NACDL Supports the Exclusion of Money Laundering Provisions from the Fight Fraud Act (H.R. 1748)

NACDL appreciates the need to provide enforcement authorities with the additional funding offered by the Fight Fraud Act (H.R. 1748), and we support amendment to include funding for defense attorneys representing those accused of financial fraud. We oppose, however, any amendment that seeks to add money laundering provisions to H.R. 1748.

To provide an additional tool in drug and racketeering cases, Congress enacted the principal money laundering statute to criminalize the act of camouflaging dirty money to create the appearance of legitimate wealth. The past two decades have witnessed an alarming expansion of the money laundering statutes. As a result, the current law applies to a wide range of activities and is a trap for unwary individuals and businesses that inflicts felony convictions, overly harsh prison sentences, and ruinous asset forfeiture.

- **How is the *current* law already overbroad and problematic in its application?**

  - Former Deputy Attorney General Larry Thompson has observed that the federal money laundering statutes "potentially reach many legitimate business transactions. The result is that businesses are subject to overreaching investigations and prosecutions for conduct unrelated to drug trafficking or organized crime. These investigations and prosecutions are extremely disruptive for business and expensive to defend."
  - Outside the context of drug trafficking, money laundering charges generally result in sentences greater than the sentences imposed for the underlying offense itself. This is despite the fact that, in many cases, the alleged "laundering" adds no additional harm and does not remotely resemble "laundering" as that term is commonly understood.
  - Piling on money laundering charges for the same conduct that constitutes the predicate offense allows prosecutors to obtain easy and often unjust plea bargains and forfeitures.
  - Spending illegal proceeds, even without any attempt to obfuscate their source, may trigger money laundering charges against the criminal *and* the merchant who knowingly accepts his money. Individuals and businesses who handle dirty money with no actual knowledge of the underlying offense are nonetheless vulnerable.

- **H.R. 1793 seeks to legislatively reverse *Cuellar v. United States* – how does that make the situation worse?**

  - In *Cuellar*, the Court held that secretive transportation of cash is insufficient for a money laundering conviction; the government must prove that the *purpose* of the transportation was to conceal the nature, location, or ownership of criminal proceeds. *Cuellar v. United States*, 128 S. Ct. 1994 (2008).
  - Reversing *Cuellar*, so that a money laundering conviction could rest solely on evidence that the defendant "hid" ill-gotten money, casts the money laundering net far too wide.
  - As a result, anyone carrying alleged "proceeds" will be exposed to conviction and forfeiture of the money--without direct proof that the money came from drugs or other specified crimes. The government will ask the jury to infer that the money must come from some sort of criminal activity (e.g., "Why would anyone carry a lot of cash if they aren't a criminal?").
  - There is simply no justification for this, given the ability of the government to charge the underlying conduct and perhaps one of the numerous other money laundering, cash-reporting or anti-smuggling statutes.

- **H.R. 1793 also seeks to legislatively reverse *United States* v. *Santos* – how does that make the situation worse?**

  - In *Santos*, the Court correctly limited the term "proceeds," as used in the principal money laundering statute, to the profits of a crime, not its gross receipts. *United States v. Santos*, 128 S. Ct. 2020 (U.S. 2008).
  - Before *Santos*, expansive interpretations of "proceeds" exacerbated inappropriate and unfair use of the money laundering statute to "tack on" additional charges and dramatically increase penalties based on conduct that is virtually indistinguishable from the underlying offense.
  - Allowing the government to charge both the underlying offense *and* money laundering for the gross receipts of the underlying offense is, as Justice Stevens wrote in *Santos*, "tantamount to double jeopardy."

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