet website at which unlawful bets or wagers may be placed, received, or otherwise made, or at which unlawful bets or wagers are offered to be placed, received, or otherwise made").

[116] 18 U.S.C., 1955(b)(1).

event, or a game subject to chance, upon an agreement or understanding that the person or another person will receive something of value in the event of a certain outcome."[117]

Earlier in UIGEA's legislative history, the definition of "bet or wager" used the phrase "a game predominantly subject to chance" rather than simply "a game subject to chance." The Justice Department questioned whether the original phrase was "sufficient to cover card games, such as poker."[118] The change in language appears to accommodate that concern by extending coverage to games that have an element of chance, even if not necessarily a predominant element.

The definition also explicitly covers lotteries[119] and information relating to the financial aspects of gambling.[120] The list of other common activities exempted from the definition includes securities and commodities exchange activities,[121] insurance,[122] Internet games and promotions that do not involve betting,[123] and certain fantasy sporting activities.[124]

---

[117] 31 U.S.C. 5362(1)(A).

[118] *Hearing* at 16 (statement of Bruce G. Ohr, Chief of the Organized Crime and Racketeering Section, Criminal Division, United States Department of Justice).

[119] 31 U.S.C. 5362(1)(B),(C)("The term 'bet or wager' ... (B) includes the purchase of a chance or opportunity to win a lottery or other prize (which opportunity to win is predominantly subject to chance); (C) includes any scheme of a type described in section 3702 of title 28"). 28 U.S.C. 3702 provides, "It shall be unlawful for—(1) a governmental entity to sponsor, operate, advertise, promote, license, or authorize by law or compact, or (2) a person to sponsor, operate, advertise, or promote, pursuant to the law or compact of a governmental entity, a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use of geographical references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games."

[120] 31 U.S.C. 5362(1)(D)("The term 'bet or wager' ... (D) includes any instructions or information pertaining to the establishment or movement of funds by the bettor or customer in, to, or from an account with the business of betting or wagering").

[121] 31 U.S.C. 5362(1)(E)(i)-(iv)("The term 'bet or wager' ... (E) does not include—(i) any activity governed by the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 for the purchase or sale of securities (as that term is defined in section 3(a)(10) of that Act); (ii) any transaction conducted on or subject to the rules of a registered entity or exempt board of trade under the Commodity Exchange Act; (iii) any over-the-counter derivative instrument; (iv) any other transaction that—(I) is excluded or exempt from regulation under the Commodity Exchange Act; or (II) is exempt from State gaming or bucket shop laws under section 12(e) of the Commodity Exchange Act or section 28(a) of the Securities Exchange Act of 1934").

[122] 31 U.S.C. 5362(1)(E)(v)-(vii)("The term 'bet or wager' ... (E) does not include ... (v) any contract of indemnity or guarantee; (vi) any contract for insurance; (vii) any deposit or other transaction with an insured depository institution").

[123] 31 U.S.C. 5362(1)(E)(viii)("The term 'bet or wager' ... (E) does not include ... (viii) participation in any game or contest in which participants do not stake or risk anything of value other than—(I) personal efforts of the participants in playing the game or contest or obtaining access to the Internet; or (II) points or credits that the sponsor of the game or contest provides to participants free of charge and that can be used or redeemed only for participation in games or contests offered by the sponsor").

[124] 31 U.S.C. 5362(1)(E)(ix)("The term 'bet or wager' ... (E) does not include ... (ix) participation in any fantasy or simulation sports game or educational game or contest in which (if the game or contest involves a team or teams) no fantasy or simulation sports team is based on the current membership of an actual team that is a member of an amateur or professional sports organization (as those terms are defined in section 3701 of title 28) and that meets the following conditions: (I) All prizes and awards offered to winning participants are established and made known to the participants in advance of the game or contest and their value is not determined by the number of participants or the amount of any fees paid by those participants. (II) All winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individuals (athletes in the case of sports events) in multiple real-world sporting or other events. (III) No winning outcome is based—(aa) on the score, point-spread, or any performance or performances of any single real-world team or any combination of such teams; or (bb) solely on any single performance of an individual athlete in any single real-world sporting or other event").

"Unlawful Internet gambling" refers to an Internet bet or wager that is illegal in the place where it is placed, received, or transmitted.[125] The term does not encompass various forms of Internet use by the horse racing industry, regardless of their legal status over other provisions of law.[126] If certain conditions are met, the definition also exempts from UIGEA's prohibitions certain intrastate and intratribal forms of gambling, like state lotteries and Indian casinos that operate under state regulations or compacts.[127]

To qualify for the intrastate exception, a bet must: (1) be made and received in the same state;[128] (2) comply with applicable state law that authorizes the gambling and the method of transmission including any age and location verification and security requirements;[129] and (3) be in accord with various federal gambling laws.[130]

The intratribal exception is comparable, but a little different. Compliance with the various federal gambling laws remains a condition.[131] And there are comparable security as well as age and location verification demands.[132] The intratribal gambling, however, may involve transmissions between the lands of two or more tribes and need not be within the same state.[133]

---

[125] 31 U.S.C. 5362(10)(A)("The term 'unlawful Internet gambling' means to place, receive, or otherwise knowingly transmit a bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable Federal or State law in the State or Tribal lands in which the bet or wager is initiated, received, or otherwise made").

[126] 31 U.S.C. 5362(10)(D)("(i) In general.—The term 'unlawful Internet gambling' shall not include any activity that is allowed under the Interstate Horseracing Act of 1978 (15 U.S.C. 3001 et seq.). (ii) Rule of construction regarding preemption.—Nothing in this subchapter may be construed to preempt any State law prohibiting gambling. (iii) Sense of Congress.—It is the sense of Congress that this subchapter shall not change which activities related to horse racing may or may not be allowed under Federal law. This subparagraph is intended to address concerns that this subchapter could have the effect of changing the existing relationship between the Interstate Horseracing Act and other Federal statutes in effect on the date of the enactment of this subchapter. This subchapter is not intended to change that relationship. This subchapter is not intended to resolve any existing disagreements over how to interpret the relationship between the Interstate Horseracing Act and other Federal statutes").

[127] 31 U.S.C. 5362(10)(B), (C).

[128] 31 U.S.C. 5362(10)(B)(i)("The term 'unlawful Internet gambling' does not include placing, receiving, or otherwise transmitting a bet or wager where—(i) the bet or wager is initiated and received or otherwise made exclusively within a single State"). *See also*, 31 U.S.C. 5362(10)(E)("The intermediate routing of electronic data shall not determine the location or locations in which a bet or wager is initiated, received, or otherwise made").

[129] 31 U.S.C. 5362(10)(B)(ii)("The term "unlawful Internet gambling" does not include placing, receiving, or otherwise transmitting a bet or wager where ... (ii) the bet or wager and the method by which the bet or wager is initiated and received or otherwise made is expressly authorized by and placed in accordance with the laws of such State, and the State law or regulations include—(I) age and location verification requirements reasonably designed to block access to minors and persons located out of such State; and (II) appropriate data security standards to prevent unauthorized access by any person whose age and current location has not been verified in accordance with such State's law or regulations").

[130] 31 U.S.C. 5362(10)(B)(iii)("The term "unlawful Internet gambling" does not include placing, receiving, or otherwise transmitting a bet or wager where ... (iii) the bet or wager does not violate any provision of—(I) the Interstate Horseracing Act of 1978 (15 U.S.C. 3001 et seq.); (II) chapter 178 of title 28 (commonly known as the "Professional and Amateur Sports Protection Act"); (III) the Gambling Devices Transportation Act (15 U.S.C. 1171 et seq.); or (IV) the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.)"). The Gambling Devices Transportation Act, also known as the Johnson Act, among other things prohibits the interstate transportation of gambling devices under some circumstances. The Indian Gaming Regulatory Act, as the name suggests, regulates gambling on Indian lands.

[131] 31 U.S.C. 5362(C)(iv).

[132] 31 U.S.C. 5362((10)(B)(iii)("The term 'unlawful Internet gambling' does not include placing, receiving, or otherwise transmitting a bet or wager where ... (iii) the applicable tribal ordinance or resolution or Tribal-State compact includes—(I) age and location verification requirements reasonably designed to block access to minors and persons located out of the applicable Tribal lands; and (II) appropriate data security standards to prevent unauthorized access by (continued...)

Definitions aside, UIGEA's prohibitions can only be breached by one who acts "knowingly." As a general rule, "the word 'knowingly' means that the defendant realized what she was doing and was aware of the nature of her conduct and did not act through ignorance, mistake or accident."[134] However, "the term 'knowingly' does not necessarily have any reference to a culpable state of mind or to knowledge of the law."[135]

There is nothing to shield UIGEA defendants from the same general accomplice and conspirator liability provisions that apply in the case of any other federal felony. Those who aid or abet a violation, that is, those who knowingly embrace the criminal activity and assist in its commission with an eye to its success, are liable to the same extent as those who commit the offense directly.[136] Conspirators are liable for conspiracy, for any completed crime that is the object of the plot, and for any additional, foreseeable offense committed by a confederate in furtherance of the common scheme.[137]

Section 5362(2) excludes the activities of financial institutions, as well as communications and Internet service providers, from the definition of "business of betting or wagering." Section 5367

(...continued)

any person whose age and current location has not been verified in accordance with the applicable tribal ordinance or resolution or Tribal-State Compact").

[133] 31 U.S.C. 5362(10)(B)(i)(ii)("The term "unlawful Internet gambling" does not include placing, receiving, or otherwise transmitting a bet or wager where—(i) the bet or wager is initiated and received or otherwise made exclusively—(I) within the Indian lands of a single Indian tribe (as such terms are defined under the Indian Gaming Regulatory Act); or (II) between the Indian lands of 2 or more Indian tribes to the extent that intertribal gaming is authorized by the Indian Gaming Regulatory Act; (ii) the bet or wager and the method by which the bet or wager is initiated and received or otherwise made is expressly authorized by and complies with the requirements of—(I) the applicable tribal ordinance or resolution approved by the Chairman of the National Indian Gaming Commission; and (II) with respect to class III gaming, the applicable Tribal-State Compact"). Class I gaming refers to social games played for stakes of minimal value; class II gaming means bingo and cards games that are legal under applicable state law (not including blackjack, baccarat and other banking games); class III gaming describes any other form of gambling that is not class I or class II gaming and includes things like casino gambling, 25 U.S.C. 2703.

[134] *United States v. Dominguez*, 661 F.3d 1051, 1068 (11th Cir. 2011); *United States v. Voice*, 622 F.3d 870, 876 (8th Cir. 2010); *United States v. Alston-Graves*, 435 F.3d 331, 337 (D.C. Cir. 2006)(citing cases from the First, Seventh, and Eighth Circuits).

[135] *Bryan v. United States*, 524 U.S. 184, 192 (1998)("[T]he knowledge requisite to knowing violation of a statute is factual knowledge as distinguished from knowledge of the law"); *United States v. Dominguez*, 661 F.3d 1051, 1068 (11th Cir. 2011); *United States v. Blair*, 54 F.3d 639, 642 (10th Cir. 1995)(in the context of the Wire Act "knowingly" does not mean that the defendant must be shown to have known his conduct violated the Wire Act); *cf., United States v. Cohen*, 260 F.3d 68, 71-3 (2d Cir. 2001)(conviction for conspiracy to engage in conduct in violation the Wire Act does not require proof that the defendant knew that the conduct was unlawful); *contra, Cohen v. United States*, 378 F.2d 751, 756-57 (9th Cir. 1967).

[136] 18 U.S.C. 2; *Nye & Nissen v. United States*, 336 U.S. 613, 619 (1949); see also *United States v. George,* 658 F.3d 706, 708 (7th Cir. 2011); *United States v. Devries*, 630 F.3d 1130, 1133 (8th Cir. 2011); *United States v. Petersen*, 622 F.3d 196, 208 (3d Cir. 2010); *United States v. Hungerford*, 465 F.2d 1113, 1117 (9th Cir. 2006).

[137] *Pinkerton v. United States,* 328 U.S. 640, 645-48 (1946); *Salinas v. United States*, 522 U.S. 52, 62-3 (1997)("The partners in the criminal plan must agree to pursue the same criminal objective and may divide up the work, yet each is responsible for the acts of each other"). The conspiratorial agreement is itself a separate crime under 18 U.S.C. 371 ("If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both. If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor"); *United States v. Bingham*, 653 F.3d 983, 997 (9th Cir. 2011); *United States v. Vazquez-Castro,* 640 F.3d 19, 24 (1st Cir. 2011); *United States v. Matias*, 465 F.3d 169, 173 (5th Cir. 2006).

declares that such entities may nonetheless incur liability under the act if they are directly engaged in the operation of an Internet gambling site.[138] Neither section precludes their incurring liability as accomplices or co-conspirators.

As noted earlier, whether a federal law applies to conduct committed entirely outside the United States is ordinarily a matter of congressional intent.[139] The most obvious indicia of congressional intent is a statement within a particular statute that its provisions are to have extraterritorial application. UIGEA contains no such statement. Its legislative history of the act, however, leaves little doubt that Congress was at least as concerned with offshore illegal Internet gambling businesses as with those operated entirely within the United States.[140]

Offenders may also suffer civil constraints. UIGEA creates a limited federal civil cause of action to prevent and restrain violations of the act.[141] It authorizes federal and state attorneys general to sue in federal court for injunctive relief to prevent and restrain violations of the act.[142] It does not foreclose other causes of action on other provisions of state or federal law,[143] but it does preclude suits in state court to enforce the act.[144] It does not expressly authorize a private cause of action.[145] It does not expressly offer attorneys general or anyone else any prospect of relief other than the federal court orders necessary to prevent and restrain.[146] Moreover, it expressly limits the

---

[138] 31 U.S.C. 5367 ("Notwithstanding section 5362(2), a financial transaction provider, or any interactive computer service or telecommunications service, may be liable under this subchapter if such person has actual knowledge and control of bets and wagers, and—(1) operates, manages, supervises, or directs an Internet website at which unlawful bets or wagers may be placed, received, or otherwise made, or at which unlawful bets or wagers are offered to be placed, received, or otherwise made; or (2) owns or controls, or is owned or controlled by, any person who operates, manages, supervises, or directs an Internet website at which unlawful bets or wagers may be placed, received, or otherwise made, or at which unlawful bets or wagers are offered to be placed, received, or otherwise made").

[139] *See supra* text accompanying notes 61-69.

[140] *See, e.g.,* H.Rept. 109-412 (Pt.1), at 8 (2006)("[The Act's] primary purpose is to give U.S. law enforcement new, more effective tools for combating offshore Internet gambling sites that illegally extend their services to U.S. residents via the Internet"); H.Rept. 109-412 (Pt.2), at 8 (2006)("The booming industry of offshore websites accepting bets and wagers from persons located in the United States raises a number of social and criminal concerns related to Internet gambling").

[141] 31 U.S.C. 5365.

[142] *Id.*

[143] 31 U.S.C. 5375(a) ("In addition to any other remedy under current law ... ").

[144] Id.(emphasis added) ("In addition to any other remedy under current law, the district courts of the United States shall have original and *exclusive* jurisdiction to prevent and restrain restricted transactions by issuing appropriate orders in accordance with this section, regardless of whether a prosecution has been initiated under this subchapter.")

[145] 31 U.S.C. 5365((b)(1)(A), (2)(A), (3)(A)("(1) ... The United States, acting through the Attorney General, may institute proceedings under this section to prevent or restrain a restricted transaction.... (2) ... The attorney general (or other appropriate State official) of a State in which a restricted transaction allegedly has been or will be initiated, received, or otherwise made may institute proceedings under this section to prevent or restrain the violation or threatened violation ... (3) ... Notwithstanding paragraphs (1) and (2), for a restricted transaction that allegedly has been or will be initiated, received, or otherwise made on Indian lands (as that term is defined in section 4 of the Indian Gaming Regulatory Act)—(i) the United States shall have the enforcement authority provided under paragraph (1); and (ii) the enforcement authorities specified in an applicable Tribal-State Compact negotiated under section 11 of the Indian Gaming Regulatory Act (25 U.S.C. 2710) shall be carried out in accordance with that compact").

