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The Value of Cryptocurrencies: How Bitcoin Fares in the Pockets of Federal and State Courts

Brandon M. Peck

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The Value of Cryptocurrencies: How Bitcoin Fares in the Pockets of Federal and State Courts

Brandon M. Peck*

A recent Eleventh Judicial Circuit Court of Florida decision has raised concerns over how both federal and state courts consider the unregulated cryptocurrency, Bitcoin. In State of Florida v. Mitchell Abner Espinoza, Judge Teresa Pooler held that Bitcoin did not fall under the statutory definitions of “payment instrument” or “monetary instrument” because virtual currency is not directly specified nor could it be included within one of the defined categories listed in Fla. Stat. § 560.103(29) or 896.101(2). Furthermore, Judge Pooler, alluding to the doctrine of lenity, refused to hold Espinoza responsible under a statute that is “so vaguely written that even legal professionals have difficulty finding a singular meaning.”¹

Judge Pooler thus disagreed with earlier decisions by several federal judges. The federal courts have uniformly held that Bitcoin is “money” or “funds” for the purpose of money laundering. Additionally, the federal courts, analyzing the applicable federal money laundering statutes, have refused to apply the doctrine of lenity because there were no ambiguities such that “an ordinary person would [not] know that engaging in the challenged conduct could give rise to the type of criminal liability charged.”² State and federal courts can interpret similar state and federal statutes in differing ways based on each statute’s respective canon of construction and legislative intent. However, because the Florida

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¹ See Order Granting Defendant’s Motion to Dismiss the Information, State v. Espinoza, No. F14–2923, at 7 (Fla. Cir. Ct. dismissed July 22, 2016).

² See United States v. Ulbricht, 31 F. Supp. 3d 540, 563 (S.D.N.Y. 2014).

Money Laundering Act (Fla. Stat. § 896.101) is modeled on the federal Money Laundering Control Act (18 U.S.C. § 1956), it is reasonable to assume that the courts would reach the same conclusion.

Part I of this comment describes Bitcoin, discussing the cryptocurrency’s origins as well as how it works. Part II analyzes both the state and federal anti–money laundering statutes in light of Florida v. Espinoza and the opinions of the federal courts. Part III discusses the state and federal business services statutes in light of Florida v. Espinoza and federal court decisions, including U.S. v. Ulbricht, which held Bitcoin to be within the plain meaning of “money” and “funds” under the applicable federal money laundering statute.

Finally, Part IV of this paper addresses the public policy implications of how Bitcoin is interpreted under criminal statutes pertaining to money laundering. A brief synopsis will provide information on how other countries and states have considered Bitcoin and the steps that the U.S. Congress has begun to take to address Bitcoin in criminal prosecutions.

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I. INTRODUCTION

*“Nobody knows what a dollar is, what the word means, what holds the thing up, [and] what it stands in for.”*³

A decision from the Eleventh Judicial Circuit Court of Florida has disagreed with several federal court decisions regarding whether Bitcoin, and cryptocurrencies more generally, are “money” or “property.”⁴ The distinction has implications on whether Bitcoin, as well as other cryptocurrencies, is subject to current federal and state anti-money laundering and unlawful money services business statutes. If Bitcoin is considered “money,” and, therefore subject to current money laundering statutes, persons using Bitcoin while engaged in the acts of money laundering may be prosecuted pursuant to current state and federal statutes. However, if Bitcoin is considered “property,” persons using Bitcoin to launder money have not violated the applicable federal or state money laundering statutes according to the applicable statutory language.

Proponents of characterizing Bitcoin as “money” argue that the cryptocurrency functions like money and, therefore, it should be treated like money. At times, Bitcoin is used to (1) purchase goods and services, (2) measure value, and (3) exchange for conventional legal tender or currencies.⁵ However, advocates who argue for Bitcoin to be considered property cite the cryptocurrency’s (1) decentralization, (2) volatility and instability in future value, and (3) acceptance only by a narrow selection of merchants.⁶

³ Toby Lester, *The Money Artist*, THE ATLANTIC (July 1999), <https://www.theatlantic.com/magazine/archive/1999/07/the-money-artist/308425/>.

⁴ Compare Order Granting Defendant’s Motion to Dismiss the Information, *State v. Espinoza*, No. F14–2923 (Fla. Cir. Ct. dismissed July 22, 2016), with *United States v. Murgio*, 209 F. Supp. 3d 698 (S.D.N.Y. 2016), *United States v. Faiella*, 39 F. Supp. 3d 544 (S.D.N.Y. 2014), *United States v. Ulbricht*, 31 F. Supp. 3d 540 (S.D.N.Y. 2014), and *Sec. & Exch. Comm’n v. Shavers*, No. 4:13–CV–416, 2013 WL 4028182 (E.D. Tex. Aug. 6, 2013).

