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### **Game Theory Optimized Fraud: How the Unlawful Internet Gambling Enforcement Act Created a Virtually Riskless Environment for White Collar Crime in Online Poker**

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# GAME THEORY OPTIMIZED FRAUD: HOW THE UNLAWFUL INTERNET GAMBLING ENFORCEMENT ACT CREATED A VIRTUALLY RISKLESS ENVIRONMENT FOR WHITE COLLAR CRIME IN ONLINE POKER

*Bye, bye to poker online,  
Drove my credit to the limit, now my bank account has run dry,  
And to them good old days of winning with Ace-King high  
before 2011, April 1-5,  
when DOJ brought an end to poker online.*

Or did it?

## INTRODUCTION<sup>1</sup>

Public corruption, money laundering, securities and commodities fraud, financial institution fraud, bank fraud and embezzlement, and fraud against the government are just some of the criminal activity that fits into the Federal Bureau of Investigation's (FBI) scope of white-collar criminal activity.<sup>2</sup> The common thread for these, and other white-collar crimes, is that they are financially motivated for the purpose "to obtain or avoid losing money, property, or services or to secure a personal or business advantage."<sup>3</sup>

In a 2002 report examining Uniform Crime Reporting (UCR) data, the FBI found that computer equipment criminal offenses accounted for forty two-percent of white-collar offenses, with larceny-theft comprising the most significant proportion of those offenses.<sup>4</sup> Twenty years later, vast improvements in technology have provided tech-savvy fraudsters with the means and methods to execute more complex schemes that are more efficient and harder to detect. While technological

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<sup>1</sup> The author, Jeffrey Woolf, a 4L evening student at American University Washington College of Law, would like to thank his faculty advisor and mentor, Professor Tracee Plowell. The topic for this paper was inspired by her May 2021 White Collar Crimes class, our discussions during and after class on how statutory ambiguity can present challenges for prosecuting white-collar crimes, and my personal interest in poker. The author would also like to thank Professors N. Jeremi Duru, Tracy Kepler, Brent Newton, Andrew Popper, Gil Rothenberg, the Honorable Carlos F. Acosta, and the Honorable Douglas R.M. Nazarian, all of whom have provided me with endless support and advocacy. A special thank you to my wife, Regina, who put up with my countless hours of *very* early morning "research" at MGM National Harbor, and without whom none of this would have been possible.

<sup>2</sup> *What We Investigate*, FED. BUREAU OF INVESTIGATIONS, <https://www.fbi.gov/investigate/white-collar-crime> (last visited Apr. 3, 2022).

<sup>3</sup> *Id.*

<sup>4</sup> Cynthia Barnett, *The Measurement of White-Collar Crime Using Uniform Crime Reporting (UCR) Data*, DEP'T OF JUST., FED. BUREAU OF INVESTIGATIONS, 4 (Nov. 10, 2000), [https://ucr.fbi.gov/nibrs/nibrs\\_wcc.pdf](https://ucr.fbi.gov/nibrs/nibrs_wcc.pdf).

advances present a constantly evolving criminal theater, statutory challenges, such as ambiguity, have remained a persistent challenge in white-collar crime prosecution.<sup>5</sup> In white-collar criminal cases, whether a crime occurred turns on a careful examination of fact and law.<sup>6</sup> White-collar criminal cases where fraud is suspected often leave questions about “whether criminal intent was formed by the [suspected] perpetrator.”<sup>7</sup> Sometimes, the courts may be the root cause of ambiguity. In *Cheek v. United States*,<sup>8</sup> the Court held that even though ignorance of the law is generally not a defense to a criminal charge, proving willfulness as an element of a crime requires “the Government [to] prove the law imposed a duty on the defendant, that the defendant knew of [t]his duty, and that [the defendant] voluntarily and intentionally violated that duty.”<sup>9</sup> The Court also held that whether or not objectively reasonable, a good-faith misunderstanding of the law or a good-faith belief that one is not violating the law negates willfulness.<sup>10</sup> Here, the Court appeared to suggest that one can be ignorant of the law and still be accountable for the crime, but no matter how ridiculous the excuse may be, truly believing that one is doing nothing wrong is enough to negate the notion that someone willfully broke the law.

Ambiguity may also arise when statutory definitions create it.<sup>11</sup> In *Dowling v. United States*, the defendant was convicted for mail fraud, interstate transportation of stolen property, and conspiracy to transport stolen property interstate.<sup>12</sup> In reversing Dowling’s convictions, the Court noted that “assessing the reach of a federal criminal statute requires paying close heed to language, legislative history, and purpose in order to strictly determine the scope of the conduct the enactment

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<sup>5</sup> Jerold H. Israel et al., *White Collar Crime Law and Practice* 91 (4th ed. 2015) (quoting Kenneth Mann, Defending White Collar Crime – A Portrait of Attorneys at Work 114-15 (1985)).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Cheek v. United States*, 498 U.S. 192 (1991).

<sup>9</sup> *Id.* at 201.

<sup>10</sup> *Id.* at 192.

<sup>11</sup> Israel, *supra* note 5, at 91.

<sup>12</sup> 473 U.S. 207, 213 (1985).

forbids.”<sup>13</sup> When “interpreting a criminal statute that does not explicitly reach the conduct in question, [the Court is] reluctant to base an expansive reading on inferences drawn from subjective and variable ‘understandings.’”<sup>14</sup> Because the language in the statute did not concern itself with interstate shipments of bootleg and pirated sound recordings, it did not “plainly and unmistakably” cover Dowling’s conduct.<sup>15</sup>

While white-collar criminal investigations often, and somewhat necessarily, put the cart before the horse—connecting a person to potentially criminal activity versus connecting criminal facts to the suspect—prosecuting white-collar criminal cases still requires proving beyond a reasonable doubt each element of the crime alleged. In some instances, the law’s statutory construct significantly lowers the Government’s burden. Because the Unlawful Internet Gambling Enforcement Act<sup>16</sup> (UIGEA) only requires proving the financial transactions in question were processed for the purpose of online gambling,<sup>17</sup> it deters the online poker sites from reporting fraudulent acts to authorities, creating an ideal playground for other forms of criminal activity.

### **PURPOSE**

The following discussion explores how the UIGEA created an environment that encourages bad actors to engage in white-collar criminal activities such as wire fraud, money laundering, and Racketeer Influenced and Corrupt Organizations Act (RICO)-like criminal activity in an environment virtually free from the fear of prosecution. Through a critical examination of the UIGEA and Department of Justice’s April 15, 2011, assault on online poker sites, the reader will see how the UIGEA provides online scammers the opportunity to implement technology as an artifice to defraud

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 218.

<sup>15</sup> *Id.* at 228.

<sup>16</sup> 31 U.S.C.A. § 5361, *et seq.* (West 2018).

<sup>17</sup> § 5362.

unsuspecting online poker players. Now that several states have legalized online poker, this paper suggests ways to amend the UIGEA to better protect U.S.-based online poker players from fraud.

### **Unlawful Internet Gambling Enforcement Act**

In 1999, the National Gambling Impact Study Commission (NGISC) recommended Congress pass legislation prohibiting wire transfers related to Internet gambling sites and the banks that represented them.<sup>18</sup> The NGISC based its recommendation on findings that Internet gambling was a “growing cause of debt collection problems for insured depository institutions and the consumer credit industry because it was primarily funded through personal use of payment system instruments, credit cards, and wire transfers.”<sup>19</sup> The report also noted that ambiguity in the current law raised questions on the applicability of the Wire Act<sup>20</sup> to Internet gambling, including whether “the specific mention of ‘sports wagering’ and ‘contests’ include[d] all types of gambling on the Internet.”<sup>21</sup> Central to the debate over the original intent of the statute and the future of technology was the applicability of the phrase “wired communications.”<sup>22</sup> The first argument asked whether the law’s intent only applied to telephone communication because the Internet had not yet been invented.<sup>23</sup> The argument for including the Internet in the statute’s reach was based on the idea that even though Congress did not write “telephone communications” into the Wire Act, the intent was to include “any and all wire communication devices.”<sup>24</sup> This interpretation sought to solve whether the Wire Act would still apply should the information on the Internet “pass through most computers without any hardwire connection at all.”<sup>25</sup> The second argument was over the forms of gambling the Wire Act

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<sup>18</sup> § 5361(a)(2).

<sup>19</sup> §§ 5361(a)(1) and (2).

<sup>20</sup> 18 U.S.C. § 1084 (West 2018).

<sup>21</sup> Report, Nat’l Gambling Impact Study Commission, *Chapter 5. Internet Gambling* (June 18, 1999), <https://govinfo.library.unt.edu/ngisc/reports/5.pdf> [Herein, *Internet Gambling*].

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

applied to because there was no clear definition of “contest.”<sup>26</sup> Both positions fail under *Dowling* because they argue to extend the statute to cover bodies of law that Congress had not intended it to touch.<sup>27</sup> The “time-honored interpretive guideline [is] that ‘ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity.’”<sup>28</sup> Therefore, simply applying the law arbitrarily would violate precedent.

