YES, THAT IS MONEY LAUNDERING. OH WAIT, IT'S NOT: THE IMPACT OF *CUELLAR* ON CONCEALMENT MONEY LAUNDERING CASE LAW

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INTRODUCTION

Money laundering has traditionally been thought of as the transformation of tainted money in order to make it appear to have come from a legitimate source. One way to do this is to conceal or disguise money in order to make it harder to trace the proceeds back to their illicit origins. Federal money laundering charges are controlled by the companion statutes 18 U.S.C. §§ 1956, 1957. It makes a difference what section of the money laundering statute the government brings charges under. There are a number of money laundering charges contained within the statute including, among others, using the proceeds of unlawful activity to promote further crime or knowingly participating in a transaction to avoid a reporting requirement under state or federal law.[1] Specifically, concealment money laundering is described as transactions involving illicit proceeds executed "to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity[.]"[2] Evidence of concealment must be substantial.[3] While it is not necessary to prove intent to conceal in order to convict someone of money laundering in general, it is necessary to prove intent to get a conviction for *concealment* money laundering.[4] Therefore, in order to bring a successful concealment money laundering charge, prosecutors must show that (1) "the property involved in a financial transaction represents the proceeds of some form of unlawful activity"[5] and (2) the defendant knew that the transaction was designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the unlawful proceeds.[6] The terms design and intent can be equated in this context because the statute makes clear that a scheme must have been intended to conceal the proceeds or designed in such a manner that concealment was the scheme's intention.

1. *See* 18 U.S.C. § 1956(a)(1)(A)(i), (B)(ii) (2014) (containing a list of charges associated with money laundering).

2. 18 U.S.C. § 1956(a)(1)(B)(i) (2014).

3. United States v. Majors, 196 F.3d 1206, 1213 (11th Cir. 1999).

4. *See, e.g.*, 18 U.S.C. § 1956 (b)(1) (2014) (creating money laundering liability for individuals knowingly transporting illegal proceeds).

5. 18 U.S.C. § 1956(a)(1) (2014).

6. 18 U.S.C. § 1956(a)(1)(B)(i) (2014).

Concealment money laundering can be accomplished in a number of ways. One common method of concealment money laundering is to place the tainted funds in another person's name. Indeed, courts have found that "a design or intent to conceal the nature, the source, or the ownership of unlawfully obtained proceeds may be inferred when a defendant transfers those proceeds into the control of others with whom the defendant has a very close relationship."[7] Intent to conceal can also be inferred from the use of unlawful proceeds to buy assets in another person's name.[8] Some courts have even found defendants guilty of money laundering when they transferred funds between accounts in the defendants' own names.[9] This interpretation is not unreasonable given that it is not necessary for a defendant to completely remove all traces of his or her involvement in order to satisfy the design or intent element.[10] However, the judicial circuits have applied divergent standards in determining what kinds of transfers constitute concealment money laundering. While courts have no problem agreeing over what constitutes the proceeds of an unlawful activity, the circuits have split as to what types of acts permit an inference of intent to conceal.

In some circuits, the act of putting unlawful proceeds in a third party's name on its own is sufficient to demonstrate intent to conceal. For example, the Tenth Circuit has reasoned that:

> [W]hile a showing of simply spending money in one's own name will generally not support a money laundering conviction, using a third party, for example, a business entity or a relative, to purchase goods on one's behalf or from which one will benefit usually constitutes sufficient proof of a design to conceal.[11]

Meanwhile, the Eleventh Circuit seems more interested in whether the funds were actually more concealed as a result of the transfer:

> [A] money laundering concealment conviction . . . requires evidence of something more than a simple transfer of funds between two accounts, each bearing the parties' correct name.

7. United States v. Bowman, 235 F.3d 1113, 1116 (8th Cir. 2000). *See also* United States v. Willey, 57 F.3d 1374, 1387 (5th Cir. 1995) ("[A] transfer from one third party to another supports a reasonable inference of a design to conceal because it moves the money further away from the defendant than it was before the transfer.").

8. United States v. Shoff, 151 F.3d 889, 892 (8th Cir. 1998).

9. *See, e.g.*, United States v. Norman, 143 F.3d 375, 377 (8th Cir. 1998) (finding that the defendant could be found guilty of money laundering even though he used his own name and made no effort to conceal his identity in the transactions forming the basis of the money laundering charges).

10. *Willey*, 57 F.3d at 1386.

11. *Willey*, 57 F.3d at 1384–85 (describing the Tenth Circuit's analysis in United States v. Garcia-Emanuel, 14 F.3d 1469 (10th Cir. 1994)).

> There must be some evidence that the funds are more concealed after the transaction is completed than before. Decisions by our sister circuits also support this conclusion.[12]

It is important to note that 18 U.S.C. § 1956 is a money laundering statute and not a money spending statute. Merely spending unlawful proceeds does not automatically provide a basis for a money laundering conviction. "[I]t is the concealing or disguising of the funds and not their spending that is prohibited by" § 1956(a)(1)(B)(i).[13] Furthermore, putting funds or buying assets in another's name is also not illegal on its own; but when considered alongside other legal but suspicious activities, it can give rise to an inference of money laundering.[14]

This Paper analyzes the current circuit split on what constitutes concealment money laundering. Specifically, it considers whether the Supreme Court's novel money laundering decision in *Regalado Cuellar v. United States*, which set a more stringent standard for what is sufficient for an intent to conceal, has altered this split at all.[15] Part I of this Paper will give a brief overview of the legislative history of the money laundering statutes. Part II explores the circuit split regarding the standard of proof necessary to convict someone of concealment laundering and the different grounds upon which defendants had been convicted before the *Cuellar* decision. Part III describes the case *Regalado Cuellar v. United States* and its impact on how courts must now conduct their analysis in concealment money laundering cases. Part IV looks at cases that were decided after *Cuellar* and how courts' approaches have and also have not changed. Finally, Part V recommends that (1) courts should continue to look at the traditional indicators of concealment as a starting point, (2) circumstantial evidence ought to be allowed to show inferred intent but it must be paired with "objective" evidence as well, and (3) courts need to more strictly follow *Cuellar*, despite the holding's issues, in order to maintain consistency in concealment money laundering case law and to adhere to the primary purpose of the statute.

12. United States v. Johnson, 440 F.3d 1286, 1293 (11th Cir. 2006).

13. MARVIN G. PICKHOLZ ET AL., *Types of Violations*, 21 SECURITIES CRIMES § 6:19 (Database updated November 2014). *See also Money Laundering*, EXEC. LEGAL SUMMARY 53 (Database updated June 2015) ("An intent to conceal is commonly found where the defendant uses a false name or shell corporation to hide his or her identity. This requirement may also be met where third parties are involved to conceal the funds. However, the buying of personal goods alone does not show an intent to conceal.").

14. Rachel Ratliff, *Third-Party Money Laundering: Problems of Proof and Prosecutorial Discretion*, 7 STAN. L. & POL'Y REV. 173, 178 (1996).

15. Cuellar v. United States, 553 U.S. 550 (2008).

I. LEGISLATIVE HISTORY

Money laundering was not always controlled by a primary federal statute. Prior to the statutes eventually codified at 18 U.S.C. §§ 1956, 1957, the federal government relied on a combination of Title 31 currency transaction reporting statutes, Title 21 conspiracy provisions, and Title 18 conspiracy statutes to prosecute money laundering activities.[16] The money laundering legislation developed from a combination of changes in conspiracy law and forfeiture law, as well as the challenges facing authorities in enforcing the currency transaction reporting requirements of the Bank Secrecy Act.[17]

From a historical perspective, the money laundering statutes were also a response to the pressing social issues of the time. Urbanization in the 1980s and 1990s fueled drug trafficking.[18] The huge profits generated by drug cartels and the increase of schemes to circumvent currency reporting laws led President Reagan to form the "President's Commission on Organized Crime" through Executive Order 12,435.[19] The purpose of the Commission was to investigate organized crime.[20] Part of its responsibilities were to "evaluate Federal laws pertinent to the effort to combat organized crime," and to make recommendations to improve law enforcement efforts.[21] The Commission concluded that "money laundering is the lifeblood of organized crime"[22] and "[w]ithout the means to launder money . . . organized crime could not flourish as it now does."[23] At the time, the primary means of detecting money launderers was through the Bank Secrecy Act, which imposes reporting requirements on financial

16. Daniel L. Snedigar, *Loose Change: The Seventh Circuit Misses an Opportunity to Clarify Money Laundering in* United States v. Haddad, 2 SEVENTH CIRCUIT REV. 605, 607 (2007).

17. G. Richard Strafer, *Money Laundering: The Crime of the '90's*, 27 AM. CRIM. L. REV. 149, 150 (1989).

18. Daniel H. Cicchini, Note, *From Urbanization to Globalization: Using the Federal Money Laundering and Civil Asset Forfeiture Statutes in the Twenty-First Century Drug War*, 41 RUTGERS L.J. 741, 745 (2010).

19. *See* Exec. Order No. 12,435, 48 Fed. Reg. 34,723 (Aug. 1, 1983) (establishing a commission to examine organized crime).

20. *Id*.

21. *Id*.

22. *Cover letter* to PRESIDENT'S COMM'N ON ORGANIZED CRIME, THE CASH CONNECTION: ORGANIZED CRIME, FINANCIAL INSTITUTIONS, AND MONEY LAUNDERING, (1984), https://www.ncjrs.gov/pdffiles1/Digitization/166517NCJRS.pdf (last visited Nov. 24, 2015), *archived at* https://perma.cc/7TW2-PS8Y.

