No. 17-4488

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JAMES MICHAEL FARRELL,

Defendant-Appellant.

No. 17-4488
Appeal from the United States District Court for the District of Maryland
(8:15-cr-562-RWT)

BRIEF OF AMICUS CURIAE THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS IN SUPPORT OF REVERSING MONEY LAUNDERING CONVICTIONS OF APPELLANT, JAMES MICHAEL FARRELL

NAT'L ASS'N OF CRIMINAL DEFENSE LAWYERS
David B. Smith
Elizabeth Franklin-Best
Vice-Chairpersons, Amicus Curiae Committee
1660 L Street, N.W.
Washington, D.C. 20036
Telephone: (202) 872-8600
Facsimile: (202) 872-8690

AKIN GUMP STRAUSS HAUER & FELD LLP
Catherine E. Creely
Robert S. Strauss Building
1333 New Hampshire Ave., N.W.
Washington, D.C. 20036
Telephone: (202) 887-4000
Facsimile: (202) 887-4288

Attorneys for Amicus Curiae

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 29, the National Association of Criminal Defense Lawyers (NACDL) does not have a parent corporation or issue stock, and consequently there exists no publicly held corporation that owns ten percent or more of its stock.

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INTEREST OF AMICUS CURIAE[1]

Amicus the National Association of Criminal Defense Lawyers (NACDL) is a non-profit voluntary professional bar association that pursues a three-fold mission of ensuring justice and due process for persons accused of crime; fostering the integrity, independence, and expertise of the criminal defense profession; and promoting the proper and fair administration of criminal justice. The NACDL files numerous *amicus* briefs each year in cases throughout the United States that present issues of importance to criminal defendants, criminal defense lawyers, and/or the criminal justice system as a whole. This case implicates all three. Here, the Appellant, James Michael Farrell, is a criminal defense lawyer convicted of multiple counts of money laundering under 18 U.S.C. § 1956 in connection with receipt and provision of fees for bona fide legal services. The jury was instructed that it could find the requisite statutory knowledge element under the doctrine of "willful blindness." The NACDL believes its views on the application of the willful blindness doctrine in the prosecution of criminal defense lawyers in money laundering cases, as well as the doctrine's impact on the criminal defense profession and the criminal justice system as a whole, will be of value to the Court.

[1] No counsel for any party authored this brief in whole or in part, and no person or entity other than *amicus curiae* made a monetary contribution intended to fund the brief's preparation or submission. As noted in the NACDL's motion for leave to file this *amicus curiae* brief, Mr. Farrell consents to its filing but the United States opposes.

Pursuant to Federal Rule of Appellate Procedure 29(a), the NACDL therefore respectfully submits this brief of *amicus curiae* in support of reversing Mr. Farrell's conviction on the money laundering counts (Counts 1-3, 5-7, and 12) of the indictment.

SUMMARY OF ARGUMENT

In a money laundering case, the government must prove beyond a reasonable doubt that a defendant acted "knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity." 18 U.S.C. § 1956(a). The government cannot meet its burden by relying on willful blindness as a fallback theory of knowledge, employed just in case the jury is unconvinced by evidence the government asserts demonstrates actual knowledge. A willful blindness jury instruction is only proper if it is justified by specific factual support in the record, apart from any evidence the government may claim supports actual knowledge. *See United States v. Jinwright*, 683 F.3d 471, 479 (4th Cir. 2012) (evidence consistent with actual knowledge did not preclude a willful blindness instruction when the government *also* presented separate evidence that the defendants "purposely avoided learning the fact[s] of their liability"); *United States v. Ebert*, No. 96-4871, 1999 U.S. App. LEXIS 8453, at *37 (4th Cir. May 3, 1999) (when the government's evidence is consistent with only actual knowledge, "[a]n ostrich instruction is not allowed"); *United States v. Whittington*, 26 F.3d 456,

463 (4th Cir. 1994) ("A deliberate avoidance instruction, like all jury instructions, is proper only if there is a foundation in evidence to support [a finding of deliberate avoidance].") (alteration in original) (internal quotation marks and citation omitted).