⁵ See generally *Murgio*, 209 F. Supp. 3d at 707; *Faiella*, 39 F. Supp. 3d at 545; *Ulbricht*, 31 F. Supp. 3d at 548, 570; *Shavers*, WL 4028182, at *2.

⁶ See Michelle Singletary, *Investing in Bitcoin has a Dangerous Flip Side*, WASH. POST (Feb. 28, 2014), https://www.washingtonpost.com/business/investing-in-bitcoin-has-a-dangerous-flip-side/2014/02/28/09af7f54-9e5e-11e3-9ba6-800d1192d08b_story.html?hpid=hp-top-table-main-bitcoin-table%3Ahomepage%2Fstory&hpid=hp-top-table-main-bitcoin-table%3Ahomepage%2Fstory

Money Laundering in the United States

“Money laundering is the process of making illegally gained proceeds (i.e. ‘dirty money’) appear legal (i.e. ‘clean money’)” and is usually conducted in three stages: “placement, layering, and integration.”⁷ “Placement” occurs when illegally gained proceeds are invested or “introduced into a legitimate financial system or business.”⁸ The illegally gained proceeds are then “layered” or mixed with legitimate money, which creates confusion regarding the whereabouts or origins of the illegally gained proceeds.⁹ Finally, “integration” refers to the illegally-gained proceeds becoming sufficiently intertwined with legitimate money such that it is safe to be withdrawn from the financial system and used for other purposes without being identified as illegitimate.¹⁰ Although there is evidence that the act of hiding money or assets from state confiscation has been ongoing for several thousand years,¹¹ money laundering in the United States has been addressed as a response to the Prohibition in the 1930s, organized crime in the 1970s, and drug wars of the 1980s.¹²

Congress has enacted modern anti-money laundering statutes throughout the course of the last century, primarily aiming to combat organized crime and drug trafficking. In 1970, Congress passed the Bank Secrecy Act and the Racketeer Influenced and Corrupt Organization Act (the “RICO Act”).¹³ The Bank Secrecy Act has become one of the most important tools in combatting money laundering as it “[e]stablished requirements for recordkeeping and reporting by [both] . . . individuals . . . and financial institutions” in order to aid in the identification of the

utm_term=.3e608f904f76. In regards to volatility, the value of a bitcoin was “less than \$14 [fourteen dollars] in January 2013 and jumped to \$1,200 [one thousand two hundred dollars] in November of 2013.” *Id.*

⁷ Financial Crimes Enforcement Network, *History of Anti-Money Laundering Laws*, UNITED STATES DEPARTMENT OF THE TREASURY, <https://www.fincen.gov/history-anti-money-laundering-laws> (last visited Mar. 19, 2017).

⁸ *Id.*

⁹ *See id.*

¹⁰ *See id.*

¹¹ *See* Nigel Morris-Cotterill, *A Brief History of Money Laundering*, MONEY LAUNDERING RISK MANAGEMENT AND COMPLIANCE, <http://www.counter.moneylaundering.com/public/content/brief-history-money-laundering> (last visited Mar. 19, 2017).

¹² *See* Roberto Saviano, *Where the Mob Keeps its Money*, N. Y. TIMES (Aug. 25, 2012), <http://www.nytimes.com/2012/08/26/opinion/sunday/where-the-mob-keeps-its-money.html>.

¹³ *See* Financial Crimes Enforcement Network, *supra* note 7; Eliot Kaough, *Methods Used to Combat Organized Crime and Racketeering: United States, United Kingdom, Italy and Canada*, INFORMATION & KNOWLEDGE SERVICES, http://archive.mops.gov.il/Documents/International_Public_Security_Briefs/Organized%20crime%20brief%2001.13.pdf (last visited Mar. 19, 2017).