23. PRESIDENT'S COMM'N ON ORGANIZED CRIME, THE CASH CONNECTION: ORGANIZED CRIME, FINANCIAL INSTITUTIONS, AND MONEY LAUNDERING, 3 (1984), https://www.ncjrs.gov/pdffiles1/Digitization/166517NCJRS.pdf (last visited Nov. 24, 2015), *archived at* https://perma.cc/7TW2-PS8Y.

institutions for transactions above a threshold amount.[24] The Commission made a number of recommendations regarding amendments to the Bank Secrecy Act in order to tighten the restrictions on money launderers.[25] However, it recognized that these recommendations did not directly target money laundering activities.[26] The Bank Secrecy Act only allowed law enforcement to penalize money launderers indirectly by punishing those who willfully violated the Act in the course of laundering their illicit funds.[27] However, money launderers who complied with the recordkeeping and recording requirements of the Act, which they often did, could not be touched unless the government could show that they also violated another federal statute.[28] Therefore, the Commission opined that the federal government must strike directly at the heart of the problem by criminalizing the use of financial institutions by money launderers.[29] The Commission even prepared draft legislation in their report,[30] and "[i]n response to the commission's findings, Congress passed the Money Laundering Control Act of 1986, . . . which was codified in 18 U.S.C. §§ 1956, 1957."[31]

Two related reports from the Senate and House of Representatives provide valuable insight into the purpose of the money laundering statute.[32] The legislative history makes it clear that the statute was designed to create a new federal crime rather than to further penalize the underlying criminal conduct.[33] However, not all aspects of the original proposal were incorporated into the final statute. For example, the House Report suggested that the Money Laundering Control Act would penalize engaging in a financial transaction using criminally derived property, thereby encompassing virtually all activity involving illicit funds.[34] However, in 1988, then-Senator Joe Biden emphasized that the purpose of this amendment was to enhance the ability of law enforcement officers "to obtain evidence necessary to convict *money launderers*,"[35] not just money spenders. Thus, what had originally developed as a method to hinder

24. *Id*. at 8.
25. *Id*. at 59-61.
26. *Id*. at 61.
27. *Id*.
28. *Id*.
29. *Id*. at 62.
30. *See id*. at 65-82 (containing the draft legislation).
31. Snedigar, *supra* note 16, at 607.
32. *See generally* S. REP. NO. 99-433 (1986); H.R. REP. NO. 99-855 (1986) (discussing Congressional intent in the enactment of the money laundering statute).
33. *See* S. REP. NO. 99-433, at 1-2; H.R. REP. NO. 99-855, at 7 (creating the new Federal crime of money laundering).
34. H.R. REP. NO. 99-855, at 13.
35. 134 CONG. REC. S17, at 365 (1988) (emphasis added).

organized crime became a targeted money laundering statute that is still in effect today.

II. CIRCUIT SPLIT PRE-*CUELLAR*

An individual can put money in another's name in a number of ways including depositing money into a bank account that bears someone else's name, conducting transactions in another person's name, or buying property and placing the title in the name of someone other than the buyer. All of the circuits agree that putting money or assets into a third party's name is indicative of money laundering. What differs among the circuits is whether that act alone is sufficient to convict a defendant of concealment money laundering or if they need to consider additional facts before conviction.

A number of circuits have found that simply putting unlawful proceeds into a third party's name is sufficient indication of intent to conceal. In *United States v. Wilkinson*, the defendants transferred fraudulently obtained funds to their other businesses, causing the primary business to record the transfers on its books using false names for the companies.[36] This transaction could be characterized as an attempt to conceal ownership. The Fourth Circuit held that doctoring the books with the false names and submitting reports to another company using those names was sufficient to sustain the money laundering charge.[37]

Meanwhile, the Fifth Circuit seems to require more than the simple transfer of unlawful assets into another person's name in order to sustain a concealment money laundering conviction. For example, transferring money from one account in an individual's name to another account in the same individual's name is insufficient to support an inference that the particular transaction was intended to conceal.[38] This contrast with the Fourth Circuit's opinion in *Wilkinson* is not that surprising since transferring money into an account in one's own name does not conceal ownership. Still, the Fifth Circuit acknowledges that the use of third persons is usually sufficient to demonstrate intent to conceal.[39] For example, it found intent to conceal in *United States v. Powers*, in which it held that depositing checks into a third-party corporation's bank account

36. United States v. Wilkinson, 137 F.3d 214, 222-23 (4th Cir. 1998).

37. *Id.*

38. *See* United States v. Willey, 57 F.3d 1374, 1388 (5th Cir. 1995) (holding that evidence was insufficient to find that debtor committed offense of money laundering with respect to check issued to debtor's girlfriend from her brokerage account and deposited by her into one of her personal checking accounts).

39. United States v. Pipkin, 114 F.3d 528, 534 (5th Cir. 1997).

was sufficient to demonstrate intent to conceal.[40]

The Tenth Circuit provided the following list of some of the types of conduct that can support a jury finding a defendant engaged in transactional money laundering:

> [S]tatements by a defendant probative of intent to conceal; unusual secrecy surrounding the transaction; structuring the transaction in a way 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.[41]

However, while these activities may support a conclusion of guilt, they are not necessarily sufficient to convict a defendant on their own. Many money laundering cases require factual analysis and judges decide them on a case-by-case basis. The differing facts among cases are perhaps the main reason that the circuits have struggled to agree on a single standard.

A. *Circuits Agree That the Money Laundering Statute Is Not a Spending Statute*

One area where the courts have agreed is the purpose of the statute. The money laundering statute is a statute meant to punish money laundering and nothing more. While the statute is admittedly broad, there is widespread agreement among the circuits that it does not criminalize the mere act of spending illicit proceeds.[42]

The Sixth Circuit in particular has emphasized that the money laundering statute is not a spending statute. The buying of personal goods with unlawful proceeds alone does not show intent to conceal. For example, in *United States v. Marshall*, the defendant stole money from an ATM, which he then used to purchase a Rolex watch, a diamond tennis bracelet, and wine.[43] The court found that the government could not infer intent to disguise the money in violation of section 1956.[44] It stated that "Congress did not intend for this law to be treated as a 'money spending

40. United States v. Powers, 168 F.3d 741, 754 (5th Cir. 1999).

41. United States v. Garcia-Emanuel, 14 F.3d 1469, 1475-76 (10th Cir. 1994) (emphasis added).

42. *See* Matthew R. Auten, Note and Comment, *Money Spending or Money Laundering: The Fine Line Between Legal and Illegal Financial Transactions*, 33 PACE L. REV. 1231, 1232 (2013) (exploring courts' approaches to differentiating money laundering from money spending).

43. United States v. Marshall, 248 F.3d 525, 531 (6th Cir. 2001), *cert. denied*, 534 U.S. 925 (2001).

44. *Id.* at 539-40.

statute,'" and "the government must produce more evidence than the simple fact of a retail purchase using illegally obtained money in order to prove the 'intent to disguise' element of § 1956(a)(1)(B)(i)."[45] Therefore, showing that a defendant spent illicit funds is not a feasible path for prosecutors in money laundering cases.

B. *Factors in Determining Intent to Conceal*

While money laundering cases tend to be particularly fact-specific, there are certain types of transactions that courts consistently believe imply an intention to conceal. These include unusual financial transactions and transactions indicating a subjective intent to conceal by the defendant. Conversely, some circuits are hesitant to find intent in cases where there is a dearth of evidence in the record indicating that a defendant's actions were designed to conceal. For example, courts will typically infer that open and conspicuous transactions indicate that defendants were not trying to conceal the funds as much they were merely spending their illegally obtained funds.

1. Unusual Financial Transactions

A highly unusual financial transaction can support a reasonable inference of design to conceal.[46] The Eleventh Circuit set out several factors that are helpful in determining whether a transaction was designed to conceal including, among others, statements by a defendant probative of intent to conceal, unusual secrecy surrounding the transaction, highly irregular features of the transaction, and a series of unusual financial moves cumulating in the transaction.[47] In *United States v. Magluta*, a drug dealer paid his attorney fees with a check from an Israeli bank account under a fictitious name.[48] His associates transferred cash between themselves, then transported the money from Miami to New York, and ultimately moved the

45. *Id.* at 538.

46. *See* United States v. Willey, 57 F.3d 1374, 1387 (5th Cir. 1995) (finding enough evidence in a transaction where defendant's girlfriend deposited a check issued by the trust into a personal checking account in her name, thereby allowing defendant to get the money out of his girlfriend's brokerage account without creating any record of his involvement in the transaction). *See also* United States v. Clements, 73 F.3d 1330, 1340 (5th Cir. 1996) (defendant repeatedly converted received funds into multiple cashier's checks made out to himself, which he then deposited into his wife's separate bank account thereby "obscur[ing] the link between the money and . . . himself" and "undeniably made it more difficult for the IRS to detect his evasion").

47. United States v. Majors, 196 F.3d 1206, 1213 n.18 (11th Cir. 1999)

48. United States v. Magluta, 418 F.3d 1166, 1175 (11th Cir. 2005)

funds to the Israeli bank from which the defendant wrote the check to pay his attorney.[49] The use of so many intermediate steps implied a design to conceal the source of the funds.[50] The court found that the cash transfers, the movement of the cash from Miami to New York to Israel, and the use of a foreign account held in a false name were "a series of unusual financial moves" which culminated in the defendant writing the checks.[51] Therefore, there was an air of "unusual secrecy surround[ing] the transaction[s]" and the defendant's use of his associates and the fictitious name demonstrated his use of "third parties to conceal the real owner" of the money in the foreign account.[52] The final transaction with the defendant writing checks on a foreign account held in a false name was itself also "highly irregular."[53] The Eleventh Circuit therefore affirmed the defendant's convictions on the substantive money laundering counts since he used such an elaborate plan to conceal the fact that he was using drug proceeds to pay his attorneys.[54]

The fact that unusual financial transactions can be used as evidence of concealment laundering is consistent with the idea that courts care about the subjective intent of the money launderer. Using complicated financial transactions to disguise money shows that a defendant took affirmative steps to make it harder to trace the funds, which provides an even stronger indication of a purpose to conceal.