[146] 31 U.S.C. 5365(b)(1)(B), (2)(B)("(1) ... Upon application of the United States under this paragraph, the district court may enter a temporary restraining order, a preliminary injunction, or an injunction against any person to prevent or restrain a restricted transaction, in accordance with rule 65 of the Federal Rules of Civil Procedure. (2) ... Upon application of the attorney general (or other appropriate State official) of an affected State under this paragraph, the district court may enter a temporary restraining order, a preliminary injunction, or an injunction against any person to prevent or restrain a restricted transaction, in accordance with rule 65 of the Federal Rules of Civil Procedure").

instances when the attorneys general may institute proceedings against Internet service providers and financial institutions. They may only proceed civilly against financial institutions to block transactions involving unlawful Internet gambling unless the institution is directly involved in an unlawful Internet gambling business.[147] Barring application of the same direct involvement exception, the attorneys general may sue Internet service providers under the act only to block access to unlawful Internet gambling sites or to hyperlinks to such sites under limited circumstances.[148] Subject to an exception that mirrors the direct involvement exception, the act also removes providers from the coverage of the Wire Act provision under which law enforcement officials may insist that communications providers block the wire communications of Wire Act violators.[149] Neither of the provisions restricting the civil liability of financial institutions and of Internet service providers explicitly immunizes them from criminal prosecution for aiding or abetting or for conspiracy.

Although UIGEA restricts the civil liability of financial institutions, it binds them under a regulatory enforcement scheme outlined in the act. The act calls upon the Secretary of the Treasury and the Governors of the Federal Reserve Board in conjunction with the Attorney General to create a regulatory mechanism that identifies and blocks financial transactions prohibited in the act.[150] Among its other features,[151] the mechanism must admit to practical

---

[147] 31 U.S.C. 5365(d)("Notwithstanding any other provision of this section, and subject to section 5367, no provision of this subchapter shall be construed as authorizing the Attorney General of the United States, or the attorney general (or other appropriate State official) of any State to institute proceedings to prevent or restrain a restricted transaction against any financial transaction provider, to the extent that the person is acting as a financial transaction provider"). For the text of 31 U.S.C. 5367 see *supra* note 143. A financial transaction provider is anyone who is "a creditor, credit card issuer, financial institution, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or international, national, regional, or local payment network utilized to effect a credit transaction, electronic fund transfer, stored value product transaction, or money transmitting service, or a participant in such network, or other participant in a designated payment system," 31 U.S.C. 5362(4).

[148] 31 U.S.C. 5365(c)(1)(" Relief granted under this section against an interactive computer service shall—(A) be limited to the removal of, or disabling of access to, an online site violating section 5363, or a hypertext link to an online site violating such section, that resides on a computer server that such service controls or operates, except that the limitation in this subparagraph shall not apply if the service is subject to liability under this section under section 5367; (B) be available only after notice to the interactive computer service and an opportunity for the service to appear are provided; (C) not impose any obligation on an interactive computer service to monitor its service or to affirmatively seek facts indicating activity violating this subchapter; (D) specify the interactive computer service to which it applies; and (E) specifically identify the location of the online site or hypertext link to be removed or access to which is to be disabled").

[149] 31 U.S.C. 5365(c)(2)("An interactive computer service that does not violate this subchapter shall not be liable under section 1084(d) of title 18, except that the limitation in this paragraph shall not apply if an interactive computer service has actual knowledge and control of bets and wagers and—(A) operates, manages, supervises, or directs an Internet website at which unlawful bets or wagers may be placed, received, or otherwise made or at which unlawful bets or wagers are offered to be placed, received, or otherwise made; or (B) owns or controls, or is owned or controlled by, any person who operates, manages, supervises, or directs an Internet website at which unlawful bets or wagers may be placed, received, or otherwise made, or at which unlawful bets or wagers are offered to be placed, received, or otherwise made"). Section 1084(d) provides in relevant part, "(d) When any common carrier, subject to the jurisdiction of the Federal Communications Commission, is notified in writing by a Federal, State, or local law enforcement agency, acting within its jurisdiction, that any facility furnished by it is being used or will be used for the purpose of transmitting or receiving gambling information in interstate or foreign commerce in violation of Federal, State or local law, it shall discontinue or refuse, the leasing, furnishing, or maintaining of such facility, after reasonable notice to the subscriber, but no damages, penalty or forfeiture, civil or criminal, shall be found against any common carrier for any act done in compliance with any notice received from a law enforcement agency."

[150] 31 U.S.C. 5364 (a)("Before the end of the 270-day period beginning on the date of the enactment of this subchapter, the Secretary and the Board of Governors of the Federal Reserve System, in consultation with the Attorney General, shall prescribe regulations (which the Secretary and the Board jointly determine to be appropriate) requiring each designated payment system, and all participants therein, to identify and block or otherwise prevent or prohibit restricted (continued...)

exemptions and ensure that lawful Internet gambling transactions are not blocked.[152] Good faith compliance insulates regulated entities from both regulatory[153] and civil liability.[154] Regulatory enforcement falls to the Federal Trade Commission and to the "federal functional regulators" within their areas of jurisdiction, that is, the Governors of the Federal Reserve, the Comptroller of the Currency, the Federal Deposit Insurance Commission, the Office of Thrift Supervision, the National Credit Union Administration, the Securities and Exchange Commission and the Commodities Exchange Commission.[155]

The Third Circuit has concluded that UIGEA is neither unconstitutionally vague nor unconstitutionally intrusive on any recognized right to privacy.[156]

(...continued)

transactions through the establishment of policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit the acceptance of restricted transactions in any of the following ways: (1) The establishment of policies and procedures that—(A) allow the payment system and any person involved in the payment system to identify restricted transactions by means of codes in authorization messages or by other means; and (B) block restricted transactions identified as a result of the policies and procedures developed pursuant to subparagraph (A). (2) The establishment of policies and procedures that prevent or prohibit the acceptance of the products or services of the payment system in connection with a restricted transaction").

[151] 31 U.S.C. 5364(b)(1), (2) ("In prescribing regulations under subsection (a), the Secretary and the Board of Governors of the Federal Reserve System shall—(1) identify types of policies and procedures, including nonexclusive examples, which would be deemed, as applicable, to be reasonably designed to identify and block or otherwise prevent or prohibit the acceptance of the products or services with respect to each type of restricted transaction; (2) to the extent practical, permit any participant in a payment system to choose among alternative means of identifying and blocking, or otherwise preventing or prohibiting the acceptance of the products or services of the payment system or participant in connection with, restricted transactions").

[152] 31 U.S.C. 5364(b)(3), (4)("In prescribing regulations under subsection (a), the Secretary and the Board of Governors of the Federal Reserve System shall ... (3) exempt certain restricted transactions or designated payment systems from any requirement imposed under such regulations, if the Secretary and the Board jointly find that it is not reasonably practical to identify and block, or otherwise prevent or prohibit the acceptance of, such transactions; and (4) ensure that transactions in connection with any activity excluded from the definition of unlawful internet gambling in subparagraph (B), (C), or (D)(i) of section 5362(10) [relating to lawful intrastate, intratribal, and horse race related gambling] are not blocked or otherwise prevented or prohibited by the prescribed regulations").

[153] 31 U.S.C. 5364(c)("A financial transaction provider shall be considered to be in compliance with the regulations prescribed under subsection (a) if—(1) such person relies on and complies with the policies and procedures of a designated payment system of which it is a member or participant to—(A) identify and block restricted transactions; or (B) otherwise prevent or prohibit the acceptance of the products or services of the payment system, member, or participant in connection with restricted transactions; and (2) such policies and procedures of the designated payment system comply with the requirements of regulations prescribed under subsection (a)").

[154] 31 U.S.C. 5364(d)("A person that identifies and blocks a transaction, prevents or prohibits the acceptance of its products or services in connection with a transaction, or otherwise refuses to honor a transaction—(1) that is a restricted transaction; (2) that such person reasonably believes to be a restricted transaction; or (3) as a designated payment system or a member of a designated payment system in reliance on the policies and procedures of the payment system, in an effort to comply with regulations prescribed under subsection (a),shall not be liable to any party for such action").

[155] 31 U.S.C. 5364(e)("The requirements under this section shall be enforced exclusively by—(1) the Federal functional regulators, with respect to the designated payment systems and financial transaction providers subject to the respective jurisdiction of such regulators under section 505(a) of the Gramm-Leach-Bliley Act [(15 U.S.C. 6805(a)), see also, 15 U.S.C. 6809(2)] and section 5g of the Commodities Exchange Act [(7 U.S.C. 7b-2)]; and (2) the Federal Trade Commission, with respect to designated payment systems and financial transaction providers not otherwise subject to the jurisdiction of any Federal functional regulators (including the Commission) as described in paragraph (1)").

[156] *Interactive Media Entertainment and Gaming Ass'n v. Attorney General*, 580 F.3d 113, 116, 118 (3d Cir. 2009)(internal citations omitted)("We reject Interactive's vagueness claim. The Act prohibits a gambling business from knowingly accepting certain financial instruments from an individual who places a bet over the Internet if such gambling is illegal at the location in which the business is located or form which the individual initiates the bet. Thus, (continued...)

Racketeer Influenced and Corrupt Organizations (RICO)

Illegal gambling may trigger the application of federal racketeering (RICO) provisions.[157] Violations of the Wire Act, the Illegal Gambling Business Act, and the Travel Act, as well as any state gambling felony, are all RICO predicate offenses. RICO violations are punishable by imprisonment for not more than twenty years and/or a fine of greater of not more than $250,000 (not more than $500,000 for an organization) or twice the gain or loss associated with the offense.[158] An offender's crime-tainted property may be confiscated, and he may be liable to his victims for triple damages and subject to other sanctions upon the petition of the government.[159]

RICO makes it a federal crime for any person to

I. conduct or participate, directly or indirectly, in the conduct of

II. the affairs of an enterprise

III. engaged in or the activities of which affect, interstate or foreign commerce

IV. A. through the collection of an unlawful debt, or
B. through a pattern of racketeering activity, defined to include:
1. any act of gambling which is chargeable under State law and punishable by imprisonment or more than 1 year;
2. any act which is indictable under 18 U.S.C. 1084 (Wire Act);
3. any act which is indictable under 18 U.S.C. 1952 (Travel Act);
4. any act which is indictable under 18 U.S.C. 1955 (relating to conducting an illegal gambling business, 18 U.S.C. 1962(c).[160]

"To establish the elements of a substantive RICO offense, the government must prove (1) that an enterprise existed; (2) that the enterprise affected interstate or foreign commerce; (3) that the defendant associated with the enterprise; (4) that the defendant participated, directly or indirectly, in the conduct of the affairs of the enterprise; and (5) that the defendant participated in the enterprise through a pattern of racketeering activity by committing at least two racketeering (predicate) acts [*e.g.*, 18 U.S.C. 1084 (Wire Act), 18 U.S.C. 1952 (Travel Act), 18 U.S.C. 1955 (illegal gambling business)]. To establish the charge of conspiracy to violate the RICO statute, the government must prove, in addition to elements one, two and three described immediately above,

(...continued)

the Act clearly provides a person of ordinary intelligence with adequate notice of the conduct that it prohibits.... Both *Lawrence* and *Earle* involved state laws that barred certain forms of sexual conduct between consenting adults in the privacy of the home.... Gambling, even in the home, simply does not involve any individual interest of the same constitutional magnitude. Accordingly, such conduct is not protected by any right to privacy under the constitution").

[157] 18 U.S.C. 1961-1968.

[158] 18 U.S.C. 1963, 3571.

[159] 18 U.S.C. 1964.

[160] Other subsections of 18 U.S.C. 1962 outlaw acquire or maintaining control of a commercial enterprise through collection of an unlawful debt or pattern of racketeering and proscribe conspiracy to commit a RICO offense, 18 U.S.C. 1962(a),(b),(d); see generally, CRS Report 96-950, *RICO: A Brief Sketch*.

that the defendant objectively manifested an agreement to participate ... in the affairs of the enterprise."[161]

The "person" who commits a RICO offense need not be a human being, but may be "any individual or entity capable of holding a legal or beneficial interest in property," [162] The "enterprise" element is defined with comparable breath, embracing "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity."[163] In spite of their sweeping scope, the elements are distinct and a single defendant may not be simultaneously charged as both the "person" and the "enterprise" under 18 U.S.C. 1962(c).[164] Subject to this limitation, however, a RICO enterprise may be formal or informal, legal or illegal. In order for a group associated in fact to constitute a RICO enterprise, it "must have at least three structural features: a purpose, relationships among those associated with the enterprise, and longevity sufficient to permit these associates to pursue the enterprise's purpose."[165] On the other hand, it "need not have a hierarchical structure or a 'chain of command'; decisions may be made on an ad hoc basis and by any number methods.... Members of the group need not have fixed roles."[166] And, "nothing in RICO exempts an enterprise whose associates engage in spurts of activity punctuated by periods of quiescence."[167]

The interstate commerce element of the RICO offense may be established either by evidence that the enterprise has conducted its affairs in interstate commerce or foreign commerce or has engaged in activities that affect interstate commerce or foreign commerce.[168]

The "pattern of racketeering activity" element demands the commission of at least two predicate offenses,[169] which must be of sufficient relationship and continuity to be described as a "pattern."[170] Related crimes, for pattern purposes, are marked by "the same or similar purposes,

---

[161] *United States v. Darden*, 70 F.3d 1507, 1518 (8th Cir. 1995); *see also United States v. Olson*, 450 F.3d 655, 663-64 (7th Cir. 2006); *United States v. Bergrin*, 650 F.3d 257, 265 (3d Cir. 2011); *United States v. Knight*, 659 F.3d 1285, 1287 (10th Cir. 2011).

[162] 18 U.S.C. 1961(3).

[163] 18 U.S.C. 1961(4).

[164] *United States v. Bergrin*, 650 F.3d 259, 266 (3d Cir. 2011); *Wagh v. Metris Direct, Inc.*, 363 F.3d 821, 830 (9th Cir. 2003); *United States v. Fairchild*, 189 F.3d 769, 777 (8th Cir. 1999); *Anatian v. Coutts Bank (Switzerland) Ltd.*, 193 F.3d 85, 88-9 (2d Cir. 1999); *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158, 161 (2001)(holding, however, that the "person" and the individual through whom a corporate enterprises acts may be the same and need not be distinct).

[165] *Boyle v. United States*, 129 S.Ct. 2237, 2244 (2009); *United States v. Applins*, 637 F.3d 59, 73 (2d Cir. 2011*); United States v. Bergrin*, 650 F.3d 259, 265-66 (3d Cir. 2011).

[166] *Boyle v. United States*, 129 S.Ct. at 2245; *United States v. Bingham*, 653 F.3d 983, 992 (9th Cir. 2011).

[167] *Boyle v. United States*, 129 S.Ct. at 2245 (2009).

[168] *United States v. Robertson*, 514 U.S. 669, 671 (1995); proof of even a de minimis effect on interstate commerce is sufficient where the enterprise is engaged in economic activity, *United States v. Johnson*, 440 F.3d 832, 841 (7th Cir. 2006); *Waucaush v. Untied States*, 380 F.3d 251, 256 (6th Cir. 2004); *United States v. Cianci*, 378 F.3d 71,83 (1st Cir. 2004); *United States v. Rodriguez*, 360 F.3d 949, 955 (9th Cir. 2004).

[169] 18 U.S.C. 1961(5).

[170] "A pattern is not formed by sporadic activity.... [A] person cannot be subjected to the sanctions [of RICO] simply for committing two widely separate and isolated criminal offenses. Instead, the term `pattern' itself requires the showing of a relationship between the predicates and of the threat of continuing activity. It is this factor of *continuity plus relationship* which combines to produce a pattern," *H.J., Inc.* v. *Northwestern Bell Telephone Co.*, 492 U.S. 229, 239 (1989)(emphasis of the Court); *United States v. Cianci*, 378 F.3d 71, 88 (1st Cir. 2004); *United States v. Bergrin*, 650 F.3d 259, 267 (3d Cir. 2011); *United States v. Knight*, 659 F.3d 1285, 1288-289 (10th Cir. 2011). Prior conviction of a predicate offense, however, is not required or even usual, *BancOklahoma Mortgage Corp. v. Capital Title Co.*, 194 (continued...)

results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events."[171]

The "continuity" of predicate offenses may be shown in two ways, either by prove of the regular occurrences of related misconduct over a period of time in the past (closed ended) or by evidence of circumstances suggesting that if not stopped by authorities they would have continued in the future (open ended).[172]

The courts have been reluctant to find the continuity required for a RICO pattern for closed ended enterprises (those with no threat of future predicate offenses) unless the enterprise's activities spanned a fairly long period of time.[173] Open-ended continuity (found where there is a threat of future predicate offenses) is nowhere near as time sensitive and is often found where the predicates consist of murder, drug dealing or other serious crimes or are part of the enterprise's regular way of doing business.[174]

The RICO conspiracy and accomplice branches of the law are notable for at least two reasons. RICO conspiracies are outlawed in a subsection of section 1962 that imposes no overt act requirement.[175] The crime is complete upon the agreement to commit a RICO offense.[176] Second, at least in some circuits, RICO accomplices are not subject to RICO tort liability.[177]

(...continued)

F.3d 1089, 1102 (10th Cir. 1999); *cf., Sedima, S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479, 488-93 (1985)(a private cause of action under RICO does not require the prior conviction of a defendant).