“source, volume, and movement of currency.”¹⁴ The Act legally bound banks “to (1) report cash transaction over \$10,000 [ten thousand dollars], (2) properly identify persons conducting [these] transactions, and (3) maintain a paper trail by keeping appropriate records”¹⁵ The RICO Act was primarily focused on prosecuting Mafia syndicates, but was expanded by the Comprehensive Crime Control Act in 1984 to address money laundering more appropriately.¹⁶ In 1986, Congress passed the Money Laundering Control Act, which officially designated money laundering as a federal crime pursuant to 18 U.S.C. § 1956 (the “Federal Anti–Money Laundering Statute”).¹⁷

The Origins of Bitcoin and Blockchain

Bitcoin is a cryptocurrency and peer–to–peer payment system that was launched on January 3, 2009.¹⁸ Although Bitcoin was not the first cryptocurrency ever introduced¹⁹ and there indeed exists hundreds of other such electronic payment systems,²⁰ Bitcoin is the world’s first completely decentralized digital currency that enabled transactions to occur between users directly without the intervention or regulation of any financial intermediaries, such as banks or credit card companies.²¹ The purpose of Bitcoin is to provide “a solution to the double–spending problem” and “achieve a level of privacy” within peer–to–peer online transactions without the need and additional costs of a trusted third party.²²

¹⁴ Financial Crimes Enforcement Network, *supra* note 7.

¹⁵ *Id.*

¹⁶ Kaough, *supra* note 13.

¹⁷ See Financial Crimes Enforcement Network, *supra* note 7.

¹⁸ See Satoshi Nakamoto, *Bitcoin: A Peer–to–Peer Electronic Cash System*, BITCOIN (Oct. 31, 2008), <https://bitcoin.org/bitcoin.pdf>; L.S., *Who is Satoshi Nakamoto?*, ECONOMIST (Nov. 2, 2015), <http://www.economist.com/blogs/economist-explains/2015/11/economist-explains-1>. An anonymous programmer, or group of programmers, who used the alias of “Satoshi Nakamoto,” invented and developed Bitcoin.

¹⁹ See Derek Khanna, *Can Bitcoin Outrun the Regulators?*, POLITIX (Mar. 28, 2014), <http://www.rstreet.org/op-ed/can-bitcoin-outrun-the-regulators/>. E–Gold and Liberty Dollar, other digital currencies, have essentially been shut down by the government. E–Gold was backed by gold while Liberty Dollar was backed by silver. E–Gold was shut down following money laundering charges and Bernard Von Nothause, the creator of Liberty Dollar, was convicted in 2011 of making and possessing currency.

²⁰ See CryptoCurrency Market Capitalizations, COIN MKT. CAP, <http://coinmarketcap.com/all/views/all/> (last visited Mar. 19, 2017). As of March 19, 2017, one Bitcoin had a value of \$1,069.91 USD.

²¹ See Nakamoto, *supra* note 18; Jerry Brito & Andrea Castillo, *Bitcoin: A Primer for Policymakers*, GEORGE MASON UNIV. MARCATUS CTR. (2013), at 1, https://www.mercatus.org/system/files/Brito_BitcoinPrimer.pdf.

²² Nakamoto, *supra* note 18, at 1–6. The “double–spending” problem is that the bitcoin payees cannot verify that the payor did not already spend the bitcoin in a previous transaction. A solution to this problem that Bitcoin was intended to forego is the

Bitcoin exists freely on the internet and is available for anyone to use across the globe.²³ Bitcoin does not require personal user information, such as a credit card or bank account identification number, because Bitcoin transactions are conducted without the use of any government-supported fiat currency.²⁴ Rather, Bitcoin transactions are conducted using a unit known as a “bitcoin.”²⁵ Unlike traditional currency, bitcoin has no physical form and exists only electronically on the internet. However, like government-supported fiat currency, bitcoin is backed by individuals’ faith in the currency. Therefore, if users lose faith in Bitcoin, demand for bitcoins will decrease and bitcoins will no longer have value.²⁶

Instead of government or central authorities producing and introducing bitcoins into the marketplace, the only way that bitcoins are created is through a process known as “mining.”²⁷ Conducted by individual Bitcoin-user computers and processors throughout the world, mining is the process of verifying, recording, and publishing recent Bitcoin transactions to a shared public distribution ledger called the “blockchain.”²⁸ All Bitcoin transactions are published and made public on the blockchain ledger.²⁹ New bitcoins are created and awarded to successful miners as a form of compensation for the use of the miner’s computer processing unit and the electricity expended during the process

“introduc[tion] of a trusted central authority, or mint, that checks every transaction for double spending.”

²³ See Jason Leibowitz, *Bitcoin: A 21st Century Currency Explained by a Wall Street Veteran*, COINDESK (Feb. 7, 2017), <http://www.coindesk.com/bitcoin-explained-global-currency-wall-street-veteran/>.