2. Open and Conspicuous Transactions

Courts have typically found that situations where defendants used the products that they purchased with their unlawful proceeds in an open and conspicuous manner do not satisfy the "intent to conceal" element. The rationale behind these decisions appears to be a practical one in that if a defendant flaunted his or her ill-gotten gains in such an obvious manner, then he or she must not have had an intent to conceal them. Of course, this is all moot if there is evidence in the record of a clear intent to conceal despite using their purchases openly and obviously. This also goes back to the point that section 1956 is not a money spending statute: without an intent or design to conceal, a defendant is only guilty of purchasing goods with illicit funds, which is not chargeable under this statute.

49. *Id*.

50. *See id*. at 1177 ("Magluta went to great pains to conceal the fact that he was using drug proceeds to pay his lawyers.").

51. *Id*. at 1176-77 (quoting *Majors*, 196 F.3d at 1213).

52. *Id*. (quoting *Majors*, 196 F.3d at 1213).

53. *Id*. (quoting *Majors*, 196 F.3d at 1213).

54. *Id*. at 1177.

The Tenth Circuit held in *United States v. Sanders* that the defendant's purchase of a car with the title in his daughter's name was insufficient to support his money laundering convictions.[55] The government contended that this transaction was designed to conceal or disguise proceeds from the sale of drugs, thereby concealing the source of the funds.[56] Factors that the court considered included the fact that the daughter was present in the car lot at the time of the purchase, the daughter shared the defendant's last name, and the defendant and his wife used the car conspicuously.[57] The court believed that all of these factors "undermine[d] the government's argument . . . that the . . . purchase involved the requisite design of concealment."[58] The Tenth Circuit maintained this position in *United States v. Lovett*.[59] In that case, the purchase of a car and ring with unlawfully obtained funds from the defendant's grandmother's bank accounts was insufficient to support the money laundering charges.[60] When the defendant purchased the car, he made statements to the car dealer about "how he had done really well in the siding business."[61] The court said that there was no indication that the defendant made statements in an effort to justify or explain his ability to purchase the car with cash.[62] The statements were insufficient evidence to show an intent to conceal and in the absence of any evidence of concealment, the "defendant's open and conspicuous manner of purchasing the [vehicle] undermines any inference of concealment or disguise."[63] The court applied the same reasoning to the purchase of the ring, finding that the inference of concealment from the unusual manner of payment was usurped by the defendant's open and conspicuous purchase,[64] thereby solidifying the point that purchasing items alone cannot sustain a money laundering conviction since it is not a money spending statute.

However, this defendant-friendly assumption may be negated by concrete evidence of intent to conceal. For example, *United States v. Garcia-Emanuel* involved the purchase of a pickup truck and a horse trailer in the defendant's wife's name, among other goods.[65] Despite finding that the purchase of certain horses, a different horse trailer, a covered riding

55. United States v. Sanders, 928 F.2d 940, 946 (10th Cir. 1991).
56. *Id.* at 945-46.
57. *Id.* at 946.
58. *Id.*
59. United States v. Lovett, 964 F.2d 1029, 1036-37 (10th Cir. 1992).
60. *Id.*
61. *Id.* at 1036.
62. *Id.*
63. *Id.*
64. *Id.* at 1037.
65. United States v. Garcia-Emanuel, 14 F.3d 1469, 1478 (10th Cir. 1994).

area, and round pen were insufficient to demonstrate a design to conceal, the Tenth Circuit in the same opinion deemed this particular transaction as probative of an intent to conceal because a witness testified that the defendant put those assets in his wife's name in order to deceive the IRS.[66] Of course, the reliability of the witness may come into question. Still, *Garcia-Emanuel* recognized that the purchase of goods in a third party's name alone was insufficient to convict someone for concealment money laundering in the Tenth Circuit without more reliable evidence of intent. Without this design to conceal, the government would have nothing because, once again, section 1956 is not a money spending statute.

The Fifth Circuit had a similar holding in *United States v. Dobbs*.[67] In *Dobbs*, the defendant was a cattle rancher who had been charged with money laundering for depositing illegal cattle sale proceeds in his wife's bank account used to pay ordinary household and ranch expenses.[68] The court found that this typical and straightforward banking transaction failed to demonstrate intent to conceal the origin of the money.[69] Transactions that were "open and notorious" and involved no third parties to make purchases or hide defendant's activity did not constitute money laundering.[70]

3. Subjective Intent of the Money Launderer

Some circuits looked at the knowledge and intent of the money launderer, as opposed to objectively looking at the defendants' acts, and therefore seemed to already be following the line of reasoning later solidified by *Cuellar*.

The Eighth Circuit has focused on the defendant's knowledge that transferring the funds to a third party would result in concealing the money or making it more difficult to trace. For example, in *United States v. Norman*, the defendant bought a Range Rover in his business's name.[71] The defendant contended that he could not be found guilty of money laundering because he used his own name and made no effort to conceal his identity in the transaction that was the basis for the money laundering charges.[72] The court rejected these claims and asserted that the point was not whether the car seller was deceived as to who the defendant was but

66. *Id.* at 1478.
67. United States v. Dobbs, 63 F.3d 391 (5th Cir. 1995).
68. *Id.* at 397-98.
69. *Id.* at 397.
70. *Id.*
71. United States v. Norman, 143 F.3d 375, 377 (8th Cir. 1998).
72. *Id.* at 376.

rather that by changing the proceeds of an unlawful activity from a bank account into the form of an automobile, the defendant "made it more difficult for the true owner of the money to trace what had happened to it."[73] Thus, the Eighth Circuit affirmed a money laundering conviction in a case where everything was in the defendant's name yet there was still inferable intent to conceal. It has made clear that "[i]t is the transformation of unlawfully gained cash into another form . . . that evinces the design to conceal."[74] For example, the use of drug proceeds to purchase stock in the name of a third party would meet the concealing test.[75] This reasoning has its issues. The "transformation of unlawfully gained cash into another form" seems like another way of saying buying things with illicit proceeds. However, both case law and the statute's legislative history have emphasized that the money laundering statute is not a money spending statute. Unfortunately, the Eighth Circuit did not address this issue in its reasoning.

In *United States v. Heaps*, the defendant was a drug dealer who instructed that payment be wire transferred to his wife.[76] The wife testified at trial that she picked up the money at the direction of the defendant, cashed the money orders, and brought the money to the apartment that she shared with the defendant where she then put the cash in a money box.[77] The government argued that the defendant instructed the money be transferred to his wife rather than to himself in order to conceal and disguise the source and ownership of the funds from law enforcement authorities.[78] The only witness who testified to the purpose of the arrangement was the wife, who asserted that the only reason that she picked up the money was because the defendant was away and would not be able to go himself.[79] The defense also pointed to a taped conversation in evidence in which the defendant told his co-conspirators that they did not need to send the money to his wife again.[80] The defense argued that since the defendant was available at the time of the second wiring, there was no reason to have the money sent to his wife.[81] The Fourth Circuit was convinced by this reasoning and held that the fact that the money was wired

73. *Id.* at 377.

74. United States v. Bowman, 235 F.3d 1113, 1116 (8th Cir. 2000).

75. United States v. Martin, 933 F.2d 609 (8th Cir. 1991).

76. United States v. Heaps, 39 F.3d 479, 481 (4th Cir. 1994). At the time of the transactions, the woman was the defendant's girlfriend, but at the time of trial, she was his wife.

77. *Id.* at 482.

78. *Id.* at 487.

79. *Id.*

80. *Id.*

81. *Id.*

to the defendant's wife instead of to the defendant was not enough to show concealment because the record showed that it was for the purpose of *convenience* and not concealment.[82] This interpretation may be a bit generous, but it demonstrates how courts are concerned about the intent to conceal and not just activities that may have an effect of concealing. This type of reasoning is reminiscent of what the Supreme Court later held in *Cuellar*, which indicates that focusing on an alleged money launderer's subjective purpose is not a novel notion.

C. *Specific Examples of Acts Transferring to Third Party*

Multiple circuits agree that employing a third party to conceal the defendant's identity is one of the most obvious kinds of evidence that would sustain intent to conceal.[83] Two specific ways that this is accomplished is by placing funds in a relative's name or by purchasing cars and writing someone else's name in the car titles.

1. Placing Funds In A Relative's Name

Incidents where an individual places illegally obtained funds or assets in a relative's name may be probative of intent to conceal due to the close relationship that the defendant shares with the third party. By placing illicit proceeds in a relative's possession, the defendant could still theoretically regain access at a later date relatively easily. In contrast, if a defendant puts money into a bank account in a person's name with whom he or she has no legal relationship, the chances of those funds making their way back to the defendant would appear to diminish because that third party would need to grant the defendant access.

The First, Second, Fifth, and Eighth Circuits have found depositing unlawful proceeds in a relative's name probative of intent to conceal or disguise. In *United States v. Hall*, the defendant gave his sister $16,000 in cash in order to purchase a money order in her name payable to a truck dealer.[84] The defendant then used the money order to purchase a dump truck.[85] The First Circuit reasoned that the defendant's use of his sister's

82. *Id.*

83. United States v. Marshall, 248 F.3d 525, 531 (6th Cir. 2001), *cert. denied*, 534 U.S. 925 (2001). *See also* United States v. Lovett, 964 F.2d 1029, 1034 n.3 (10th Cir. 1992) (asserting the same proposition); United States v. Elder, 90 F.3d 1110, 1124-25 (6th Cir. 1996) (asserting the same proposition in a case where defendant caused third parties to wire transfer drug proceeds to members of his family for his benefit, without defendant's name appearing on any records, thus concealing defendant's ownership of the funds).