[171] *H.J., Inc. v. Northwestern Bell Telephone Co.,* 492 U.S. at 240, quoting 18 U.S.C. 3575(e); *United States v. Torres*, 191 F.3d 799, 806 (7th Cir. 1999); *United States v. Bruno*, 383 F.3d 65, 83-4 (2d Cir. 2004); *United States v. Bergrin*, 650 F.3d 259, 265-66 (3d Cir. 2011); *United States v. Knight*, 659 F.3d 1285, 1289 (10th Cir. 2011); *United States v. Bingham*, 653 F.3d 983, 992 (9th Cir. 2011).

[172] *H.J.,Inc. v. Northwestern Bell Tel.Co.*, 492 U.S. 229, 241 (1988)(continuity "is both a closed- and open-ended concept, referring either to a closed end period of repeated conduct, or to past conduct that by its nature projects into the future with a threat of repetition"); *First Capital Asset Management v. Satinwood, Inc.*, 358 F.3d 159, 180 (2d Cir. 2004); *United States v. Bradley*, 644 F.3d 1213, 1238 (11th Cir. 2011); *United States v. Bergrin*, 650 F.3d 259, 267 (3d Cir. 2011).

[173] *First Capital Asset Management v. Satinwood, Inc.*, 358 F.3d at 181-82 (2d Cir. 2004)("this Court has never found a closed-ended pattern where the predicate acts spanned fewer than two years"); *Roger Whitmore's Automotive Services, Inc. v. Lake Country*, 424 F.3d 659, 672-74 (7th Cir. 2005)(2 years with relatively limited activity involving a relatively few individuals, insufficient); *Jackson v. Bellsouth Telecommunications*, 372 F.3d 1250, 1267 (11th Cir. 2004)(9 months, insufficient); *but see*, *United States v. Hively*, 437 F.3d 753, 764-65 (8th Cir. 2006)(over a year with indications of intent to continue, sufficient).

[174] *United States v. Torres*, 191 F.3d 799, 808 (7th Cir. 1999)("As other courts of appeals have noted, in cases where the acts of the defendant or the enterprise were inherently unlawful, such as murder or obstruction of justice, and where in pursuit of inherently unlawful goals, such as narcotics trafficking or embezzlement, the courts generally have concluded that the requisite threat of continuity was adequately established by the nature of the activity, even though the period spanned by the racketeering activity was short"). Open ended continuity may also be found where the evidence suggests that only the intervention of law enforcement authorities closed down the enterprise, *United States v. Delgado*, 399 F.3d 290, 298 (5th Cir. 2005); *Jackson v. Bellsouth Telecommunications*, 372 F.3d 1250, 1267 (11th Cir. 2004); *United States v. Connolly*, 341 F.3d 16, 30 (1st Cir. 2003); *United States v. Richardson*, 167 F.3d 621, 626-27 (D.C.Cir. 1999).

[175] 18 U.S.C. 1962(d).

[176] *Salinas v. United States*, 522 U.S. 52, 63 (1997); *United States v. Applins*, 637 F.3d 59, 74 (2d Cir. 2011).

[177] *Rolo v. City Investing Co. Liquidating Trust*, 155 F.3d 644, 656-68 (3d Cir. 1998); *Jubelirer v. MasterCard International, Inc.*, 68 F.Supp.2d 1049, 1053-54 (D.Wis. 1999) (dismissing RICO claim against credit card company, bank and Internet casino on the grounds, among others, that there is no RICO civil liability for those who aid and abet a RICO violation); *In re MasterCard International Inc., Internet Gambling Litigation*, 132 F.Supp.2d 468, 493-95 (continued...)

The criminal proscriptions of the UIGEA do not appear to qualify as a RICO predicate offense. Certainly, P.L. 109-437 which created it did not explicitly amend RICO to include UIGEA among the RICO predicates. UIGEA outlaws certain Internet gambling related transactions, not Internet gambling itself.[178] Nevertheless, those engaged in the business receipt of revenue from unlawful Internet gambling may also be guilty of any of the state or federal gambling felonies that are RICO predicate offenses.[179]

Money Laundering

Congress has enacted several statutes to deal with money laundering. It would be difficult for an illegal Internet gambling business to avoid either of two of the more prominent, 18 U.S.C. 1956 and 1957, both of which involve financial disposition of the proceeds of various state and federal crimes, including violation of 18 U.S.C. 1084 (Wire Act), 18 U.S.C. 1955 (illegal gambling business), 18 U.S.C. 1952 (Travel Act), or any state gambling law (if punishable by imprisonment for more than one year).[180] In fact, *Santos*, one of the landmark cases in the development of federal money laundering law, is a gambling case.[181] In other instances, the lower federal courts have frequently upheld money laundering convictions predicated upon various gambling offenses.[182]

The crimes under section 1956 are punishable by imprisonment for not more than twenty years or a fine of the greater of not more than twice the value of the property involved in the transaction or not more than $500,000; those under section 1957 carry a prison term of not more than ten years or a fine of the greater of twice the amount involved in the offense or not more than $250,000 (not more than $500,000 for an organization).[183] Any property involved in a violation of either section is subject to the civil and criminal forfeiture provisions of 18 U.S.C. 981, 982.

(...continued)

(E.D.La. 2001)(same), *aff'd*, 313 F.3d 257 (5th Cir. 2002); *but see, American Automotive Accessories, Inc. v. Fishman*, 991 F.Supp. 987, 993 (N.D.Ill. 1998)("to be held liable as an aider and abettor, a person must in some sort associate himself with the venture, participate in it as something he wishes to bring about, and seek by his action to make it succeed")(noting that the Seventh Circuit has yet to "comment on the possibility of aiding and abetting liability in civil RICO actions"); *Simon v. Weaver*, 327 F.Supp.2d 258, 262 (S.D.N.Y. 2004)("In order to properly allege a claim for aiding and abetting [a RICO violation], plaintiffs must show ... ").

[178] 31 U.S.C. 5363.

[179] 18 U.S.C. 1961(1)(A), (B).

[180] 18 U.S.C. 1956(7)(A), 1957(f)(3), 1961(1).

[181] In *Santos*, the Supreme Court indicated that ambiguity in the money laundering statute, as then written, precluded prosecution in some instances based on the tainted gross receipts of a gambling business, rather than on its tainted profits, *Santos v. United States*, 553 U.S. 507, 514, 528 (2008). Congress subsequently clarified the issue with a statutory definition of "proceeds," 18 U.S.C. 1956(c)(9).

[182] *Santos v. United States*, 461 F.3d 886 (7th Cir. 2006)(upholding convictions under18 U.S.C. 1955 and 1956), aff'd, 553 U.S. 507 (2008); *United States v. Houston*, 529 F.3d 743, 746 (6th Cir. 2008)(convictions under 18 U.S.C. 1955 and 1956); *United States v. Neal*, 512 F.3d 427, 429 (7th Cir. 2008)(same*); United States v. Tedder*, 403 F.3d 836 (7th Cir. 2005)(convictions under 18 U.S.C. 1084, 1956 and 1957. For a more extensive discussion of section 1956 see CRS Report RL33315, *Money Laundering: An Overview of 18 U.S.C. 1956 and Related Federal Criminal Law* ; *Twenty-Sixth Survey of White Collar Crime: Money Laundering*, 48 AMERICAN CRIMINAL LAW REVIEW 929 (2011); *Validity, Construction, and Application of 18 USCS §1956, Which Criminalizes Money Laundering*, 121 ALR FED. 525 (1994 & 2011 Supp.).

[183] 18 U.S.C. 1956(a), 1957(b), 3571.

Laundering the Proceeds

Section 1956 creates several distinct crimes: (1) laundering with intent to promote an illicit activity such as an unlawful gambling business; (2) laundering to evade taxes; (3) laundering to conceal or disguise; (4) structuring financial transactions (smurfing) to avoid reporting requirements;[184] (5) international laundering; and (6) "laundering" conduct by those caught in a law enforcement sting.

Promotion

In its most basic form the promotion offense essentially involves plowing the proceeds of crime back into an illegal enterprise. Section 1956 has two promotional offenses: those involving financial transactions and those involving international monetary transfers. The elements of the two are roughly comparable. The transaction offense applies to whoever

I. knowing
  A. that the property involved in a financial transaction,
  B. represents the proceeds of some form of unlawful activity,

II. A. conducts or
  B. attempts to conduct such a financial transaction

III. which in fact involves the proceeds of specified unlawful activity

IV. with the intent to promote the carrying on of specified unlawful activity.[185]

The knowledge element is the subject of a special definition which allows a conviction without the necessity of proving that the defendant knew the exact particulars of the underlying offense or even its nature.[186] The "proceeds" may be tangible or intangible, for example, cash, things of value, or things with no intrinsic value, for example, checks written on depleted accounts.[187] Nor need "proceeds" be confined to the profits realized from the predicate offense, that is, the "specified unlawful activity." Section 1956 specifically defines "proceeds" as "any property

[184] *The Drug Money Seizure Act and the Bank Secrecy Act Amendments: Hearing Before the Senate Comm. on Banking, Housing, and Urban Affairs*, 99th Cong., 2d Sess. 66-7 (1986)(statement of Dep. Ass't Att'y Gen.)(This "addresses the problem of 'structured' currency transactions. That is, currency transactions which are intentionally broken down into a series of small transactions, each under $10,000, for the purpose of evading the reporting requirements of the Bank Secrecy Act. This process commonly known as 'smurfing' is undertaken by individuals or groups of individuals who intending to prevent banks from reporting their currency transactions, engage in a series of cash transactions each under $10,000 at different banks on the same day, or at the same bank, or its branches, on different days").

[185] 18 U.S.C. 1956(a)(1)(A)(i); *United States v. Wilkes*, 662 F.3d 524, 548 (9th Cir. 2011).

[186] "The term 'knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity' means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State, Federal, or foreign law, regardless of whether or not such activity is specified in paragraph (7)," 18 U.S.C. 1956(c)(1); *United States v. Cedeno-Perez*, 579 F.3d 54, 59 (1st Cir. 2009); *United States v. Hill*, 167 F.3d 1055, 1065-68 (6th Cir. 1999).

[187] *United States v. Estacio*, 64 F.3d 477, 480 (9th Cir. 1998)(The defendant Estacio "argues that 'proceeds' must always consist of money or some tangible asset. We do not agree.... A fraudulently obtained line of credit, which results in an artificially inflated bank balance is within the scope of the term 'proceeds' as used in §1956. When Estacio directed the deposit of checks drawn on insufficient funds, ... he unquestionable knowingly promoted the commission of bank fraud").

derived from or obtained or retained, directly or indirectly through some form of unlawful activity, including the gross receipts of such activity."[188]

The "financial transaction" necessary to satisfy that element of the crime may take virtually any shape that involves the disposition of something representing the proceeds of an underlying crime,[189] including a disposition as informal as handing cash over to someone else.[190]

The statutory definition of the necessary "financial transaction" provides the basis for federal jurisdiction. To qualify, the transaction must be one that affects interstate or foreign commerce or must involve a financial institution whose activities affect such commerce.[191] The "intent to promote" element of the offense can be satisfied by proof that the defendant used the proceeds to continue a pattern of criminal activity[192] or to enhance the prospect of future criminal activity.[193]

To establish an intent to promote, "the government must show the transaction at issue was conducted with the intent to promote the carrying on of a specified unlawful activity. It is not enough to show that a money launderer's actions *resulted* in promoting the carrying on of specified unlawful activity. Nor may the government rest on proof that the defendant engaged in 'knowing promotion' of the unlawful activity. Instead, there must be evidence of *intentional* promotion. In other words, the evidence must show that the defendant's conduct not only

---

[188] 18 U.S.C. 1956(c)(9). The definition was added after the Supreme Court suggested in *United States v. Santos*, 553 U.S. 507 (2008), that without it the term "proceeds" would be limited to profits, at least in some cases.

[189] "The term 'financial transaction' means (A) a transaction which in any way or degree affects interstate or foreign commerce (i) involving the movement of funds by wire or other means or (ii) involving one or more monetary instruments, or (iii) involving the transfer of title to any real property, vehicle, vessel, or aircraft, or (B) a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree," 18 U.S.C. 1956(c)(4).

"The term 'transaction' includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safe deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected," 18 U.S.C. 1956(c)(3).

[190] *United States v. Gough*, 152 F.3d 1172, 1173 (9th Cir. 1998); *United States v. Garcia Abrego*, 141 F.3d 142, 160 (5th Cir. 1998); *United States v. Roy*, 375 F.3d 21, 23-4 (1st Cir. 2004)(exchange between individuals of $100 bills for currency of smaller denominations to facilitate drug trafficking); *United States v. Gotti*, 459 F.3d 296, 335-36 (2d Cir. 2006) (mere receipt of funds constitutes a financial transaction); *United States v. Blair*, 661 F.3d 755, 764 (4th Cir. 2011)("Almost any exchange of money between two parties qualifies as a financial transaction subject to criminal prosecution under §1956, provided that the transaction has at least a minimal effect on interstate commerce and satisfies at least one of the four intent requirements of §1956(a)(1)(A), (B). Thus, even the mere receipt of funds can constitute a transaction subject to criminal prosecution under §1956").

[191] 18 U.S.C. 1956(c)(4).

[192] *United States v. Parker*, 364 F.3d 934, 947-50 (8th Cir. 2004)(payment for surplus instrumental as part of an ongoing fraud); *United States v. Miles*, 360 F.3d 472, 478 (5th Cir. 2004)(adding the observation that when an enterprise is as a whole illegitimate even otherwise ordinary and lawful expenditures may support a promotion money laundering charge); *United States v. Lee*, 558 F.3d 638, 642 (7th Cir. 2009)("The government also alleges that the 'future rent' payments out of the account also amounted to money laundering. Those payments clearly satisfy the requirement that the transactions were made with the intent to promote the carrying on of the underlying illegal [prostitution] operation").

[193] *United States v. King*, 169 F.3d 1035, 1040 (6th Cir. 1999)(drug dealer's payment for past shipments preserved the defendant's opportunity to acquire additional shipments); *United States v. Williamson*, 339 F.3d 1295, 1302 (11th Cir. 2003); *United States v. Lee*, 558 F.3d 638, 642 (7th Cir. 2009)("The promotion element can be met by 'transactions that promote the continued prosperity of the underlying offense.... Purchase of advertising inherently promoted the prosperity of the underlying [prostitution] offense").

promoted a specified unlawful activity but that he engaged in it *with the intent* to further the progress of that activity."[194]

The government must also establish that proceeds of the transaction are derived from a predicate offense and that they are intended to promote a predicate offense.[195] All RICO predicate offenses are automatically money laundering predicate offenses.[196] The RICO predicate offense list includes state gambling felonies as well as violations of the Travel Act and the Illegal Gambling Business Act.[197]

The elements of the travel or transportation version of promotional money laundering are comparable, but distinctive. They apply to anyone who

I.A. transports,
B. transmits,
C. transfers, or
D. attempts transport, transmit, or transfer

II. a monetary instrument or funds

III. A. 1. from a place in the United States
2. to or through a place outside the United States or
B. 1. to a place in the United States
2. from a place outside the United States

IV. with the intent to promote the carrying on of an specified unlawful activity.[198]

One of the distinctive features of the transportation promotional money laundering provision is that the transported, transmitted, or transferred funds do not have to be the proceeds of a predicate offense.[199] The defendant, however, must be shown to have transmitted, transferred, or transported the funds with the intent to promote a predicate offense.[200] The measure by which that question will be judged is the same as that used in the case of a transactional promotion offense, discussed above.[201]

---

[194] *United Stats v. Trejo*, 610 F.3d 308, 314 (5th Cir. 2010)(internal citations omitted).