Moreover, honoring the interpretive guideline would virtually repeal the Wire Act as Internet gambling became more mainstream. Therefore, the NGISC called for “[n]ew mechanisms of enforcing gambling laws on the Internet” because “traditional enforcement mechanisms are often inadequate for enforcing gambling prohibitions or regulations on the Internet, especially where such gambling crosses state or national borders.”<sup>29</sup> Congress responded by “hastily tack[ing] [the UIGEA] onto the end of unrelated legislation.”<sup>30</sup> And on October 13, 2006, Congress passed the Security and Accountability for Every Port Act of 2006 (SAFE Act)<sup>31</sup> and the UIGEA with it.

How the UIGEA filled the gaps in the Wire Act during the Internet era becomes apparent when comparing each statute’s prohibited acts. Under the Wire Act, “[w]hoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers” commits the crime of wire fraud.<sup>32</sup> Whereas the UIGEA prohibits a person engaged in the business of betting or wagering “to knowingly accept in connection with the participation of another person in unlawful Internet gambling,” credit or the proceeds of credit,

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<sup>26</sup> *Id.*

<sup>27</sup> *Dowling*, 473 U.S. at 229.

<sup>28</sup> *Id.*

<sup>29</sup> § 5361(a)(4).

<sup>30</sup> *Poker Face Off*, THE ECONOMIST (Apr. 20, 2011), <https://www.economist.com/business/2011/04/20/poker-face-off>.

<sup>31</sup> Security and Accountability for Every Port Act of 2006 (SAFE Act), Pub. L. No. 109–347, October 13, 2006, 120 Stat. 1884. [Herein, SAFE Act].

<sup>32</sup> § 1084(a).

electronic fund transfers, checks, or the proceeds of any form of a financial transactions.<sup>33</sup> Unlike the Wire Act, the UIGEA focuses on the process of accepting or transmitting funds for gambling; it does not make the act of betting illegal. Almost two years after its enactment, the difference between the Wire Act prohibited acts and those included in the UIGEA played a significant role in bringing an apparent end to online poker in the United States.

## DISCUSSION

On the morning of April 15, 2011, thirty-six days after a Grand Jury in the Southern District of New York returned an indictment<sup>34</sup> charging Full Tilt Poker, Absolute Poker/UltimateBet, and PokerStars (collectively the “Poker Companies”), U.S.-based online poker players logging into their Full Tilt Poker, Absolute Poker/UltimateBet, and PokerStars accounts learned the Department of Justice (DOJ) had taken control of the Internet addresses and froze the bank accounts attached to the sites<sup>35</sup>—including a reported hundreds of millions of dollars in player funds<sup>36</sup>—under suspicion the Poker Companies engaged in criminal activity.<sup>37</sup> On what is known to those in the poker community as “Black Friday,” DOJ executed a sweeping effort to scrub online poker from the Internet in the United States, seizing the aforementioned online poker sites—and reportedly hundreds of millions of dollars in player funds—under suspicion the Poker Companies engaged in criminal activity.<sup>38</sup> The indictment charged the principals of the Poker Companies, including Raymond Bitar (“Bitar”) and Nelson Burtnick (“Burtnick”) of Full Tilt Poker; Scott Tom (“Tom”) and Brent Beckley (“Beckley”)

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<sup>33</sup> § 5363.

<sup>34</sup> *United States v. Isai Scheinberg, Raymond Bitar, Scott Tom, Brent Beckley, Nelson Burtnick, Paul Tate, Ryan Lang, Bradley Franzen, Ira Rubin, Chad Elie, and John Campos, Defendants.*, 2011 WL 1449655 (S.D.N.Y.) [Hereinafter “Indictment”].

<sup>35</sup> David K. Lappin, *Black Friday: The Day That Shook the Poker World*, VEGASLOTSONLINE (Apr. 15, 2021), <https://www.vegasslotsonline.com/news/2021/04/15/black-friday-the-day/-that-shook-the-poker-world>.

<sup>36</sup> Mo Nuwwarah, *10 Years After Black Friday: Where Poker's Been and Where it's Going*, POKER NEWS (Apr. 16, 2021), <https://www.pokernews.com/news/2021/04/10-years-after-poker-black-friday-38989.htm>.

<sup>37</sup> See generally *Indictment*.

<sup>38</sup> Nuwwarah, *supra* note 36.

of Absolute Poker; Isai Scheinberg (“Scheinberg”); and Paul Tate (“Tate”) of PokerStars (collectively the “Poker Principals”), as well as some of the highly compensated third-party payment processors, including Ryan Lang (“Lang”), Bradley Franzen (“Franzen”), Ira Rubin (“Rubin”), Chad Elie (“Elie”), and John Campos (“Campos”) (collectively the “Poker Processors”) with UIGEA conspiracy.<sup>39</sup>

DOJ alleged the Poker Companies “received billions of dollars from United States residents who gambled through the Poker Companies” because the Poker Principals conspired with the Poker Processors to disguise payments to the websites as being made to non-existent online merchants and other non-gambling businesses.<sup>40</sup> Working together, the Poker Companies and Poker Processors:

deceived United States banks and financial institutions – including banks insured by the Federal Deposit Insurance Corporation – into processing billions of dollars in gambling transactions for the Poker Companies . . . [with] [a]pproximately one-third or more of the funds deposited by gamblers [going] directly to the Poker Companies as revenue through the ‘rake’ the Poker Companies charged players on almost every poker hand played online.<sup>41</sup>

Because Internet gambling companies, like the Poker Companies, are not permitted to open bank accounts in the United States to receive proceeds from U.S. gamblers, the Defendants employed various deceptive methods to trick banks into processing the gambling-related transactions.<sup>42</sup> One scheme used dummy companies to circumvent the regulations Visa and Mastercard introduced in 2001, requiring member banks to apply a specific transaction code to Internet gambling transactions.<sup>43</sup> The dummy companies created the false appearance that the transactions were unrelated to gambling, tricking the banks into miscoding the transactions and allowing the payments

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<sup>39</sup> *Indictment* at ¶¶ 1 and 2.

<sup>40</sup> *Id.* at ¶ 1.

<sup>41</sup> *Id.* at ¶ 3.

<sup>42</sup> *Id.* at ¶ 16.

<sup>43</sup> *Id.* at ¶ 18.

to process.<sup>44</sup> A second scheme involved using pre-paid credit cards developed to look like “store value cards” that were then funded by credit card without the transaction code being applied.<sup>45</sup>

A third scheme used e-checks as the artifice to carry out the fraud.<sup>46</sup> Between 2007 and March 2009, one e-check provider, Australia-based Intabill, processed \$543,210,092 of transactions for the Poker Companies.<sup>47</sup> The scheme was particularly effective because Intabill sought out banks struggling as a result of the global banking crisis. In one instance, Intabill’s U.S.-based representative, Andrew Thornhill (“Thornhill”), and Elie approached Campos, the then-Vice-Chairman of the Board of Directors and part-owner of SunFirst Bank (“SunFirst”) in Saint George, Utah, and proposed to Campos that SunFirst process poker transactions in exchange for a \$10M investment into the bank.<sup>48</sup> Despite warnings from SunFirst’s attorneys that processing the payments could lead to prosecution or seizure and forfeiture, Campos finalized the deal.<sup>49</sup> Between September 2009 and November 2010, SunFirst earned approximately \$1.6M in revenue from the processing fees connected to more than \$200M in payments made to the Poker Companies.

In all, the Indictment charged nine counts. Both the Poker Companies and the Poker Processors were charged with violating the UIGEA and operating an illegal gambling business. The Poker Processors were charged with conspiracy to violate the UIGEA and conspiracy to commit bank fraud, wire fraud, and money laundering.<sup>50</sup>

Wire fraud, 18 U.S.C.A. § 1343 (“Section 1343”), is the act of:

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<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at ¶ 20.

<sup>46</sup> *Id.* at ¶ 20.

<sup>47</sup> *Id.* at ¶ 26.

<sup>48</sup> *Id.* at ¶ 30.

<sup>49</sup> *Id.* at ¶ 31.

<sup>50</sup> *Id.* at ¶¶ 32–54.

“devis[ing] or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice.”<sup>51</sup>

The bank fraud statute, 18 U.S.C.A. § 1344 (“Section 1344”), states that it is illegal for an individual to “knowingly execute[ ], or attempt[ ] to execute, a scheme or artifice to defraud a financial institution” or to “obtain any of the money, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises.”<sup>52</sup> Though wire fraud and bank fraud are distinct statutes, the latter usually relies on the former to effect the fraud.

The bank fraud charges against the Poker Companies and Poker Processors were based on the scheme to use dummy companies to mask the nature of the gambling-related transactions by making the transactions appear to be connected to other online merchants.<sup>53</sup> For example, the Poker Processors “processed credit card payments for gambling transactions under the name ‘PS3SHOP,’ using a non-gambling credit card code for the transactions.”<sup>54</sup> The use of the wires was critical to the execution of the bank fraud scheme because the Poker Processors used wire communications, including the Internet, to willfully and knowingly “deceive financial institutions and other financial intermediaries into processing and authorizing the payments” by creating a “false appearance [that the payments] were unrelated to gambling.”<sup>55</sup>

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<sup>51</sup> 18 U.S.C.A. § 1343 (West 2018).

<sup>52</sup> 18 U.S.C.A. § 1344 (West 2018).

<sup>53</sup> Indictment at ¶¶ 47–51.