84. United States v. Hall, 434 F.3d 42, 53 (1st Cir. 2006).

85. *Id.*

name on the money order evidenced intent to conceal because it was an "attempt[] to disguise the source of the proceeds by having it pass through another person's control."[86]

The Second Circuit has taken a more literal approach to the text of the statute and has still found that the use of a third party is a sufficient indication of concealment money laundering: "[Section] 1956 (a)(1)(B)(i) does not require an attempt to conceal the identity of the defendant; a scheme that conceals only the source of the funds falls within the purview of the statute."[87] Nonetheless, the court held that the concealment element was satisfied in *United States v. Stephenson*, where the defendant's wife put the defendant's illegal drug proceeds into a safe deposit box in her name.[88] The Second Circuit has also noted that transferring proceeds to an account solely held by the defendant's wife would be a circumstance that might support an inference of deliberate concealment.[89]

The Fifth Circuit has reasoned that using a third party like a relative to purchase goods on one's behalf or from which one will benefit would usually constitute adequate proof of a design to conceal.[90] In *United States v. Short*, the Fifth Circuit found sufficient evidence to satisfy the concealment element when the defendant's wife placed illegally obtained money in a safe deposit box under another relative's name.[91] The Eighth Circuit came to similar conclusions in *United States v. Bowman*.[92] In *Bowman*, the defendant deposited criminally derived funds into his girlfriend's account that she later used to buy personal items.[93] The defendant argued that he was simply financing his girlfriend's checking account but the court found that this type of behavior "evinces the design to conceal."[94]

The Tenth Circuit had not specifically addressed how the concealment element applied when a defendant deposits unlawful proceeds into a family member's account prior to *United States v. Shepard*, in which the defendant deposited checks that were made out to a third party and endorsed by the third party and the defendant into his daughter's bank account.[95] The court heavily considered other circuits' approaches when conducting its analysis:

86. *Id.*
87. United States v. Kinzler, 55 F.3d 70, 73 (2d Cir. 1995).
88. United States v. Stephenson, 183 F.3d 110, 120 (2d Cir. 1999).
89. United States v. Davidson, 175 F. App'x 399, 401 (2d Cir. 2006).
90. United States v. Willey, 57 F.3d 1374, 1385 (5th Cir. 1995) (describing the Tenth Circuit's analysis in *United States v. Garcia-Emanuel*, 14 F.3d 1469 (10th Cir. 1994)).
91. United States v. Short, 181 F.3d 620, 626 (5th Cir. 1999).
92. United States v. Bowman, 235 F.3d 1113, 1116 (8th Cir. 2000).
93. *Id.*
94. *Id.*
95. United States v. Shepard, 396 F.3d 1116, 1122 (10th Cir. 2005).

> [I]n light of *Garcia-Emanuel*, other circuits' treatment of illegal deposits into a relative's account, and our standard of review of a jury verdict, we find sufficient evidence of concealment to support Mr. Shepard's conviction . . . . A rational jury could reasonably conclude that Mr. Shepard intended to conceal or disguise the unlawfully gained checks when he deposited them in his daughter's account.[96]

In *United States v. Lovett*, the Tenth Circuit also found that the evidence was sufficient to support money laundering counts related to the defendant's purchase of a pickup truck for his brother and the purchase of a house for himself and his wife.[97] These goods were purchased with funds that the defendant unlawfully withdrew from his grandmother's account.[98] The brother testified that the defendant specifically instructed him to not tell their grandmother about the purchase of the pickup truck.[99] The court found that the purchase of the truck was designed to conceal the illegal source of the proceeds from individuals who would likely expose the defendant's underlying fraudulent activities.[100] By purchasing the truck, the defendant "both disguised the nature of the [funds] . . . and also prevented discovery of the fraudulent activities that generated the funds ultimately used to purchase the [truck]."[101] Therefore, the use of a relative's name has been accepted by multiple circuits as sufficient evidence to prove a design to conceal.

2. Car Titling

Placing car titles in another's name is an additional means that money launderers have used to conceal unlawful proceeds. In *United States v. Antzoulatos*, a car dealer sold numerous cars to alleged drug dealers, titling them in other real and fictitious names or in the name of the car dealership.[102] One car was titled in the name of a customer's one-year-old nephew.[103] The Seventh Circuit reasoned that "[t]he mistitling of cars is relevant in this case only because of the number of incidents involved and only then when viewed in conjunction with the other facts of this case. There is certainly nothing illegal about buying a car and placing that car in

96. *Id.*
97. United States v. Lovett, 964 F.2d 1029, 1033-36 (10th Cir. 1992).
98. *Id.* at 1031-32.
99. *Id.* at 1033.
100. *Id.* at 1034.
101. *Id.*
102. United States v. Antzoulatos, 962 F.2d 720, 721-22 (7th Cir. 1992).
103. *Id.* at 722.

someone else's name. . . ."[104] Thus, although nominee titling, like transferring money to a third party, is not illegal per se, in most cases it will be taken as circumstantial evidence of concealment.[105] In *United States v. Barnett*, the Seventh Circuit affirmed the money laundering conviction of an attorney who advised his client to title cars in the attorney's name and the client's brother's name.[106] The Fourth Circuit also found intent to conceal in an analogous case. In *United States v. Adra*, the defendant was the manager of an automobile leasing business where he developed a financing program catered toward high-credit-risk lessee clientele.[107] The transactions that led to the indictments in this case each involved a similar fact pattern in which a young man came into the leasing company with an older woman to apply for an automobile lease.[108] In each case, the defendant would direct the female companion to fill out the lease application with her own income and credit information as the "nominee" of the lease.[109] However, the woman would not make any of the payments nor be given possession of the car.[110] Instead, the actual lessee would make the payments and possess the car.[111] It later came out that the actual lessee in each of these transactions was engaged in drug trafficking.[112] Thus, in this specific situation, titling the car in another person's name was a clear indication of concealment.

The Eleventh Circuit has taken a similar view about putting a car title in the name of someone other than the buyer. In *United States v. Garcia-Jaimes*, there was evidence that one of the defendants had instructed that a car be put in his wife's name in the course of a scheme involving the transportation of illegal proceeds.[113] The court found that the plan allowed the owner of the money to place it in the hands of a third party, which makes it difficult to determine both the owner and source of the money, and concluded that there was sufficient evidence for a jury to conclude that the defendants had engaged in concealment money laundering.[114] Therefore, putting a car title in another's name is also accepted as a general

104. *Id.* at 727 n.4.

105. Ratliff, *supra* note 14, at 178.

106. United States v. Barnett, No. 91-3758, 1993 U.S. App. LEXIS 28555, at *1 (7th Cir. Aug. 18, 1993).

107. United States v. Adra, No. 93-5797, 1994 U.S. App. LEXIS 35200, at *1 (4th Cir. Dec. 13, 1994).

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

113. United States v. Garcia-Jaimes, 484 F.3d 1311, 1322 (11th Cir. 2007), *overruled by* Moreno-Gonzalez v. United States, 533 U.S. 1091 (2008) (mem.).

114. *Id.*

indication of concealment so long as there are also additional facts present that support this conclusion.

III. *REGALADO CUELLAR V. UNITED STATES*

The analysis in concealment money laundering changed in 2008 with the decision in *Cuellar v. United States*. While some circuits had already been focusing on whether the intent of the defendant was to conceal, other circuits had been taking an objective approach and evaluating whether a defendant's actions made it more likely that funds could not be traced. After the Supreme Court's decision in *Cuellar*, the standard has been set to assess the subjective intent of the alleged money launderer.

In *Cuellar*, the defendant was stopped by a trooper while he was driving in Texas to the Mexico border.[115] Upon further inspection, the trooper found a secret compartment under the car's rear floorboard and inside was $81,000 in cash wrapped in plastic bags.[116] This case involved the provision of the money laundering statute that prohibits international transportation of the proceeds of unlawful activity.[117] Cuellar was convicted in the district court but his conviction was reversed at the Fifth Circuit.[118] The Supreme Court affirmed the Fifth Circuit's decision and noted that "[b]ecause the Fifth Circuit used 'design' to refer not to the purpose of the transportation but to the manner in which it was carried out, its use of the term in this context was consistent with the alternate meaning of 'design' as structure or arrangement."[119] In other words, *how* one moves the money is distinct from *why* one moves the money.[120] The Supreme Court found that the secretive aspects of the transportation were employed to facilitate the transportation, but not necessarily that secrecy was the purpose of the transportation.[121] By construing the facts in this way, the Supreme Court equated the "design" element of section 1956 with purpose. In order to convict the defendant, the government had to demonstrate that he did more than merely hide the money during its transport.[122] The holding in *Cuellar* meant that "the inevitable effort to conceal every crime from law enforcement d[id] not transform every financial transaction or transportation involving criminally derived funds into money

115. Cuellar v. United States, 553 U.S. 550, 553 (2008).
116. *Id.* at 554.
117. *Id.* at 553.
118. *Id.* at 554-55.
119. *Id.* at 564.
120. *Id.* at 566.
121. *Id.* at 567.
122. *Id.* at 553.

laundering."[123]

In their concurrence, Justices Alito and Kennedy argued that intent to conceal can be inferred.[124] They contended that the government could have shown inferred intent if it had introduced evidence showing that (1) taking money across the border had one of the effects of concealing the nature, location, source, ownership, or control of funds and (2) it was commonly known in the relevant circles that taking money across the border would have one of these effects.[125] This would have helped the inference that the scheme was designed to conceal and the person carrying out the scheme knew that this was the design. Here, while the government did introduce evidence about the effects of carrying money across the border, it did not point to any evidence in the record that would allow the fact finder to infer knowledge beyond a reasonable doubt.[126] *Cuellar* resolved a circuit split by rejecting the requirement of an "attempt to create the appearance of legitimate wealth" for money laundering.[127] The question that remained post-*Cuellar* was whether the "design to conceal" requirement had teeth.[128]

IV. POST-*CUELLAR*

In light of its decision in *Cuellar*, the Supreme Court vacated and remanded four cases on the same day.[129] After, circuit courts have generally followed the Supreme Court's orders to focus on the why instead of the how. The courts have required that the government prove more than showing that a transaction had a concealing effect or that the transaction was structured to conceal the nature of illicit funds.[130] Instead, "[c]oncealment – even deliberate concealment – as mere facilitation of some *other* purpose, is not enough to convict. What is required, rather, is

123. Barry Boss et al., *Money Laundering Defense After* Santos *and* Regalado Cuellar, CHAMPION, Sept. 2008, at 12, 12.

124. Cuellar v. United States, 553 U.S. 550, 569 (2008).

125. *Id*.