[195] 18 U.S.C. 1956(a)(1)("Whoever ... conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity ... with the intent to promote the carrying on of specified unlawful activity ... ").

[196] 18 U.S.C. 1956(c)(7)("[T[he term 'specified unlawful activity means ... any act or activity constituting an offense listed in section 1961(1) of this title, except an act which is indictable under subchapter II of chapter 53 of title 31 [relating to records and reports of monetary instrument transactions]").

[197] 18 U.S.C. 1961(1)("As used in this chapter—(1)'racketeering activity' means (A) any act ... involving ... gambling ... which is chargeable under State law and punishable by imprisonment for more than one year ... (B) any act which is indictable under any of the following provisions of title 18, United States Code ... section 1952 [Travel Act] ... section 1955 [Illegal Gambling Business Act] ... ").

[198] 18 U.S.C. 1956(a)(2).

[199] *United States v. Moreland*, 622 F.3d 1147, 1167 (9th Cir. 2010).

[200] *United States v. Trejo*, 610 F.3d 308, 314-15 (5th Cir. 2010).

[201] *Id.* at 315 (emphasis in the original)("Section 1956(a)(2)(A) contains an identical specific intent requirement for *transportation* cases as its §1956(a)(1)(A)(i) *transaction* counterpart. While the definitive case authority on specific intent derives from the *transaction* provision, it is safe to assume that requirement is no less rigorous under 1956(a)(2)(A). *See United States v. Huezo*, 546 F.3d 174, 179 (2d Cir. 2008)(noting the use of identical language in the (continued...)

Section 1956 is subject to general federal law with regard to accomplice and conspirator liability,[202] except that it permits the same punishment for conspirators as for simple launderers.[203]

Concealment

The "concealment" offenses share several common elements with the promotion offenses of section 1956. For instance the transaction offense, like the promotion transaction offense in all but one aspect, proscribes

I. knowing

A. that the property involved in a financial transaction

B. represents the proceeds of some form of unlawful activity,

II. A. conducts or

B. attempts to conduct such a financial transaction

III. which in fact involves the proceeds of specified unlawful activity (A)(i)

IV. knowing that the transaction is designed in whole or in part to conceal or disguise the nature, location, the source, the ownership, or the control of the proceed of specified unlawful activity.[204]

The fourth and distinctive element of the transactional concealment offense covers more than simple spending and more than simple concealment of the proceeds. Concealment must be designed to concern, that is, it must be purposeful concealment.[205] The courts have made it clear that conviction for the concealment offense requires proof of something more than simply spending the proceeds of a predicate offense.[206] That having been said, the line between innocent

(...continued)

transportation and transaction provisions of §1956 is a strong indicator that they should be interpreted in the same manner)").

[202] E.g., *United States v. Moreland*, 622 F.3d 1147, 1169 (9th Cir. 2010)(internal citations omitted)("There is also sufficient evidence to uphold Moreland's convictions on the other money laundering charges ... even though those transactions did not directly involve Moreland. Under *Pinkerton*, a conspirator is criminally liable for the substantive offenses committed by a co-conspirator when they are reasonable foreseeable and committed in furtherance of the conspiracy. Pursuant to the *Pinkerton* doctrine, sufficient evidence exists in this case to uphold Moreland's convictions for the substantive laundering charges").

[203] 18 U.S.C. 1956(h).

[204] 18 U.S.C. 1956(a)(1)(B)(i) (common elements in italics); *United States v. Wilkes*, 662 F.3d 524, 545 (9th Cir. 2011)("To convict a person for money laundering under 18 U.S.C. §1956(a)(1)(B)(i), the government must prove that (1) the defendant conducted or attempted to conduct a financial transaction; (2) the transaction involved the proceeds of unlawful activity; (3) the defendant knew that the proceeds were from unlawful activity; and (4) the defendant knew 'that the transaction was 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'"); see also *United States v. Richardson*, 658 F.3d 333, 337-38 (3d Cir. 2011); *United States v. Rabshkin*, 655 F.3d 849, 864 (8th Cir. 2011).

[205] *United States v. Richardson*, 658 F.3d 333, 340 (3d Cir. 2011), quoting *Cuellar v. United States*, 553 U.S. 550, 567 (2008)("[C]onviction ... requires proof that the purpose—not merely effect— ... was to conceal or disguise a listed attribute [of the proceeds]"); see also *United States v. Naranjo*, 634 F.3d 1198, 1208 (11th Cir. 2011); *United States v. Faulkenberry*, 614 F.3d 573, 585-86 (6th Cir. 2010).

[206] *United States v. Warshak*, 631 F.3d 266, 142 (6th Cir. 2010)("[I] is true that §1956(a)(1(B)(i) does not criminalize (continued...)

spending and criminal laundering is not always easily discerned. "Evidence of a purpose to conceal can come in many forms including: [deceptive] statements by a defendant probative of intent to conceal; unusual secrecy surrounding the transactions; structuring the transaction to avoid attention; depositing illegal profits in the bank account of a legitimate business; highly irregular features of the transaction; using third parties to conceal the real owner; a series of unusual financial moves cumulating in the transaction; or expert testimony on practices of criminals."[207]

The transportation concealment offense tracks both the transportation promotional and the transaction concealment offense. Like the promotional offense and unlike the transaction offense, the government must prove that the defendant knew of the tainted nature of the transported funds.[208] The transportation concealment offense covers anyone who

I.A. transports,
B. transmits,
C. transfers, or
D. attempts transport, transmit, or transfer

II. a monetary instrument or funds

III. A. 1. from a place in the United States
2. to or through a place outside the United States or
B. 1. to a place in the United States
2. from a place outside the United States

IV. knowing that the monetary instrument or funds represent the proceeds of unlawful activity

V. knowing the transportation, transmission, or transfer is designed in whole or in part to conceal or disguise the nature, location, the source, the ownership, or the control of the proceed of specified unlawful activity.[209]

The concealment clause requires that concealment be the motivating force, at least in part, for the transportation.[210] Subsection 1956(h) imposes the same penalties for conspiracy as for substantive violations of the section.[211] Otherwise, the general accomplice and conspiracy principles of law apply throughout the section.[212]

(...continued)

the simple spending of illegally obtained money"); *United States v. Caldwell*, 560 F.3d 1214, 1222 (10th Cir. 2009).

[207] *United States v. Richardson*, 658 F.3d 333, 340 (3d Cir. 2011); *United States v. Naranjo*, 634 F.3d 1198, 1208 (11th Cir. 2011); *United States v. Baldridge*, 559 F.3d 1126, 1141 (10th Cir. 2009).

[208] 18 U.S.C. 1956(a)(2)(B)(i)

[209] 18 U.S.C. 1956(a)(2)(B); *United States v. Slagg*, 651 F.3d 832, 844 (8th Cir. 2011); *United States v. Jenkins*, 633 F.3d 788, 806 (9th Cir. 2011); *United States v. Ness*, 565 F.3d 73, 77 (2d Cir. 2009).

[210] *Cuellar v. United States*, 553 U.S. 550, 957 (2008); *United States v. Faulkenberry*, 614 F.3d 573, 586 (6th Cir. 2010)("What the government must show, instead, is that the concealment was one of purposes that drove Faulkenberry to engage in the transportation in the first place").

[211] *United States v. Heidi*, 651 F.3d 850, 854-55 (8th Cir. 2011).

[212] Cf., *United States v. Moreland*, 622 F.3d 1147, 1168-169 (9th Cir. 2010).

Tax Evasion and Report Evasion

The tax evasion[213] and structured transactions or report evasion ("smurfing") offenses[214] shadow the promotion and concealment offenses. A tax evasion, laundering prosecution requires the government to show that the defendant acted intentionally rather than inadvertently, but not that the defendant knew that his conduct violated the tax laws.[215] Similarly, conviction for the smurfing offense does not require a showing that the defendant knew that his conduct was criminal as long as the government establishes that the defendant acted with the intent to frustrate a reporting requirement.[216] Here too, the general principles of law applying to accomplices and conspirators apply.[217]

The final crime found in section 1956 is a "sting" offense, the proscription drafted to permit the prosecution of money launderers taken in by undercover officers claiming they have proceeds from illegal gambling or other predicate offenses in need of cleansing.[218] The provision has promotional, concealment, and report evasion components.[219]

Spending the Proceeds

Section 1956 does not make spending tainted money a crime, but section 1957 does. Using most of the same definitions as section 1956, the elements of 1957 cover anyone who

I. A. in the United States,
B. in the special maritime or territorial jurisdiction of the United States, or
C. outside the United States if the defendant is an American,

---

[213] The elements of the tax evasion provision reach anyone who: *I. knowing, A. that the property involved in a financial transaction, B. represents the proceeds of some form of unlawful activity; II. A. conducts or B. attempts to conduct such a financial transaction; III. which in fact involves the proceeds of specified unlawful activity (A)(i);* IV. with the intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986, 18 U.S.C. 1956(a)(1)(A)(ii)(elements in common with the promotion offense in italics).

[214] The elements of the report evasion offense reach anyone who: *I. knowing, A. that the property involved in a financial transaction B. represents the proceeds of some form of unlawful activity; II. A. conducts or B. attempts to conduct such a financial transaction; III. which in fact involves the proceeds of specified unlawful activity (A)(i); IV. knowing that the transaction is designed in whole or in part to* avoid a transaction reporting requirement under State or Federal law," 18 U.S.C. 1956(a)(1)(B)(ii)(elements shared with the concealment offense in italics).

[215] *United States v. Zanghi*, 189 F.3d 71, 77-8 (1st Cir. 1999).

[216] *United States v. Hill*, 167 F.3d 1055, 1070 (6th Cir. 1999); *United States v. Morales*, 108 F.3d 1213, 1221 (10th Cir. 1997); *United States v. Bowman*, 235 F.3d 1113, 1117-119 (8th Cir. 2000); *United States v. Bronzino*, 598 F.3d 276, 278-81 (6th Cir. 2010).

[217] E.g., *United States v. Bronzino*, 598 F.3d 276, 278-79 (6th Cir. 2010).

[218] 18 U.S.C. 1956(a)(3).

[219] 18 U.S.C. 1956(a)(3)(A), (B), (C)("Whoever, with the intent - (A) to promote the carrying on of specified unlawful activity; (B) to conceal or disguise the nature, location, source, ownership, or control of property believed to be the proceeds of specified unlawful activity; or (C) to avoid a transaction reporting requirement under State or Federal law, conducts or attempts to conduct a financial transaction involving property represented to be the proceeds of specified unlawful activity, or property used to conduct or facilitate specified unlawful activity, shall be fined under this title or imprisoned for not more than 20 years, or both. For purposes of this paragraph and paragraph (2), the term 'represented' means any representation made by a law enforcement officer or by another person at the direction of, or with the approval of, a Federal official authorized to investigate or prosecute violations of this section").

II. knowingly

III. A. engages or
B. attempts to engage in

IV. a monetary transaction[220]
V. [in or affecting interstate commerce]

VI. in criminally derived property that
A. is of a greater value than $10,000 and
B. is derived from specified unlawful activity.[221]

Federal jurisdiction flows from the definition of the tainted monetary transaction, that is a transaction, "in or affecting interstate or foreign commerce" or one involving a financial institution.[222] The government must also prove that the defendant knew the monetary instrument came from some criminal activity,[223] but not that the defendant knew that the underlying crime was a money laundering predicate.[224]

The predicate offense and the money laundering offense must be separate, distinct crimes, but the standard is met when the defendant deposits a check representing the proceeds of a completed offense.[225] Acquittal of the predicate offense is no bar to conviction under the section.[226] The

---

[220] "[T]he term 'monetary transaction' means the deposit, withdrawal, transfer, or exchange, in or affecting interstate or foreign commerce, of funds or a monetary instrument (as defined in section 1956(c)(5) of this title)* by, through, or to a financial institution (as defined in section 1956 of this title),** including any transaction that would be a financial transaction under section 1956(c)(4)(B) of this title,*** but such term does not include any transaction necessary to preserve a person's right to representation as guaranteed by the sixth amendment to the Constitution," 18 U.S.C. 1957(f)(1).

* "[T]he term 'monetary instruments' means (i) coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, and money orders, or (ii) investment securities or negotiable instruments, in bearer form or otherwise in such form that title thereto passes upon delivery," 18 U.S.C. 1956(c)(5).

** "[T]he term 'financial institution' has the definition given that term in section 5312(a)(2) of title 31, United States Code, or the regulations promulgated thereunder," 18 U.S.C. 1956(c)(6). The title 31 definition includes banks, car dealers, jewelers, real estate agents, brick and mortar casinos and most other institutions likely to be involved in a transaction involve more than $10,000.

*** "[T]he term 'financial transaction' means ... (B) a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree," 18 U.S.C. 1956(c)(4)(B).

[221] 18 U.S.C. 1957(a),(d),(f). *United States v. Irvin*, 656 F.3d 1151, 1165-166 (10th Cir. 2011)(The government must prove: "(1) that the defendant engaged in or attempted to engage in a monetary transaction; (2) in criminally derived property worth at least $10,000; (3) with knowledge that the property was derived from unlawful activity; and (4) the proper was, in fact, derived from specified unlawful activity"); see also *United States v. Wetherald*, 636 F.3d 1315, 1325 n.2 (11th Cir. 2011); *United States v. Shafer*, 6908 F.3d 1056, 1067 (8th Cir. 2010).

[222] *United States v. Ness*, 565 F.3d 73, 78 (2d Cir. 2009); *United States v. Greenidge*, 495 F.3d 85, 100 (3d Cir. 2007); cf., *United States v. Irvin*, 656 F.3d 1151, 1166 (10th Cir. 2011).

[223] *United States v. Diamond*, 378 F.3d 720, 728 (7th Cir. 2004)("In order to find Diamond guilty of this offense [under section 1957], the government needed to prove that she derived property from a specified unlawful activity and that she engaged in a monetary transaction"); *United States v. Johnson*, 440 F.3d 1286, 1289(11th Cir. 2006).

[224] "In a prosecution for an offense under this section, the Government is not required to prove the defendant knew that the offense from which the criminally deprived property was derived was specified unlawful activity," 18 U.S.C. 1957(c); *United States v. Hawkey*, 148 F.3d 920, 925 (8th Cir. 1998); *United States v. Carucci*, 364 F.3d 339, 343 (1st Cir. 2004); *United States v. Flores*, 454 F.3d 149, 155 (3d Cir. 2006).

[225] *United States v. Huff*, 641 F.3d 1228, 1231 (10th Cir. 2011)("When a person receives illicit proceeds in the form of (continued...)

$10,000 threshold must be crossed at the time of the transaction.[227] Proceeds worth less at the time of transaction, but more thereafter, do not qualify.[228] The definition of the term "proceeds" added to section 1956 after *Santos* applies with equal force to section 1957: "the term 'proceeds' means any property derived from or obtained or retained, directly or indirectly, through some form of unlawful activity, include the gross receipts of such activity."[229]

The requisite monetary transaction may involve any number of "financial institutions"—a bank, credit union, any of the statutorily designated high-cash flow businesses, or any comparable business designated by the Secretary of the Treasury.[230] The statute, however, expressly exempts monetary transactions of the accused, necessary to secure legal representation in criminal proceedings.[231]

(...continued)

a check, he obtains criminally derived property. When he deposits the criminal derived property— the check—in a bank, he commits money laundering").

[226] *United States v. Irvin*, 656 F.3d 1151, 1167 (10th Cir. 2011), citing in accord *United States v. Richard*, 234 F.3d 763, 768 (1st Cir. 2000).

[227] *United States v. Wright*, 651 F.3d 764, 771-72 (7th Cir. 2011).

[228] *Id*.

[229] 18 U.S.C. 1956(c)(9). 18 U.S.C. 1957(f)(3)("As used in this section ... (3) the term[] ... 'proceeds' shall have the meaning given ... in section 19556 of this title").