²⁴ See *id.*

²⁵ See Brito & Castillo, *supra* note 21. A unit of bitcoin is also referred to as a BTC; however, for simplicity purposes, I will use Bitcoin (capitalized) to refer to the cryptocurrency payment system itself, bitcoin (lowercased) as the unit of a transaction, and cryptocurrencies generally as all of the existing digital currencies.

²⁶ See Allison Caffarone & Meg Holzer, ‘Ev’ry American Experiment Sets a Precedent’: *Why One Florida State Court’s Bitcoin Opinion is Everyone’s Business*, 16 HOFSTRA L. J. OF INT’L BUS. & L. 6, 8 (2017) (pointing out that Bitcoins are a consumer faith-based system).

²⁷ See *id.*

²⁸ See Joshua Kopstein, *The Mission to Decentralize the Internet*, NEW YORKER (Dec. 12, 2013), <http://www.newyorker.com/tech/elements/the-mission-to-decentralize-the-internet>. Bitcoin software users utilize their individual computer processors to check the validity of transactions, add such transactions to their individual copy of blockchain, and broadcast the additional transactions to other nodes all in order to ensure that no one uses the same bitcoins twice. Approximately six times per hour, a new group of accepted transactions, known as a “block,” is created, added to the blockchain, published to all other nodes, which are maintaining their own copies of the blockchain.

²⁹ See Caffarone & Holzer, *supra* note 26, at 8.

of recording and publishing Bitcoin transactions.³⁰ Therefore, Bitcoin users who are engaged in the process of mining authenticate Bitcoin transactions and thus forego the need of any third-party institution or regulatory body to verify the individual transactions.³¹

In order to spend his or her bitcoins, a user must first digitally sign the transaction by inputting a corresponding private key, which only the owner of the bitcoins is designed to know.³² Bitcoin maintains the privacy of transaction's parties by limiting the information published to the blockchain ledger and keeping the public key ownership anonymous.³³ Similar to a public stock exchange, third-party Bitcoin users are aware that a Bitcoin user is sending bitcoins to another user, but only information regarding the time and amount of the transaction is published and made public.³⁴ The identities of the payor and payee of a Bitcoin transaction are not made public on the blockchain ledger.³⁵ Currently, about twelve million (12,000,000) bitcoins are in circulation.³⁶

Bitcoins can also be obtained through the exchange of other currencies, including the government-supported United States Dollar, Euro, and Chinese Yen, as well as other digital currencies; additionally, bitcoins may be procured through the sale of products and services.³⁷ These exchanges can be completed directly by purchasing the bitcoins from a bitcoin dealer or indirectly through a "bitcoin exchange," which allows prospective Bitcoin buyers to purchase the bitcoins using traditional currency.³⁸ More than one hundred thousand (100,000) merchants, including Microsoft and Paypal, now accept bitcoins as forms

³⁰ See Nakamoto, *supra* note 18 at 4; Kopstein, *supra* note 27. Miners keep the blockchain consistent, complete, and effectively unalterable by repeatedly verifying and collecting newly broadcast transactions into every new group of transactions called a block. Bitcoin was designed such that only twenty-one million (21,000,000) can be issued or "mined." Until 2020, twelve and one half (12.5) bitcoins will be produced per block (approximately every ten minutes) and used as compensation to miners. Thereafter, the number of bitcoins will halve every 210,000 blocks (approximately every four years) until the limit is reached.

³¹ See Caffarone & Holzer, *supra* note 26, at 8-9.

³² Brito & Castillo, *supra* note 21, at 5. If the private key is lost, the Bitcoin network will not recognize or honor any other evidence of ownership; thus, rendering the bitcoins unusable and effectively lost. See also *Man Throws Away 7,500 Bitcoins, Now Worth \$7.5 Million*, CBS DC, <http://washington.cbslocal.com/2013/11/29/man-throws-away-7500-bitcoins-now-worth-7-5-million/>. For a bitcoin transaction to be valid, every bitcoin input must be (1) an unspent output of a previous transaction and (2) digitally signed.

³³ See Nakamoto, *supra* note 18, at 6.

³⁴ *Id.*

³⁵ See Caffarone & Holzer, *supra* note 26, at 9.

³⁶ See Khanna, *supra* note 19, at 1.

³⁷ *Sec. & Exch. Comm'n v. Shavers*, No. 4:13-CV-416, 2013 WL 4028182 at *2 (E.D. Tex. Aug. 6, 2013).