126. *Id*. at 570.

127. Samuel P. Schnider, *The "Design to Conceal" Requirement and the Elusive Culprits of Money-Laundering*, 48 CRIM. L. BULL. 2, 2 (2012).

128. *Id*.

129. The Supreme Court vacated Moreno-Gonzalez v. United States, 128 U.S. 2901 (2008) (mem.), *rev'd* 313 F. App'x 215 (11th Cir. 2008); Balderas v. United States, 128 U.S. 2901 (2008) (mem.), *rev'd* 237 F. App'x 921 (5th Cir. 2007); Nunez-Virraizabal v. United States, 128 U.S. 2901 (2008) (mem.), *rev'd sub nom*. United States v. Garcia-Jaimes, 484 F.3d 1311 (11th Cir. 2007); Ness v. United States, 128 U.S. 2900 (2008) (mem.), *rev'd* 466 F.3d 79 (2d Cir. 2006).

130. *See, e.g*., United States v. Faulkenberry, 614 F.3d 573, 586 (6th Cir. 2010) (explaining that concealment must be the purpose of the transaction).

that concealment be an animating purpose of the transaction."[131]

A. *Application of Concealment Standard After Cuellar*

Cuellar does not appear to have resolved the varied liberality with which the different circuits construed the standard for concealment money laundering under section 1956. Courts often still rely on the traditional indicators of money laundering. For example, in one case the Fifth Circuit opined:

> Here, the government relied on [the defendant]'s transfers of funds from his operating accounts to investment accounts, and on [defendant]'s purchases of property and investments – all done openly, in his name – as proof of concealment money laundering. . . . [Defendant] did not use false names, third parties, or any particularly complicated financial maneuvers, which are usual hallmarks of an intent to conceal. . . . We thus find that there is insufficient evidence of concealment money laundering . . . .[132]

There have also been instances where it appears that the *Cuellar* standard was not properly applied. For example, in *United States v. Carter*, the defendant's husband had underreported taxes, and the defendant had signed those joint tax returns.[133] During the course of their divorce proceedings, the defendant acted under the advice of her lawyer and moved $3,900,000 into previously existing accounts under only her name.[134] As a result of these actions, the defendant was later convicted of twenty-two counts of money laundering, eighteen of which were under section 1956.[135] During sentencing, the district court explained:

> I believe that at some point [defendant] must have known her husband was stealing money because their spending went from one level to an entirely different level. . . . There is no indication that she had anything to do with the fraud. It does, however, seem to me that she must have been aware at some point that her husband was doing something illegal because of the vast amount of money that all of a sudden came into his hands . . . .[136]

This reasoning seems to indicate that the court believed the defendant knew that the source of these funds was illegal, not that her actions were designed to conceal the money from authorities rather than just her

131. *Id.*
132. United States v. Valdez, 726 F.3d 684, 690 (5th Cir. 2013).
133. United States v. Carter, 538 F.3d 784, 786 (7th Cir. 2008).
134. *Id.*
135. *Id.* at 787.
136. *Id.* at 788-89.

husband. Granted, *Carter* was decided only a couple of months after *Cuellar*, but that does not change the fact that its holding appears to be inconsistent.

Other circuits have remained more loyal to the Supreme Court's directive in *Cuellar*. The First Circuit applied *Cuellar* in its decision in *United States v. Cedeno-Perez*.[137] Here, the defendant was charged with conspiracy to commit money laundering after delivering more than $200,000 to an undercover agent posing as a money launderer.[138] The court distinguished this case from *Cuellar* because here, instead of transportation, the underlying criminal conduct was a financial transaction.[139] The defendant engaged in conduct that was commonly known to conceal such as employing code words, establishing meeting locations where there would be no police, hiding bags of packaged money in his car, and making deliveries in mall parking lots.[140] The court felt that these actions had the effects of hiding the money and rendering the transaction relatively suspicious, which could lead a rational jury to have "reasoned that, since it is commonly known that engaging in such conduct would have the effect of concealing the location, source, ownership or control of the money being transferred, it was [the defendant]'s purpose in so acting to conceal those traits of the proceeds."[141] This analysis seems to coincide with Justices Alito and Kennedy's suggestion in their *Cuellar* concurrence opinion.

The Second Circuit distinguished *United States v. Mercedes* from *Cuellar* by pointing out that the purpose of the attempted money transaction in this case was to conceal the source of narcotics proceeds rather than transporting cash.[142] Nonetheless, the court still cited and applied the rule established in *Cuellar* in affirming the defendant's money laundering convictions. During the plea colloquy in the district court, the defendant was specifically asked, "[w]as the purpose to hide the fact that [the money] was from narcotics?" to which the defendant replied, "I believe so."[143] Based on *Cuellar*, the court found that this statement substantiated that the purpose of the transaction was to conceal the source of the narcotics proceeds and provided sufficient evidence that the transaction violated the concealment clause of the money laundering statute.[144] Of course, not all defendants make it that easy for the court by admitting a concealment purpose for their actions. While *Cuellar* has

137. United States v. Cedeno-Perez, 579 F.3d 54, 60 (1st Cir. 2009).
138. *Id.* at 55.
139. *Id.* at 61.
140. *Id.*
141. *Id.*
142. United States v. Mercedes, 283 F. App'x 862, 864 (2d Cir. 2008).
143. *Id.*
144. *Id.*

changed the focus of courts, it has not prevented them from making inferences as to defendants' ultimate purposes or intents.

1. Intent to Conceal Can Be Inferred from Circumstantial Evidence

In the absence of an explicit admission of intent to conceal, courts have still affirmed concealment money laundering convictions on the basis of circumstantial evidence.[145] In fact, according to the Fourth Circuit, *Cuellar* made clear that a jury may infer the requisite design to conceal based on circumstantial evidence.[146]

The Eighth Circuit has followed this approach. In *United States v. Delgado*, the defendant gave his wife's brother, Santa-Anna, cashier's checks and money orders to pay off the mortgage Santa-Anna owed on a residence.[147] The government also produced evidence that the brother had signed over the residence to a company the defendant's wife had formed three days earlier.[148] The court found that this supported an inference that the defendant designed the transaction to disguise the illegal source and nature of the funds that he used to finance the property transfer, which sustained his money laundering conviction.[149] Therefore, the standard that has developed is whether a reasonable trier of fact could determine that a defendant acted with the purpose of concealing rather than concealment being a collateral consequence of the transaction.[150]

In *United States v. Slagg*, the Eighth Circuit concluded that there was "ample circumstantial evidence" to allow a reasonable jury to infer that at least some of the money gathered for the defendant's $50,000 bail was drug proceeds and the defendant was therefore guilty of conspiring to violate the money laundering statute.[151] In that case, the government presented evidence of telephone conversations that the defendant had with his mother and an unidentified man regarding his bail money.[152] In those recordings, the unidentified man described bringing the money to the courthouse as

145. *See*, *e.g.*, United States v. Cruzado-Laureano, 404 F.3d 470, 483 (1st Cir. 2005) ("A conviction requires evidence of intent to disguise or conceal the transaction, whether from direct evidence, like the defendant's own statements, or from *circumstantial evidence*, like the use of a third party to disguise the true owner, or unusual secrecy." (emphasis added)).

146. United States v. Day, 700 F.3d 713, 724 (4th Cir. 2012).

147. United States v. Delgado, 653 F.3d 729, 738 (8th Cir. 2011).

148. *Id.*

149. *Id.*

150. *See*, *e.g.*, United States v. Wilkes, 662 F.3d 524, 547 (9th Cir. 2011) (affirming defendant's money laundering conviction because a reasonable finder of fact could determine that defendant acted with an intent to conceal).

151. United States v. Slagg, 651 F.3d 832, 844 (8th Cir. 2011).

152. *Id.* at 838.

"the one thing" impeding them from bailing the defendant out of jail and that using the money as bail would "risk it 'disappear[ing].'"[153] The defendant's mother ultimately retained two bail bondsmen to deliver the bail money to the courthouse.[154] On appeal, the defendant argued that the evidence was insufficient to prove that he knew that the bail-posting transaction was "designed in whole or in part . . . to conceal or disguise" a statutorily listed attribute of the money.[155] The court applied *Cuellar* and found that had the sole purpose of the agreement been to bail the defendant out of jail, the transaction would not violate the money laundering statute since it is not a "money spending statute."[156] However, from these conversations, a jury could reasonably infer that the defendant knew his colleagues planned to conduct the transaction in such a way as to "'conceal or disguise the nature, . . . the source, the ownership or the control'" of the money and reduce the risk of the money's "'disappearing'" – in other words, later being seized as drug proceeds.[157]

The Third Circuit used the same reasoning in *United States v. Young*.[158] In *Young*, a man named Myron Punter was a crack cocaine dealer in Alaska who became concerned that he was casting suspicion upon himself by sending a high volume of wire transfers and money orders in his own name.[159] The defendant was a childhood friend of Isiah Fawkes, who was Punter's cocaine source in the Virgin Islands. Fawkes instructed Punter to send the money to the defendant and other individuals who would then turn the money over to him.[160] At trial, the jury heard evidence that Fawkes provided Punter with names of individuals in the Virgin Islands to whom the drug payments should be sent, including the defendant, in order to "lessen suspicion."[161] The court concluded that the evidence was sufficient to permit a reasonable jury to find that the defendant knew that the money wire transactions in question were designed to conceal the true "nature, location, source, ownership, or control" of the funds and affirmed his money laundering conviction.[162]

It seems that so long as a reasonable jury could find or infer that a defendant acted with the design to conceal the nature, location, source,

153. *Id*.
154. *Id*.
155. *Id*. at 845 (quoting 18 U.S.C. § 1956(a)(2)(B)(i)).
156. *Id*. (quoting United States v. Shoff, 151 F.3d 889, 892 (8th Cir. 1998)).
157. *Id*. at 846 (citing 18 U.S.C. § 1956(a)(1)(B)(i)).
158. United States v. Young, 532 F. App'x 259 (3d Cir. 2013).
159. *Id*. at 260.
160. *Id*. at 260-61.
161. *Id*. at 263.
162. *Id*. at 263-64 (quoting United States v. Richardson, 658 F.3d 333, 338 (3d Cir. 2011)).

ownership, or control of funds in the course of a financial transaction, those cases would not contradict *Cuellar*, and the money laundering conviction would stand. However, while this threshold does not seem like an unbearably tough one to surpass, there are still a number of cases post-*Cuellar* where the government has not been able to meet this burden.