<sup>54</sup> *Id.* at ¶¶ 26, 27, 34 and 35.

<sup>55</sup> *Id.* at ¶ 35.

DOJ charged conspiracy to commit bank and wire fraud under statute 18 U.S.C.A. § 1349 (“Section 1349”).<sup>56</sup> Under Section 1349, “[a]ny person who attempts or conspires to commit any offense under this chapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.”<sup>57</sup> In New York—where the illegal gambling operations took place—New York State Law § 105.20 requires an independent overt act in furtherance of the conspiracy.<sup>58</sup> Indicting for the federal crime of conspiracy charged under Section 1349, however, does not require proof of an overt act; federal conspiracy charges only require a defendant to join in the agreement willfully with the intent to further its unlawful purpose.<sup>59</sup> Section 1349 significantly lowers the bar for prosecution because the Government only has to prove that two or more persons agreed to commit an offense.

Count Nine against the Defendants was money laundering, 18 U.S.C.A. § 1956.<sup>60</sup> Money laundering is the process of making dirty money look clean.<sup>61</sup> Charging under this statute speaks to a basic tenant of American jurisprudence: “criminal liability is normally based upon the concurrence of two factors, an evil-meaning mind [, the *mens rea*], and an evil-doing hand [, the *actus reus*].”<sup>62</sup> The *actus reus* for money laundering is an attempted financial transaction involving the proceeds of criminal activity.<sup>63</sup> Two distinct types of activity can serve as the *actus reus* for money laundering: the first act is where the suspect knows “the property involved in the financial transaction represents the proceeds of some form of unlawful activity” and still “attempts to conduct such a financial

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<sup>56</sup> 18 U.S.C.A. § 1349 (West 2018).

<sup>57</sup> *Id.*

<sup>58</sup> N.Y. Penal Law § 105.20 (McKinney 2022).

<sup>59</sup> “The language of § 1349 does not require the commission of an overt act.” *United States v. Gonzalez*, 834 F.3d 1206, 1220 (11<sup>th</sup> Cir. 2016) (*comparing* 18 U.S.C.A. § 371 *with* 18 U.S.C.A. § 1349).

<sup>60</sup> 18 U.S.C.A. § 1956 (West 2018).

<sup>61</sup> *History of Anti-Money Laundering Laws*, FIN. CRIMES ENFORCEMENT NETWORK, <https://www.fincen.gov/history-anti-money-laundering-laws> (last visited Apr. 3, 2022).

<sup>62</sup> *United States v. Thompson*, 81 M.J. 824, 825 (A. Ct. Crim. App. 2021) (*quoting United States v. Bailey*, 444 U.S. 394, 402 (1980)).

<sup>63</sup> § 1956.

transaction which involves the proceeds of specified unlawful activity.”<sup>64</sup> The second act is where the suspect “transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds” from inside the United States “to or through a place outside the United States or to a place inside the United States from or through a place outside the United States.”<sup>65</sup> The *actus reus* for money laundering requires that the funds represent the “proceeds of specified unlawful activity.”<sup>66</sup> Specified unlawful activity covers “over 250 crimes in six categories, including most RICO predicate offenses; certain offenses against foreign nations; acts constituting a criminal enterprise under the Controlled Substances Act; miscellaneous offenses against persons and property; federal health offenses and federal environmental offenses.”<sup>67</sup> For money to represent the proceeds of a specified unlawful activity, the underlying criminal action must be complete.<sup>68</sup>

The base acts alone are not sufficient to prosecute money laundering; there must be a *mens rea*—the evil purpose for the transaction or attempted transaction. The *mens rea* is expressed through the intent of the transaction. If the intent is to “promote the carrying on of specified criminal activity” or to engage in conduct constituting tax fraud or evasion, the crime is charged under Section 1956(a)(1)(A)<sup>69</sup> or Section 1956(a)(2)(A),<sup>70</sup> or both, as *promotional* money laundering. If the intent is to “conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity”; or to “avoid a transaction reporting requirement under State

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<sup>64</sup> § 1956(a)(1).

<sup>65</sup> § 1956(a)(2).

<sup>66</sup> § 1956(a)(1).

<sup>67</sup> *Money Laundering Control Act (MCLA) Overview*, WILKIE FARR & GALLAGHER, <https://complianceconcourse.willkie.com/resources/anti-money-laundering-us-money-laundering-control-act> (last visited Apr. 3, 2022).

<sup>68</sup> *Id.*

<sup>69</sup> § 1956(a)(1)(A).

<sup>70</sup> § 1956(a)(2)(A).

or Federal law,” the crime is charged under Section 1956(a)(1)(B)<sup>71</sup> or 1956(a)(2)(B),<sup>72</sup> or both, as *concealment* money laundering.

The Poker Processors were indicted for conspiring to commit *promotional* money laundering—to continue operating illegal gambling businesses<sup>73</sup>—under both Section 1956 and 18 U.S.C.A. § 1957 (“Section 1957”).<sup>74</sup> Charging under both statutes was addition by subtraction. Section 1957 money laundering removes the requirement to prove a defendant knew the funds were derived from a specified unlawful activity, even if the predicate offense occurred outside the United States, as long as the Defendants were United States persons.<sup>75</sup> In the Black Friday case, charging money laundering under both Section 1956 and Section 1957 ensured DOJ would have jurisdiction even though the unlawful activity occurred in the Isle of Mann (PokerStars), Ireland (Full Tilt Poker), Antigua (UltimateBet), and Costa Rica (Absolute Poker)—because the Poker Processors were U.S. residents.<sup>76</sup>

Additionally, the Defendants faced the likelihood of significantly longer prison sentences if they were convicted of bank fraud, wire fraud, and money laundering than just a UIGEA conviction would allow. Under Section 5366 of the UIGEA, “[a]ny person who violates section 5363 shall be fined under title 18, imprisoned for not more than [five] years, or both.”<sup>77</sup> “Title 18” references 18 USCA § 3571,<sup>78</sup> which provides guidelines for “fines for individuals,” not more than \$250,000, and “fines for organizations,” not to exceed \$500,000, found guilty of a felony under the statute.<sup>79</sup> By comparison, the punishment for bank and wire fraud is a fine of not more than \$1,000,000,

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<sup>71</sup> § 1956(a)(1)(B).

<sup>72</sup> § 1956(a)(2)(B).

<sup>73</sup> *Indictment* at ¶ 53.

<sup>74</sup> 18 U.S.C.A. § 1957(a)-(c) (West 2018).

<sup>75</sup> § 1957.

<sup>76</sup> *Indictment* at ¶ 6.

<sup>77</sup> § 5366.

<sup>78</sup> 18 U.S.C.A. § 3571 (West 2018).

<sup>79</sup> §§ 3571(b)(3) and (c)(3).

imprisonment for not more than [twenty] years, or both.<sup>80</sup> Convictions for money laundering are punishable by a fine of not more than \$500,000 or twice the value of the property involved in the transaction, whichever is greater, imprisonment for not more than twenty years, or both.<sup>81</sup>

Many policymakers and practitioners believe that a more severe prison experience may make individuals convicted of an offense less likely to commit crimes in the future.<sup>82</sup> However, studies show that the likelihood of getting caught is a greater deterrent than a lengthy prison sentence, doing more to “chasten individuals convicted of crimes” than does the risk of severe punishment.<sup>83</sup> This is likely because “[c]riminal justice today is, for the most part, a system of pleas, not a system of trials.”<sup>84</sup> In a system of bargained justice, the threat of lengthy incarceration is a valuable commodity because the prospect of spending decades in prison gives DOJ leverage to secure pleas from defendants in exchange for more lenient sentences. Facing decades in prison if convicted by a jury, two Poker Principals<sup>85</sup> and three Poker Processors<sup>86</sup> entered guilty pleas.

### ***The rise in online poker’s popularity and its fall under the UIGEA***

The 1999 NGISC report attributed the Internet gambling phenomenon to the increasing number of Internet users and their growing consumer confidence in conducting online financial

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<sup>80</sup> §§ 1343 and 1344.

<sup>81</sup> § 1956.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Lafler v. Cooper*, 566 U.S. 156, 159 (2012).

<sup>85</sup> *Bitar* – Press Release, Dep’t of Justice, Former Full-Tilt Poker CEO Pleads Guilty And Is Sentenced In Manhattan Federal Court (Apr. 15, 2013), <https://www.justice.gov/usao-sdny/pr/former-full-tilt-poker-ceo-pleads-guilty-and-sentenced-manhattan-federal-court>; *Scheinberg* – Press Release, Dep’t of Justice, PokerStars Founder Pleads Guilty (Mar. 25, 2020), <https://www.justice.gov/usao-sdny/pr/pokerstars-founder-pleads-guilty>; *Rubin* – Michael Gentile, *Another Guilty Plea from Black Friday Indictments*, POKER FUSE (Jan 28, 2012), <https://pokerfuse.com/news/law-and-regulation/another-guilty-plea-black-friday-indictments/>.

