

Fausto Martin De Sanctis

# International Money Laundering Through Real Estate and Agribusiness

A Criminal Justice Perspective from the  
“Panama Papers”

 Springer

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Fausto Martin De Sanctis  
Tribunal Regional Federal 3rd Region  
São Paulo  
Brazil

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Finally, I would like to express my respect for people who choose to live ethical lives by valuing social justice and resisting the temptation to launder the proceeds of criminal activity.

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# About the Author

**Fausto Martin De Sanctis** holds a Doctorate in Criminal Law from the University of São Paulo's School of Law (USP) and an advanced degree in Civil Procedure from the Federal University of Brasilia (UnB) in Brazil. He was a Public Defender in São Paulo from 1989–1990, and a State Court Judge, also in São Paulo, from 1990–1991, until he was appointed to the Federal Courts.

He is currently Appellate Judge in Brazil's Federal Court for the Third Region, with jurisdiction over the states of São Paulo and Mato Grosso do Sul. He is also the Deputy Director of the Federal Judicial School and a member of the Portuguese Language Law Jurists Community (CJLP).

In 2012, Judge De Sanctis was a fellow at Federal Judicial Center in Washington, DC. Since 2013, he has been Advisory Council Member for the Brazil-U.S. Legal and Judicial Studies Program at American University Washington College of Law.

Judge De Sanctis was selected to handle a specialized federal court created in Brazil to exclusively hear complex cases involving financial crimes and money laundering offenses. He is a world-known expert on this topic and has been invited to participate in programs and conferences both in Brazil as well as internationally.

His publications include, among others:

## Books

*Churches, Temples, and Financial Crimes: A Judicial Perspective of the Abuse of Faith.* Cham, Heidelberg, New York, Dordrecht, London: Springer, 2015.

*Football, Gambling, and Money Laundering: A Global Criminal Justice Perspective.* Cham, Heidelberg, New York, Dordrecht, London: Springer, 2014.

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“Crimes Against the National Financial System: A Precursor to Money Laundering” (“Crimes Contra o Sistema Financiero Nacional como Antecedentes de Lavagem de Valores”). In *Money Laundering—Commentary on the Law by Judges at Specialized Courts, In Honor of Gilson Dipp (Lavagem de Dinheiro—Comentários à Lei pelos Juízes das Varas Especializadas. Homenagem ao Ministro Gilson Dipp)*. Porto Alegre: Livraria do Advogado, 2007.

Judge De Sanctis has also written a number of articles published in newspapers and magazines specializing in law and economics.

# Introduction

Properties like real estate and agribusiness have been discovered by criminals as an effective and clandestine way to launder money nationally and internationally. Ownership of properties is obscured through shell companies, fake documentation, and variations on family names listed on deeds. Legal mechanisms available to hold property without disclosing the actual owner's name make tracing money difficult. Wealthy people, including foreigners, are buying property in the United States at a brisk pace with few questions asked, even as border security is tightened against poor immigrants trying to cross into the country. Figuring out whose money is behind these properties and shell companies proves difficult.

According to Peter Alldridge, mass media depicts money laundering as bad, interesting, and daring, but never explains exactly what it is, why it is done, or why it is so damaging.<sup>1</sup> This book explores the novel and known ways money is being laundered in the world. The book reveals how new financial techniques used by criminals are going ignored and undetected. Indeed, money laundering is an international crime challenging the very sovereignty of nations.

The core discussion of this book is money laundering involving real estate and agribusiness. The Panama Papers revealed that these sectors are replete with legal loopholes that easily permit the laundering of millions of dollars. Properties constitute an attractive line of business for the practice of money laundering given the large monetary transactions involved and the general confidentiality surrounding property transactions. The real estate and agribusiness sectors are susceptible to use by money launderers, who also use nonprofit organizations, foundations, remittance companies, offshore accounts, and clandestine wire transfers to launder ill-gotten gains.

The purpose of this book is to inquire into the scale of the problem and look into legislative and institutional loopholes that lend power and mobility to organized crime, thereby making it a more deeply entrenched source of unprecedented illicit

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<sup>1</sup>Alldridge, Peter (2008, Dec). Money laundering and globalization. *Journal of Law & Society*, 35(4), 437–463.

wealth. The carefree attitude which has characterized law enforcement in this area must be confronted with a realistic understanding of the problem and must go beyond the adoption of measures taken in isolation or in an uncoordinated manner. I hope that this book will serve as a useful guide for law enforcement officials, prosecutors, judges, and others involved in efforts to curb money laundering and terrorism financing. I also hope that this book prompts specialists to speak up to prevent real estate and agribusiness from being used and manipulated for illegal purposes.