To obtain a willful blindness jury instruction, the government must introduce evidence of *both* the defendant's subjective belief that there was a high probability that a relevant fact existed, *and* that the defendant took affirmative steps to avoid confirming that belief. *Global-Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. 754, 769-70 (2011). When the government introduces no such evidence, a willful blindness instruction relieves the government of its burden of proof in violation of the defendant's due process rights. *In re Winship*, 397 U.S. 358, 364 (1970) ("Due process commands that no man shall lose his liberty unless the Government has borne the burden" of proving his "guilt beyond a reasonable doubt.").

In Mr. Farrell's case, the government did not present evidence of his subjective belief that funds he received for legal services were proceeds of unlawful activity, or evidence of any affirmative steps he took to avoid confirming any such belief. While the government may argue that evidence it claims supports actual knowledge justifies Mr. Farrell's conviction, pursuing both theories—actual knowledge and willful blindness—without the necessary factual record to support each theory independently is a legally flawed strategy that a jury is ill-equipped to

identify or correct. *Griffin v. United States*, 502 U.S. 46, 59 (1991) (explaining that "[j]urors are not generally equipped to determine whether a particular theory of conviction submitted to them is contrary to law," and when "jurors have been left the option of relying upon a legally inadequate theory, there is no reason to think that their own intelligence and expertise will save them from that error.").

Further, when willful blindness is used as a substitute for actual knowledge in the prosecution of a criminal defense attorney, it puts the Sixth Amendment rights of the attorney's clients at risk. Criminal defendants have a Sixth Amendment right to loyal counsel free from conflicts. *United States v. Tatum*, 943 F.2d 370, 375 (4th Cir. 1991) ("The effective performance of counsel requires meaningful compliance with the duty of loyalty and the duty to avoid conflicts of interest, and a breach of these basic duties can lead to ineffective representation."). If an attorney must investigate his own client to determine the source of legal fees or risk criminal liability himself, the attorney's interests conflict with those of his client in a manner that precludes the effective representation to which the client is constitutionally entitled. The government cannot be permitted to interfere in the attorney-client relationship by using the threat of prosecution to cause criminal defense attorneys to breach their relationship of trust with their criminal defendant clients.

That is why it is so troubling when the government prosecutes a criminal defense attorney under 18 U.S.C. § 1956 for the receipt of legal fees: it circumvents an otherwise applicable safe harbor that expressly exempts from criminal liability transactions over a certain amount that are "necessary to preserve a person's right to representation as guaranteed by the sixth amendment to the Constitution." 18 U.S.C. § 1957(f)(1). *See also United States v. Rutgard*, 116 F.3d 1270, 1291 (9th Cir. 1997) (noting that, without the safe harbor, "a drug dealer's check to his lawyer might have constituted a new federal felony."). Recognizing those constitutional risks, the Department of Justice (DOJ) has well-established policies regarding the prosecution of criminal defense lawyers for the receipt of fees for bona fide legal services, and generally disapproves of such prosecutions. The government in Mr. Farrell's case skirted those important policies.

For at least these reasons, the NACDL opposes the use of willful blindness as a substitute for a criminal defense lawyer's actual knowledge of the unlawful source of funds used to pay for bona fide legal services in a criminal case in the absence of an adequate factual basis. It endangers not only the due process rights of the attorney defendant, but also the Sixth Amendment rights of the attorney's clients, and the institution of criminal defense as a whole.

ARGUMENT

I. The Use of Willful Blindness As a Substitute for Actual Knowledge, Without an Appropriate Factual Basis, Lowers the Government's Burden of Proof and Infringes A Defendant's Due Process Rights.