³⁸ Caffarone & Holzer, *supra* note 26, at 34, 37.

of payment.³⁹ Although Bitcoin has been acknowledged in some online markets and retail spaces, it has received scrutiny and negative attention from legislative bodies, regulatory agencies, law enforcement, and the media due to its use by criminals.⁴⁰

The two most infamous incidents surrounding Bitcoin both occurred in 2013. The first involved Mt. Gox, a bitcoin exchange launched in 2010 that at one time handled approximately seventy percent (70%) of all bitcoin transactions.⁴¹ Mt. Gox suspended trading, closed its website, and filed for bankruptcy before announcing that seven hundred and fifty thousand (750,000) bitcoins belonging to customers had gone missing and were likely stolen.⁴² The second incident involved an online black market platform, known as the “Silk Road,” which provided illegal drugs, child pornography, murder-for-hire services, and weapons for those that exchanged in bitcoins.⁴³ The Silk Road was shut down by U.S. law enforcement and the founder of the online market, Ross William Ulbricht, was sentenced to life in prison.⁴⁴

³⁹ See Anthony Cuthbertson, *Bitcoin Now Accepted by 100,000 Merchants Worldwide*, INT’L BUS. TIMES, (Feb. 4, 2015, 3:34 PM), <http://www.ibtimes.co.uk/bitcoin-now-accepted-by-100000-merchants-worldwide-1486613>.

⁴⁰ See Timothy B. Lee & Hayley Tsukayama, *Bitcoin Industry Reeling as Authorities Shut Down Silk Road Online Marketplace*, WASH. POST (Oct. 2, 2013), https://www.washingtonpost.com/business/economy/bitcoin-industry-reeling-as-authorities-shut-down-silk-road-online-marketplace/2013/10/02/961b105a-2ba1-11e3-97a3-ff2758228523_story.html?utm_term=.e21eff6ec1b6; Timothy B. Lee, *Here’s How Bitcoin Charmed Washington*, WASH. POST (Nov. 21, 2013), https://www.washingtonpost.com/news/the-switch/wp/2013/11/21/heres-how-bitcoin-charmed-washington/?utm_term=.4751fd06118e.

⁴¹ See Paul Vigna, *Five Things About Mt. Gox’s Crisis*, WALL ST. J. (Feb. 25, 2014), <http://blogs.wsj.com/briefly/2014/02/25/5-things-about-mt-goxs-crisis>.

⁴² See Carter Dougherty & Grace Huang, *Mt. Gox Seeks Bankruptcy After \$480 Million Bitcoin Loss*, BLOOMBERG (Feb. 28, 2014, 2:59 PM), <https://www.bloomberg.com/news/articles/2014-02-28/mt-gox-exchange-files-for-bankruptcy>. The loss in Bitcoins were valued at more than four hundred and fifty million dollars (\$450 million) at the time.

⁴³ See Nicolas Christin, *Traveling the Silk Road: A Measurement Analysis of a Large Anonymous Online Marketplace*, INT’L WORLD WIDE WEB CONFERENCE COMMITTEE, at 8, <http://www.andrew.cmu.edu/user/nicolasc/publications/Christin-WWW13.pdf>. It is estimated that the Silk Road hosted between five (5) and nine (9) percent of all transactions on all exchanges in the world; almost all of which involving drugs. Buyers and sellers who utilized the Silk Road were required to conduct all transactions with bitcoins in order to provide a certain level of anonymity.

⁴⁴ See Judgment in a Criminal Case at 3, *United States v. Ulbricht*, No. 14-cr-00068-KBF-1 (2014), https://www.docketalarm.com/cases/New_York_Southern_District_Court/1--14-cr-00068/USA_v._Ulbricht/269/.

Bitcoin Precedence In Florida

“Buying Bitcoins allows money to be anonymously moved around the world with a click of a computer mouse. Improperly used, Bitcoins are often seen as a perfect means of laundering dirty money or for buying and selling illegal goods, such as drugs or stolen credit card information.”⁴⁵

Until 2016, only federal courts had provided precedent regarding the analysis and scrutiny of Bitcoin under money laundering statutes.⁴⁶ However, following the arrest of two Miami residents, Pascal Reid and Michel Abner Espinoza, Florida has become the first state to prosecute Bitcoin users pursuant to state statutes.⁴⁷ Law enforcement officers discovered that Reid and Espinoza were using a Bitcoin exchange known as “LocalBitcoins.”⁴⁸ In separate sting operations seeking “individuals engaged in high volume Bitcoin activity,” undercover officers informed Reid and Espinoza that the officers were using Bitcoin to purchase stolen credit card numbers.⁴⁹ Reid sold to members of the United States Secret Service’s Miami Electronic Crimes Task Force (“Task Force”), a unit comprised of state and local agents, twenty-six thousand five hundred dollars (\$26,500) worth of bitcoins and was charged in violation of state money laundering and unlicensed money service business statutes.⁵⁰ Reid accepted a plea agreement on September 16, 2015, and has been sentenced to serve five (5) years of probation.⁵¹

