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# TAX LAW CONFERENCE

March 7-8, 2019

Ronald Reagan Building and International Trade Center  
Washington, D.C.

## International Hot Topics in Criminal Tax Enforcement



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## Panelists

- **Ian M. Comisky**, Partner, Fox Rothschild, LLP – Moderator
- **R. Damon Rowe**, Director, International Operations, Criminal Investigation, Internal Revenue Service
- **Mark F. Daly**, Senior Litigation Counsel (Criminal), Tax Division, U.S. Department of Justice
- **Alan W. Granwell**, Of Counsel, Holland & Knight, LLP
- **Sarah E. Paul**, Assistant U.S. Attorney & Tax Coordinator for the Criminal Division, U.S. Attorney Office for the Southern District of New York.



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Internal Revenue Service

# Criminal Investigation



**Damon Rowe – Executive Director  
Office of International Operations  
IRS – Criminal Investigation**

# CRIMINAL INVESTIGATION FIELD OPERATIONS: INTERNATIONAL



## LEGEND



Headquarters

● Attaché



● Attaché w/Deputy Attaché



## **Fiscal Year 2019 Investigative Priorities**

- Employment Tax
- International Tax Fraud
- Conventional / General Tax Fraud
- Cyber Crimes / Virtual Currency
- Public Corruption
- Refund Fraud (Stolen Identity Refund, Questionable Refund & Return Preparer Fraud)
- Counterterrorism and Terrorist Financing
- Narcotics Related Financial Crimes
- **Professional Enablers**
- **Kleptocracy**

# Political Exposed Persons

- **Kleptocracy** meaning: a society whose leaders make themselves rich and powerful by stealing from the rest of the people.

## **1MDB CASE**

- \$4.5 billion in funds belonging to 1MDB, a sovereign wealth fund created by the government of Malaysia, were misappropriated that were intended to be used for improving the well-being of the Malaysian people.



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# Criminal Investigation

## Recent International Cases

**Red Granite Pictures**  
*Los Angeles*

Investment in "The Wolf of Wall Street:"  
**\$100,000,000+**



Images: Red Granite Pictures.

# Operation Politico Junction

- Joint investigative effort with Mexico and United States of America.
- The investigation uncovered information indicating that several former Mexican political leaders unjustly enriched themselves from narco bribes, stolen government monies, and bribe schemes.



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**Agents seized \$6.1 million from several U.S bank and investment accounts**





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## Seizure of Learjet 45, N135CG



# Results Politico Junction

- These investigations resulted in the indictments of three former governors in Mexico and a state secretary of finance.
  - **Former Governors** of the State of Tamaulipas; Tomas Yarrington-Ruvalcaba and Eugenio Hernandez-Flores;
- Former **Governor** of the State of Coahuila, Jorge Juan Torres-Lopez,.

# Results Operation Politico

Former ***Secretary of Finance*** of the State of Coahuila, Hector Javier Villarreal-Hernandez



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QUESTIONS????



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- United States v. Ramses Owens, et al, 18 Crim. 693 (S.D.N.Y. Dec. 4, 2018)
- Count Four – Wire Fraud

113. From at least in or about 2000 through in or about 2016, in the Southern District of New York and elsewhere, RAMSES OWENS, a/k/a "Ramses Owens Saad," RICHARD GAFFEY, a/k/a "Dick Gaffey," and HARALD JOACHIM VON DER GOLTZ, a/k/a "H.J. von der Goltz," a/k/a "Johan von der Goltz," the defendants, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, did transmit and cause to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, to wit, OWENS, GAFFEY, and VON DER GOLTZ participated in a fraudulent scheme to help VON DER GOLTZ conceal his assets and investments, and the income generated by those assets and investments, from the IRS, and OWENS, GAFFEY, and VON DER GOLTZ transmitted and caused to be transmitted interstate and foreign wires, including emails and bank wires, for the purpose of executing this fraudulent scheme.

(Title 18, United States Code, Sections 1343 and 2.)



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- Count Five – Money Laundering Conspiracy

115. From at least in or about May 2007 through in or about June 2014, in the Southern District of New York and elsewhere, RAMSES OWENS, a/k/a "Ramses Owens Saad," RICHARD GAFFEY, a/k/a "Dick Gaffey," and HARALD JOACHIM VON DER GOLTZ, a/k/a "H.J. von der Goltz," a/k/a "Johan von der Goltz," the defendants, and others known and unknown, knowingly did combine, conspire, confederate, and agree together and with each other to commit money laundering, in violation of Title 18, United States Code, Section 1956(a)(2)(A).



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116. It was a part and object of the conspiracy that RAMSES OWENS, a/k/a "Ramses Owens Saad," RICHARD GAFFEY, a/k/a "Dick Gaffey," and HARALD JOACHIM VON DER GOLTZ, a/k/a "H.J. von der Goltz," a/k/a "Johan von der Goltz," the defendants, and others known and unknown, in an offense involving and affecting interstate and foreign commerce, would and did transport, transmit, and transfer, and attempt to transport, transmit, and transfer, monetary instruments and funds from a place in the United States to or through a place outside the United States, and to a place in the United States from and through a place outside the United States, with the intent to promote the carrying on of specified unlawful activity, to wit, the wire fraud scheme alleged in Count Four of this Indictment, in violation of Title 18, United States Code, Section 1956 (a) (2)(A).

(Title 18, United States Code, Section 1956(h).)