The government's obligation to prove each and every element of the crimes it charges beyond a reasonable doubt is fundamental to every criminal defendant's constitutional right to due process. *See, e.g.*, *In re Winship*, 397 U.S. at 364 ("Due process commands that no man shall lose his liberty unless the Government has borne the burden" of proving his "guilt beyond a reasonable doubt."); *Sullivan v. Louisana*, 508 U.S. 275, 277-78 (1993) ("The prosecution bears the burden of proving all elements of the offense charged, and must persuade the factfinder 'beyond a reasonable doubt' of the facts necessary to establish each of those elements.") (internal citation omitted). In a money laundering case like Mr. Farrell's, brought under 18 U.S.C. § 1956, the government's burden includes proving beyond a reasonable doubt that the defendant knew funds were the proceeds of specified unlawful activity, and knowingly engaged in financial transactions with those funds to conceal that fact.

While the Fourth Circuit has upheld the use of willful blindness as a method for proving knowledge, it has also cautioned that the use of willful blindness as a substitute for actual knowledge "softens" the government's burden of proof, and raises a "serious concern" about "shift[ing] the burden to the defendant and

forc[ing] him to prove his innocence," creating a presumption of guilt. *Ebert*, 1999 U.S. App. LEXIS 8453, at *35-36 (citation omitted). Because willful blindness relieves the government of the burden of proving actual knowledge, in exchange, the government must show that "the defendant . . . subjectively believe[d] that there [was] a high probability that a fact exist[ed]," *and* that "the defendant . . . [took] deliberate actions to avoid learning of that fact." *Jinwright*, 683 F.3d at 480. *See also Global-Tech*, 563, U.S. at 769 (a willful blindness instruction is only appropriate when a defendant "takes deliberate actions to avoid confirming a high probability of wrongdoing and who can almost be said to have actually known the critical facts"); *Ebert*, 1999 U.S. App. LEXIS 8453, at *35-36 (same).

There is "no requirement that a lawyer … must know from where a client's money comes," and "concluding knowledge from merely not asking is outright speculation" that does not justify a willful blindness jury instruction. *United States v. Lieberman*, No. 96-4118, 1997 U.S. App. LEXIS 1057, at *4-*5 (4th Cir. Jan. 24, 1997) (reversing conviction based on finding insufficient evidence to support a willful blindness instruction in a money laundering case involving an attorney defendant whose client was a marijuana smuggler). But speculation is all the government had in Mr. Farrell's case, which illustrates the dangers of using the receipt of legal fees as a basis to prosecute criminal defense attorneys for money laundering under § 1956.

The government argued that evidence of Mr. Farrell's willful blindness was simply "inherent in [his] longstanding representation of [his client] and his overt efforts to help by paying for legal fees of other members of [his client's] organization from his own accounts." J.A. 3128. As an initial matter, that argument amounts to a claim that Mr. Farrell should have known the source of the funds, and fails to appreciate that willful blindness "does not allow a jury to impute actual knowledge of the operative fact to a defendant just because he should have known of the existence of that fact." *Ebert*, 1999 U.S. App. LEXIS 8453, at *35. Moreover, the evidence showed possible legitimate sources of the funds Mr. Farrell received from Mr. Nicka for legal services. J.A. 1798-99 (testimony concerning Mr. Nicka's interests in real estate and a casino). Even if what Mr. Farrell should have known was relevant, it is not clear why he should have known the legal fees were drug proceeds as opposed to funds from Mr. Nicka's legitimate businesses.

Instead of presenting evidence of Mr. Farrell's subjective belief of a high probability that the funds he received were tainted, the government merely pointed to Mr. Farrell's allocation of legal fees to other attorneys—via what it characterizes in a conclusory fashion as "obvious illegal financial transactions" (J.A. 3128-29)—as evidence of his subjective belief. That argument is concerning because it is not unusual for defense attorneys to distribute legal fees to other attorneys with whom they are in a joint defense relationship. In the white collar context, for example,

corporate clients often pay for separate counsel for individual employees, and those payments may flow through the corporation's own counsel. Under the government's flawed theory, those routine transactions would be "obvious[ly] illegal." That is why proof of the attorney's subjective belief of a high likelihood that legal fees are tainted is so important. Without that proof, the normal conduct of defense attorneys is potentially criminalized.