<sup>86</sup> *Elie* – Nick Jones, *Fourth Black Friday Payment Processor Chad Elie Pleads Guilty*, POKER FUSE (Mar. 26, 2012), <https://pokerfuse.com/news/law-and-regulation/fourth-black-friday-indictee-chad-elie-pleads-guilty/>; *Lang* – Michael Gentile, *Another Black Friday Payment Processor Pleads Guilty*, POKER FUSE (Feb. 29, 2012); <https://pokerfuse.com/news/law-and-regulation/another-black-friday-payment-processor-pleads-guilty/>; *Tate*, Katie Callahan, *Former PokerStars Employee Paul Tate Avoids Prison in Black Friday Case*, POKER NEWS (Nov. 29, 2016), <https://www.pokernews.com/news/2016/11/former-pokerstars-employee-paul-tate-avoids-prison-26473.htm>; *Rubin*, Michael Gentile, *Another Guilty Plea from Black Friday Indictments*, POKER FUSE (Jan 28, 2012), <https://pokerfuse.com/news/law-and-regulation/another-guilty-plea-black-friday-indictments/>.

transactions.<sup>87</sup> By the early 2000s, Internet poker was available to practically anyone with a modem and a computer. Within five years, more than 70% of the 1.8 million players logging into their online poker accounts were located in the United States.<sup>88</sup> The online poker boom in the United States arguably came to an end when the UIGEA passed in 2006.<sup>89</sup> PartyGaming shares plummeted 13% overnight after analysts forecasted a 90% revenue drop attributed to the loss of access to the U.S. player pool.<sup>90</sup> Despite the bill passing, some online poker sites, including the Poker Companies continued to operate until April 15, 2011.<sup>91</sup> Today, only a few online poker websites accept U.S. players. One site, America’s Cardroom (“ACR”), a subsidiary of Winning Poker Network based in Costa Rica, ranks seventh in the world for online poker traffic.<sup>92</sup> ACR offers a variety of payment methods ranging from cryptocurrency to standard Visa card payments.<sup>93</sup> Like the Poker Companies once did, ACR operates offshore; however, the presumption of extraterritoriality—a canon of statutory construction where “[a]bsent clearly expressed congressional intent to the contrary, federal laws will be construed to have only domestic application”<sup>94</sup>—impedes DOJ’s enforcement of the UIGEA against online poker sites operating outside the United States.

Extraterritorial application of U.S. law is evaluated under the *Morrison–Kiobel* framework—a two-step analysis originating from two seminal cases: *Morrison v. National Australia Bank Ltd.*<sup>95</sup>

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<sup>87</sup> *Internet Gambling*, *supra* note 21.

<sup>88</sup> *Going All In For Online Poker*, NEWSWEEK (Aug. 15, 2005), <https://www.newsweek.com/going-all-online-poker-117991>.

<sup>89</sup> SAFE Act, *supra* note 31.

<sup>90</sup> Simon Bowers, *Players Walk Away As US Law Wipes Out 90% of PartyGaming’s poker revenue*, THE GUARDIAN (Oct. 16, 2006, 7:19 PM), <https://www.theguardian.com/business/2006/oct/17/usnews.gambling>.

<sup>91</sup> *See generally* Indictment, *supra* note 34.

<sup>92</sup> Darren Heitner, *How This CEO Turned His Company Into A Top Poker Destination*, FORBES (Sept. 4, 2017, 07:32 AM), <https://www.forbes.com/sites/darrenheitner/2017/09/04/how-this-ceo-turned-his-company-into-a-top-poker-destination/?sh=3edd065511b1>.

<sup>93</sup> Darren Heitner, *Why A Poker Site Will Start Accepting Over 60 Forms Of Cryptocurrencies*, FORBES (Oct. 15, 2017, 09:15 AM), <https://www.forbes.com/sites/darrenheitner/2017/10/15/why-a-poker-site-will-start-accepting-over-60-forms-of-cryptocurrencies/?sh=35edd9f740d3>.

<sup>94</sup> *RJR Nabisco, Inc. v. Eur. Cmty.*, 579 U.S. 325, 326 (2016) (citing *Morrison v. National Australia Bank Ltd.*, 561 U.S. 247, 255 (2010)).

<sup>95</sup> 561 U.S. 247 (2010).

and *Kiobel v. Royal Dutch Petroleum Co.*<sup>96</sup> Under the *Morrison – Kiobel* framework, the Court asks whether the statute gives a clear, affirmative indication that it applies extraterritorially.<sup>97</sup> If there is a clear extraterritorial effect, the analysis turns to what limits Congress imposed on the statute’s foreign application.<sup>98</sup> If there is no clear extraterritorial effect, the Court moves to the second step, examining the statute’s “focus.”<sup>99</sup> “If the conduct relevant to the statute’s focus occurred in the United States, then the case involves a permissible domestic application even if [the conduct] occurred abroad.”<sup>100</sup> Courts do not necessarily have to start the analysis at step one; they may opt to start their analysis at step two when it is appropriate; however, because a “finding of extraterritoriality at step one will obviate step two’s ‘focus’ inquiry, it will usually be preferable for courts to proceed with the two-step *Morrison – Kiobel* framework sequentially.”<sup>101</sup>

Recently, the Ninth Circuit Court implemented the *Morrison – Kiobel* framework in *United States v. Hussain*, a wire fraud and conspiracy to commit wire fraud case.<sup>102</sup> Hussain argued on appeal that his convictions for wire fraud and conspiracy to commit wire fraud must be reversed because they were based on the improper application of US criminal law to conduct abroad.<sup>103</sup> The Court held that “[s]o long as Hussain’s use of the wires in furtherance of his fraud had a sufficient domestic nexus,” the convictions were based on “permissible domestic application[s]” of the statute.<sup>104</sup> Specific to its decision, the Court held that because “the focus of the wire fraud statute is the use of the wires in furtherance of a scheme to defraud,” and not the “scheme to defraud,” as

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<sup>96</sup> 569 U.S. 108 (2013).

<sup>97</sup> *RJR Nabisco, Inc.*, 579 U.S. at 326.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *United States v. Hussain*, 972 F.3d 1138, 1142 (9th Cir. 2020).

<sup>102</sup> *Id.* at 1138.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.* at 1145.

Hussain argued, the convictions were proper as Hussain used domestic wires to further his extraterritorial scheme.<sup>105</sup>

The Ninth Circuit’s analysis in *Hussain* is instructive for explaining why ACR and online poker sites that operate offshore are willing to accept U.S. players and why the UIGEA creates a significant hurdle for bringing those sites within reach of U.S. law enforcement. *First*, Internet gambling sites outside the United States, like ACR, obtain licenses from Antigua, the Isle of Man, and other foreign jurisdictions.<sup>106</sup> *Second*, 31 USCA § 5361 Note (“Sec. 803”) addresses “Internet gambling in or through foreign jurisdictions,” stating the United States Government should:

(1) encourage cooperation by foreign governments and relevant international fora in identifying whether Internet gambling operations are being used for money laundering, corruption, or other crimes.

(2) advance policies that promote the cooperation of foreign governments, through information sharing or other measures, in the enforcement of this Act.<sup>107</sup>

Suppose ACR implemented a similar scheme to trick banks into processing transactions as the Poker Companies employed. In that instance, a court starting at the second step would find the fraud satisfies the *Morrison-Kiobel* framework’s “focus-centric” analysis for extraterritorial application because the core component of the scheme to defraud occurred in the United States. If the same court proceeded through the *Morrison-Kiobel* framework analysis sequentially, first examining whether Congress intended for the UIGEA to apply extraterritorially, and if so, with what limitations, the outcome differs significantly. In that instance, it is likely the court would find the

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<sup>105</sup> *Id.* at 1145.

<sup>106</sup> Lawrence G. Walters, Esq., *UIEGA On Second Thought . . . — What Does The UIGEA Really Mean For Internet Gambling?*, WALTERS LAW GROUP, <https://www.firstamendment.com/uiega/> (last visited Apr. 3, 2022).

<sup>107</sup> *Id.* Security and Accountability for Every Port Act of 2006, Pub. L. No. 109–347, § 803 October 13, 2006, 120 Stat 1962.

UIGEA lacks extraterritorial application because Sec. 803 specifically addresses Congress’s intent for the UIGEA’s application outside the United States.

The lack of apparent extraterritorial application and the focus on holding only financial processors and website owners accountable created an optimal environment for tech savvy cheaters to rob online U.S.-based online poker players. *First*, it disincentivized online poker sites to do anything about terms of service violations that reach the level of criminal activity because they would have to self-report their own criminal activity. *Second*, the unwillingness for online poker sites to self-report coupled with increased accessibility to Real Time Assistance (RTA) software allows bad actors to take advantage of sites like ACR to scam U.S.-based online poker players without fear of getting caught. How these components created a highly profitable and virtually risk-free environment for wire fraud, money laundering, and RICO-like criminal activity is discussed below.

### ***The rise of criminal activity in online poker during the UIGEA era***

Poker is a game of decisions. Players decide to check, call, raise, or fold based on their analysis of available, and often, incomplete information. Game Theory Optimal (GTO) poker is a strategy that dictates “player[s] [are] always making the decision that returns the most profit in the long run.”<sup>108</sup> Two essential components drive profitable decision-making in poker: expected value and pot odds. The quality of the decision is measured in expected value (EV)—(EV) is the average result of a given play if it were made hundreds (or even thousands) of times<sup>109</sup>—and the EV of a decision is derived from a concept referred to as “pot odds.” Pot odds represent the relationship of what you stand to gain in a hand of poker and what you have to spend in order to get it — that is, the

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<sup>108</sup> *Game Theory Optimal (GTO) Texas Holdem Poker Theory*, CORNELL U. (Nov. 3, 2021), <https://blogs.cornell.edu/info2040/2021/11/03/game-theory-optimal-gto-texas-holdem-poker-theory/>.

