

PRESS RELEASE

## Winston & Strawn Wins Money Laundering Case Before the U.S. Supreme Court on Behalf of Pro Bono Client

JUNE 3, 2008

*The ruling could have a broad impact on money laundering convictions*

**WASHINGTON, DC, June 3, 2008** — Winston & Strawn LLP scored a victory in the United States Supreme Court on Monday on behalf of pro bono client Benedicto Diaz. In *United States v. Santos* (No. 06-1005) the Supreme Court limited the scope of the federal money laundering statute and increased the government's burden of proof. The statute makes it a crime to engage in financial transactions using the "proceeds" of specified unlawful activities with the intent to promote those activities or to conceal the proceeds. The question presented was whether "proceeds" refers broadly to any gross receipts generated by the unlawful activities (the government's position) or only the profits.

Diaz and his co-defendant, Efrain Santos, were convicted of money laundering in connection with their operation of an illegal lottery in northern Indiana. Their convictions were based on proof of expense payments involving gross receipts — payments to winning bettors and the lottery's employees. Winston & Strawn took on the representation in the Seventh Circuit, which vacated the convictions. The Seventh Circuit held that the money laundering statute must be limited to transactions in profits; otherwise, every instance of illegal gambling would qualify as money laundering, and the available sentence would automatically quadruple, from 5 to 20 years — a draconian result that Congress could not have intended.

In a fractured set of decisions, the Supreme Court agreed that the convictions must be vacated. Justice Scalia, joined by Justices Souter, Thomas, and Ginsburg, concluded that the profits interpretation must be applied to the statute generally. Justice Stevens concurred in the judgment, concluding that the profits interpretation should be applied at least to illegal gambling but not necessarily to other unlawful activities. There were two dissenting opinions, one by Justice Breyer alone, the other by Justice Alito joined by Chief Justice Roberts and Justices Kennedy and Breyer.

Stuart Altschuler, a partner who concentrates on appellate litigation, served as co-counsel for Diaz, assisted by associates Mike Bess and Marlen Cortez. Winston's brief emphasized the "rule of lenity" argument that provided the primary basis for Justice Scalia's opinion.

"The decision's impact is potentially far-reaching," Altschuler said. "Presumably many other money laundering convictions are now in question. In addition, the decision will increase the government's burden of proof in future

cases, although Justice Stevens' separate opinion makes the precise scope of that effect unclear. The government may ask Congress to undo the decision's effects through further legislation. Meanwhile, the lower courts will have to grapple with a major new interpretation of the money laundering statute."

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