The problem is compounded when, as in Mr. Farrell's case, there is also no evidence of any affirmative steps taken to avoid learning that legal fees are tainted. At most, Mr. Farrell simply failed to inquire about the source of the legal fees, which is not sufficient to establish the requisite affirmative steps. *Lieberman*, 1997 U.S. App. LEXIS 1057, at *4-*5.[2]

A willful blindness instruction is therefore inappropriate when there is a lack of evidence (1) of the attorney defendant's subjective belief that there was a high probability that funds received as legal fees were tainted, and (2) that the attorney defendant took affirmative steps to avoid confirming his subjective belief that the funds were likely tainted. Without such evidence, a willful blindness theory functions merely as a contingency in the event the jury does not find actual

[2] The language of the district court's willful blindness instruction was, itself, deficient because the instruction did not reference "affirmative steps" at all (J.A. 2579), and was therefore inconsistent with the Supreme Court's holding in *Global-Tech*. 563 U.S. at 770 (holding that "deliberate indifference" to a "known risk" is not sufficient to support a willful blindness theory of knowledge, and requiring a showing that the defendant made "active efforts" to avoid knowledge).

knowledge, rather than as a separately proved basis for finding scienter beyond a reasonable doubt. Allowing the government to rely on a theory of liability it has not proven violates a defendant's due process rights. In Mr. Farrell's case, the district court's instruction to the jury on willful blindness, given over defense counsel's objection and without the proper evidentiary support, was not harmless error. "[T]he risks associated with an improperly tendered willful blindness instruction" establish reversible error particularly when, as here, there is "relatively weak evidence of [the defendant's] guilt." *United States v. Barnhart*, 979 F.2d 647, 652 (8th Cir. 1992).

II. Prosecuting Criminal Defense Attorneys for Money Laundering Under a Willful Blindness Theory Threatens Clients' Sixth Amendment Rights and Creates an Ethical Conflict for Attorney Defendants.

The relationship of loyalty and trust between a criminal defense lawyer and his client is one of the most important aspects of our criminal justice system. "At a minimum, the Sixth Amendment right to effective assistance of counsel encompasses the attorney's duty of loyalty to the client." *United States v. Magini*, 973 F.2d 261, 263 (4th Cir. 1992). As a result, "a prosecutor's intentional intrusion into the attorney-client relationship constitutes a direct interference with the Sixth

Amendment rights of a defendant." *Shillinger v. Haworth*, 70 F.3d 1132, 1142 (10th Cir. 1995).[3]

Criminal defendants are constitutionally entitled to loyalty from their attorneys, and thus cannot be subjected to open suspicion from, and constant investigation by, the very individuals who are supposed to zealously represent their interests in a conflict-free manner. When willful blindness is used as a substitute for actual knowledge in money laundering cases, however, criminal defense lawyers representing people accused of profit-generating crimes (*e.g.*, drug or financial crimes) are forced to investigate their own clients in order to avoid criminal prosecution themselves. That conflict between the attorney's interests and the client's is detrimental to the client's Sixth Amendment right to counsel.

[3] The government may argue that a defendant does not have a Sixth Amendment to right to use tainted funds to pay for legal counsel. That argument misses the mark. While there are some limitations on a criminal defendant's ability to pay for the counsel of his choice using improperly-acquired funds, those have arisen in the context of *forfeiture*. *See Caplin & Drysdale v. United States*, 491 U.S. 617, 631 (1989) (holding that a defendant's use of criminally-derived proceeds to pay for defense counsel does not protect those funds from forfeiture); *United States v. Blair*, 661 F.3d 755, 771-72 (4th Cir. 2011) (holding that a criminal defendant did not have a right to "use[ ] someone else's unlawful drug proceeds to pay for counsel for others" when the money "belonged to the United States" via forfeiture). Those cases do not squarely address a lawyer's duty of loyalty and the fundamental importance of that duty in the context of a client's Sixth Amendment rights. Those rights are significantly threatened when a criminal defendant's attorney is forced into a position of conflict with his own client such that his ability to zealously represent that client is diminished, or even eliminated.