<sup>109</sup> *What is Expected Value (EV) in Poker? This Basketball Analogy Will Make it Clear*, UPSWING POKER, <https://upswingpoker.com/expected-value-ev-poker/#what>.

ratio between your reward and your risk.<sup>110</sup> For poker players who aspire to be profitable over the long run:

“The goal is to make the highest expected value decision at each opportunity. Generally, the best way to accomplish this is to focus on giving our opponents the most difficult decisions possible by using our understanding of the pot odds model to capture more than our fair share of each pot.”<sup>111</sup>

Consistently making the highest expected value decisions that yield the most profit over the long term is easier said than done. “The foundation of the game of poker is our ability to [consistently] make good decisions based on that incomplete information,” which “mak[es] gaining and using information each a skill unto themselves.”<sup>112</sup> Because humans are prone to making mistakes, getting tired, and acting on emotion decisions, it is almost impossible to implement the right decision in a game where there are “10<sup>161</sup> (1 followed by 161 zeroes) situations, or information sets, that a player may face—vastly more than all of the atoms in the universe.”<sup>113</sup> Fortunately, there’s an app[lication] for that!<sup>114</sup>

Real Time Assistance (“RTA”) is “anything that assists a poker player in their decision making while the player is currently playing in a cash game or a tournament.”<sup>115</sup> Using RTA software influences a player’s decision-making.<sup>116</sup> In some cases, the poker software allows users to “data mine.” “Data mining” involves exploring and analyzing large blocks of information to glean

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<sup>110</sup> *10 Hold'em Tips: Pot Odds Basics*, POKER NEWS (July 18, 2016), <https://www.pokernews.com/strategy/10-hold-em-tips-04-25360.htm>.

<sup>111</sup> Text message from Matthew Hunt, Instructor, Solve For Why, to Jeff Woolf (7:13 pm EST, February 11, 2022).

<sup>112</sup> *THE PRIMER COURSE: Laying the Theoretical Groundwork with Matt Hunt, Episode 1. Afforded Information & Key Terminologies*, SOLVE FOR WHY TV, <https://solveforwhy.io/programs/the-primer-course?cid=1979761&permalink=primer-ep1&offset=141> (Apr. 3, 2022).

<sup>113</sup> Ken Walters, *Brains Vs. Artificial Intelligence: Carnegie Mellon Computer Faces Poker Pros In Epi No-Limit Texas Hold'Em Competition*, CARNEGIE MELLON UNIVERSITY (April 24, 2015), <https://www.cmu.edu/news/stories/archives/2015/april/computer-faces-poker-pros.html>.

<sup>114</sup> THERE’S AN APP FOR THAT, Registration No. 3884408 (referring to Apple’s slogan in relation to its retail store for purchasing and downloading applications (“apps”) to one’s iPad, iPhone, or iPod).

<sup>115</sup> Matthew Pitt, *What Is Real-Time Assistance (RTA)? Is it Legal?*, POKER NEWS (Oct. 02, 2020), <https://www.pokernews.com/news/2020/10/what-is-meant-by-real-time-assistance-rta-38054.htm>.

<sup>116</sup> *Id.*

meaningful data patterns and trends.<sup>117</sup> Grocery stores, for example, use data mining in loyalty programs to determine who is buying what and what items to put on sale and when.<sup>118</sup> In online poker, data mining refers to using software to access hand histories from the players that use the site.<sup>119</sup> The hand history will usually include such information as the date and time the hand was played; the player seating positions; player identifiers, such as the “Hero,” who is usually the person keeping the hand history, or the “Villain,” who is usually the primary opponent in the hand history; the type of game and the table stakes, known hole cards, betting action for each round, and the community cards in play.<sup>120</sup> Poker data mining software allows the user to access this data about all players on the site.<sup>121</sup> The data gleaned from other players gives the user the ability to target specific players and exploit their weaknesses by determining their capabilities as a player, the likelihood they will fold to aggressive betting, how often they bluff, and the bet sizing they use when bluffing compared to when they have strong hands.<sup>122</sup> Real Time Assistance helps players implement GTO strategy, giving users the formula for making the highest EV decision in a particular spot. As long as users know what data to enter, understanding the game does not matter.

Using RTA software violates the terms of service for many online poker sites because it violates the basic tenet of poker that is “[f]undamental to the “integrity of the game, ‘one person, one hand.’”<sup>123</sup> Unfortunately, “one person, one hand” is an almost impossible rule to enforce online, making the use of RTAs an existential threat to online poker.<sup>124</sup> Some online poker sites, such as

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<sup>117</sup> Alexandra Twin, *Data Mining*, INVESTOPEDIA (Sept. 17, 2021), <https://www.investopedia.com/terms/d/datamining.asp>.

<sup>118</sup> *Id.*

<sup>119</sup> *Data Mining*, POKER SOFTWARE, <https://pokersoftware.com/categories/data-mining.html> (last visited Apr. 3, 2022).

<sup>120</sup> *Hand History*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Hand\\_history](https://en.wikipedia.org/wiki/Hand_history) (last visited Apr. 3, 2022).

<sup>121</sup> *Data Mining*, *supra* note 119.

<sup>122</sup> *Data Mining*, *supra* note 119.

<sup>123</sup> David K Lappin, *Robot Wars: How Long Before Real-Time Assistants Threaten the Viability of Online Poker*, VEGASSLOTSONLINE (Jan. 15, 2022), <https://www.vegasslotsonline.com/news/2022/01/15/robot-wars-how-long-before-real-time-assistants-threaten-the-viability-of-online-poker/>.

<sup>124</sup> *Id.*

GGPoker, have taken an aggressive stance against cheating. The GGPoker website has an entire section of its “Security & Ecology Policy (SEP)” devoted to breaches, prohibiting the use of RTAs, including, but not limited to, the use of real-time assistance (RTA), remote desktop and screen sharing programs, virtual machines and emulators, and data mining.<sup>125</sup> Players caught using banned materials face may be permanently banned from the site or have the funds in their accounts confiscated.<sup>126</sup>

RTA use became the focus of one of the biggest scandals in online poker since the Full Tilt Poker Ponzi scheme came to light in the aftermath of Black Friday.<sup>127</sup> In September 2020, Fedor Kruse was accused of amassing over \$90,000 in profit over two weeks by using RTA against players in online high-stakes cash games on several sites, including ACR.<sup>128</sup> Fedor “GlitchSystem” Kruse (“Kruse”), a YouTube streamer who amassed more than 400,000 subscribers who watched him live stream the game “Call of Duty” before he turned his attention to poker in 2015.<sup>129</sup> When Kruse started playing online poker, he played \$0.50/\$1.00 No Limit Hold’em<sup>130</sup> (NLHE) cash games, known as “micro-stakes.”<sup>131</sup> Inside of twelve months, Kruse was playing \$200/\$400 high-stakes

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<sup>125</sup> *Security & Ecology Policy*, GGPOKER, <https://en.ggpoker.com/security-ecology-policy/> (last visited Apr. 3, 2022).

<sup>126</sup> *Id.*

<sup>127</sup> Nathan Vardi, *Feds Call Full Tilt Poker A Massive Ponzi Scheme*, FORBES (Sept. 20, 2011, 12:08 P.M), <https://www.forbes.com/sites/nathanvardi/2011/09/20/feds-call-full-tilt-poker-a-massive-ponzi-scheme/?sh=244f2dd23dc5>.

<sup>128</sup> Mo Nuwwarah, *Fedor Kruse Accused of Using Solver to Cheat in High-Stakes Cash Games*, POKER NEWS (Sept. 16, 2020), <https://www.pokernews.com/news/2020/09/fedor-kruse-solver-cheat-high-stakes-cash-37966.htm> (click on “a screenshot of an Excel spreadsheet” hyperlink, which takes the reader to the screenshot of the Excel spreadsheet showing the profit and loss for Kruse and his roommates over the two-week span referenced throughout this section).

<sup>129</sup> *Id.*

<sup>130</sup> No Limit Hold’em is a variant of poker that involves potentially four rounds of betting per hand: preflop is the round that starts when the dealer deals two “down cards” to each player who then decides if they will fold, call or raise the big blind (BB)—which is the larger of the two forced bets, the small blind (SB) being the other. If at least one player calls the previous bet, then the second round—the flop round—begins. The flop is when the dealer will put out three cards that all players in the hand can use to make the best five-card hand. Another round of betting takes place and then the process repeats on the “turn card” round and then continues to the “river card” round. Until the last bet is called or there is fold, the hand continues. At any time on any round, a player can move “all-in” because there is “no limit” to how many of the chips a player can use to bet. A player can be all-in preflop, on the flop, on the turn, or after the river. It is entirely up to the player. *See generally How to Play No Limit Holdem*, TOPPOKERSITES.COM, <https://www.toppokersites.com/poker-rules/no-limit-holdem/> (last visited Apr. 3, 2022).