[230] *United States v. Ness*, 565 F.3d 73, 78-80 (2d Cir. 2009). 18 U.S.C. 1957(f)(1)("As used in this section ... (1) the term 'monetary transaction means the ... exchange ... of funds ... to a financial institution (as defined in section 1956 of this title) ... "); 18 U.S.C. 1956(c)(6)("[T]he term 'financial institution' includes ... (A) any financial institution, as defined in section 5312(a)(2) of title 31, United States Code, or the regulations promulgated thereunder; and (B) any foreign bank, as defined in section 1 of the International Banking Act of 1978 (12 U.S.C. 3103)"); 31 U.S.C. 5312(a)(2)("'[F]inancial institution' means - (A) an insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h))); (B) a commercial bank or trust company; (C) a private banker; (D) an agency or branch of a foreign bank in the United States; (E) any credit union; (F) a thrift institution; (G) a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.); (H) a broker or dealer in securities or commodities; (I) an investment banker or investment company; (J) a currency exchange; (K) an issuer, redeemer, or cashier of travelers' checks, checks, money orders, or similar instruments; (L) an operator of a credit card system; (M) an insurance company; (N) a dealer in precious metals, stones, or jewels; (O) a pawnbroker; (P) a loan or finance company; (Q) a travel agency; (R) a licensed sender of money or any other person who engages as a business in the transmission of funds, including any person who engages as a business in an informal money transfer system or any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside of the conventional financial institutions system; (S) a telegraph company; (T) a business engaged in vehicle sales, including automobile, airplane, and boat sales; (U) persons involved in real estate closings and settlements; (V) the United States Postal Service; (W) an agency of the United States Government or of a State or local government carrying out a duty or power of a business described in this paragraph; (X) a casino, gambling casino, or gaming establishment with an annual gaming revenue of more than $1,000,000 which - (i) is licensed as a casino, gambling casino, or gaming establishment under the laws of any State or any political subdivision of any State; or (ii) is an Indian gaming operation conducted under or pursuant to the Indian Gaming Regulatory Act other than an operation which is limited to class I gaming (as defined in section 4(6) of such Act); (Y) any business or agency which engages in any activity which the Secretary of the Treasury determines, by regulation, to be an activity which is similar to, related to, or a substitute for any activity in which any business described in this paragraph is authorized to engage; or (Z) any other business designated by the Secretary whose cash transactions have a high degree of usefulness in criminal, tax, or regulatory matters").

[231] 18 U.S.C. 1957(f)(1); *United States v. Blair*, 661 F.3d 755, (4th Cir. 2011)("[T]he scope of the safe harbor provision is shaped by the Sixth Amendment. Thus, anyone seeking to benefit from §1957(f) must tie his conduct to the Sixth Amendment right to counsel"); *United States v. Velez*, 586 F.3d 875, 877 (11th Cir. 2009)("Accordingly, the exemption is limited to attorneys' fees paid for representation guaranteed by the Sixth Amendment in a criminal proceeding and does not extend to attorneys' fees paid for other purposes").

Constitutional Considerations

Constitutional objections initially greeted the prospect of prosecuting illegal Internet gambling. Principal among these have been questions as to Congress's legislative power under the Commerce Clause, restrictions imposed by the First Amendment's guarantee of free speech, and due process concerns about the regulation of activities occurring at least in part overseas.

Commerce Clause

Congress possesses no legislative power that cannot be traced to the Constitution.[232] Among its Constitutionally enumerated powers, Congress enjoys the authority "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes ... [and] To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers."[233] Over the years, the Supreme Court has regularly confirmed the enormous breadth of Congress's legislative prerogatives under the Commerce Clause and the Necessary and Proper Clause.[234] It has reminded us on occasion, however, that Congress's Commerce Clause power is not without limit.

Lopez and *Morrison*, are perhaps the best known of these reminders.[235] *Lopez* held that the Congress lacked the authority under the Commerce Clause to enact the Gun-Free School Zones Act,[236] which outlawed possession of a firearm within 1,000 feet of a school, 514 U.S. at 551. In doing so, *Lopez* mapped Congress's Commerce Clause powers:

> First, Congress may regulate the use of the channels of interstate commerce.... *Heart of Atlanta Motel,* [*Inc. v. United States*, 379 U.S. 241, 256 (1964)]("'[T]he authority of Congress to keep the channels of interstate commerce free from immoral and injurious uses has been frequently sustained and is no longer open to question'").
>
> Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even through the threat may come only from intrastate activities. See, e.g., ... *Perez [v. United States*, 402 U.S. 146, 150 (1971)] ("[F]or example, the destruction of an aircraft (18 U.S.C. §32), or ... thefts from interstate shipments (18 U.S.C. §659").
>
> Finally, Congress' commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce, *i.e.*, those activities that substantially affect interstate commerce.[237]

Since the Gun-Free School Zones Act addressed neither the channels nor the content of commerce, it had to find coverage under the power to regulate matters that "substantially affect"

[232] U.S.Const. Amends. IX, X.

[233] U.S.Const. Art. I, §8, cls.3, 18.

[234] E.g., *Gonzales v. Raich*, 545 U.S. 1, 33 (2005)(Congress's Commerce Clause power includes authority to regulate the intrastate, as well as the interstate, cultivation and use of marijuana).

[235] *United States v. Lopez*, 514 U.S. 449 (1995); *United States v. Morrison*, 529 U.S. 598 (2000).

[236] 18 U.S.C. 922(q)(1988 ed., Supp. II).

[237] 514 U.S. at 558-59 (several citations of the Court omitted).

interstate or foreign commerce. This it could not do. It was devoid of any economic component and so could claim no kinship to earlier cases approving Congressional regulation of various forms of intrastate economic activity that substantially affected interstate commerce, such as, "regulation of intrastate coal mining, intrastate extortionate credit transactions [loan sharking], restaurants utilizing substantial interstate supplies, inns and hotels catering to interstate guests, and production and consumption of homegrown wheat."[238]

Moreover, the act lacked the kind of explicit restraints or guidelines that might have confined its application to instances more clearly within the Commerce power. Its criminal proscription contained no "commerce" element; it did not, for example, outlaw possession of a firearm, *which had been transported in interstate commerce*, within 1,000 feet of a school. Its enactment occurred without the accompaniment of legislative findings or declarations of purpose that might have guided appropriate enforcement limitations. The act's overreaching was all the more troubling because it sought to bring federal regulation to school activities, an area where the states "historically have been sovereign."[239]

Morrison echoed *Lopez*, quoting it extensively in the course of an opinion that found that the Commerce Clause did not empower Congress to create a federal civil remedy for the victims of gender-motivated violence.[240] Other opinions confirm that the Commerce Clause must be read in light of the principles of federalism reflected in the Tenth Amendment. For instance, the Clause does not empower Congress to compel the states to exercise their sovereign legislative or executive powers to implement a federal regulatory scheme.[241]

These limitations, notwithstanding, the federal appellate courts have conclude that a gambling business, legal or illegal, is a commercial activity, and as a consequence, may be regulated under the Commerce Clause.[242]

First Amendment

Gambling implicates First Amendment free speech concerns on two levels. Gambling is communicative by nature. Gambling also relies on advertising and a wide range of auxiliary communication services. Historically, gambling itself has been considered a vice and

---

[238] *Id*. at 559-60.

[239] *Id.* at 564, 583 (Kennedy & O'Connor, JJ., concurring)("The statute now before us forecloses the States from experimenting and exercising their own judgment in an area to which States lay claim by right of history and expertise, and it does so by regulating an activity beyond the realm of commerce in the ordinary and usual sense of that term").

[240] 529 U.S. at 607-19.

[241] *New York v. United States*, 505 U.S. 144, 188 (1992)("The Federal Government may not compel the States to enact or administer a federal regulatory program"); *Printz v. United States*, 521 U.S. 898, 935 (1997)("The Federal Government may neither issue directives requiring the states to address particular problems, nor command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program"). This does not mean that the states are beyond federal regulation when they engage in interstate, or interstate-impacting, commercial activity, *Reno v. Condon*, 528 U.S. 141, 148-51 (2000).

[242] *United States v. Lee*, 173 F.3d 809, 810-11 (11th Cir. 1999)(18 U.S.C. 1955) (limiting proscriptions to gambling *businesses* provides the nexus to interstate commerce impact); *United States v. Zizzo*, 120 F.3d 1338, 1350 (7th Cir. 1997) (same); *United States v. Wall*, 92 F.3d 1444, 1449 (6th Cir. 1996) (same); *United States v. Boyd*, 149 F.3d 1062, 1065-66 (10th Cir. 1998)(18 U.S.C. 1955) (the statute regulates a commercial activity (gambling), comes with Congressional findings concerning the activity's impact on interstate commerce, and contains elements that weed out run of the mill, low level gambling cases—all factors absent in *Lopez*); see also, *Interactive Media Entertainment and Gaming Ass'n Inc. v. Attorney General*, 580 F.3d 113, 115 (3d Cir. 2009)(affirming without addressing the lower court's rejection, on standing grounds, of a Tenth Amendment attack on UIGEA).

consequently beyond the protection of the First Amendment. There is every reason to believe that illegal gambling remains beyond the shield of the First Amendment. Gone, however, is the notion that the power to outlaw a vice includes the power to outlaw auxiliary speech when the underlying vice remains unregulated.[243] The Supreme Court made this readily apparent when it approved an advertising ban on gambling illegal at the point of broadcast,[244] but invalidated an advertising ban on gambling lawful at the point of broadcast.[245]

Due Process

Early commentators suggested application of federal criminal law to offshore Internet gambling entrepreneurs implicated due process, personal jurisdiction concerns, as understood in civil cases.[246] There, the Supreme Court has explained that

> The Due Process Clause protects an individual's liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful 'contacts, ties, or relations.' *International Shoe Co. v. Washington*, 326 U.S. [310], at 319. By requiring that individuals have fair warning that a particular activity may subject them to the jurisdiction of a foreign sovereign, the Due Process Clause gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit,' *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980) . . . .
>
> [T]he constitutional touchstone remains whether the defendant purposefully established minimum contacts in the forum State. Although it has been argued that foreseeability of causing injury in another State should be sufficient to establish such contacts there when policy considerations so require, the Court has consistently held that this kind of foreseeability is not a sufficient benchmark for exercising personal jurisdiction. Instead, the foreseeability that is critical to due process analysis ... is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there.[247]

---

[243] *Greater New Orleans Broadcasting Ass'n, Inc. v. United States*, 527 U. S. 173, 182 (1999), noting that *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 513-14 (1996), "rejected the argument that the power to restrict speech about certain socially harmful activities was as broad as the power to prohibit such conduct."

[244] *United States v. Edge Broadcasting Co.* 509 U.S. 418 (1993).

[245] *Greater New Orleans Broadcasting Ass'n, Inc. v. United States*, 527 U.S. 173 (1999). *Greater New Orleans* adopted the *Central Hudson* test: "At the outset, we must determine whether the expression is protected by the First Amendment. For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest," *Greater New Orleans Broadcasting Ass'n, Inc. v. United States*, 527 U.S. at 183.

[246] Schwartz, *The Internet Gambling Fallacy Craps Out*, 14 BERKELEY TECHNOLOGY LAW JOURNAL 1021, 1039-46 (1999); *Do Not Bet on Unilateral Prohibition of Internet Gambling to Eliminate Cyber-Casinos*, 1999 UNIVERSITY OF ILLINOIS LAW REVIEW 1045, 1062-65; Keller, *The Game's the Same: Why Gambling in Cyberspace Violates Federal Law*, 108 YALE LAW JOURNAL 1569, 1596-1602 (1999); *World Wide Wager: The Feasibility of Internet Gambling Regulation*, 8 SETON HALL CONSTITUTIONAL LAW JOURNAL 815, 827-48 (1998).

[247] *Burger King Corp. v. Rudzewicz*, 472 U.S. 462, 471-74 (1985)(some internal quotation marks and citations omitted); see also, *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S.Ct. 2846, 2851 (2011)("A court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliation with the state are so continuous and systematic as to render them essentially at home in the forum State. Specific jurisdiction, on the other hand, depends on an affiliation between the forum and the underlying (continued...)

The lower federal appellate courts, called upon to apply these principles in Internet commercial litigation, have concluded that suing nonresident parties doing business on the Internet where they have a real and continuous presence or where they caused an injury does not offend due process requirements. Yet, more than a passive Internet site is required; the critical test is often the level of commercial activity associated with the website.[248]

In a criminal law context, some courts describe a due process requirement that demands a nexus between the United States and the circumstances of the offense.[249] A few look to international law principles to provide a useful measure to determine whether the nexus requirement has been met;[250] others consider the principles at work in the minimum contacts test for personal jurisdiction.[251] At the heart of these cases is the notion that due process expects that a defendant's conduct must have some past, present, or anticipated locus or impact within the United States before he can fairly be held criminally liable for it in an American court. The commentators have greeted this analysis with some hesitancy,[252] and some courts have simply rejected it.[253]

(...continued)

controversy, principally, activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation").

[248] *Mavrix Photo, Inc. v. Brand Technologies Inc.*, 647 F.3d 1218, 1226-228, 1231(9th Cir. 2011)('[O]peration of an interactive website—even a highly interactive one—does not confer general jurisdiction.... [T]o justify the exercise of specific jurisdiction ... (1) the non-resident defendant must purposefully direct his activities or consummate some transaction with the forum or resident thereof ... ; (2) the claim must be one which arises out of or relates to the defendant's forum-related activities; and (3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e, it must be reasonable.... But where, as here, a website with national viewership and scope appeals to, and profits from, an audience in particular state, the site's operators can be said to have expressly aimed at that state"); *Shrader v. Bidding*, 633 F.3d 1235, 1241 (10th Cir. 2011); *Illinois v. Hemi Group LLC*, 622 F.3d 754, 757-60 (7th Cir. 2010); *Chloe v. Queen Bee*, 616 F.3d 158, 171-73 (2d Cir. 2010); *Cossaboon v. Maine Medical Center.*, 600 F.3d 25, 35-7 (1st Cir. 2010); *see also, State v. Granite Gate Resorts, Inc.*, 568 N.W.2d 715, 718 (Minn.App. 1997), *aff'd*, 576 N.W.2d 747 (Minn. 1998).

[249] *United States v. Medjuck*, 156 F.3d 916, 918 (9th Cir. 1998)("to satisfy the strictures of due process, the Government [must] demonstrate that there exists a sufficient nexus between the conduct condemned and the United States such that the application of the statute [to the overseas conduct of an alien defendant] would not be arbitrary or fundamentally unfair to the defendant"), citing, *United States v. Davis*, 905 F.2d at 248-49; see also, *United States v. Perlaza*, 439 F.3d 1149, 1160-161 (9th Cir. 2006); *United States v. Moreno-Morillo*, 334 F.3d 819, 828 (9th Cir. 2003); *United States v. Klimavicius-Viloria*, 144 F.3d 1249, 1256 (9th Cir. 1998); *United States v. Greer*, 956 F.Supp. 531, 534-36 (D.Vt. 1997); *United States v. Aikens*, 946 F.2d 608, 613-14 (9th Cir. 1990); *United States v. Robinson*, 843 F.2d 1, 5-6 (1st Cir. 1988); *United States v. Peterson*, 812 F.2d 486, 493 (9th Cir. 1987); *United States v. Gonzalez*, 776 F.2d 931, 938-41 (11th Cir. 1985).

[250] *United States v. Davis*, 905 F.2d 245, 249 n.2 (9th Cir. 1990) ("International law principles may be useful as a rough guide of whether a sufficient nexus exists between the defendant and the United States so that application of the statute in question would not violate due process. However, danger exists that emphasis on international law principles will cause us to lose sight of the ultimate question: would application of the statute to the defendant be arbitrary or fundamentally unfair?"); *United States v. Ibarguen-Mosquera*, 634 F.3d 1370, 1379 (11th Cir. 2011); *cf., United States v. Caicedo*, 47 F.3d 370, 372-73 (9th Cir. 1995).

[251] *United Sates v. Clark*, 435 F.3d 1100, 1108 (9th Cir. 2006)("Although Clark's citizenship alone is sufficient to satisfy due process concerns, his U.S. investments, ongoing receipt of federal retirement benefits and use of U.S. military flights also underscore his multiple and continuing ties with this country"); *United States v. Zakharov*, 468 F.3d 1171, 1177 (9th Cir. 2006)("Nexus is a constitutional requirement analogous to 'minimum contacts' in personal jurisdiction analysis"); *United States v. Klimavicius-Viloria*, 144 F.3d at 1257 (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)); *United States v. Aikens*, 946 F.2d 608, 613-14 (9th Cir. 1990); *United States v. Robinson*, 843 F.2d 1, 5-6 (1st Cir. 1988); *United States v. Peterson*, 812 F.2d 486, 493 (9th Cir. 1987); *United States v. Gonzalez*, 776 F.2d 931, 938-41 (11th Cir. 1985).