Relatedly, requiring a criminal defense lawyer to police the source of legal fees received conflicts with the lawyer's own ethical obligations. In particular, a lawyer may be understandably hesitant to inquire about the source of funds for fear of discovering information that would require him to act against his client's interests. Private attorneys would effectively be precluded from representing certain clients at all if there is any possibility that legal fees are proceeds of ongoing criminal activity. If a private lawyer does take on the representation, the only alternative he has to protect himself from criminal prosecution for money laundering is to affirmatively investigate his client's activities lest he be accused of being willfully blind. The threat of prosecution of a defense attorney under the willful blindness theory thus creates an ethical conundrum. *See* MODEL RULES OF PROF'L CONDUCT AND CODE OF JUDICIAL CONDUCT § 1.7 (Am. Bar Assoc. 2016) (generally prohibiting representation of a client with whom there is a conflict of interest).

Furthermore, the lawyer would have to confront several problematic questions even if some investigation of the source of legal fees was feasible. For example, how much investigation is enough? If the client tells his attorney that the funds used to pay legal fees are from a legitimate source, is that sufficient? How does the attorney know the client is telling the truth? Does the attorney have an obligation to independently corroborate his client's assertion about the legitimacy

of the funds? How would an attorney even do so without breaking the attorney-client privilege? If the funds were lent to the client by a third party (*e.g.*, a friend or relative), does the attorney then need to investigate that person? It is easy to see why even the prospect of such an investigation would cause a prudent attorney to simply decline the representation.

Effectively precluding private criminal defense attorneys from representing certain defendants in this manner would trigger a cascading failure in the criminal justice system as a whole because the alternative—representation by court-appointed attorneys and public defenders—would quickly overwhelm an already burdened system with clients who have nowhere else to turn regardless of their ability to pay. The United States' well-documented public defender crisis[4] would get exponentially worse if non-indigent defendants find themselves at the public defender's doorstep because they have no other option for obtaining the legal representation to which they are constitutionally entitled.

[4] *See, e.g.*, Oliver Laughland, *The Human Toll of America's Public Defender Crisis*, THE GUARDIAN (Sept. 7, 2016), https://www.theguardian.com/us-news/2016/sep/07/public-defender-us-criminal-justice-system (describing public defenders as the "pack mules of the system" and noting the "bottomless caseloads" they face).

III. The Use of Section 1956 To Prosecute Criminal Defense Lawyers Has Significant, Negative Policy Implications.

A. Section 1956 Should Not Be Used To Charge Criminal Defense Lawyers In Contravention of Department of Justice Policy, Robbing Them of the Protection of an Otherwise Applicable Safe Harbor.

When a money laundering investigation targets a criminal defense lawyer, there is a risk that prosecutors may make charging decisions that avoid DOJ policy requiring proof of an attorney defendant's actual knowledge. The DOJ "firmly believes that attorneys representing clients in criminal matters must not be hampered in their ability to effectively and ethically represent their clients," and *will not authorize* the prosecution of an attorney under § 1957 for the receipt of tainted funds as legal fees in a criminal case unless there is proof of the attorney's actual knowledge beyond a reasonable doubt. U.S. DEP'T OF JUSTICE U.S. ATT'YS MANUAL 9-105.600 ("prosecution [under § 1957] is not permitted if the only proof of knowledge is evidence of willful blindness"). That policy is not discretionary by its terms: § 1957 money laundering cases against attorneys are not authorized when the only evidence of knowledge is derived from willful blindness. *Id.*