⁴⁵ Susannah Nesmith, *Miami Bitcoin Arrests may be First State Prosecution*, BLOOMBERG (Feb. 10, 2014, 1:27 PM), <https://www.bloomberg.com/news/articles/2014-02-09/miami-bitcoin-arrests-may-be-first-state-prosecution>.

⁴⁶ See *United States v. Murgio*, 209 F. Supp. 3d 704 (S.D.N.Y. 2016); *United States v. Faiella*, 39 F. Supp. 3d 544 (S.D.N.Y. 2014); *United States v. Ulbricht*, 31 F. Supp. 3d 540 (S.D.N.Y. 2014); *Sec. & Exch. Comm’n v. Shavers*, No. 4:13-CV-416, 2013 WL 4028182 (E.D. Tex. Aug. 6, 2013).

⁴⁷ See Nesmith, *supra* note 45 at 1. The Miami-Dade County State Attorney announced, “The use of Bitcoins . . . is a new technological flourish to this very old crime [of money laundering and these] arrests may be the first state prosecutions involving the use of [b]itcoins in money laundering operations.”

⁴⁸ See *id.*

⁴⁹ *Id.*

⁵⁰ See *Id.*; Jerin Mathew, *Pascal Reid and Michell Abner Espinoza Bitcoin Trial: ‘Money Laundering Using Bitcoin Not Crime*, INT’L BUS. TIMES (Feb. 28, 2014, 8:13 PM), <http://www.ibtimes.co.uk/pascal-reid-michell-abner-espinoza-bitcoin-trial-money-laundering-using-bitcoin-not-crime-1438268>.

⁵¹ See Harvey Ruvlin Clerk of the Courts for Miami-Dade County, *Miami-Dade County Criminal Justice Online System*, <https://www2.miami-dadeclerk.com/cjis/CaseSearch.aspx> (last visited Mar. 19, 2017).

State of Florida v. Michel Abner Espinoza

On December 4, 2013, Detective Ricardo Arias, a member of the Miami Beach Police Department, and Special Agent Gregory Ponzi of the United States Secret Service accessed a peer-to-peer Bitcoin exchange website seeking to purchase Bitcoin.⁵² Arias and Ponzi contacted Espinoza, a user identified by the username on the website as “Michelhack,” who represented himself as a seller and dictated that interested buyers would have to pay for the bitcoins in cash and in person.⁵³ Acting in an undercover capacity and contacting Espinoza through text message correspondences with Espinoza’s listed phone number, Arias arranged a meeting with Espinoza.⁵⁴

On December 5, 2013, as a result of this meeting, Espinoza agreed to sell 0.4032258 bitcoins to Arias in exchange for five hundred dollars (\$500) in cash.⁵⁵ However, during this meeting, there was no discussion of illegal activity or stolen credit cards as Arias’ fabricated purpose for these recently purchase bitcoins.⁵⁶ On January 10, 2014, Arias arranged a second meeting with Espinoza for the purchase of one (1) bitcoin in exchange for one thousand dollars (\$1,000).⁵⁷ At this meeting, Arias informed Espinoza that he was in the business of buying stolen credit card numbers and that the bitcoins would be used to pay for such information.⁵⁸ On January 30, 2014, Arias arranged with Espinoza a third Bitcoin

⁵² See Order Granting Defendant’s Motion to Dismiss the Information, *State v. Espinoza*, No. F14–2923, at 1 (Fla. Cir. Ct. dismissed July 22, 2016). “LocalBitcoins.com” is a website that allowed users who wished to sell Bitcoin to create an online advertisement conveying the amount of Bitcoin that the user was offering and the asking price. Then, potential buyers could browse the website’s advertisements and may arrange to purchase Bitcoin, either electronically online or in-person, with any seller who had posted.

⁵³ See *id.* at 2. Arias and Ponzi elected Espinoza for the newly established investigation not because of any previous reports that Espinoza was engaged in any illicit criminal activity, but rather because his username, availability, and his desire to meet in public places.

