

A Closer Look At Money Laundering Sentencing Issues

By **Sarah Sulkowski** (March 13, 2025)

Money laundering cases are on the rise, having increased nearly 15% between 2019 and 2023, and are the subject of renewed focus under Attorney General Pam Bondi.[1]

These nonviolent offenses commonly involve defendants with "little or no prior criminal history,"[2] according to the U.S. Sentencing Commission, and yet they nearly always result in prison sentences, which are often lengthy.[3]

It is not immediately obvious, on the face of the money laundering sentencing guidelines, why this should be so. But a closer look at the numbers reveals several notable trends — as well as potentially valuable arguments that defense attorneys should keep in their arsenal.



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The federal money laundering statute — Title 18 of the U.S. Code, Section 1956 — prescribes a penalty of up to 20 years' imprisonment for anyone who knowingly conducts a financial transaction using the proceeds of a crime, with both (1) the intent to promote the commission of that crime; and (2) the knowledge that the transaction is designed to conceal the nature, location, source, ownership or control of the proceeds, or to avoid a state or federal transaction reporting requirement.[4]

Section 1956 also authorizes a fine of up to "\$500,000 or twice the value of the property involved in the transaction, whichever is greater," and an additional civil penalty of at least \$10,000, up to the full value of the transacted property.[5]

At sentencing, money laundering offenses are governed by Section 2S1.1 of the U.S. sentencing guidelines, which provides that the base offense level for the underlying crime should be used if the defendant committed that crime or would be accountable for it as relevant conduct under Section 1B1.3.[6]

If those prerequisites are not met, Section 2S1.1 provides for a base offense level of eight plus the number of offense levels from the table in Section 2B1.1 — the fraud guideline — corresponding to the amount of money laundered.[7]

Section 2S1.1(b) prescribes a number of enhancements, including a six-level increase to a Section 2S1.1(a)(2) base offense level if the defendant knew or believed that the laundered funds were derived from a drug trafficking offense, a violent crime, or a firearm or national security offense.[8]

In practice, the majority of money laundering defendants are sentenced using the base offense level for the underlying crime, which is most often a drug trafficking crime.[9] This goes a long way toward explaining the disparity between the average fraud sentence of 23 months[10] and the average money laundering sentence of 71 months,[11] as base offense levels for trafficking crimes are notoriously high.[12]

There also appear to be demographic discrepancies in the adjudication and sentencing of such cases: Almost 40% of money laundering defendants were Latino in fiscal year 2023, as compared to only about 17% of fraud defendants. And the U.S. Sentencing Commission has

reported that, across all federal crimes committed between 2017 and 2021, Hispanic men received average sentences about 11% longer than those of white men, while Hispanic women received sentences an average of about 28% longer than those of white women.[13]

The disparities affecting Black defendants are similarly dramatic: Black men received sentences more than 13% longer than those of similarly situated white men, and were approximately 23% less likely to be sentenced to probation during the relevant period. Black women were about 11% less likely than white women to receive probation.[14]

Moreover, district courts appear to have significant latitude to characterize a defendant's laundering of receipts from a drug trafficking conspiracy as either taking part in that conspiracy — triggering application of the base offense level for the underlying conspiracy pursuant to Section 2S1.1(a)(1) — or as merely laundering the proceeds of the conspiracy pursuant to Section 2S1.1(b)(1)(B)(i), yielding a mere six-level enhancement to the base offense level for money laundering.

The difference between these two approaches can be quite significant. For example, in *U.S. v. Diaz-Menera*, the defendant was arrested while in possession of approximately \$100,000, in circumstances suggesting that the money was related to drug trafficking.[15]

According to the U.S. Court of Appeals for the Tenth Circuit's decision in 2023, when Diaz-Menera was questioned, he confessed that he had been tasked with "collect[ing] U.S. currency from various locations in the United States and remitt[ing] it" to an individual in Mexico.[16] He admitted to handling approximately \$1.5 million in this manner over the previous eight months.[17]

Diaz-Menera was charged with drug trafficking conspiracy and money laundering conspiracy, but pled guilty only to the latter; the drug charge against him was dismissed.[18]

At sentencing, after "[c]oncluding that the laundered funds came from drug sales," U.S. District Judge Jodi W. Dishman of the U.S. District Court for the Western District of Oklahoma elected to apply Section 2S1.1(a)(1), attributing approximately 15 kilograms of methamphetamine to Diaz-Menera based on the \$100,000 found in his possession.[19]

That calculation yielded a base offense level of 36, a final offense level of 39 after enhancements and a reduction for acceptance of responsibility, and a guideline range of 262 to 327 months, which was capped at 240 months by the statutory maximum.[20] Judge Dishman then granted a downward variance and imposed a sentence of 168 months, and the Tenth Circuit affirmed the district court's application of the drug conspiracy guideline.[21]

In contrast, an application of Section 2S1.1(a)(2), even using the much larger total of \$1.6 million to which Diaz-Menera confessed, would have yielded a base offense level of 24, a total offense level of 27 after a six-level Section 2S1.1(b)(1)(B)(i) enhancement and a three-level reduction for acceptance of responsibility, and a corresponding guideline range of 70 to 87 months — approximately half the sentence that Diaz-Menera ultimately received, even after a significant downward variance.

Many federal courts appear to be cognizant of, and attempting to address on a case-by-case basis, the outsize sentences prescribed by the guidelines for money laundering offenses, particularly under Section 2S1.1(a)(1).