[252] Brilmayer & Norchi, *Federal Extraterritoriality and Fifth Amendment Due Process*, 105 HARVARD LAW REVIEW 1217 (1992); Weisburd, *Due Process Limits on Federal Extraterritorial Legislation?* 35 COLUMBIA JOURNAL OF (continued...)

Selected Federal Anti-Gambling Laws (Text)

Wire Act (18 U.S.C. 1084)

Transmission of wagering information; penalties

(a) Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.

(b) Nothing in this section shall be construed to prevent the transmission in interstate or foreign commerce of information for use in news reporting of sporting events or contests, or for the transmission of information assisting in the placing of bets or wagers on a sporting event or contest from a State or foreign country where betting on that sporting event or contest is legal into a State or foreign country in which such betting is legal.

(c) Nothing contained in this section shall create immunity from criminal prosecution under any laws of any State.

(d) When any common carrier, subject to the jurisdiction of the Federal Communications Commission, is notified in writing by a Federal, State, or local law enforcement agency, acting within its jurisdiction, that any facility furnished by it is being used or will be used for the purpose of transmitting or receiving gambling information in interstate or foreign commerce in violation of Federal, State or local law, it shall discontinue or refuse, the leasing, furnishing, or maintaining of such facility, after reasonable notice to the subscriber, but no damages, penalty or forfeiture, civil or criminal, shall be found against any common carrier for any act done in compliance with any notice received from a law enforcement agency. Nothing in

(...continued)

TRANSNATIONAL LAW 379 (1997); *Due Process and True Conflicts: The Constitutional Limits on Extraterritorial Federal Legislation and the Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996*, 46 CATHOLIC UNIVERSITY LAW REVIEW 907 (1997); Colangelo, *Constitutional Limits on Extraterritorial Jurisdiction: Terrorism and the Intersection of National and International Law*, 48 HARVARD INTERNATIONAL LAW JOURNAL 121 (2007).

[253] *United States v. Ibarguen-Mosquera*, 634 F.3d 1370, 1378-379 (11th Cir. 2011)(internal citations omitted)("In determining whether an extraterritorial law comports with due process, appellate courts often consult international law principles.... In the past we have held that [these] ... principles have no applicability in connection with stateless vessels because such vessels are international pariahs that have no internationally recognized right to navigate freely on the high seas. Indeed, the law places no restrictions upon a nation's right to subject stateless vessels to its jurisdiction"); *United States v. Suerte*, 291 F.3d 366, 375 (5th Cir. 2002)("[T]o the extent the Due Process Clause may constrain the MDLEA's extraterritorial reach, that clause does not impose a nexus requirement, in that Congress has acted pursuant to the Piracies and Felonies Clause"); *United States v. Perez-Oviedo*, 281 F.3d 400, 403 (3d Cir. 2002)(internal citations omitted)("[N]o due process violation occurs in an extraterritorial prosecution under MDLEA when there is no nexus between the defendant's conduct and the United States. Since drug trafficking is condemned universally by law-abiding nations ... there is no reason for us to conclude that it is 'fundamentally unfair' for Congress to provide for the punishment of a person apprehended with narcotics on the high seas ... Perez-Oviedo's state of facts presents an even stronger case for concluding that no due process violation occurred. The Panamanian government expressly consented to the application of the MDLEA ... Such consent from the flag nation eliminates a concern that the application of the MDLEA may be arbitrary or fundamentally unfair"); *United States v. Cardales*, 168 F.3d 548, 553 (1st Cir. 1999) ("[D]ue process does not require the government to prove a nexus between a defendant's criminal conduct and the United States in a prosecution under the MDLEA when the flag nation has consented to the application of United States law to the defendants").

this section shall be deemed to prejudice the right of any person affected thereby to secure an appropriate determination, as otherwise provided by law, in a Federal court or in a State or local tribunal or agency, that such facility should not be discontinued or removed, or should be restored.

(e) As used in this section, the term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a commonwealth, territory or possession of the United States.

Illegal Gambling Business Act (18 U.S.C. 1955)

Prohibition of illegal gambling businesses

(a) Whoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business shall be fined under this title or imprisoned not more than five years, or both.

(b) As used in this section—

(1) "illegal gambling business" means a gambling business which—

(i) is a violation of the law of a State or political subdivision in which it is conducted;

(ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and

(iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of $2,000 in any single day.

(2) "gambling" includes but is not limited to pool-selling, bookmaking, maintaining slot machines, roulette wheels or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances therein.

(3) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(c) If five or more persons conduct, finance, manage, supervise, direct, or own all or part of a gambling business and such business operates for two or more successive days, then, for the purpose of obtaining warrants for arrests, interceptions, and other searches and seizures, probable cause that the business receives gross revenue in excess of $2,000 in any single day shall be deemed to have been established.

(d) Any property, including money, used in violation of the provisions of this section may be seized and forfeited to the United States. All provisions of law relating to the seizure, summary, and judicial forfeiture procedures, and condemnation of vessels, vehicles, merchandise, and baggage for violation of the customs laws; the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from such sale; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred or alleged to have been incurred under the provisions of this section, insofar as applicable and not inconsistent with such provisions. Such duties as are imposed upon the collector of customs or any other person in respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws shall be performed with respect to seizures and forfeitures of property used or intended for use in violation of this section by such officers, agents, or other persons as may be designated for that purpose by the Attorney General.

(e) This section shall not apply to any bingo game, lottery, or similar game of chance conducted by an organization exempt from tax under paragraph (3) of subsection (c) of section 501 of the Internal Revenue Code of 1954, as amended, if no part of the gross receipts derived from such activity inures to the benefit of any private shareholder, member, or employee of such organization except as compensation for actual expenses incurred by him in the conduct of such activity.

Travel Act (18 U.S.C. 1952)

Interstate and foreign travel or transportation in aid of racketeering enterprises

(a) Whoever travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with intent to—

(1) distribute the proceeds of any unlawful activity; or

(2) commit any crime of violence to further any unlawful activity; or

(3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity,

and thereafter performs or attempts to perform—

(A) an act described in paragraph (1) or (3) shall be fined under this title, imprisoned not more than 5 years, or both; or

(B) an act described in paragraph (2) shall be fined under this title, imprisoned for not more than 20 years, or both, and if death results shall be imprisoned for any term of years or for life.

(b) As used in this section (i) "unlawful activity" means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics or controlled substances (as defined in section 102(6) of the Controlled Substances Act), or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States, or (3) any act which is indictable under subchapter II of chapter 53 of title 31, United States Code, or under section 1956 or 1957 of this title and (ii) the term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(c) Investigations of violations under this section involving liquor shall be conducted under the supervision of the Attorney General.

Unlawful Internet Gambling Enforcement Act (31 U.S.C. 5361 et seq.)

31 U.S.C. 5363. Prohibition on acceptance of any financial instrument for unlawful internet gambling

No person engaged in the business of betting or wagering may knowingly accept, in connection with the participation of another person in unlawful Internet gambling—

(1) credit, or the proceeds of credit, extended to or on behalf of such other person (including credit extended through the use of a credit card);

(2) an electronic fund transfer, or funds transmitted by or through a money transmitting business, or the proceeds of an electronic fund transfer or money transmitting service, from or on behalf of such other person;

(3) any check, draft, or similar instrument which is drawn by or on behalf of such other person and is drawn on or payable at or through any financial institution; or

(4) the proceeds of any other form of financial transaction, as the Secretary and the Board of Governors of the Federal Reserve System may jointly prescribe by regulation, which involves a financial institution as a payor or financial intermediary on behalf of or for the benefit of such other person.

31 U.S.C. 5366. Criminal penalties

(a) In general.—Any person who violates section 5363 shall be fined under title 18, imprisoned for not more than 5 years, or both.

(b) Permanent injunction.—Upon conviction of a person under this section, the court may enter a permanent injunction enjoining such person from placing, receiving, or otherwise making bets or wagers or sending, receiving, or inviting information assisting in the placing of bets or wagers.

31 U.S.C. 5367. Circumventions prohibited

Notwithstanding section 5362(2), a financial transaction provider, or any interactive computer service or telecommunications service, may be liable under this subchapter if such person has actual knowledge and control of bets and wagers, and—

(1) operates, manages, supervises, or directs an Internet website at which unlawful bets or wagers may be placed, received, or otherwise made, or at which unlawful bets or wagers are offered to be placed, received, or otherwise made; or

(2) owns or controls, or is owned or controlled by, any person who operates, manages, supervises, or directs an Internet website at which unlawful bets or wagers may be placed, received, or otherwise made, or at which unlawful bets or wagers are offered to be placed, received, or otherwise made.

31 U.S.C. 5365. Civil remedies

(a) Jurisdiction.—In addition to any other remedy under current law, the district courts of the United States shall have original and exclusive jurisdiction to prevent and restrain restricted transactions by issuing appropriate orders in accordance with this section, regardless of whether a prosecution has been initiated under this subchapter.

(b) Proceedings.—

(1) Institution by Federal government.—

(A) In general.—The United States, acting through the Attorney General, may institute proceedings under this section to prevent or restrain a restricted transaction.

(B) Relief.—Upon application of the United States under this paragraph, the district court may enter a temporary restraining order, a preliminary injunction, or an injunction against any person to prevent or restrain a restricted transaction, in accordance with rule 65 of the Federal Rules of Civil Procedure.

(2) Institution by State attorney general.–

(A) In general.—The attorney general (or other appropriate State official) of a State in which a restricted transaction allegedly has been or will be initiated, received, or otherwise made may institute proceedings under this section to prevent or restrain the violation or threatened violation.

(B) Relief.—Upon application of the attorney general (or other appropriate State official) of an affected State under this paragraph, the district court may enter a temporary restraining order, a preliminary injunction, or an injunction against any person to prevent or restrain a restricted transaction, in accordance with rule 65 of the Federal Rules of Civil Procedure.

(3) Indian lands.–

(A) In general.—Notwithstanding paragraphs (1) and (2), for a restricted transaction that allegedly has been or will be initiated, received, or otherwise made on Indian lands (as that term is defined in section 4 of the Indian Gaming Regulatory Act)–

(i) the United States shall have the enforcement authority provided under paragraph (1); and

(ii) the enforcement authorities specified in an applicable Tribal-State Compact negotiated under section 11 of the Indian Gaming Regulatory Act (25 U.S.C. 2710) shall be carried out in accordance with that compact.

(B) Rule of construction.—No provision of this section shall be construed as altering, superseding, or otherwise affecting the application of the Indian Gaming Regulatory Act.

(c) Limitation relating to interactive computer services.–

(1) In general.—Relief granted under this section against an interactive computer service shall–

(A) be limited to the removal of, or disabling of access to, an online site violating section 5363, or a hypertext link to an online site violating such section, that resides on a computer server that such service controls or operates, except that the limitation in this subparagraph shall not apply if the service is subject to liability under this section under section 5367;

(B) be available only after notice to the interactive computer service and an opportunity for the service to appear are provided;

(C) not impose any obligation on an interactive computer service to monitor its service or to affirmatively seek facts indicating activity violating this subchapter;

(D) specify the interactive computer service to which it applies; and

(E) specifically identify the location of the online site or hypertext link to be removed or access to which is to be disabled.

(2) Coordination with other law.—An interactive computer service that does not violate this subchapter shall not be liable under section 1084(d) of title 18, except that the limitation in this paragraph shall not apply if an interactive computer service has actual knowledge and control of bets and wagers and—

(A) operates, manages, supervises, or directs an Internet website at which unlawful bets or wagers may be placed, received, or otherwise made or at which unlawful bets or wagers are offered to be placed, received, or otherwise made; or

(B) owns or controls, or is owned or controlled by, any person who operates, manages, supervises, or directs an Internet website at which unlawful bets or wagers may be placed, received, or otherwise made, or at which unlawful bets or wagers are offered to be placed, received, or otherwise made.

(d) Limitation on injunctions against regulated persons.—Notwithstanding any other provision of this section, and subject to section 5367, no provision of this subchapter shall be construed as authorizing the Attorney General of the United States, or the attorney general (or other appropriate State official) of any State to institute proceedings to prevent or restrain a restricted transaction against any financial transaction provider, to the extent that the person is acting as a financial transaction provider.

31 U.S.C. 5364. Policies and procedures to identify and prevent restricted transactions

(a) Regulations.—Before the end of the 270-day period beginning on the date of the enactment of this subchapter, the Secretary and the Board of Governors of the Federal Reserve System, in consultation with the Attorney General, shall prescribe regulations (which the Secretary and the Board jointly determine to be appropriate) requiring each designated payment system, and all participants therein, to identify and block or otherwise prevent or prohibit restricted transactions through the establishment of policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit the acceptance of restricted transactions in any of the following ways:

(1) The establishment of policies and procedures that–

(A) allow the payment system and any person involved in the payment system to identify restricted transactions by means of codes in authorization messages or by other means; and

(B) block restricted transactions identified as a result of the policies and procedures developed pursuant to subparagraph (A).

(2) The establishment of policies and procedures that prevent or prohibit the acceptance of the products or services of the payment system in connection with a restricted transaction.

(b) Requirements for policies and procedures.—In prescribing regulations under subsection (a), the Secretary and the Board of Governors of the Federal Reserve System shall–

(1) identify types of policies and procedures, including nonexclusive examples, which would be deemed, as applicable, to be reasonably designed to identify and block or otherwise prevent or prohibit the acceptance of the products or services with respect to each type of restricted transaction;

(2) to the extent practical, permit any participant in a payment system to choose among alternative means of identifying and blocking, or otherwise preventing or prohibiting the acceptance of the products or services of the payment system or participant in connection with, restricted transactions;

(3) exempt certain restricted transactions or designated payment systems from any requirement imposed under such regulations, if the Secretary and the Board jointly find that it is not reasonably practical to identify and block, or otherwise prevent or prohibit the acceptance of, such transactions; and

(4) ensure that transactions in connection with any activity excluded from the definition of unlawful internet gambling in subparagraph (B), (C), or (D)(i) of section 5362(10) are not blocked or otherwise prevented or prohibited by the prescribed regulations.

(c) Compliance with payment system policies and procedures.—A financial transaction provider shall be considered to be in compliance with the regulations prescribed under subsection (a) if—

(1) such person relies on and complies with the policies and procedures of a designated payment system of which it is a member or participant to–

(A) identify and block restricted transactions; or

(B) otherwise prevent or prohibit the acceptance of the products or services of the payment system, member, or participant in connection with restricted transactions; and

(2) such policies and procedures of the designated payment system comply with the requirements of regulations prescribed under subsection (a).

(d) No liability for blocking or refusing to honor restricted transactions.—A person that identifies and blocks a transaction, prevents or prohibits the acceptance of its products or services in connection with a transaction, or otherwise refuses to honor a transaction—

(1) that is a restricted transaction;

(2) that such person reasonably believes to be a restricted transaction; or

(3) as a designated payment system or a member of a designated payment system in reliance on the policies and procedures of the payment system, in an effort to comply with regulations prescribed under subsection (a),shall not be liable to any party for such action.

(e) Regulatory enforcement.—The requirements under this section shall be enforced exclusively by–

(1) the Federal functional regulators, with respect to the designated payment systems and financial transaction providers subject to the respective jurisdiction of such regulators under section 505(a) of the Gramm-Leach-Bliley Act and section 5g of the Commodities Exchange Act; and

(2) the Federal Trade Commission, with respect to designated payment systems and financial transaction providers not otherwise subject to the jurisdiction of any Federal functional regulators (including the Commission) as described in paragraph (1).