<sup>131</sup> *Id.*

NLHE cash games.”<sup>132</sup> The meteoric rise from micro-stakes to the nose-bleeds<sup>133</sup> inside of one year is virtually unheard of because of the vast difference in the talent pool and the amount of money a player needs to absorb the swings that come with playing the game. While there is no bright-line rule for how much money one needs to play poker, the general rule is that a player should have anywhere between 20–50 “buy-ins” to absorb the variance inherent to poker.<sup>134</sup> A “buy-in” is the maximum amount of money a player can start with at that specific game. Generally, the maximum buy-in for lower limit games is 100 big blinds. To put this into context, the maximum buy-in for most \$0.50/\$1.00 NLHE games online is usually \$100; thus, the recommended bankroll for \$0.50/\$1.00 NLHE—where Kruse started his online poker career—is between \$2,000–\$5,000.<sup>135</sup> By the end of 2015, Kruse was playing at limits that recommend players have between \$800,000–\$2,000,000 in their bankroll.

Coupled with what opponents deemed to be “very non-intuitive” solver-approved decisions in which Kruse employed very exact bet-sizing, German players started to question Kruse’s success and style of play.<sup>136</sup> One day, Kruse’s roommates outed him on the popular *Two Plus Two* poker forum.<sup>137</sup> His roommates shared an Excel spreadsheet of Kruse’s cash game results for sessions in which one or both of his roommates had a part of the action.<sup>138</sup> The total hours played across the six sessions is not presently known. Assuming marathon twelve-hour sessions, Kruse would have logged only 72 hours of play, winning an astonishing \$1,283.44 per hour. Kruse used a two-computer set up

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<sup>132</sup> *A Comprehensive Guide to Poker Bankroll Management*, CARDS CHAT, <https://www.cardschat.com/poker-bankroll-management.php> (last visited Apr. 3, 2022).

<sup>133</sup> “The idea is that the stakes are so high that winning or losing might cause a nosebleed.” *What is Nosebleed in Poker?* 888 GROUP (June 1, 2019), <https://www.888poker.com/magazine/poker-terms/nosebleed>.

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> Nuwwarah, *supra* note 128.

<sup>137</sup> Nuwwarah, *supra* note 128.

<sup>138</sup> *Id.*

to run RTA software on one computer while accessing the poker sites on the second computer.<sup>139</sup> Using two computers made it practically impossible for the online poker site’s security and integrity team to detect what Kruse was doing.<sup>140</sup> Had Kruse’s roommates not come forward, it is hard to say whether Kruse would have ever been exposed.

While cheating at a game may be considered an act of moral turpitude, it is likely Kruse’s actions rise to the level of white-collar criminal activity. Consider the following elements for wire fraud: “a scheme or artifice to defraud” for “obtaining money or property by means of fraudulent pretenses” and “caus[ing] to be transmitted by wire” any writings or signals “for the purpose of executing such scheme or artifice.”<sup>141</sup> Kruse’s actions are prosecutable as wire fraud. *First*, Kruse devised a scheme to cheat at online poker with the sole intent being financial gain. *Second*, to execute on the scheme, Kruse built a two-computer set up specifically to run the RTA software undetected.<sup>142</sup> *Third*, Kruse implemented the scheme and artifice to defraud and made sure he evaded detection by running the software on a computer that was not linked to the same network, demonstrating that he knew he was doing something untoward. *Fourth*, Kruse “caused” the transmitting of data—the hand histories—from the poker site to another electronic destination, where he entered the information into the solver that relayed the information back to him on what the most profitable action to take was for executing his scheme. It is impossible to know how many times Kruse implemented this scheme without access to all of the hand histories. A typical live nine-handed poker game will see about 25-30 hands per hour.<sup>143</sup> The same game played online will deal 60-80 hands per hour.<sup>144</sup>

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<sup>139</sup> *Id.*

<sup>140</sup> Mo Nuwwarah, *GGPoker responds to Cheating Scandal With Bans and Warnings*, POKER NEWS (Sept. 30, 2020), <https://www.pokernews.com/news/2020/09/ggpoker-responds-cheating-scandal-38050.htm>.

<sup>141</sup> § 1343.

<sup>142</sup> Nuwwarah, *supra* note 128.

<sup>143</sup> Geoffrey Fisk, *How Many Hands Are Played Per Hour in Live Poker Games?*, UPSWING POKER (Feb. 5, 2020), <https://upswingpoker.com/hands-per-hour-live-poker-vs-online/>.

<sup>144</sup> *Id.*

Kruse was likely playing six-max (a six-player maximum table), which will deal 75-100 hands per hour.<sup>145</sup> Therefore, he could have efficiently executed this scheme hundreds of times per hour over the six recorded sessions.

The Excel spreadsheet shows that one or both of Kruse's roommates bought equity stakes in Kruse's action for almost all recorded sessions between May 12, 2020, and May 26, 2020.<sup>146</sup> Buying another player's action," more commonly known as "backing" a player, is when someone agrees to cover a portion of the player's buy-in in exchange for a respective share of any profit from the session.<sup>147</sup> One driver for selling action is to defray some of the costs of playing, allowing a player to sit at bigger games where the potential for making more money is higher but may also be too much for the player to afford on their own. On May 25, 2020, Kruse bought into the game for \$10,000 and cashed out of the game for \$25,139—a \$15,139 profit.<sup>148</sup> That day, one of the roommates bought 60% of Kruse's action and received a \$9,083.40 profit in return for the risk of backing him.<sup>149</sup> Backing a player is an investment that carries risk. Having confidence that the investment will return a profit is important, begging the question as to what gave Kruse's roommates the confidence to back him in a game that big and after on a short time playing poker.

It is unclear whether Kruse's roommates knew he was using RTA software to defraud players. If they did know about the scheme, it is arguable they were co-conspirators in a RICO-like operation and not just Kruse's backers. Though this may explain their sudden change of heart after realizing how the scheme had escalated,<sup>150</sup> their participation raises the specter of what if any culpability they

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<sup>145</sup> *Id.*

<sup>146</sup> Nuwwarah, *supra* note 128.

<sup>147</sup> Chris Wallace, *Everything You Always Wanted to Know About Selling Action in Poker But Were Afraid to Ask*, CARDPLAYER LIFESTYLE (May 29, 2018), <https://cardplayerlifestyle.com/selling-action/>.

<sup>148</sup> Nuwwarah, *supra* note 128.

<sup>149</sup> Nuwwarah, *supra* note 128.

<sup>150</sup> Petr Černý, *Overwhelming Evidence Posted in Fedor Kruse RTA Cheating Scandal*, VIP-GRINDERS (Sept. 15, 2020), <https://www.vip-grinders.com/evidence-fedor-kruse-rta-cheating-scandal/>.

may have had in the Kruse's scheme to defraud players. Outside of the strong likelihood that they conspired to commit wire fraud, there may have been a more significant criminal statute in play.

The RICO Act, § 18 U.S.C. § 1962,<sup>151</sup> makes it unlawful for any person to receive any income derived, directly or indirectly, through a pattern of racketeering activity to acquire or [conspire to] maintain directly or indirectly, an interest in or control of any enterprise," or "to be [or conspire to be] associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly in the conduct of such enterprise's affairs through a pattern of racketeering activity."<sup>152</sup>

Elements common to all RICO claims are a RICO person, an enterprise, and a pattern of racketeering activity.<sup>153</sup> A RICO person is defined as an "individual or entity capable of holding a legal or beneficial interest in property."<sup>154</sup> An enterprise is defined to include "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity."<sup>155</sup> "On its face, the definition [of an enterprise] appears to include both legitimate and illegitimate enterprises with its scope."<sup>156</sup> Whether legitimate or illegitimate, "an enterprise includes any union or group of individuals associated in fact," including "a group of persons associated together for a common purpose of engaging in a course of conduct."<sup>157</sup> "Such [a RICO] enterprise is proved by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit."<sup>158</sup>

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<sup>151</sup> 18 U.S.C. § 1962 (West 2018).

<sup>152</sup> § 1962(a)–(d).

<sup>153</sup> *In re MasterCard Int'l*, 132 F. Supp. 2d at 477.

<sup>154</sup> 18 U.S.C. 1961(3) (West 2018).

<sup>155</sup> § 1961.

<sup>156</sup> *United States v. Turkette*, 452 U.S. 576, 580 (1981).

<sup>157</sup> *Boyle v. United States*, 556 U.S. 938, 944 (2009).

<sup>158</sup> *Id.* (citing *Turkette*, 452 U.S. at 583).

Racketeering activity is defined in Section 1961(1) as any act involving gambling,<sup>159</sup> or any act which is indictable under Section 1343 (relating to wire fraud), or which is indictable under Section 1955 (relating to the prohibition of illegal gambling businesses).<sup>160</sup> Racketeering activity that rises to the level of a “pattern of racketeering activity” requires “at least two acts of racketeering activity, one of which occurred after the effective date of this chapter [of the statute] and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity.”<sup>161</sup>

In *H.J. Inc. v. Nw. Bell Tel. Co.*, the Court scrutinized how “pattern” should be interpreted for the purpose of determining what Congress intended “patterns of racketeering activity” to include.<sup>162</sup> The Court held that a “pattern is not formed by sporadic activity.”<sup>163</sup> Patterns of activity require “showing a relationship between the predicates” and “the threat of continuing activity.”<sup>164</sup> Therefore, proving a pattern of racketeering activity, requires showing the racketeering predicates are related, and amount to or pose a threat of continued criminal activity.<sup>165</sup> Criminal conduct forms a pattern when it “embraces criminal acts that have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are related by distinguishing characteristics and are not isolated events.”<sup>166</sup> Continuity is “both a closed and open-ended concept that refers to a closed period of repeated conduct or past conduct that by its nature projects into the future with a threat of

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<sup>159</sup> § 1962(1)(A).