2. Cases that Failed the Cuellar Test

In *United States v. Law*, the defendants had been under investigation by the FBI for drug trafficking.[163] The government argued at trial that the defendants conspired to launder the proceeds of their narcotics activities by using those proceeds to pay a mortgage.[164] However, the mortgage payments provided the defendants with legitimate benefits, such as rental income and a base for the drug operation.[165] The D.C. Circuit found that the defendants' explanations for the mortgage payments created sufficient reasonable doubt and no jury could conclude that that the purpose in paying the mortgage was to conceal the source of illegally obtained funds.[166] In other words, a reasonable jury could not conclude that the "why" of defendants' actions was for the purpose of concealing.

The Third Circuit came to a similar conclusion in *United States v. Richardson*.[167] In *Richardson*, the defendant's boyfriend was a drug dealer, and she lied on a mortgage application regarding her income so that her boyfriend's name would not need to be included.[168] The court found that this did not satisfy the elements needed for concealment money laundering because the defendant was not trying to hide the boyfriend's involvement but was simply trying to get a loan without his bad credit impacting it.[169] Regardless of whether the case was decided correctly, *Richardson* demonstrates how although a court or jury could imagine a scenario where the defendant acted with the purpose of concealing, defendants can also rebut this conclusion by giving a plausible alternative explanation for their actions. Since the "why" of an action is so subjective, as long as the justification that a defendant presents for why they did what they did is reasonable, a court is likely to side with the defendant after *Cuellar*.

3. Examples of Cases that Were Reversed or Would Be Reversed

163. United States v. Law, 528 F.3d 888, 892 (D.C. Cir. 2008).
164. *Id.* at 895.
165. *Id.* at 897.
166. *Id.* at 896.
167. United States v. Richardson, 658 F.3d 333 (3d Cir. 2011).
168. *Id.* at 336.
169. *Id.* at 342.

After Cuellar

Cuellar was a major decision that had significant ramifications in money laundering case law. A few decisions that were either reversed by *Cuellar* or would be decided differently had the *Cuellar* standard been in effect are discussed below.

United States v. Ness is one of the cases that the Supreme Court reversed and remanded in light of its decision in *Cuellar*.[170] The defendant in *Ness* had been convicted of one count of conspiring to commit money laundering and one substantive money laundering count.[171] The facts in *Ness* were very similar to the situation in *Cuellar*. The defendant ran an armored car carrier business that he used to receive millions of dollars in narcotics proceeds from drug traffickers and then transport the money abroad.[172] The defendant avoided leaving a paper trail, hid the proceeds in packages of jewelry, and used code words during his operation.[173] The Second Circuit reasoned that this evidence only showed "how" he moved the money, but not "why."[174] Under *Cuellar*, such evidence was insufficient to convict the defendant of concealment money laundering because it only demonstrated an intent to conceal the transportation and not that the transportation was designed to conceal.[175] Therefore, as a result of *Cuellar*, the Second Circuit overturned the convictions.

In *Garcia-Jaimes*, which was previously discussed in Part II, the defendant put a car in his wife's name that the court interpreted as an attempt to make his illegal proceeds more difficult to trace.[176] This decision was vacated by *Moreno-Gonzalez*, which is one in the group of cases that the Supreme Court reversed and remanded after *Cuellar*.[177] The Supreme Court did not explain its reasoning except for attributing the decision to its recent *Cuellar* decision. The most probable explanation is that the Eleventh Circuit looked at the objective effect of the act instead of the defendant's purpose. The court found that the defendants hiding the money in cars was an attempt to conceal the money and the plan allowed them to place the money in the hands of a third party, which made it difficult to determine both the owner and source of the money, and as a result, a jury could conclude that the defendants had engaged in

170. *See supra* note 129 (listing cases vacated and remanded by the Supreme Court in light of Cuellar v. United States, 553 U.S. 550 (2008)).

171. United States v. Ness, 466 F.3d 79, 80 (2d Cir. 2006).

172. United States v. Ness, 565 F.3d 73, 76 (2d Cir. 2009).

173. *Id.* at 78.

174. *Id.*

175. *Id.*

176. United States v. Garcia-Jaimes, 484 F.3d 1311, 1322 (11th Cir. 2007).

177. Moreno-Gonzalez v. United States, 128 U.S. 2901 (2008).

concealment money laundering.[178] There was no mention of whether the design of the defendants' actions was meant to conceal, and it therefore failed the *Cuellar* standard.

There are also cases that were not explicitly overturned by *Cuellar* but would most likely come out differently if they were decided today. For example, in *United States v. Johnson*, the issue regarding concealment money laundering was whether the defendant depositing illicit proceeds into his mother's account was for the purpose of concealing the origins of that money.[179] The Eleventh Circuit concluded that the evidence was insufficient to support the defendant's money laundering convictions because the government presented "no evidence of unusual secrecy, questionable structuring, highly irregular features of the transfers, or multiple movements of the same funds that assisted in concealing their original source. Nothing about these transfers suggests that [the defendant] attempted to avoid detection or attention."[180] However, once again, there was no explanation of the "why" and the decision only focused on the "how." By only focusing on the transaction itself, the court gave basically no weight to what the purpose of the transaction might have been. Therefore, this case would have most likely come out the other way had it been decided after *Cuellar*.

Two Eighth Circuit cases that were both discussed in Part II, *United States v. Norman* and *United States v. Bowman*, would also have different results post-*Cuellar*. In *Norman*, the court reasoned that the point was whether the defendant made the funds more difficult to trace by using illicit proceeds to purchase a car.[181] However, *Cuellar* tells us that the point is not whether an action actually makes funds more difficult to trace, but whether that was the defendant's purpose. The *Norman* decision remains good law, yet the decision does not enlighten us as to what the "why" was. Similarly, in *Bowman*, the defendant put illegal proceeds into his girlfriend's account, which she then used for personal expenses.[182] The court found that this transformation showed concealment.[183] Once again, without actually pointing to any evidence in the record, the court inferred that the defendant's actions were designed to conceal. These decisions were problematic then and remain problematic now. First, they do not satisfy the *Cuellar* standard. Second, both *Norman* and *Bowman* interpret buying goods with illicit proceeds as money laundering when the statute

178. *Garcia-Jaimes*, 484 F.3d at 1322 (11th Cir. 2007).
179. United States v. Johnson, 440 F.3d 1286, 1291 (11th Cir. 2006).
180. *Id.* at 1291-92.
181. United States v. Norman, 143 F.3d 375, 377 (8th Cir. 1998).
182. United States v. Bowman, 235 F.3d 1113, 1116 (8th Cir. 2000).
183. *Id.*

explicitly does not cover money spending. This issue is explored more in depth in Part V, subsection 3.

There are, of course, many other cases that one could list to demonstrate *Cuellar*'s impact. The primary takeaway is that *Cuellar* significantly altered the standard against which concealment money laundering cases are judged and would theoretically impact a great deal of preceding case law.

B. *What Has Remained the Same Post-Cuellar*

1. Concealment Through Structuring

Showing that a defendant structured transactions is one way that the government has successfully demonstrated concealment. After *Cuellar*, there continues to be a trend of convicting individuals for concealment money laundering because of their transaction structuring. There is no monetary limit under 18 U.S.C. § 1956, and a prosecutor could theoretically charge a defendant for laundering even a penny under this statute. Transaction structuring is controlled by the statute 31 U.S.C. § 5324, although there is a structuring provision in section 1956(a)(1)(B)(ii). Financial institutions are required to report any transactions over $10,000, and it is a criminal act to structure transactions, such as breaking up a single transaction above the threshold amount into multiple transactions, for the purpose of evading reporting requirements.[184] Even though structuring offenses could be charged through § 1956, courts have found transaction structuring to be indicative of concealment and instead affirmed convictions based on the concealment portion of the statute.

In *United States v. Williams*, the defendant was found guilty of a drug conspiracy during which he structured transactions.[185] The defendant claimed that he structured his transactions in order to avoid reporting requirements, not to launder money.[186] The government argued that his structuring *was itself* evidence of the defendant's design to conceal.[187] In addition, the defendant used bank accounts in his own name and with fictitious names to negotiate structured deposits in order to avoid law enforcement attention regarding the nature and source of his funds.[188] This

184. 31 U.S.C. § 5324(a) (2014).

185. United States v. Williams, 605 F.3d 556, 560, 564 (8th Cir. 2010), *rehearing and rehearing en banc denied*, No. 4:11-CV-02059-RWS, 2012 WL 6216790, at *8 (E.D. Mo. Dec. 13, 2012).

186. *Id.* at 564.