This book is divided into six chapters along with this Introduction. Chapter 1 addresses money laundering through real estate. This chapter first looks at two U.S. forfeiture actions against a government officer of Equatorial Guinea, revealing the difficult task of restraining financial criminals. It then discusses the influx of global cash fueling New York City's high-end real estate boom. The New York Times investigation pierced the secrecy of more than 200 shell companies that have owned condominiums at a single complex. Chapter 2 untangles the complex situation when criminals launder ill-gotten gains through agribusinesses. Chapter 3 analyzes various money laundering typologies that were revealed by the "Panama Papers". Chapter 4 discusses efforts to combat money laundering, including property confiscation, international legal cooperation, and asset repatriation. Chapter 5 offers conclusions. Chapter 6 covers national and international proposals for improving the industry so as to prevent money laundering and terrorism financing. These proposals call for a broader institutional and regulatory improvement, extending beyond mere regulation of the market.

Although this book may, at a glance, appear to have covered the subject, this is far from the case. The book aims at a logical and practical completeness in describing an unexplored and virtually unknown world in which real estate and agribusinesses are used in the commission of serious crimes.

# Chapter 1

## Money Laundering Through Real Estate

### 1.1 The Nguema Obiang Cases

In 2011, the United States government filed civil forfeiture complaints against approximately \$70.8 million in real and personal property, which the government alleged were the proceeds of foreign corruption offences and were laundered in the United States.<sup>1</sup> According to the complaints, Teodoro Nguema Obiang Mangue (Nguema) used his position and influence as a government minister for Equatorial Guinea to acquire criminal proceeds through corruption and money laundering, in violation of both Equatoguinean and U.S. law. Nguema is the son of Teodoro Nguema Obiang Mbasogo (Obiang), the president of Equatorial Guinea.

The complaints alleged that on a modest government salary Minister Nguema amassed wealth of over \$100 million. Former Assistant Attorney General Lanny A. Breuer stated as follows: “[W]hile [Nguem’s] people struggled, he lived the high life—purchasing a Gulfstream jet, a Malibu mansion and nearly \$2 million in Michael Jackson memorabilia. Alleging that these extravagant items are the proceeds of foreign official corruption, the Department of Justice is seeking to seize them through coordinated forfeiture actions. Through our Kleptocracy Initiative, we are sending the message loud and clear: the United States will not be a hiding place for the ill-gotten riches of the world’s corrupt leaders.”<sup>2</sup>

The investigation was initiated by the U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) in an effort to identify Nguema’s assets in the United States after he was suspected of obtaining his wealth

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<sup>1</sup>The property includes (1) a White Crystal Covered Bad Tour Glove and Other Michael Jackson Memorabilia, (2) a Gulfstream G-V Jet Airplane Displaying Tail Number VPCE5, (3) Real Property Located on Sweetwater Mesa Road In Malibu California, (4) a 2007 Bentley Azure, (5) a 2008 Bugatti Veyron, (6) a 2008 Lamborghini Murcielago, (7) a 2008 Rolls Royce Drophead Coupe, (8) a 2009 Rolls Royce Drophead Coupe, (9) a 2009 Rolls Royce Phantom Coupe, and (10) a Ferrari 599 GTO. Messick (2014).

<sup>2</sup>U.S. Department of Justice (2011).

from illicit activities, such as the misappropriation of public funds, theft, extortion, and embezzlement of the nation's natural resources.<sup>3</sup>

According to the complaints, despite an official government salary of less than \$100,000 per year, Nguema amassed more than \$100 million during a period in which he an inner circle of individuals who held critical positions of political and economic power in Equatorial Guinea and who were the near-exclusive beneficiaries of the extraction and sale of that country's natural resources. Under Equatoguinean law, the natural resources belong to the people of Equatorial Guinea. The complaints alleged that Nguema used intermediaries and corporate entities to acquire numerous assets in the United States, including more than \$1.8 million worth of Michael Jackson memorabilia, a \$38.5 million Gulfstream G-V jet, a \$30 million house in Malibu, California, and a 2011 Ferrari automobile valued at more than \$530,000. In court papers in 2012, prosecutors also alleged that Nguema had committed bank fraud by "concealing his association" with bank accounts opened on his behalf in the United States. Nguema then funneled his ill-gotten funds into those accounts and subsequently used the funds to pay for the "upkeep and maintenance" of his Malibu mansion and other assets.<sup>4</sup>

The forfeiture against Nguema's assets was announced with much fanfare in 2011. The U.S. Department of Justice (DOJ) accused Nguema of plundering billions of dollars of his country's resource wealth. Nguema was placed in charge of the country's forest industry in 1998. His father, President Teodoro Obiang Nguema Mbasogo, came to power of the oil-rich Middle African country in a 1979 coup.