<sup>160</sup> § 1962(1)(B).

<sup>161</sup> § 1961.

<sup>162</sup> *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 239 (1989).

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> *Id.* at 240.

repetition.”<sup>167</sup> As such, repeat activity is not necessarily continued activity that falls within the statute if it continues over a few weeks or months but threatens no future criminal conduct.<sup>168</sup>

Analyzing the Kruse scandal under the RICO statute indicates behavior that appears to satisfy the elements of RICO. *First*, they engaged in at least two acts of gambling that were separated by less than ten years that may pose a threaten of repetition in the future.<sup>169</sup> *Second*, the presence of a RICO person element is satisfied as Kruse and his roommates are people capable of holding a legal or beneficial interest in property.<sup>170</sup> *Third*, though they are not legally formed, Kruse and his roommates constitute are a group formed for the “common purpose of engaging in a course of conduct.”<sup>171</sup> That at least one of the roommates added their proceeds to “net worth”<sup>172</sup> may further the “common purpose” component of RICO because it suggests the proceeds of the activity, if determined to constitute a pattern of racketeering activity, were reinvested in the enterprise or used to gain an interest in an enterprise that would continue engaging in that course of conduct.

Under a plain text interpretation of the statute, Kruse and his roommates acted in a manner consistent with RICO; however, as the Court held in *H.J. Inc.*, Congress intended for RICO to address long-term criminal conduct.<sup>173</sup> The Excel spreadsheet only provides enough information to prove Kruse and his roommates engaged in a pattern of behavior for few weeks.<sup>174</sup> Without additional evidence that this pattern of racketeering activity continued for more than what is shown in the Excel spreadsheet, it is likely the Kruse scandal falls short of satisfying the elements of a RICO charge. However, it is hard to fathom how a scheme executed at least six times, that implements an “advanced

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<sup>167</sup> *Id.* at 241 (quoting *Barticheck v. Fidelity Union Bank/First National State*, 832 F.2d 36, 39 (3d. Cir. 1987)).

<sup>168</sup> *Id.* at 239.

<sup>169</sup> § 1961.

<sup>170</sup> 18 U.S.C.A § 1961(3) (West 2018).

<sup>171</sup> *Boyle*, 556 U.S. at 944.

<sup>172</sup> Nuwwarah, *supra* note 128

<sup>173</sup> *H.J. Inc.*, 492 U.S. at 242.

<sup>174</sup> Nuwwarah, *supra* note 128.

game theory optimal (GTO) solver running on a super-computer, capable of running hands millions of times in a matter of seconds, making decisions based on its findings a split second before the time limit expires”<sup>175</sup> is something less than wire fraud. If the pattern were to continue for an extended period of time, it would almost certainly satisfy the common elements for RICO prosecution.

The Kruse scandal revealed the existence of RICO-like enterprises in the world of online poker. Unfortunately for the majority of poker players, there is no way to know at what scale Kruse-like scams occur because online poker sites are reluctant to report these types of scams unless it affects their bottom line. “Like it or not, this is the way forward [in] online [poker]” because “[t]here is no policing this strategy [and] money tends to win over ethics.”<sup>176</sup>

Like the Poker Processors and Poker Companies charged with promotional money laundering conspiracy, similar charges can be levied against Fedor Kruse as his roommates. The broad definition of specified unlawful activity includes “any act or activity constituting an offense listed in Section 1961(1).”<sup>177</sup> Section 1961(1) lists a variety of acts that fall under the definition of racketeering activity, including but not limited to transmitting gambling information and wire fraud. In the Kruse scandal, the roommates’ participation in the apparent scam indicated that at least one roommate added the gains to his “net worth,” implying that it was available for Kruse to implement at another time.<sup>178</sup> Though it is a much smaller scale, this “reinvestment” parallels how the Poker Processors and the Poker Companies used the proceeds of the wire and bank fraud to promote illegal gambling operations<sup>179</sup>; therefore, it is conceivable that a prosecutor would look at adding the proceeds of a

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<sup>175</sup> *Id.*

<sup>176</sup> Matt Berkey (@berkey11), TWITTER (Sept. 13, 2020, 4:47 P.M.), <https://twitter.com/berkey11/status/1305249285575815168?lang=en>; *See also* Solve For Why Vlogcast, *Real Time AI Used to Solve Poker*, YOUTUBE (streamed live June 17, 2020), <https://www.youtube.com/watch?v=NbATk2df6wk> (last visited Apr. 3, 2022).

<sup>177</sup> § 1956(c)(7)(A).

<sup>178</sup> Nuwwarah, *supra* note 128.

<sup>179</sup> Indictment at §§ 51–55.

specified unlawful activity to the net worth of the enterprise as *promotional* money laundering because it was done to help further the specified unlawful conduct. Publicly available information also indicates that the other roommate may have cashed out the funds, as the Excel Spreadsheet shows those funds were “sent on n8.”<sup>180</sup> It is possible this transfer was intended to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity,” bringing the transaction under the definition of *concealment* money laundering.<sup>181</sup>

As more states move to legalize online poker, there is a non-zero chance that Kruse-like scandals will happen in the United States. Without proper measures, the risk for bad actors is minimal compared to the potential reward. Forfeiture of funds or a ban from the site has a minimal deterrent effect because it is improbable the perpetrators will get caught—recall that Kruse was only caught because his roommates exposed him.<sup>182</sup> The current regulatory environment allows for potentially uncapped upside rewards. It is time for that to change. The first step to ending the “positive EV environment” for game theory optimized white-collar criminal activity in online poker requires amending the UIGEA to punish criminal behavior instead of rewarding it. Ensuring online poker players can enjoy online poker in an environment as free from fraud requires transparency. Transparency necessitates a willingness for the two entities with the greatest visibility— poker companies and poker processors—to cooperate. Cooperation cannot happen for as long as processing payments for online poker is a prosecutable offense. Several states have taken the first critical steps to protect players by ensuring interstate cooperation between them and any other like-minded states willing to legalize online poker.

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<sup>180</sup> Nuwwarah, *supra* note 128.

<sup>181</sup> § 1956(B)(i).

<sup>182</sup> Nuwwarah, *supra* note 128.

### *The fall of criminal activity under an amended UIGEA*

Shortly after Black Friday, some state lawmakers quickly went to work behind the scenes to restore access to online gambling. In 2012, Delaware became the first state to legalize online poker,<sup>183</sup> and Nevada quickly followed.<sup>184</sup> On October 5, 2017, then-Governor of New Jersey, Chris Christie, signed the Multi-State Internet Gaming Agreement (MSIGA), making New Jersey the newest Member State, joining the founding Member States, Delaware, and Nevada.<sup>185</sup> Two other states, Pennsylvania, having amended its iGaming bill, H271,<sup>186</sup> and Michigan, made online poker accessible to its residents but have not yet joined The Multi-State Internet Gaming Agreement.<sup>187</sup> Online poker is approved in Massachusetts and West Virginia but is not yet accessible to residents.<sup>188</sup> New York, Connecticut, Kentucky, and Virginia have introduced bills to legalize online poker, but the bills have not been brought to a vote.<sup>189</sup>

The MSIGA provides a framework for modifying the UIGEA to regulate online poker in the United States that focuses on player protection measures that deter white-collar criminal activity amongst the player pool. There are several ways that players benefit from regulatory oversight the MSIGA provides. The MSIGA requires online poker sites to prove they have a secure system to hold player funds and are able to timely process payments to players.<sup>190</sup> Additionally, the MSIGA requires careful monitoring of the sites for responsible gaming protocols—including means to deter underage

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<sup>183</sup> 29 Del. C. § 4807 (West 2012)

<sup>184</sup> Ian Simpson, *Nevada Legalizes First Interstate Online Poker*, REUTERS (Feb. 22, 2013, 11:35 A.M.), <https://www.reuters.com/article/net-us-usa-gambling-nevada/nevada-legalizes-first-interstate-online-poker-idUSBRE91LOS020130222>.

<sup>185</sup> Multi-State Internet Gaming Agreement, Oct. 5, 2017, available at <https://www.nj.gov/oag/ge/2017news/MSIGA%20signed%20by%20all.pdf>. [Herein, “MSIGA”].

<sup>186</sup> 4 Pa. C.S.A. § 1509 (West 2017).

<sup>187</sup> Jennifer Newell, *Legal Online Poker: Can I Play in My State?*, LEGAL U.S. POKER SITES (April 26, 2018), <https://www.legaluspokersites.com/state-laws>.

<sup>188</sup> Nick Chappell, *Legal US Online Poker*, US BETS (APR. 27, 2021), <https://www.usbets.com/online-poker/>.