187. *Id.*

188. *Id.* at 566.

caused the Eighth Circuit to go into a detailed analysis and application of other cases under the *Cuellar* standard since *why* the money was hidden was more important than the mere fact that it was hidden.[189]

The *Williams* court first cited and discussed a Fifth Circuit case, *United States v. Brown*, which discussed *Cuellar* in depth and applied the *Cuellar* standard.[190] In *Brown*, the defendants were pharmacists convicted of a compilation of offenses, including money laundering arising from their distribution of medication using false prescriptions.[191] The government proved concealment money laundering under § 1956(a)(1)(B)(i) by demonstrating that some of the defendants made payments for illegal prescription drugs in structured cash transactions.[192] The Fifth Circuit held that the government's evidence was sufficient to satisfy the *Cuellar* standard because the defendants "intended to and did make it more difficult for the government to trace and demonstrate the nature of these funds."[193] The aspects of "classic" money laundering that were present included the fact that the transactions were in cash so that they were not easily tracked and that most of the deposits were below ten thousand dollars so as to avoid triggering any reporting requirements that might lead to unwanted attention regarding the details of the money.[194] Importantly, the Fifth Circuit noted that "[s]ome of this behavior could also be reached by the 'structuring' provisions of the money laundering statute, . . . but the government charged concealment and has produced sufficient evidence to support those charges."[195]

The *Williams* court also found a Fourth Circuit case, *United States v. Villarini*, to be instructive.[196] In *Villarini*, the defendant embezzled $83,000, which she thereafter deposited in structured amounts into a bank account that she opened.[197] The three deposits in question ranged in amounts from $1,000 to $2,200.[198] Like the defendant in *Brown*, the defendant here argued that the Government had insufficient evidence to sustain her money laundering conviction.[199] While the court addressed that the defendant could also have been charged through the structuring provision under § 1056(a)(1)(B)(ii), it found that the fact the defendant

189. *Id.* at 565.
190. United States v. Brown, 553 F.3d 768, 787 (5th Cir. 2008).
191. *Id.* at 773, 775.
192. *Id.* at 787.
193. *Id.*
194. *Id.*
195. *Id.*
196. United States v. Williams, 605 F.3d 556, 565 (8th Cir. 2010).
197. United States v. Villarini, 238 F.3d 530, 532 (4th Cir. 2001).
198. *Id.*
199. *Id.*

made four transactions "at two-to-four-week intervals, gives rise to a reasonable inference that the transactions were designed to avoid suspicion or to give the appearance that she had a legitimate income stream."[200]

Thus, following *Brown* and *Villarini*, the Eighth Circuit found that the evidence in *Williams* was sufficient to prove concealment under the *Cuellar* standard.[201] It reasoned that:

> Depositing money as cash with a fictitious name as the purchaser does more than "merely hide" the money from reporting requirements; we hold that a reasonable jury could find that [the defendant]'s intent was to conceal the nature of the funds. If [the defendant]'s only goal was to avoid reporting requirements, there would be no need to use a fictitious name. The use of [a fake name] demonstrates that [the defendant] wanted not only to shield himself from reporting requirements but also to actively conceal the nature or source of the funds.[202]

The use of fictitious names appears to have been what pushed the Eighth Circuit over the edge regarding design to conceal. It distinguished this case from its previous decision in *United States v. Herron* where the defendants wired proceeds of a drug operation to their own bank accounts using non-structured amounts.[203] The defendants in *Herron* used their own names when sending the money, and "there is no evidence to suggest that the money was received by any persons other than those named in the . . . records."[204] Therefore, there was no effort to conceal since the defendants merely moved illegal proceeds from one place to another and were not trying to disguise the source or ownership of the funds. This made the case distinguishable from *Williams* because in *Williams*, the defendant took affirmative steps toward concealing the nature and source of the funds by adopting fictitious names.[205] Thus, a reasonable jury could conclude that the defendant was not just "hiding" money but in fact designing the scheme to disguise the source of the money.[206]

It should be noted that *Villarini* was decided in 2001, which was long before *Cuellar*. Therefore, courts' acceptance of transaction structuring as a form of concealment money laundering is not a recent development. However, it is one of the areas that has not seemed to be significantly impacted by the *Cuellar* decision since courts will still readily accept

200. *Id.* at 533.
201. *Williams*, 605 F.3d at 566.
202. *Id.*
203. United States v. Herron, 97 F.3d 234, 236-37 (8th Cir. 1996).
204. *Id.* at 237.
205. *Williams*, 605 F.3d at 566-67.
206. *Id.* at 567.

structuring as sufficient to demonstrate a purpose to conceal.

C. *Implications for the Cuellar Standard*

The *Cuellar* standard seems to be here to stay. In 2009, in response to the financial crisis, Congress passed the Fraud Enforcement Recovery Act (FERA), which added additional crimes to the criminal code.[207] Prior to the statute's passage, the National Association of Criminal Defense Lawyers (NACDL) anticipated that some members of the House Judiciary Committee would introduce their own bills concerning fraud and money laundering, so the NACDL put forth extensive and persistent efforts to educate Capitol Hill on FERA's problematic provisions.[208] Various bills were introduced regarding the various topics covered by FERA including Representative Lungren's Money Laundering Correction Act of 2009, which actually went against the NACDL's interests.[209] This act sought to legislatively reverse *United States v. Santos* and *Cuellar*.[210] If passed, the act would have amended the federal criminal code to allow a conviction for money laundering based on merely concealing or disguising monetary instruments and would have expanded the concept of monetary proceeds to include gross receipts.[211] The final bill was signed into law on May 20, 2009 and did not contain a legislative reversal of *Cuellar* but did legislatively reverse *Santos*.[212] As a result, *Cuellar* remains good law and the standard dictated in that case will continue to be followed by the courts for the foreseeable future.

D. *The Application of Cuellar Remains Unclear*

A number of recently decided cases highlight the inconsistencies in applying the *Cuellar* standard among various courts.

In *United States v. Rey*, the Third Circuit appeared to have reverted

207. The Fraud Enforcement and Recovery Act of 2009, Pub. L. No. 111-21, 123 Stat. 1617.

208. Tiffany M. Joslyn, *FERA's Silver Lining – An Account of NACDL's Efforts Combating Overcriminalization*, 33 CHAMPION 55 (2009).

209. H.R. 1793, 111th Cong. (2009).

210. *Id*. *See also* United States v. Santos, 553 U.S. 507, 514 (2008) (holding that "proceeds" of criminal activities applies only to criminal profits and not gross receipts); Cuellar v. United States, 553 U.S. 550, 568 (2008) (holding that in order to sustain a concealment money laundering conviction, the government must show that a defendant intended to conceal illegal proceeds and the concealment was not merely the logical result of a defendant's actions).

211. H.R. 1793, 111th Cong. (2009).

212. Joslyn, *supra* note 208, at 56.

back to the pre-*Cuellar* ways and allowed courts to draw even stronger conclusions regarding intent from relatively ambiguous evidence.[213] The defendant in *Rey* was the CEO of a company who swindled individuals into investing in her company by telling them that the company traded in currencies, commodities, and precious stones.[214] She also told them that their funds were guaranteed, that they would never leave the firm's bank account, and that they would receive their principal back no matter what.[215] In reality, the defendant transferred funds from the company's bank accounts to several other bank accounts for her own purposes.[216] The government offered evidence that the defendant transferred investors' funds to the Hong Kong bank accounts in the name of corporations that had no apparent ties to the defendant's company.[217] The money was never invested but either spent or transferred back to individuals in the United States, thereby concealing the location of the funds.[218] The Third Circuit reasoned that a jury could infer that the defendant wanted it to be difficult for investors to discover the Hong Kong corporations and could also infer that the defendant wired the funds for purposes of concealing the money before it was spent or re-routed back to the defendant and her co-conspirators in the United States.[219] Given this evidence, the court found that "there was ample evidence to support [the defendant]'s conviction for international money laundering."[220] The Third Circuit thus appears to support a standard that enables courts to make inferences much like they did before *Cuellar* and deviate from the announced test.

The First Circuit displayed a similar level of generosity in *United States v. Ledee*.[221] In *Ledee*, a brother and sister were charged with multiple bankruptcy-related crimes allegedly designed to conceal the brother's assets in order to avoid his obligations to creditors.[222] The brother transferred property to the name of a corporation which he also owned.[223] He did not disclose this transaction when he filed for bankruptcy and also lied to creditors about the property's ownership.[224] The illegal transaction itself involved converting payments into eight cashier's checks that were

213. United States v. Rey, 595 F. App'x 152, 153 (3d Cir. 2014).
214. *Id.*
215. *Id.*
216. *Id.*
217. *Id.* at 156.
218. *Id.* at 153.
219. *Id.* at 156.
220. *Id.*
221. United States v. Ledee, 772 F.3d 21 (1st Cir. 2014).
222. *Id.* at 25.
223. *Id.*
224. *Id.* at 25-26.

payable to four individuals who had no financial interest in the transaction or the corporation.[225] On appeal, the defendants asserted that the government failed to show that the money was derived from unlawful activity and that they intended to conceal the money.[226] The First Circuit concluded that "[t]his claim warrants little discussion" since the evidence supported a finding that the defendant initiated a "sham sale . . . and arranged the convoluted handling of the proceeds, to further his earlier fraudulent transfer and concealment of the property."[227] This is the only explanation that the court provides. While the evidence is undoubtedly suspicious, given that the *Cuellar* standard is so restrictive, it seems rather casual for the court to state one of the major issues on appeal warrants limited discussion. By simply stating that the evidence is sufficient, the First Circuit gives no guidance on how to interpret future cases.

V. RECOMMENDATIONS

Courts have always cared about the intent of the defendant. Indeed, the money laundering statute itself requires that the defendant know that the transaction is designed in whole or in part "to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity[.]"[228] However, under the *Cuellar* standard, the government must now show that concealment was one of the defendant's ultimate purposes and not just an effect.

A. *Courts Should Continue to Look At the Traditional Indicators of Concealment*

As previously discussed, traditional indicators of concealment include:

> [S]tatements by a defendant probative of intent to conceal; unusual secrecy surrounding the transaction; structuring the transaction in a way 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.[229]

Money laundering case law is an area where there is not a lot of uniformity.