Initially, Nguema won motions to dismiss both actions because there was no presentation of additional circumstantial evidence that the defendant assets were purchased with illicit funds. However, each court gave the DOJ the right to file an amended complaint, moving them forward with forfeiture on certain assets on the ground that Nguema committed bank fraud, and leaving the door open for prosecutors to re-apply for forfeiture on the foreign offence grounds with additional evidence.<sup>5</sup> U.S. District Judge George Wu ruled that prosecutors lacked probable

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<sup>3</sup>"HSI established the FCIG in 2003 to conduct investigations into the laundering of proceeds emanating from foreign public corruption, bribery and embezzlement. The cases are worked jointly with representatives of the victimized foreign governments. The FCIG's goal is to prevent foreign-derived, ill-gotten gains from entering the U.S. financial infrastructure; to seize assets identified in the U.S.; and to repatriate these funds to the victimized governments. Since the initiative's launch, HSI has affected 220 seizures involving more than \$146 million worth of property and assets until 2014." U.S. Department of Justice (2014).

<sup>4</sup>Matthews (2013).

<sup>5</sup>The United States District Court for the District of Columbia stated, in part, as follows:

A recurring theme in the government's complaint is the allegation that Nguema's outlandish wealth raises suspicions about the lawfulness of his income. *Id.* 34 ("Nguema's level of spending is inconsistent with his salary as a Minister. His official salary today is approximately \$6,799 per month, or less than \$100,000 per year, according to official E.G. sources."). When viewed in tandem with other details suggesting illegal behavior, wealth might allow an inference of illegal activity—but standing alone, it does not. *See Mondragon*, 313 F.3d at 864 ("The presence of that much cash [half a million dollars],

cause to pursue forfeiture of the assets on the grounds that Nguema obtained them through extortion, misappropriation of public funds, or bribery of a public official. “Even assuming the government could show that [Nguema] generated revenue through the identified foreign offences, there is no evidence that the defendant assets were purchased with those funds,” Judge Wu wrote in an eight-page decision. Judge Wu did allow the forfeiture to proceed on the bank fraud grounds.<sup>6</sup>

The DOJ sought in the complaints to seize the ten items listed as defendants and return them to their rightful owners, the citizens of Equatorial Guinea. What makes the Nguema Obiang cases different from previous actions, and thus precedent setting, is that they were the first time the DOJ won, or at least favorably resolved, an asset seizure case where a sitting ruling family appeared and contested the claim. The United States won both cases through a settlement agreement.<sup>7</sup>

Details of the judicial decision regarding the case:

*UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, UNITED STATES: Plaintiff, : Civil Action No.: 11-1874 (RC) Re Document No.: 12: ONE GULFSTREAM G-V JET AIRCRAFT, Displaying tail number VPCEs, its tools and Appurtenances: Defendant.: MEMORANDUM OPINION GRANTING THE CLAIMANTS' MOTION TO DISMISS WITHOUT PREJUDICE; GRANTING LEAVE TO*

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(Footnote 5 continued)

oddly packaged, could raise a suspicion that someone was up to no good, but without more it does not suggest a connection to drug trafficking.”); *cf. United States v. \$22,173.00 in U.S. Currency*, 2010 WL 1328953, at \*2 (S.D.N.Y. Apr. 5, 2010) (deeming certain allegations “troubling” and noting that “a great deal more” would be necessary to survive summary judgment, but concluding that unusually large sums of cash could give rise to an inference of illegal activity when viewed in conjunction with other specific allegations “suggesting a pattern of drug trafficking”). The government itself has alleged that Ngema owns or controls a number of companies. Yet nothing is known about what income Nguema derives from them. Thus, without knowing what Nguema’s means are, the court is hard-pressed to infer that he lives beyond them. Absent other details, the court cannot infer how Nguema’s wealth may have been derived, nor from what sources, nor the legality of those sources. Although the government alleges that Nguema lives far beyond his means, the court cannot leap to the conclusion that his largesse is evidence of criminal activity. Faced with this complaint, the claimants would find it difficult to know where to begin their investigation, what individuals to interview, or what documents to review. *Cf. Mondragon*, 313 F.3d at 864. To be sure, the government paints a troubling picture of endemic corruption in Equatorial Guinea. But the government has done so with brushstrokes that are much too broad. The government cannot proceed by casting general allegations of lawlessness in the country in which the relevant transactions took place.

Absent some specific indication that the Jet is derived from or traceable to illicit activity, the complaint must be dismissed. *Id.* The court has little doubt that the government could cure these deficiencies by filing an amended complaint that alleges additional facts. Thus, the court will dismiss the complaint without prejudice and grant leave to amend the complaint.