<sup>189</sup> *Id.*

<sup>190</sup> *Id.*

access and help for gambling addicts—as well as protocols for game fairness and severe consequences for transgressions.<sup>191</sup>

The MSIGA’s authors crafted the agreement in a manner that speaks to the very nature of the UIGEA’s misguided purpose. Recall that Section 5362(10)(A) of the UIGEA limits “unlawful Internet gambling” to placing, receiving, or transmitting a bet or wager that involves the Internet where “such bet or wager is unlawful under any applicable Federal or State law in the State or Tribal lands in which the bet or wager is initiated, received, or otherwise made.”<sup>192</sup> Making online poker legal in their respective states, the Member States are outside the scope of Section 5362(10)(B) of the UIGEA because “the bet or wager is initiated and received or otherwise made exclusively within a single [Member] State” where it is “expressly authorized by and placed in accordance with the laws of such [Member] State.”<sup>193</sup> Moreover, as the Court in *New Hampshire Lottery Commission v. Barr* held, “the four prohibitions in § 1084(a) [ ] apply only to bets or wagers on a sporting event or contest.”<sup>194</sup> On appeal, the First Circuit Court concluded the prohibitions section 1084(a) applied only to the interstate transmission of wire communications related to any sporting event or contest,<sup>195</sup> all but ending the DOJ’s 2018 memorandum opinion that concluded the prohibitions of the Wire Act “are not uniformly limited to gambling on sporting events or contests.”<sup>196</sup>

Another critical, forward-thinking aspect of the MSIGA is that the agreement allows other States to join “by any means authorized by the laws of any such State, as long as such State agrees to act in accordance with the terms of [the] Agreement,” and at least two-thirds of the current Member

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<sup>191</sup> *Id.*

<sup>192</sup> § 5362(10)(A)

<sup>193</sup> § 5362(10)(B).

<sup>194</sup> *New Hampshire Lottery Comm'n v. Barr*, 386 F. Supp. 3d 132 (D.N.H. 2019).

<sup>195</sup> *New Hampshire Lottery Comm'n v. Rosen*, 986 F.3d 38, 61–62 (1st Cir. 2021).

<sup>196</sup> Reconsidering Whether the Wire Act Applies to Non-Sports Gambling, Memorandum Op. for the Acting Asst. Attorney General, Criminal Division, DEPT. OF JUSTICE (Nov. 2018),

<https://www.justice.gov/sites/default/files/opinions/attachments/2018/12/20/2018-11-02-wire-act.pdf>.

States vote to accept the new Member State.<sup>197</sup> Upon satisfying the requirements outlined in Articles VI and XI, other states have an open invitation to join the agreement if that State’s legislation permits.<sup>198</sup> With each additional Member State, the UIGEA’s domestic enforceability is threatened. Amending the UIGEA to meet “[t]he American commitment to the rule of law [so] that every citizen is governed by the same laws, applied through a fair and equal judicial process to resolve disputes peacefully”<sup>199</sup> will give the statute an enforceable purpose that will better serve online poker players going forward.

Currently, online poker sites recognize RTA as a threat only in the context of reputational harm to their business model. In September 2020, GGPoker responded to the Fedor Kruse scandal, announcing on its blog that it banned thirteen accounts for using RTA and returned \$1,175,305 to players, with an additional twenty-seven accounts banned with no confiscation of funds.<sup>200</sup> GGPoker also announced that it implemented a community-focused reporting system allowing players to report suspicious activity during gameplay but will not publicize an investigation’s details unless circumstances warrant it.<sup>201</sup>

GGPoker’s position, while a step in the right direction, ignores monetary harm players face in a misfocused and improperly regulated environment. The UIGEA should be amended to provide federal regulations that focus on unlawful player actions instead of incriminating payment processors. Doing so can be accomplished through three reasonable measures: *First*, website servers must be located inside the United States. With the website servers based in the United States, players

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<sup>197</sup> MSIGA, *supra* note 185.

<sup>198</sup> MSIGA, *supra* note 185, at 4–5, 8.

<sup>199</sup> *Law And The Rule of Law*, JUDICIAL LEARNING CENTER <https://judiciallearningcenter.org/law-and-the-rule-of-law> (last visited Apr. 3, 2022).

<sup>200</sup> *Battle Against Real-Time Assistance*, GGPoker (Sept. 30, 2020), <https://en.ggpoker.com/blog/news-headlines/battle-against-rtal/>.

<sup>201</sup> *Id.*

can have confidence the United States will have jurisdiction over the sites because the activity originates from a place where U.S. law is applicable.

*Second*, require websites located extraterritorially seeking access to the U.S market to apply for and to receive a gaming license. Bringing the sites under the purview of the Gaming Control Board (GCB) will add a layer of oversight from a regulatory body familiar with implementing and enforcing player protections and game integrity measures. Moreover, the GCB should be authorized to revoke licenses and report unlawful activity to the appropriate authorities. The authority to revoke licenses gives online poker sites exposure to significant financial loss should they lose their gaming license because they did not abide by the regulations. The risk of ruin will also promote cooperation and a more open reporting process for handling players who violate terms of service agreements.

*Third*, poker sites with gross annual gaming revenue (GAFR) exceeding \$1,000,000 should be considered a financial institution under 31 CFR 1010.100(f)(5)<sup>202</sup> and 31 CFR 1010.100(f)(6).<sup>203</sup> Courts in the United States have held that online poker accounts do not fall within the definition of a “bank, securities, or other financial account” because the poker sites were not “establish[ed] for the custody, loan, exchange, or issue of money, for the extension of credit, [or] for facilitating the transmission of funds.”<sup>204</sup> Classifying player accounts and the online poker company’s accounts as banking accounts will bring them under the jurisdiction of the Financial Crimes Enforcement Network (FinCEN). FinCEN is a division of the United States Treasury with a mission to “safeguard the financial system from illicit use, combat money laundering and its related crimes.”<sup>205</sup> Under FinCEN’s jurisdiction, bad actors run a greater risk of getting caught, disincentivize many of the

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<sup>202</sup> 31 CFR 1010.100(f)(5) (West 2018).

<sup>203</sup> 31 CFR 1010.100(f)(6) (West 2018)

<sup>204</sup> *United States v. Hom*, 657 F. App'x 652, 654 (9th Cir. 2016).

<sup>205</sup> *Mission*, FIN. CRIMES ENFORCEMENT NETWORK, <https://www.fincen.gov/index.php/about/mission> (last visited Apr. 3, 2022).

financial crimes the NGIC and Congress raised concerns for years ago. Additionally, it will deter crimes such as a tax evasion and tax fraud, referenced in the money laundering statutes.<sup>206</sup>

*Fourth*, require liquidity pooling for extraterritorial sites that do not have U.S.-based business locations that also requires offshore online poker sites to hold U.S. player funds in an U.S.-based bank account. With the risk of asset forfeiture for failing to comply with U.S. law, online poker sites found in violation of the law face the additional risk of reputational harm. Fear of economic damage and the threat of reputational harm will incentivize offshore and U.S.-based online poker sites to cooperate with investigations and help ensure all players have a fair gaming experience.

### **CONCLUSION**

An updated UIGEA that speaks to protecting players and punishing those who violate the law better serves the needs of the American people. The UIGEA will become increasingly ineffective in its current form as more states opt to join the MSIGA and tap into the growing taxable revenue generated from the Internet gambling market. Simultaneously, players in most remaining states will continue to legally access offshore online poker sites and be forced to expose themselves to greater risk than their neighbors for engaging in the same lawful activity.

These concepts are not new, they have existed since the two weeks that followed Black Friday, when Gary Loveman, Chief Executive Officer and President of Caesar's Entertainment wrote a column suggesting how to regulate online poker.<sup>207</sup> Loveman raised a salient point—because of the ban on Internet poker, “[b]usiness [was] being diverted from legitimate, respected companies that employ[ed] thousands of people to fly-by-night, underground (and in this case, foreign) operations.”<sup>208</sup> Regulating online poker will give Americans the freedom to play online poker from

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<sup>206</sup> § 1956(a)(1)(A)(ii).

<sup>207</sup> Gary Loveman, *Online Poker: Legalize It!*, CNN MONEY (April 26, 2011), [https://money.cnn.com/2011/04/26/news/companies/gary\\_loveman\\_poker.fortune/index.htm](https://money.cnn.com/2011/04/26/news/companies/gary_loveman_poker.fortune/index.htm).

<sup>208</sup> *Id.*

their homes while creating taxable revenue here in the United States.<sup>209</sup> Federal regulation could prevent criminal activity by protecting players from cheating, fraud, and identity theft.<sup>210</sup>

In the opening moments of the poker movie, “Rounders,” Matt Damon’s character, Mike McDermott, uttered the phrase, “Listen, here's the thing. If you can't spot the sucker in the first half hour at the table, then you are the sucker.”<sup>211</sup> It is time Congress re-examine the UIGEA and update it to ensure the United States protects U.S.-based online poker players and gamblers from foreign and domestic scammers and fraudsters willing to exploit the ambiguities and gaps in the law. Until then, U.S.-based online players are the suckers at the table.

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<sup>209</sup> *Id.*

<sup>210</sup> *Id.*

<sup>211</sup> ROUNDERS (Miramax 1998).