⁵⁴ See *id.*

⁵⁵ See *id.* During this meeting on December 5, 2013, Espinoza explained to Arias how he had made a profit of eighty-three dollars and sixty-seven cents (\$83.67) from this Bitcoin transaction: by purchasing the Bitcoin at ten percent (10%) under market value and selling it at a five percent (5%) above market value.

⁵⁶ See *id.*

⁵⁷ See *id.*

⁵⁸ See *id.* Arias also asked if Espinoza would be willing to accept any stolen credit card numbers as a trade for Bitcoin in their next transaction; Espinoza allegedly replied that he would consider such a form of payment. However, there was no evidence that Espinoza actually accepted stolen credit card numbers as payment for any subsequent Bitcoin transaction with Arias.

transaction for five hundred dollars (\$500) worth of Bitcoin, which was completed in its entirety through text message communication.⁵⁹

On February 6, 2014, Arias and Espinoza met for a fourth Bitcoin transaction; this time, Arias sought to purchase the equivalent of thirty thousand dollars (\$30,000) in Bitcoin.⁶⁰ During this meeting, Arias further explained that his illicit credit card operation, which Arias had fabricated as part of his undercover investigation, worked by purchasing the stolen credit cards wholesale with Bitcoin and then reselling the information at a marked-up price.⁶¹ Arias presented Espinoza with thirty thousand dollars (\$30,000) in cash, which were actually undercover funds that were counterfeit.⁶² Espinoza never took possession of the counterfeit money, but was subsequently arrested.⁶³

The State of Florida charged Espinoza with one count of operating and engaging in an unlawful money services business in violation of Fla. Stat. § 560.125(5)(a) (the “Florida Business Services Statute”) and two counts of money laundering in violation of § 896.101(3)(c) (the “Florida Anti-Money Laundering Statute”).⁶⁴ On July 22, 2016, Eleventh Judicial Circuit Court Judge for Miami-Dade County, Teresa Pooler, granted Espinoza’s Motion to Dismiss as to all three counts.⁶⁵ On August 10, 2016, Assistant State Attorney, Thomas Haggerty, of the State Attorney’s Office filed an appeal to Florida’s Third District Court of Appeal.⁶⁶ At the time of this comment’s publication, a date for the appellate hearings had not yet been scheduled.⁶⁷

II. THE MONEY LAUNDERING CHARGES

In *Espinoza*, Circuit Court Judge Pooler incorrectly dismissed both money laundering counts because of a failure to consider whether Bitcoin constitutes “funds” under the Florida Anti-Money Laundering Statute as well as the improper applications of the lenity and void-for-vagueness doctrines. The Florida Anti-Money Laundering Statute provides that

⁵⁹ *See id.* at 2–3.

⁶⁰ *See id.* at 3.

⁶¹ *See id.*

⁶² *See id.*

⁶³ *See id.* Espinoza, fearing that the cash was counterfeit, desired to bring portions of the money to the bank “a little at a time” in order to verify its authenticity.

⁶⁴ *See id.*

⁶⁵ *See id.* at 8.

⁶⁶ Florida Third District Court of Appeal Docket, *State v. Espinoza*, No. 3D16-1860, http://jweb.flcourts.org/pls/ds/ds_docket (last visited Aug. 18, 2017). Court records from the Eleventh Judicial Circuit Court in and for Miami-Dade County were received by the Third District Court of Appeal on January 6, 2017.

⁶⁷ *See id.*

it is unlawful for a person to conduct or attempt to conduct a *financial transaction* which involves property or proceeds which an investigative or law enforcement officer . . . represents as being derived from, or as being used to conduct or facilitate, specified unlawful activity, when the person's conduct or attempted conduct is undertaken with the intent: (1) to promote the carrying on of specified unlawful activity or (2) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds or property believed to be the proceeds of specified unlawful activity⁶⁸

Thus, the critical question for the *Espinoza* court to consider became whether Espinoza's Bitcoin transaction with Arias fell under the statutory definition of "financial transaction."