31 U.S.C. 5362. Definitions

In this subchapter:

(1) Bet or wager.—The term "bet or wager"–

(A) means the staking or risking by any person of something of value upon the outcome of a contest of others, a sporting event, or a game subject to chance, upon an agreement or understanding that the person or another person will receive something of value in the event of a certain outcome;

(B) includes the purchase of a chance or opportunity to win a lottery or other prize (which opportunity to win is predominantly subject to chance);

(C) includes any scheme of a type described in section 3702 of title 28;

(D) includes any instructions or information pertaining to the establishment or movement of funds by the bettor or customer in, to, or from an account with the business of betting or wagering; and

(E) does not include—

(i) any activity governed by the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 for the purchase or sale of securities (as that term is defined in section 3(a)(10) of that Act);

(ii) any transaction conducted on or subject to the rules of a registered entity or exempt board of trade under the Commodity Exchange Act;

(iii) any over-the-counter derivative instrument;

(iv) any other transaction that—

(I) is excluded or exempt from regulation under the Commodity Exchange Act; or

(II) is exempt from State gaming or bucket shop laws under section 12(e) of the Commodity Exchange Act or section 28(a) of the Securities Exchange Act of 1934;

(v) any contract of indemnity or guarantee;

(vi) any contract for insurance;
(vii) any deposit or other transaction with an insured depository institution;
(viii) participation in any game or contest in which participants do not stake or risk anything of value other than—
(I) personal efforts of the participants in playing the game or contest or obtaining access to the Internet; or
(II) points or credits that the sponsor of the game or contest provides to participants free of charge and that can be used or redeemed only for participation in games or contests offered by the sponsor; or
(ix) participation in any fantasy or simulation sports game or educational game or contest in which (if the game or contest involves a team or teams) no fantasy or simulation sports team is based on the current membership of an actual team that is a member of an amateur or professional sports organization (as those terms are defined in section 3701 of title 28) and that meets the following conditions:
(I) All prizes and awards offered to winning participants are established and made known to the participants in advance of the game or contest and their value is not determined by the number of participants or the amount of any fees paid by those participants.
(II) All winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individuals (athletes in the case of sports events) in multiple real-world sporting or other events.
(III) No winning outcome is based—
(aa) on the score, point-spread, or any performance or performances of any single real-world team or any combination of such teams; or
(bb) solely on any single performance of an individual athlete in any single real-world sporting or other event.

(2) Business of betting or wagering.—The term "business of betting or wagering" does not include the activities of a financial transaction provider, or any interactive computer service or telecommunications service.

(3) Designated payment system.—The term "designated payment system" means any system utilized by a financial transaction provider that the Secretary and the Board of Governors of the Federal Reserve System, in consultation with the Attorney General, jointly determine, by regulation or order, could be utilized in connection with, or to facilitate, any restricted transaction.

(4) Financial transaction provider.—The term "financial transaction provider" means a creditor, credit card issuer, financial institution, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or international, national, regional, or local payment network utilized to effect a credit transaction, electronic fund transfer, stored value product transaction, or money transmitting service, or a participant in such network, or other participant in a designated payment system.

(5) Internet.—The term "Internet" means the international computer network of interoperable packet switched data networks.

(6) Interactive computer service.—The term "interactive computer service" has the meaning given the term in section 230(f) of the Communications Act of 1934 (47 U.S.C. 230(f)).

(7) Restricted transaction.—The term "restricted transaction" means any transaction or transmittal involving any credit, funds, instrument, or proceeds described in any paragraph of section 5363 which the recipient is prohibited from accepting under section 5363.

(8) Secretary.—The term "Secretary" means the Secretary of the Treasury.

(9) State.—The term "State" means any State of the United States, the District of Columbia, or any commonwealth, territory, or other possession of the United States.

(10) Unlawful internet gambling.—

(A) In general.—The term "unlawful Internet gambling" means to place, receive, or otherwise knowingly transmit a bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable Federal or State law in the State or Tribal lands in which the bet or wager is initiated, received, or otherwise made.

(B) Intrastate transactions.—The term "unlawful Internet gambling" does not include placing, receiving, or otherwise transmitting a bet or wager where—

(i) the bet or wager is initiated and received or otherwise made exclusively within a single State;

(ii) the bet or wager and the method by which the bet or wager is initiated and received or otherwise made is expressly authorized by and placed in accordance with the laws of such State, and the State law or regulations include—

(I) age and location verification requirements reasonably designed to block access to minors and persons located out of such State; and

(II) appropriate data security standards to prevent unauthorized access by any person whose age and current location has not been verified in accordance with such State's law or regulations; and

(iii) the bet or wager does not violate any provision of—(I) the Interstate Horseracing Act of 1978 (15 U.S.C. 3001 et seq.); (II) chapter 178 of title 28 (commonly known as the "Professional and Amateur Sports Protection Act"); (III) the Gambling Devices Transportation Act (15 U.S.C. 1171 et seq.); or (IV) the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.).

(C) Intratribal transactions.—The term "unlawful Internet gambling" does not include placing, receiving, or otherwise transmitting a bet or wager where—

(i) the bet or wager is initiated and received or otherwise made exclusively—

(I) within the Indian lands of a single Indian tribe (as such terms are defined under the Indian Gaming Regulatory Act); or

(II) between the Indian lands of 2 or more Indian tribes to the extent that intertribal gaming is authorized by the Indian Gaming Regulatory Act;

(ii) the bet or wager and the method by which the bet or wager is initiated and received or otherwise made is expressly authorized by and complies with the requirements of—

(I) the applicable tribal ordinance or resolution approved by the Chairman of the National Indian Gaming Commission; and

(II) with respect to class III gaming, the applicable Tribal-State Compact;

(iii) the applicable tribal ordinance or resolution or Tribal-State compact includes—

(I) age and location verification requirements reasonably designed to block access to minors and persons located out of the applicable Tribal lands; and

(II) appropriate data security standards to prevent unauthorized access by any person whose age and current location has not been verified in accordance with the applicable tribal ordinance or resolution or Tribal-State Compact; and

(iv) the bet or wager does not violate any provision of—

(I) the Interstate Horseracing Act of 1978 (15 U.S.C. 3001 et seq.);

(II) chapter 178 of title 28 (commonly known as the "Professional and Amateur Sports Protection Act");

(III) the Gambling Devices Transportation Act (15 U.S.C. 1171 et seq.); or

(IV) the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.).

(D) Interstate horseracing .—

(i) In general.—The term "unlawful Internet gambling" shall not include any activity that is allowed under the Interstate Horseracing Act of 1978 (15 U.S.C. 3001 et seq.).

(ii) Rule of construction regarding preemption.—Nothing in this subchapter may be construed to preempt any State law prohibiting gambling.

(iii) Sense of Congress.—It is the sense of Congress that this subchapter shall not change which activities related to horse racing may or may not be allowed under Federal law. This subparagraph is intended to address concerns that this subchapter could have the effect of changing the existing

relationship between the Interstate Horseracing Act and other Federal statutes in effect on the date of the enactment of this subchapter. This subchapter is not intended to change that relationship. This subchapter is not intended to resolve any existing disagreements over how to interpret the relationship between the Interstate Horseracing Act and other Federal statutes.

(E) Intermediate routing.—The intermediate routing of electronic data shall not determine the location or locations in which a bet or wager is initiated, received, or otherwise made.

(11) Other terms.–

(A) Credit; creditor; credit card; and card issuer.—The terms "credit", "creditor", "credit card", and "card issuer" have the meanings given the terms in section 103 of the Truth in Lending Act (15 U.S.C. 1602).

(B) Electronic fund transfer.—The term "electronic fund transfer"—

(i) has the meaning given the term in section 903 of the Electronic Fund Transfer Act (15 U.S.C. 1693a), except that the term includes transfers that would otherwise be excluded under section 903(6)(E) of that Act; and

(ii) includes any fund transfer covered by Article 4A of the Uniform Commercial Code, as in effect in any State.

(C) Financial institution.—The term "financial institution" has the meaning given the term in section 903 of the Electronic Fund Transfer Act, except that such term does not include a casino, sports book, or other business at or through which bets or wagers may be placed or received.

(D) Insured depository institution.—The term "insured depository institution"—

(i) has the meaning given the term in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)); and

(ii) includes an insured credit union (as defined in section 101 of the Federal Credit Union Act).

(E) Money transmitting business and money transmitting service.—The terms "money transmitting business" and "money transmitting service" have the meanings given the terms in section 5330(d) (determined without regard to any regulations prescribed by the Secretary thereunder).

RICO (18 U.S.C. 1961 et seq.)

18 U.S.C. 1962. Prohibited activities

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

18 U.S.C. 1961. Definitions

As used in this chapter–

(1) "racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1028 (relating to fraud and related activity in connection with identification documents), section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), sections 1461-1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1542 (relating to false statement in application and use of passport), section 1543 (relating to forgery or false use of passport), section 1544 (relating to misuse of passport), section 1546 (relating to fraud and misuse of visas, permits, and other documents), sections 1581-1592 (relating to peonage, slavery, and trafficking in persons), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), section 1960 (relating to illegal money transmitters), sections 2251, 2251A, 2252, and 2260 (relating to sexual exploitation of children), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of a copyright), section 2319A (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances), section 2320 (relating to trafficking in goods or services bearing counterfeit marks), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24 (relating to white slave traffic), sections 175-178 (relating to biological weapons), sections 229-229F (relating to chemical weapons), section 831 (relating to nuclear materials); (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11 (except a case under section 157 of this title), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), punishable under any law of the United States, (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act, (F) any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was

committed for the purpose of financial gain, or (G) any act that is indictable under any provision listed in section 2332b(g)(5)(B);

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;

(3) "person" includes any individual or entity capable of holding a legal or beneficial interest in property;

(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

(6) "unlawful debt" means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political subdivision thereof, or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate;

(7) "racketeering investigator" means any attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect this chapter;

(8) "racketeering investigation" means any inquiry conducted by any racketeering investigator for the purpose of ascertaining whether any person has been involved in any violation of this chapter or of any final order, judgment, or decree of any court of the United States, duly entered in any case or proceeding arising under this chapter;

(9) "documentary material" includes any book, paper, document, record, recording, or other material; and

(10) "Attorney General" includes the Attorney General of the United States, the Deputy Attorney General of the United States, the Associate Attorney General of the United States, any Assistant Attorney General of the United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter. Any department or agency so designated may use in investigations authorized by this chapter either the investigative provisions of this chapter or the investigative power of such department or agency otherwise conferred by law.

Money Laundering (18 U.S.C. 1956, 1957)

18 U.S.C. 1956. Laundering of monetary instruments.

(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity—

(A)(i) with the intent to promote the carrying on of specified unlawful activity; or

(ii) with intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986; or

(B) 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; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than $500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both. For purposes of this paragraph, a financial transaction shall be considered to be one involving the proceeds of specified unlawful activity if it is part of a set of parallel or dependent transactions, any one of which involves the proceeds of specified unlawful activity, and all of which are part of a single plan or arrangement.

(2) Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States—

(A) with the intent to promote the carrying on of specified unlawful activity; or

(B) knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer represent the proceeds of some form of unlawful activity and knowing that such transportation, transmission, or transfer 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; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than $500,000 or twice the value of the monetary instrument or funds involved in the transportation, transmission, or transfer whichever is greater, or imprisonment for not more than twenty years, or both. For the purpose of the offense described in subparagraph (B), the defendant's knowledge may be established by proof that a law enforcement officer represented the matter specified in subparagraph (B) as true, and the defendant's subsequent statements or actions indicate that the defendant believed such representations to be true.

(3) Whoever, with the intent—

(A) to promote the carrying on of specified unlawful activity;

(B) to conceal or disguise the nature, location, source, ownership, or control of property believed to be the proceeds of specified unlawful activity; or

(C) to avoid a transaction reporting requirement under State or Federal law,

conducts or attempts to conduct a financial transaction involving property represented to be the proceeds of specified unlawful activity, or property used to conduct or facilitate specified unlawful activity, shall be fined under this title or imprisoned for not more than 20 years, or both. For purposes of this paragraph and paragraph (2), the term "represented" means any representation made by a law enforcement officer or by another person at the direction of, or with the approval of, a Federal official authorized to investigate or prosecute violations of this section.

(b) Penalties.—

(1) In general.—Whoever conducts or attempts to conduct a transaction described in subsection (a)(1) or (a)(3), or section 1957, or a transportation, transmission, or transfer described in subsection (a)(2), is liable to the United States for a civil penalty of not more than the greater of—

(A) the value of the property, funds, or monetary instruments involved in the transaction; or

(B) $10,000.

(2) Jurisdiction over foreign persons.—For purposes of adjudicating an action filed or enforcing a penalty ordered under this section, the district courts shall have jurisdiction over any foreign person, including any financial institution authorized under the laws of a foreign country, against whom the action is brought, if service of process upon the foreign person is made under the Federal Rules of Civil Procedure or the laws of the country in which the foreign person is found, and–

(A) the foreign person commits an offense under subsection (a) involving a financial transaction that occurs in whole or in part in the United States;

(B) the foreign person converts, to his or her own use, property in which the United States has an ownership interest by virtue of the entry of an order of forfeiture by a court of the United States; or

(C) the foreign person is a financial institution that maintains a bank account at a financial institution in the United States.

(3) Court authority over assets.—A court may issue a pretrial restraining order or take any other action necessary to ensure that any bank account or other property held by the defendant in the United States is available to satisfy a judgment under this section.

(4) Federal receiver.—

(A) In general.—A court may appoint a Federal Receiver, in accordance with subparagraph(B) of this paragraph, to collect, marshal, and take custody, control, and possession of all assets of the defendant, wherever located, to satisfy a civil judgment under this subsection, a forfeiture judgment under section 981 or 982, or a criminal sentence under section 1957 or subsection (a) of this section, including an order of restitution to any victim of a specified unlawful activity.

(B) Appointment and authority.—A Federal Receiver described in subparagraph (A)—

(i) may be appointed upon application of a Federal prosecutor or a Federal or State regulator, by the court having jurisdiction over the defendant in the case;

(ii) shall be an officer of the court, and the powers of the Federal Receiver shall include the powers set out in section 754 of title 28, United States Code; and

(iii) shall have standing equivalent to that of a Federal prosecutor for the purpose of submitting requests to obtain information regarding the assets of the defendant—

(I) from the Financial Crimes Enforcement Network of the Department of the Treasury; or

(II) from a foreign country pursuant to a mutual legal assistance treaty, multilateral agreement, or other arrangement for international law enforcement assistance, provided that such requests are in accordance with the policies and procedures of the Attorney General.