225. *Id*. at 27-28.
226. *Id*. at 35.
227. *Id*.
228. 18 U.S.C. § 1956(a)(1)(B)(i).
229. United States v. Garcia-Emanuel, 14 F.3d 1469, 1475-76 (10th Cir. 1994) (footnotes omitted).

Yet courts agree that these situations are ones where there is a strong indication of intent to conceal. Courts need to take advantage of uniformity where they can get it. I am not suggesting that if a specific fact pattern fits into one of these categories there should be a presumption of concealment. However, it should definitely be a factor that carries weight in the ultimate deliberation. Using this as a starting point also should not raise concerns about blanket applications of guilt or innocence. Money laundering cases tend to be very fact-specific given the clever schemes that conspirators attempt to develop. Because of this characteristic of money laundering cases, courts will still inevitably have to analyze the specific circumstances in fine detail before turning to the backdrop of case law.

B. *Courts Ought to Allow Circumstantial Evidence to Show Intent As Long As the Government Can Also Point to Concrete Evidence to Support Its Claims*

Some courts have been relatively generous regarding their definition of intent by allowing juries to infer intent from circumstantial evidence. This approach seems arbitrary. For example, in *Rey*, the Third Circuit allowed the inference that the defendant wanted it to be difficult for the investors to trace the funds to the companies in Hong Kong and wired the money to those companies for the purpose of concealing the funds.[230] This type of inference asks courts to prod into multiple layers of a defendant's mind without concrete evidence. It is understandably difficult to prove subjective intent. However, *Cuellar* specifically tells courts that it is not whether an act conceals that matters, but it is the intent of the defendant that is most significant.[231] Indeed, the facts in *Rey* do not appear any stronger than the facts in *Ness*, which the Second Circuit held failed the *Cuellar* standard.[232] In *Ness*, the court found that the defendant avoiding a paper trail, hiding the proceeds in packages of jewelry, and using code words was only enough to show the "how," but not the "why."[233] Yet, wiring funds abroad is apparently enough to show a design to conceal in the Third Circuit.[234]

A more ideal approach would be one where a court looks at the affirmative steps that a defendant took to conceal his or her proceeds.[235]

230. United States v. Rey, 595 F. App'x 152, 156 (3d Cir. 2014).

231. Cuellar v. United States, 553 U.S. 550, 566 (2008).

232. United States v. Ness, 565 F.3d 73, 78 (2d Cir. 2009).

233. *Id.*

234. United States v. Rey, 595 F. App'x 152, 156 (3d Cir. 2014).

235. *See* United States v. Magluta, 418 F.3d 1166, 1177 (11th Cir. 2005) (examining several unusual things the defendant did in order to conceal the cash flow from his drug proceeds to his lawyers, which thus supported a conviction of money laundering under 18

The use of affirmative steps would be an objective way to assess a subjective criterion. While some circumstantial evidence is stronger than others, by allowing juries or judges to infer purposefulness from indirect evidence, courts are not staying true to the Supreme Court's mandate in *Cuellar*. Justice Alito suggested in his *Cuellar* concurrence that the government can show inferred intent through evidence that a specific action can have a concealing effect and that the defendant knew the action would have this type of effect.[236] I agree with Justice Alito and provide a similar recommendation. If an action is objectively known to have concealing effects, the reliance on circumstantial evidence becomes more concrete. As previously discussed, money laundering cases tend to be very fact specific, thus making it difficult to develop one uniform standard. However, by allowing this combination of circumstantial evidence and objectively known effects, courts would have a benchmark that allows for less subjective decisions and can be applied to a wide array of fact patterns.

Consider the following hypothetical set of facts. The defendant is a drug dealer who had a habit of hiring people to collect drug proceeds on his behalf and then had them deposit the proceeds in a bank account under the name of a company not associated with the drug dealer. This behavior is obviously objectively suspicious, but this evidence alone would not satisfy the *Cuellar* standard of showing the "why" and not just the "how." However, the government then calls a witness, who happens to also be a reformed drug dealer, to testify that it is common practice for drug dealers to hire someone else to pick up drug sale proceeds and then deposit them in an unassociated account for the purposes of concealing the funds. This would seem to satisfy Justice Alito's request for more specific evidence of inferred intent. Not only is the behavior indicative of concealment, but in this case, the government would have pointed to specific evidence that would help a trier of fact infer that the defendant knew his actions would conceal the illicit proceeds.

C. *Courts Need to Follow Cuellar More Strictly*

In many ways, *Cuellar* imposes a heavy burden for prosecutors to meet. Apart from a defendant saying that they were trying to "conceal the nature, location, source, ownership, or control of the illicit proceeds,"[237] how realistic is it that the government can point to evidence in the record that conclusively demonstrates intent to conceal? Justice Alito in *Cuellar* would allow the use of circumstantial evidence, but his opinion was a

U.S.C. § 1956(a)(1)(B)(i)).

236. *Cuellar*, 553 U.S. at 569.

237. United States v. Mercedes, 283 F. App'x 862, 863-64 (2d Cir. 2008).

concurrence and also dicta. Nonetheless, despite *Cuellar*'s shortcomings, it is still necessary for lower courts to follow its mandate to focus on the "why" of a defendant's actions and not just the "how."

The Supreme Court is still supreme and *stare decisis* requires that *Cuellar* continue to be followed. Money laundering has an international reach and impacts the economy at the national level.[238] We do not want different circuit courts applying different standards for a plethora of reasons. For one, money laundering cases should turn on the facts of each scenario, not procedural nuances regarding where the case is tried. It is also unfair to defendants that they could be acquitted in one state while convicted in another when the Supreme Court has already set out a standard under which the government failed to meet its burden. As long as *Cuellar* remains good law, lower courts need to follow it until another case comes along.

Furthermore, *Cuellar* provides a check in preventing the money laundering statute from becoming a money spending statute. The standard becomes more difficult to apply in more complicated transactions with multiple intermediate steps. For example, the Eighth Circuit found sufficient design to conceal in *Norman* when the defendant bought a Range Rover in his business's name.[239] While this decision is problematic because it infers intent from spending illicit proceeds, the Eighth Circuit's reasoning that the defendant bought the car in order to make it more difficult for the true owner of the money to trace what had happened to it does point to specific steps that the defendant took in order to conceal or disguise the location of the money. As discussed previously, purchasing goods with illegal funds is not chargeable under the money laundering statute, but if that purchase was made for the purposes of concealing those funds, then there would be a valid case for concealment money laundering. This can be seen in *Garcia-Emanuel*, where virtually every purchase was deemed insufficient to convict the defendant for concealment money laundering except for those goods that he put in his wife's name to deceive the IRS.[240] The question that remains is how to weigh the purchase against the intermediate steps in determining whether there was sufficient design to conceal. There must be some limit or the courts risk turning the statute into a money spending statute, which Congress has explicitly rejected. Courts

238. For an overview of the International Monetary Fund's fight against money laundering, see generally *The IMF and the Fight Against Money Laundering and the Financing of Terrorism*, INT'L MONETARY FUND, http://www.imf.org/external/np/exr/facts/pdf/aml.pdf (last visited Nov. 16, 2015), *archived at* http://perma.cc/SXP4-X2L6.

239. United States v. Norman, 143 F.3d 375, 377 (8th Cir. 1998).

240. United States v. Garcia-Emanuel, 14 F.3d 1469, 1476-78 (10th Cir. 1994).

ought to follow the Tenth Circuit's approach in *Garcia-Emanuel* and only find design to conceal when there is concrete evidence to support that proposition. Taking affirmative steps to transform funds into a different form is absolutely circumstantial evidence of a design to conceal. It would be difficult for any defendant to argue that moving funds between multiple bank accounts before ultimately purchasing a house would be for any other purpose other than to conceal the source, location, or ownership of those funds. For example, *Magluta* would probably still be decided the same way today because funneling money through so many channels to pay attorney fees would appear more than objectively suspicious.[241] Why would an individual go through so many people, countries, and bank accounts to pay his attorney fees when he could just write and mail a check himself? Even if he was not trying to conceal illicit funds, the facts make it seem pretty obvious that the defendant in *Magluta* was concealing *something*. It was not the spending of tainted funds, here to pay attorney fees, that was problematic but how that money reached the attorney that raised eyebrows.

However, when the circumstantial evidence of concealment is comprised solely of a defendant's purchases, those actions appear to fall outside the scope of the statute. The government could always try to get around this requirement by charging a defendant with promotion or conspiracy to money launder instead since concealment money laundering is not the only money laundering charge. Therefore, prosecutors may be better off charging as many different types of money laundering as the facts allow so that they do not remain pigeonholed to the strict standards for concealment charges.

VI. CONCLUSION

There are certain acts, such as using third parties to conceal the real owner of funds or assets, which are traditionally associated with "classic" concealment money laundering. However, many examples that courts point to as evidence of a purpose to conceal are only that—evidence. This can be seen by the jurisdictional differences in how courts have addressed this issue with respect to cases in which the defendant placed funds or car titles in another's name. The *Cuellar* decision did not change the red flags that alert courts to concealment money laundering, but it has concentrated the focus on the subjective intent of the defendant rather than whether an act could have the potential to conceal. This standard still leaves a good deal of discretion for courts to determine whether a defendant acted with

241. United States v. Magluta, 418 F.3d 1166, 1175 (11th Cir. 2005).

the requisite purpose. It also has not unfairly altered the burden of proof that the government must prove in order to obtain money laundering convictions. Thus, *Cuellar* has not really changed the money laundering game. It has not even really changed the rules. What *Cuellar* has changed is the objective of proof at trial, and lower courts need to recognize this rather than continue to follow their own whims. Courts may continue to search for the traditional indicators of concealment money laundering but they ought to point to the most concrete evidence and follow *Cuellar*'s mandate more strictly.