Troublingly, then, charging attorneys with money laundering for the receipt of legal fees under § 1956 instead of § 1957 allows prosecutors to avoid the challenge normally presented by a lack of evidence of actual knowledge, and bring

cases that would otherwise be prohibited as a matter of DOJ policy. It also creates an avenue for improper, vindictive prosecution.[5]

Prosecution of criminal defense attorneys under § 1956 also deprives criminal defense lawyers like Mr. Farrell of the protection of § 1957's safe harbor provision. Congress created the safe harbor to "prevent the broad reach of the statute from criminalizing a defendant's bona fide payment to her attorney." *United States v. Hoogenboom*, 209 F.3d 665, 669 (7th Cir. 2000) (citing 134 CONG. REC. S17630 (daily ed. Nov. 10, 1998) (statement of Sens. Biden & Kennedy)). As a result, monetary transactions over a certain amount that are "necessary to preserve a person's right to representation as guaranteed by the sixth amendment to the Constitution" (*e.g.*, payments for legal fees in connection with representation in a criminal case) are excluded from the category of prohibited monetary transactions. 18 U.S.C. § 1957(f)(1). *See also United States v. Florez Velez*, 586 F.3d 875, 877 (11th Cir. 2009) ("attorneys' fees paid for representation guaranteed by the Sixth Amendment in a criminal proceeding" are exempt under § 1957); *Hoogenboom*, 209 F.3d at 669 (same); *Rutgard*, 116 F.3d at 1291 (citing the

[5] The NACDL understands that defense attorneys representing other individuals in the investigation of the marijuana operation, who presumably accepted tainted funds for representation of clients also accused of drug crimes, have not been charged. When individuals are similarly situated, but not similarly prosecuted, that can indicate improper selective prosecution. *See, e.g.*, *United States v. Wilson*, 262 F.3d 305, 314 (4th Cir. 2001) (charges are improperly selective when "(1) the prosecutor act[s] with genuine animus toward the defendant and (2) the defendant would not have been prosecuted but for that animus.").

statute's definition of "monetary transaction," which does not include transactions necessary for a criminal defendant to obtain representation as guaranteed by the Sixth Amendment).[6]

The government's decision to charge Mr. Farrell under § 1956 suggests that the government did not have evidence of actual knowledge sufficient to overcome the DOJ's general policy against prosecuting criminal defense attorneys under § 1957. The alternative, then, assuming the government could establish a sufficient evidentiary basis, was to rely on willful blindness and evidence of purported concealment to convict Mr. Farrell under § 1956 notwithstanding the fact that he was acting as an attorney and receiving fees for bona fide legal services, which is conduct typically within the scope of the § 1957 safe harbor. The government thus sought to paint Mr. Farrell's status as a criminal defense attorney as insignificant when it clearly was not. *See* note 6, *supra*.

[6] *Cf. Blair*, 661 F.3d at 772-73 (acknowledging the exemption in § 1957(f)(1), but affirming conviction because the defendant's conduct was "egregious" and therefore outside the scope of the safe harbor provision, and further noting that the defendant's status as an attorney was "coinciden[tal]"). Unlike the defendant in *Blair*, Mr. Farrell's status as a defense attorney is not a coincidence because the only conduct at issue is the collection of fees for bona fide legal services. That conduct falls within § 1957's safe harbor provision, which was not available to Mr. Farrell due to the government's decision to prosecute him under § 1956 despite the government's negligible evidence of concealment.

B. The Requirement of Proving Concealment Under Section 1956 Is Not A Meaningful Basis for Avoiding the Otherwise Applicable Section 1957 Safe Harbor.