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## Directly Charging Tax Evasion as Money Laundering

United States v. Maali, 358 F. Supp. 2d 1154 (M.D. Fla. 2005), aff'd sub. nom., United States v. Khanani, 502 F.2d 1281 (11th Cir. 2007) (holding that there are no proceeds of a tax offense and therefore, a tax crime cannot be charged as a money laundering offense; stating “While it is natural and clearly correct to say that Defendants received ‘proceeds’ from the sale of jeans, it is, by contract, both causally tenuous and decidedly unnatural to say that the moneys one has received from the sale of a good are, not the ‘proceeds’ from the sale of a good, but ‘proceeds of the labor used to produce the good.’”



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- United States v. Yusuf, 536 F.3d 178 (3d Cir. 2008) (international money laundering charge based on failure to report gross receipts tax to the U.S.V.I.; holding that proceeds can be created for a tax offense and that money laundering can be based upon the tax offense predicate; stating “[W]e hold that unpaid taxes, which are unlawfully disguised and retained by means of the filing of false tax returns through the U.S. mail, constitute ‘proceeds’ of mail fraud for purposes of supporting a charge of federal money laundering.”)



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- Tax Division Directive No. 128 (“The Tax Division will not authorize the use of mail, wire or bank fraud charges to convert routine tax prosecutions into RICO or money laundering cases. The Tax Division will authorize prosecution of tax-related RICO and money laundering offenses, however, when unusual circumstances warrant it.”)
- Tax Division Directive No. 145 (“The forfeiture laws should not be used to seize and forfeit personal property such as wages, salaries, and compensation for services rendered that is lawfully earned and whose only relationship to criminal conduct is the unpaid tax due and owing on the income. Title 18 fraud statutes such as wire fraud and mail fraud cannot be used to convert a traditional Title 26 legal-source income tax case into a fraud offense even if the IRS is deemed to be the victim of tax fraud.”)



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- “This Directive provides only internal Department of Justice guidance. It is not intended to, does not, any may not be relied upon to create any rights, substantive or procedural, enforceable at law by any part in in any matter civil or criminal. Nor are any limitations hereby placed on otherwise lawful litigative prerogatives of the Department of Justice.”



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## Tax Intent Money Laundering

- United States v. Manafort, Case 1:17-cr-00201-ABJ
- Count Two Conspiracy to Launder Money
- Paragraph 41.

“In or around and between 2006 and 2016, both dates being approximate and inclusive, within the District of Columbia and elsewhere, the defendants PAUL J. MANAFORT, JR., and RICHARD W. GATES III, together with others, did knowingly and intentionally conspire to:

(a) transport, transmit, and transfer monetary instruments and funds from places outside the United States to and through places in the United States and from places in the United States to and through places outside the United States, with the intent to promote the carrying on of specified unlawful activity, to wit: a felony violation of the FARA, in violation of Title 22, United States Code, Sections 612 and 618 (the "Specified Unlawful Activity"), contrary to Title 18, United States Code, Section 1956(a)(2)(A); and



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## Manafort Indictment (continued)

“(b) conduct financial transactions, affecting interstate and foreign commerce, knowing that the property involved in the financial transactions would represent the proceeds of some form of unlawful activity, and the transactions in fact would involve the proceeds of Specified Unlawful Activity, knowing that such financial transactions were designed in whole and in part (i) to engage in conduct constituting a violation of sections 7201 and 7206 of the Internal Revenue Code of 1986, and (ii) to conceal and disguise the nature, location, source, ownership, and control of the proceeds of the Specified Unlawful Activity, contrary to Title 18, United States Code, Section 1956(a)(1)(A)(ii) and 1956(a)(1)(B)(i).”



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The applicable tax intent money laundering statute, 18 U.S.C. §1956(a)(1), provides in pertinent part, that:

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

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



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

(B) knowing that the transaction is designed in whole or in part –

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

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

shall be sentenced to a fine of not more than \$500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.



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The applicable international money laundering statute, 18 U.S.C.

§1956(a)(2)(A), provides in pertinent part, that:

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

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

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

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

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

shall be sentenced to a fine of not more than \$500,000 or twice the value of the monetary instrument or funds involved in the transportation, transmission, or transfer, whichever is greater, or imprisonment for not more than twenty years, or both.



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## Specified Unlawful Activity

- Defined in 18 U.S.C. §1956(c)(7) and the RICO statute, 18 U.S.C. § 1961(1) excludes tax crimes as a predicate offense.
- Includes mail fraud and wire fraud.
- United States v. Helmsley, 941 F.2d 71 (2d Cir. 1991)(early case permitting the mailing of tax returns to be charged as mail fraud).



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- However, if a non- tax violation is identified as an Specified Unlawful Activity, tax intent money laundering can be charged.



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United States v. Christy, \_\_\_ F.3d \_\_\_, 2019 WL 638798 (Feb. 15 2019)(10th Cir. 2019) (tax intent money laundering charge arising out of a bank embezzlement scheme; counts charged involve payments on a home loan and payments on a refinance of home loan; holding that the government must prove that the loan repayments were done with an intent to violate another law, that is, prohibiting the filing of a false tax return; holding that the defendant's failure to report embezzled income on her tax return failed to establish that loan payments were made with the purpose of evading taxes; one judge dissenting who would affirm money laundering convictions).



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## Open Issues

- Can a failure to report create proceeds?
- Is the Christy dissent correct?
- Can tax intent money laundering be charged with respect to deductions on a return as opposed to the failure to report income.



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