(c) As used in this section—

(1) the term "knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity" means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State, Federal, or foreign law, regardless of whether or not such activity is specified in paragraph (7);

(2) the term "conducts" includes initiating, concluding, or participating in initiating, or concluding a transaction;

(3) the term "transaction" includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safe deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected;

(4) the term "financial transaction" means (A) a transaction which in any way or degree affects interstate or foreign commerce (i) involving the movement of funds by wire or other means or (ii) involving one or more monetary instruments, or (iii) involving the transfer of title to any real property, vehicle, vessel, or aircraft, or (B) a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree;

(5) the term "monetary instruments" means (i) coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, and money orders, or (ii) investment securities or negotiable instruments, in bearer form or otherwise in such form that title thereto passes upon delivery;

(6) the term "financial institution" includes—

(A) any financial institution, as defined in section 5312(a)(2) of title 31, United States Code, or the regulations promulgated thereunder; and

(B) any foreign bank, as defined in section 1 of the International Banking Act of 1978 (12 U.S.C. 3101);

(7) the term "specified unlawful activity" means—

(A) any act or activity constituting an offense listed in section 1961(1) of this title except an act which is indictable under subchapter II of chapter 53 of title 31;

(B) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving—

(i) the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act);

(ii) murder, kidnapping, robbery, extortion, destruction of property by means of explosive or fire, or a crime of violence (as defined in section 16);

(iii) fraud, or any scheme or attempt to defraud, by or against a foreign bank (as defined in paragraph 7 of section 1(b) of the International Banking Act of 1978));

(iv) bribery of a public official, or the misappropriation, theft, or embezzlement of public funds by or for the benefit of a public official;

(v) smuggling or export control violations involving—

(I) an item controlled on the United States Munitions List established under section 38 of the Arms Export Control Act (22 U.S.C. 2778); or

(II) an item controlled under regulations under the Export Administration Regulations (15 C.F.R. Parts 730-774);

(vi) an offense with respect to which the United States would be obligated by a multilateral treaty, either to extradite the alleged offender or to submit the case for prosecution, if the offender were found within the territory of the United States; or

(vii) trafficking in persons, selling or buying of children, sexual exploitation of children, or transporting, recruiting or harboring a person, including a child, for commercial sex acts;

(C) any act or acts constituting a continuing criminal enterprise, as that term is defined in section 408 of the Controlled Substances Act (21 U.S.C. 848);

(D) an offense under section 32 (relating to the destruction of aircraft), section 37 (relating to violence at international airports), section 115 (relating to influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member), section 152 (relating to concealment of assets; false oaths and claims; bribery), section 175c (relating to the variola virus), section 215 (relating to commissions or gifts for procuring loans), section 351 (relating to congressional or Cabinet officer assassination), any of sections 500 through 503 (relating to certain counterfeiting offenses), section 513 (relating to securities of States and private entities), section 541 (relating to goods falsely classified), section 542 (relating to entry of goods by means of false statements), section 545 (relating to smuggling goods into the United States), section 549 (relating to removing goods from Customs custody), section 554 (relating to smuggling goods from the United States), section 641 (relating to public money, property, or records), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), section 657 (relating to lending, credit, and insurance institutions), section 658 (relating to property mortgaged or pledged to farm credit agencies), section 666 (relating to theft or bribery concerning programs receiving Federal funds), section 793, 794, or 798 (relating to espionage), section 831 (relating to prohibited transactions involving nuclear materials), section 844(f) or (i) (relating to destruction by explosives or fire of Government property or property affecting interstate or foreign commerce), section 875 (relating to interstate communications), section 922(1) (relating to the unlawful importation of firearms), section 924(n) (relating to firearms trafficking), section 956 (relating to conspiracy to kill, kidnap, maim, or injure certain property in a foreign country), section 1005 (relating to fraudulent bank entries), 1006 (relating to fraudulent Federal credit institution entries), 1007 (relating to fraudulent Federal Deposit Insurance transactions), 1014 (relating to fraudulent loan or credit applications), section 1030 (relating to computer fraud and abuse), 1032 (relating to concealment of assets from conservator, receiver, or liquidating agent of financial institution), section 1111 (relating to murder), section 1114 (relating to murder of United States law enforcement officials), section 1116 (relating to murder of foreign officials, official guests, or internationally protected persons), section 1201 (relating to kidnaping), section 1203 (relating to hostage taking), section 1361 (relating to willful injury of Government property), section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction), section 1708 (theft from the mail), section 1751 (relating to Presidential assassination), section 2113 or 2114 (relating to bank and postal robbery and theft), section 2252A (relating to child pornography) where the child pornography contains a visual depiction of an actual minor engaging in sexual explicit conduct, section 2260 (production of certain child pornography for importation into the United States), section 2280 (relating to violence against maritime navigation), section 2281 (relating to violence against maritime fixed platforms), section 2319 (relating to copyright infringement), section 2320 (relating to trafficking in counterfeit goods and services), section 2332 (relating to terrorist acts abroad against United States nationals), section 2332a (relating to use of weapons of mass destruction), section 2332b (relating to international terrorist acts transcending national boundaries), section 2332g (relating to missile systems designed to destroy aircraft), section 2332h (relating to radiological dispersal devices), or section 2339A or 2339B (relating to providing material support to terrorists), section 2339C (relating to financing of terrorism), or 2339D (relating to receiving military-type training from a foreign terrorist organization) of this title, section 46502 of title 49, United States

Code, a felony violation of the Chemical Diversion and Trafficking Act of 1988 (relating to precursor and essential chemicals), section 590 of the Tariff Act of 1930 (19 U.S.C. 1590) (relating to aviation smuggling), section 422 of the Controlled Substances Act (relating to transportation of drug paraphernalia), section 38(c) (relating to criminal violations) of the Arms Export Control Act, section 11 (relating to violations) of the Export Administration Act of 1979, section 206 (relating to penalties) of the International Emergency Economic Powers Act, section 16 (relating to offenses and punishment) of the Trading with the Enemy Act, any felony violation of section 15 of the Food and Nutrition Act of 1978 [7 U.S.C.A. 2024] (relating to supplemental nutrition assistance program benefits fraud) involving a quantity of benefits having a value of not less than $5,000, any violation of section 543(a)(1) of the Housing Act of 1949 [42 U.S.C. 1490s(a)(1)] (relating to equity skimming), any felony violation of the Foreign Agents Registration Act of 1938, or section 92 of the Atomic Energy Act of 1954 (42 U.S.C. 2122)(relating to prohibitions governing atomic weapons), any felony violation of the Foreign Corrupt Practices Act;

ENVIRONMENTAL CRIMES

(E) a felony violation of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Ocean Dumping Act (33 U.S.C. 1401 et seq.), the Act to Prevent Pollution from Ships (33 U.S.C. 1901 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), or the Resources Conservation and Recovery Act (42 U.S.C. 6901 et seq.); or

(F) any act or activity constituting an offense involving a Federal health care offense;

(8) the term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States; and

(9) the term "proceeds" means any property derived from or obtained or retained, directly or indirectly, through some form of unlawful activity, including gross receipts of such activity.

(d) Nothing in this section shall supersede any provision of Federal, State, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in this section.

(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate and, with respect to offenses over which the Department of Homeland Security has jurisdiction, by such components of the Department of Homeland Security as the Secretary of Homeland Security may direct, and with respect to offenses over which the United States Postal Service has jurisdiction, by the Postal Service. Such authority of the Secretary of the Treasury, the Secretary of Homeland Security, and the Postal Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury, the Secretary of Homeland Security, the Postal Service, and the Attorney General. Violations of this section involving offenses described in paragraph (c)(7)(E) may be investigated by such components of the Department of Justice as the Attorney General may direct, and the National Enforcement Investigations Center of the Environmental Protection Agency.

(f) There is extraterritorial jurisdiction over the conduct prohibited by this section if—

(1) the conduct is by a United States citizen or, in the case of a non-United States citizen, the conduct occurs in part in the United States; and

(2) the transaction or series of related transactions involves funds or monetary instruments of a value exceeding $10,000.

(g) Notice of conviction of financial institutions.—If any financial institution or any officer, director, or employee of any financial institution has been found guilty of an offense under this section, section 1957 or 1960 of this title, or section 5322 or 5324 of title 31, the Attorney General shall provide written notice of such fact to the appropriate regulatory agency for the financial institution.

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

(i) Venue.—(1) Except as provided in paragraph (2), a prosecution for an offense under this section or section 1957 may be brought in—

(A) any district in which the financial or monetary transaction is conducted; or

(B) any district where a prosecution for the underlying specified unlawful activity could be brought, if the defendant participated in the transfer of the proceeds of the specified unlawful activity from that district to the district where the financial or monetary transaction is conducted.

(2) A prosecution for an attempt or conspiracy offense under this section or section 1957 may be brought in the district where venue would lie for the completed offense under paragraph (1), or in any other district where an act in furtherance of the attempt or conspiracy took place.

(3) For purposes of this section, a transfer of funds from 1 place to another, by wire or any other means, shall constitute a single, continuing transaction. Any person who conducts (as that term is defined in subsection (c)(2)) any portion of the transaction may be charged in any district in which the transaction takes place.

18 U.S.C. 1957. Engaging in monetary transactions in property derived from specified unlawful activity

(a) Whoever, in any of the circumstances set forth in subsection (d), knowingly engages or attempts to engage in a monetary transaction in criminally derived property that is of a value greater than $10,000 and is derived from specified unlawful activity, shall be punished as provided in subsection (b).

(b)(1) Except as provided in paragraph (2), the punishment for an offense under this section is a fine under title 18, United States Code, or imprisonment for not more than ten years or both.

(2) The court may impose an alternate fine to that imposable under paragraph (1) of not more than twice the amount of the criminally derived property involved in the transaction.

(c) In a prosecution for an offense under this section, the Government is not required to prove the defendant knew that the offense from which the criminally derived property was derived was specified unlawful activity.

(d) The circumstances referred to in subsection (a) are—(1) that the offense under this section takes place in the United States or in the special maritime and territorial jurisdiction of the United States; or

(2) that the offense under this section takes place outside the United States and such special jurisdiction, but the defendant is a United States person (as defined in section 3077 of this title, but excluding the class described in paragraph (2)(D) of such section).

(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate and, with respect to offenses over which the Department of Homeland Security has jurisdiction, by such components of the Department of Homeland Security as the Secretary of Homeland Security may direct, and with respect to offenses over which the United States Postal Service has jurisdiction, by the Postal Service. Such authority of the Secretary of the Treasury, the Secretary of Homeland Security, and the Postal Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury, the Secretary of Homeland Security, the Postal Service, and the Attorney General.

(f) As used in this section–

(1) the term "monetary transaction" means the deposit, withdrawal, transfer, or exchange, in or affecting interstate or foreign commerce, of funds or a monetary instrument (as defined in section 1956(c)(5) of this title) by, through, or to a financial institution (as defined in section 1956 of this title), including any transaction that would be a financial transaction under section 1956(c)(4)(B) of this title, but such term does not include any transaction necessary to preserve a person's right to representation as guaranteed by the sixth amendment to the Constitution;

(2) the term "criminally derived property" means any property constituting, or derived from, proceeds obtained from a criminal offense; and

(3) the terms "specified unlawful activity" and "proceeds" have the meaning given those terms in section 1956 of this title.

Federal Anti-Gambling Laws (Citations)

8 U.S.C. 1101(a)(43)(D),(J)(definition of aggravated felony (grounds for deportation of an alien) includes violations of 18 U.S.C. 1956 & 1957 (money laundering) and 18 U.S.C. 1084(interstate transmission of gambling information), 1955 (gambling business), 1962 (RICO))

8 U.S.C. 1101(f)(4),(5)(no one whose income is derived from gambling and no one with 2 or more gambling convictions can be consider of good moral character)(grounds to deny entry into the U.S.)

8 U.S.C. 1182(a)(2)(D)(iii)(excludable aliens include those coming to the U.S. to engage in commercialized vice)(grounds for denying entry and for deportation of aliens who were excludable at the time of entry)

12 U.S.C. 25a (national banks may not participate in lotteries or related activities)

12 U.S.C. 339 (state member banks (members of Federal Reserve) may not participate in lotteries or related activities)

12 U.S.C. 1463 (federal savings associations may not participate in lotteries or related activities)

12 U.S.C. 1829a (state nonmember but federally insured banks may not participate in lotteries or related activities)

15 U.S.C. 1171 to 1178 (unlawful interstate or international transportation of gambling devices)

15 U.S.C. 3001 to 3007 (Interstate Horseracing Act)

18 U.S.C. 224 (bribery with intent to influence the outcome of a sporting event)

18 U.S.C. 1081 to 1083 (gambling ships)

18 U.S.C. 1084 (interstate or international transmission of wagering information)

18 U.S.C. 1301 (interstate or international transportation of lottery tickets)

18 U.S.C. 1302 (mailing lottery tickets or related matter)

18 U.S.C. 1303 (postal officials acting as lottery agents)

18 U.S.C. 1304 (broadcasting lottery information)

18 U.S.C. 1305 (fishing contests exempted)

18 U.S.C. 1306 (penalties for violating 12 U.S.C. 25a, 339, and 1829a)

18 U.S.C. 1307 (exemptions for state-run lotteries)

18 U.S.C. 1511 (obstructing state or local law enforcement officials to facilitate an illegal gambling business)

18 U.S.C. 1952 (interstate or foreign travel or use of the mails to facilitate illegal activities defined to include business enterprises involving gambling)

18 U.S.C. 1953 (interstate or foreign transportation of wagering paraphernalia)

18 U.S.C. 1955 (engaging in an illegal gambling business)

18 U.S.C. 1956 (money laundering of funds associated with any of a list of predicate offenses which includes), by way of 18 U.S.C. 1961, 18 U.S.C. 1955)

18 U.S.C. 1957 (engaging in financial transactions involving funds derived from any of the crimes in the money laundering predicate list, e.g., 18 U.S.C. 1955)

18 U.S.C. 1959 (violent crimes in aid of racketeering defined to include 18 U.S.C. 1955, again by way of 18 U.S.C. 1961)

18 U.S.C. 1961-1965 (racketeer influenced and corrupt organizations (RICO) prohibits patterned use of predicate crimes to acquire or operate an enterprise affecting interstate or foreign commerce; predicate crime list includes 18 U.S.C. 1955)

19 U.S.C. 1305 (prohibits the importation of lottery tickets or advertisements for lotteries, inter alia)

25 U.S.C. 2701 to 2721 (regulation of Indian gaming)

26 U.S.C. 4401 to 4405 (federal taxes on wagers)

26 U.S.C. 4411 to 4424 (gambling occupation tax)

26 U.S.C. 5723 (tobacco products manufactured in or imported into the U.S. may not include lottery tickets)

28 U.S.C. 3701 to 3704 (protection of professional and amateur sports from gambling)

31 U.S.C. 5361 to 5367 (Unlawful Internet Gambling Enforcement Act)

39 U.S.C. 3005 (restrictions on mailing lottery-related)

State Anti-Gambling Laws (Citations)

ALA.CODE §§13A-12-20 to 13A-12-92;
ALASKA STAT. §§11.66.200 to 11.66.280;
ARIZ. REV.STAT.ANN. §§13-3301 to 13-3312;
ARK.CODE ANN. §§5-66-101 to 5-66-119;
CAL.PENAL CODE §§319 to 337z;

COLO.REV.STAT.ANN. §§18-10-101 to 18-10-108;
CONN.GEN.STAT.ANN. §§53-278a to 53-278g;
DEL.CODE ANN. tit.11 §§1410 to 1432;
FLA.STAT.ANN. §§849.01 to 849.46;
GA.CODE ANN. §§16-12-20 to 16-12-62;

HAW.REV.STAT. §§712-1220 to 712-1231;
IDAHO CODE §§18-3801 to 18-3810;
ILL.COMP.LAWS ANN. ch.720 §§5/28-1 to 5/28-9;
IND.CODE ANN. §§35-45-5-1 to 35-45-5-10;
IOWA CODE ANN. §§725.5 to 725.16;

KAN.STAT.ANN. §21-4302 to 21-4308;
KY.REV.STAT.ANN. §§528.010 to 528.120;
LA.REV.STAT.ANN. §§14:90 to 14:90.4;
ME.REV.STAT.ANN. tit.17-A §§951 to 961;
MD.CRIM.CODE ANN. §§12-101 to 12-307;

MASS.GEN.LAWS ANN. ch.271 §§1 to 50;
MICH.COMP.LAWS ANN. §§750.301 to 750.315a, 759.330 to 750.331, 750.372 to 750.376a;
MINN.STAT.ANN. §§609.75 to 609.763.
MISS.CODE ANN.§§97-33-1 to 97-33-49;
MO.ANN.STAT. §§572.010 to 572.125;

MONT.CODE ANN. §§23-5-110 to 23-5-810;
NEB.REV.STAT. §§28-1101 to 28-1117;
NEV.REV.STAT. §§462.250 to 462.330;
N.H.REV.STAT.ANN. §§647:1 to 647:2;
N.J.STAT.ANN. §§2C:37-1 to 2C:37-9;

N.M.STAT.ANN. §§30-19-1 to 30-19-7.2;
N.Y.PENAL LAW §§225.00 to 225.40;
N.C.GEN.STAT. §§14-289 to 14-309.20;
N.D.CENT.CODE §§12.1-28-01 to 12.1-28-02;
OHIO REV.CODE ANN. §§2915.01 to 2915.13;

OKLA.STAT.ANN. tit.21 §§941 to 996.3;
ORE.REV.STAT. §§167.108 to 167.167;
PA.STAT.ANN. tit.18 §§5512 to 5514;
R.I.GEN.LAWS §§11-19-1 to 11-19-45; 11-51-1 to 11-51-2;
S.C.CODE ANN. §§16-19-10 to 16-19-160;

S.D.COD.LAWS ANN. §§22-25-1 to 22-25-51; 22-25A-1 to 22-25A-15;
TENN.CODE ANN. §§39-17-501 to 39-17-610;
TEX.PENAL CODE ANN. arts. 47.01 to 47.10;
UTAH CODE ANN. §§76-10-1101 to 76-10-1109;
VT.STAT.ANN. tit.13 §§2101 to 2177;

VA.CODE ANN. §§18.2-325 to 18.2-340.38;
WASH.REV.CODE ANN. §§9.46.10 to 9.46.903;
W.VA.CODE §§61-10-1 to 61-10-31;
WIS.STAT.ANN. §§945.01 to 945.13;
WYO.STAT. §§6-7-101 to 6-7-104.

Author Contact Information

Charles Doyle
Senior Specialist in American Public Law
cdoyle@crs.loc.gov, 7-6968