In fiscal year 2023, only about 37% of money laundering defendants were sentenced within the guidelines range, with more than 40% receiving downward variances.[22] The magnitude of those downward variances was substantial, resulting in sentences about 46% lower, on average, than the bottom of the guidelines range.[23]

These statistics, and the illustrative case of Diaz-Menera, point to a few important principles for defense counsel in money laundering cases.

First, it is vital to point out the disparities between fraud and money laundering sentences for similar conduct, with the former being more than three times lower on average than the latter.

Second, counsel representing clients who are racial minorities should direct the sentencing court to the statistics on demographic differences in federal sentencing, particularly with regard to custodial sentences for Black and Hispanic men.

Third, defense attorneys should seek to educate judges about the disproportionate impact of a decision to sentence a money laundering defendant under Section 2S1.1(a)(1) instead of Section 2S1.1(a)(2), particularly where the money laundering conduct itself is the only link between the defendant and a drug trafficking conspiracy.

And finally, counsel should seek to focus the sentencing court's attention on the prevalence of downward variances in money laundering cases, which appear to represent a widespread consensus that Section 2S1.1 is too harsh in the vast majority of cases.

Using these tools, defense attorneys may be able to achieve meaningful sentencing reductions for their clients.

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[1] See U.S. Sentencing Commission ("USSC"), QuickFacts: Money Laundering at 1 (2023), available at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Money_Laundering_FY23.pdf; Office of the Attorney General, Memorandum: Total Elimination of Cartels and Transnational Criminal Organizations at 4 (Feb. 5, 2025) ("The Criminal Division's Money Laundering and Asset Recovery Section shall prioritize investigations, prosecutions, and asset forfeiture actions that target activities of Cartels and TCOs [Transnational Criminal Organizations]."), available at <https://www.justice.gov/ag/media/1388546/dl?inline#:~:text=On%January%2C%202025%2c%President,change%20in%20mindset%20and%20approach.>

[2] Id.

[3] Id. at 2 ("90.6% were sentenced to prison."); id. ("The average sentence imposed

slightly increased . . . to 71 months in fiscal year 2023.").

[4] 18 U.S.C. § 1956(a).

[5] 18 U.S.C. § 1956(a)-(b).

[6] U.S.S.G. § 2S1.1(a)(1).

[7] U.S.S.G. § 2S1.1(a)(2).

[8] U.S.S.G. § 2S1.1(b)(1). Other enhancements include a one-level increase for a defendant convicted under 18 U.S.C. § 1957; a two-level increase for a defendant convicted under 18 U.S.C. § 1956, with a further 2-level addition if the offense involved "sophisticated laundering"; and a four-level increase for a defendant in the business of laundering money if the base offense level is calculated pursuant to § 2S1.1(a)(2). U.S.S.G. § 2S1.1(b)(2)-(3).

[9] In 2017, the last year for which such statistics were reported, sentencing for "68.7% of money laundering offenders was based on the underlying offense from which the laundered funds were derived. Nearly two-thirds of the underlying offenses were Drug Trafficking (61.0%)" USSC, QuickFacts: Money Laundering at 1 (2017), available at https://www.uscc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Money_Laundering_FY17.pdf.

[10] USSC, QuickFacts: Theft, Property Destruction, and Fraud at 1 (2023), available at https://www.uscc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Theft_Property_Destruction_Fraud_FY23.pdf.

[11] USSC, *supra* n. 1, at 2.

[12] See *United States v. Teyer*, 322 F. Supp. 2d 359, 380 (S.D.N.Y. 2004) (noting that base offense levels for trafficking crimes are "excessively influenced by the quantity of drugs involved in a transaction"); *United States v. Johnson*, 379 F. Supp. 3d 1213, 1228 (M.D. Ala. 2019) ("Some courts have held that, because of their excessive emphasis on quantity, Guidelines ranges for all drug trafficking cases should be categorically reduced by a third.").

[13] USSC, 2023 Demographic Differences in Federal Sentencing, available at <https://www.uscc.gov/research/research-reports/2023-demographic-differences-federal-sentencing>. During the same period, Latinx men were 26% less likely to receive probation than White men, and Latinx women were nearly 30% less likely than White women to be sentenced to probation. *Id.*

[14] *Id.*

[15] 60 F.4th 1289, 1291 (10th Cir. 2023).

[16] *Id.*

[17] *Id.* at 1292.

[18] *Id.*

[19] *Id.* at 1292-93.

[20] Id. at 1293. Notably, the Pre-Sentence Report in the Diaz-Menera case proposed an even higher offense level, based on the additional \$1.5 million to which Diaz-Menera confessed and another \$400,000 found in a residence related to the drug conspiracy. Id. at 1292.

[21] Id. at 1293. The Tenth Circuit vacated and remanded Diaz-Menera's sentence to allow the government to remedy what the Tenth Circuit found was its breach of the plea agreement by failing to move for a one-point reduction in Diaz-Menera's total offense level pursuant to U.S.S.G. § 3E1.1(b).

[22] USSC, *supra* n. 1, at 17 Table 10 (more than 43% of money-laundering defendants received variances); id. at 23 Table 14 (only 22 individual money-laundering defendants, or less than 2%, received upward variances). The remainder of the non-guidelines-range sentences were accounted for by upward departures (0.2% of defendants), id. at 22 Table 13; § 5K1.1 downward departures for substantial assistance (24% of defendants), id. at 24 Table 15; and other downward departures (7% of defendants), id. at 25-26 Tables 16-17.

[23] Id. at 27 Table 18.