United States v. One Gulfstream G-V Jet Aircraft, Displaying tail number VPCEs, its tools and Appurtenances. Civil Case No. 11-1874 (1874).

<sup>6</sup>Matthews (2013).

<sup>7</sup>U.S. Department of Justice (2014).

**AMEND I. INTRODUCTION** *The United States brings this forfeiture action against a \$38.5 million dollar jet purchased by Teodoro Nguema Obiang Mangue (“Nguema”), Equatorial Guinea’s Minister of Forestry and Agriculture and the son of Equatorial Guinea’s president. The government alleges that Nguema purchased the jet with funds derived from extortion, misappropriation, theft, and embezzlement. Although the government describes a disconcerting pattern of corruption in Equatorial Guinea, the complaint does not link the jet to any specific illicit acts. Accordingly, the court grants the claimants’ motion to dismiss. I Since this litigation commenced, Nguema appears to have been promoted to Equatorial Guinea’s Vice President in charge of National Defense and State Security. See Equatorial Guinea Leader Promotes Son in Reshuffle, REUTERS (May 22, 2012), available at <http://www.reuters.com/article/2012/05/22/us-guinea-equatorial-idUSBRE84L0ZC20120522>. Case 1:11-cv-01874-RC Document 22 Filed 04/19/13 Page 1 of 23. II. LEGAL & FACTUAL BACKGROUND. A. Legal Framework. Forfeiture is an ancient penalty; its origins can be traced to biblical times. See Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663, 681 n.17 (1974) (citing Exodus 21:28) (“If an ox gore a man or a woman, and they die, he shall be stoned and his flesh shall not be eaten”). Based on the legal fiction that “the thing is primarily considered the offender,” *Goldsmith-Grant Co. v. United States*, 254 U.S. 505, 511 (1921), forfeiture law allows suit to be brought against an inanimate object rather than a person. See, e.g., *Various Items of Personal Property v. United States*, 282 U.S. 577, 581 (1931) (“[I]t is the property which is proceeded against, and, by resort to a legal fiction, held guilty and condemned as though it were conscious instead of inanimate and insentient.”). Commentators and judicial decisions have primarily understood the rationale for this peculiar concept to be a means of punishment for a wrongdoer. See, e.g., *Austin v. United States*, 509 U.S. 602, 611–14 (1993); *Calero-Toledo*, 416 U.S. at 681. The Civil Asset Forfeiture Reform Act of 2000 (“CAFRA”), 18 U.S.C. §§ 981 et seq., establishes several procedural and substantive rules governing forfeiture actions. The government may initiate a suit in rem<sup>2</sup> by filing a complaint within sixty days of the item’s seizure. *Id.* § 983(a)(1)(A)(i). Any person claiming an interest in the seized property—referred to as a “claimant”—may intervene after the seizure is effected. *Id.* § 983(a)(2)(A). The claimant may then contest the government’s action. *United States v. \$515,060.42*, 152 F.3d 491, 497 (6th Cir. 1998). Here, the government brings suit under two of CAFRA’s substantive provisions: 18 U.S.C. § 981(a)(1)(A) and § 981(a)(1)(C). Under 18 U.S.C. § 981(a)(1)(C), “[a]ny property, real or personal, which constitutes or is derived from proceeds traceable to any offense constituting ‘specified unlawful activity’” is subject to forfeiture to the United States. “Specified unlawful activity” may include offenses against a foreign nation involving “extortion,” or the “misappropriation, theft, or embezzlement of public funds by or for the benefit of a public official.” 18 U.S.C. § 1956(c)(7)(B)(ii), (iv). Under 18 U.S.C. § 981(a)(1)(A), “[a]ny property, real or personal, involved in a transaction or attempted transaction in violation of [18 U.S.C. § 1957], or any property traceable to such property,” is subject to forfeiture to the United States. 18 U.S.C. § 1957 imposes a criminal penalty on any person who “knowingly engages or attempts to engage in a monetary transaction in criminally derived property of a value greater than \$10,000 and is derived from specified unlawful activity.” The term “specified unlawful activity” is again defined to include offenses against a foreign nation involving “extortion,” or the “misappropriation, theft, or embezzlement of public funds by or for the benefit of a public official.” 18 U.S.C. § 1956(c)(7)(B)(ii), (iv). To summarize both counts: the government alleges that the Gulfstream Jet is subject to forfeiture because it is either derived from or traceable to extortion, misappropriation, theft, or embezzlement of public funds by a public official. B. Factual Allegations and Procedural History Teodoro Nguema Obiang Mangue is the son of Equatorial Guinea’s President. *Id.* 14. At the time the government filed suit, he was Equatorial Guinea’s Minister of Forestry and Agriculture. *Id.* Despite his modest government salary, *id.* 34, Nguema has managed to*