While the government may claim that it is actually more difficult to prosecute attorneys under § 1956 because the government has to prove the additional element of concealment, Mr. Farrell's case exemplifies the contradictory reality defendants actually face. Mr. Farrell did not engage in any of the schemes commonly involved in so-called concealment money laundering. For example, the government does not allege that Mr. Farrell used fake names or made straw purchases to conceal the source of funds he received for legal services even if he had known that the payments were drug proceeds. *See, e.g.*, *United States v. Smith*, 464 F. App'x 179, 182 (4th Cir. 2012) (noting that concealment money laundering "typically involves the use of fictitious entities, shell corporations, or layering of transactions") (internal quotation marks and citation omitted); *United States v. Oglesby*, No. 92-5641, 1993 U.S. App. LEXIS 25026, at *8 (4th Cir. Sept. 29, 1993) (affirming money laundering convictions based on knowing use of straw purchase of a car to conceal drug proceeds). Instead, Mr. Farrell used real names and his own law firm accounts to engage in transactions the government argues were meant to conceal the source of legal fees. Courts have reversed money laundering convictions based on similarly transparent conduct. *See, e.g., United States v. Herron*, 97 F.3d 234, 237 (8th Cir. 1996) (reversing money laundering

convictions when the defendants used their own names and signatures to complete transactions involving drug proceeds). In Mr. Farrell's case, the government portrayed transparency as concealment and obtained a criminal conviction. Given that reality, the burden of proving the additional element of concealment is, in reality, quite light.

Criminal defense attorneys should not be forced to make the "Hobson's choice" Mr. Farrell faced. *Blair*, 661 F.3d at 778 (Traxler, J., dissenting) ("either investigate fully and risk learning that the client's funds are tainted, or avoid thoroughly investigating any matter that might lead to such knowledge" and risk prosecution under a willful blindness theory). They should not have conduct protected by a statutory safe harbor—the receipt of payment for bona fide legal representation—shoe-horned into a different statutory provision that exposes them to criminal liability using a theory of liability that "softens" the government's burden of proof. Doing so threatens their ability to perform their critical constitutional function, and thus threatens our criminal justice system as a whole.

CONCLUSION

The government should not be permitted to use willful blindness as an alternative theory of knowledge without the necessary supporting evidence because it lowers the government's burden of proof in violation of due process. Further, the use of willful blindness as a substitute for actual knowledge in a criminal case is

particularly troubling when the defendant is a criminal defense lawyer. It forces lawyers into untenable and dysfunctional relationships with their clients, which threatens those clients' constitutional rights. Finally, it contravenes important Department of Justice policy and criminalizes conduct that would otherwise be protected by a statutory safe harbor. For at least these reasons, the NACDL opposes the use of a willful blindness jury instruction in these circumstances, and supports reversal of Mr. Farrell's convictions on the money laundering counts in the indictment (Counts 1-3, 5-7, and 12).

Respectfully submitted,

Dated: March 14, 2018

/s/ David B. Smith

David B. Smith
Elizabeth Franklin-Best
NAT'L ASS'N OF CRIMINAL DEFENSE LAWYERS

Catherine E. Creely
AKIN GUMP STRAUSS HAUER & FELD LLP

Attorneys for Amicus Curiae

CERTIFICATE OF COMPLIANCE

I hereby certify that, pursuant to Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B), and Fourth Circuit Rule 32(b), the attached brief is double spaced, uses a proportionally spaced typeface of 14 points or more, and contains a total of 4,481 words, based on the word count program in Microsoft Word.

Dated: March 14, 2018 /s/ David B. Smith

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system on March 14, 2018.

I certify that all parties in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: March 14, 2018 /s/ David B. Smith

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

APPEARANCE OF COUNSEL FORM

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COUNSEL FOR: National Association of Criminal Defense Lawyers

_____ as the
(party name)

☐ appellant(s) ☐ appellee(s) ☐ petitioner(s) ☐ respondent(s) ☑ amicus curiae ☐ intervenor(s) ☐ movant(s)

s/ David B. Smith
(signature)

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David B. Smith
Name (printed or typed)

703-548-8911
Voice Phone

David B. Smith, PLLC
Firm Name (if applicable)

703-548-8935
Fax Number

108 North Alfred Street
Alexandria, VA 22314
Address

dbs@davidbsmithpllc.com
E-mail address (print or type)

CERTIFICATE OF SERVICE

I certify that on March 14, 2018 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

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Date