The Florida Anti-Money Laundering Statute defines "financial transaction" as "a transaction involving the movement of *funds* by wire or other means *or* involving one or more *monetary instruments*, which in any way or degree affects commerce"⁶⁹ By this statutory definition, the *Espinoza* court should have concluded that Espinoza's Bitcoin transaction with Arias did qualify as a financial transaction and, therefore, fell within the purview of the Florida Anti-Money Laundering Statute if bitcoins constitute (1) "funds" or (2) "monetary instruments." Although the term "funds" is not defined, the Florida Anti-Money Laundering Statute defines "monetary instruments" as "coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, money orders, investment securities in bearer form . . . and negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery."⁷⁰ Virtual or digital currencies are not specifically defined or included in either definition.⁷¹

Bitcoins Constitute "Funds" under Applicable Anti-Money Laundering Statutes

Although it is proper that bitcoins do not fall under the Florida Anti-Money Laundering Statute's definition of "monetary instruments," Bitcoin transactions still qualify as "financial transactions" because bitcoins constitute "funds." As previously mentioned, a financial

⁶⁸ FLA. STAT. § 896.101(3)(c) (2016) (emphasis added).

⁶⁹ FLA. STAT. § 896.101(2)(d) (2016) (emphasis added).

⁷⁰ FLA. STAT. § 896.101(2)(e) (2016).

⁷¹ See Order Granting Defendant's Motion to Dismiss the Information, *State v. Espinoza*, No. F14-2923, at 6 (Fla. Cir. Ct. dismissed July 22, 2016).

transaction is any “transaction involving the movement of *funds* by wire or other means *or* involving one or more *monetary instruments*, which in any way or degree affects commerce.”⁷² This is a mutually exclusive definition that sets forth two prongs. The first prong defines a “financial transaction” as any transaction involving the movement of *funds* by wire or other means, which in any way or degree affects commerce. The second prong defines “financial transaction” as any transaction involving one or more *monetary instruments*, which in any way or degree affects commerce.

Because *Espinoza* is the first case to consider Bitcoin under the Florida Anti-Money Laundering Statute, there is no precedent as to whether bitcoins constitute “funds” under the Florida Anti-Money Laundering Statute itself. However, unlike in Florida, there is substantial precedent in the Federal court system as it pertains to digital currencies, particularly Bitcoin, and their statuses within various federal statutes.⁷³ This is noteworthy because the provisions of the Florida Anti-Money Laundering Statute virtually mirror the elements of its federal counterpart, the Federal Anti-Money Laundering Statute. Accordingly, because the Florida and the Federal Anti-Money Laundering Statutes are substantively identical, the Federal Anti-Money Laundering Statute’s definition of “financial transaction” also includes “funds” and “monetary instruments.”⁷⁴ Also

⁷² § 896.101(2)(d) (emphasis added).

⁷³ See *United States v. Murgio*, No. 15-cr-769, 2016 LEXIS 131745 (S.D.N.Y. 2016); *United States v. Faiella*, 39 F. Supp. 3d 544, 544 (S.D.N.Y. 2014); *United States v. Ulbricht*, 31 F. Supp. 3d 540, 540 (S.D.N.Y. 2014); *Sec. & Exch. Comm’n v. Shavers*, No. 4:13-CV-416, 2013 WL 4028182 (E.D. Tex. Aug. 6, 2013); Tanaya Macheel, *Four Court Cases Helping Shape the U.S. Stance on Bitcoin*, COINDESK (Sept. 28, 2014, 2:09 PM), <http://www.coindesk.com/4-court-cases-helping-determine-us-stance-bitcoin/>; *Shavers*, 2013 WL 4028182 at *1. Trenderon Shavers, the founder and operator of Bitcoin Savings and Trust, was fined forty million dollars (\$40,000,000) by the Securities Exchange Commission (SEC) for allegedly defrauding investors of a Bitcoin Ponzi scheme by making a number of misrepresentations to investors regarding the nature of the investments. The case against Shavers was brought before Magistrate Judge Amos L. Mazzant of the United States District Court for the Eastern District of Texas pursuant to alleged violations of the Securities Act of 1933 and Exchange Act of 1934. In his Memorandum Opinion Regarding the Court’s Subject Matter Jurisdiction, Magistrate Judge Mazzant held that it was clear that Bitcoin could be used as “money” because it could be used to purchase goods or services, pay for individual living expenses, and be exchanged for conventional currencies, such as the U.S. dollar, Euro, and Yen. Magistrate Judge Mazzant noted that “the only limitation of Bitcoin is that it is limited to those places that accept it as currency.” Magistrate Judge Mazzant concluded that “Bitcoin is a currency or form of money, and investors wishing to invest in [Bitcoin Savings and Trust] provided an investment of money.”

⁷⁴ Laundering of Monetary Instruments, 18 U.S.C. § 1956(a)(1)–(2) (1988). The Federal Anti-Money Laundering Statute states that “[w]hoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful

important is the fact that the term “funds” in both the Florida and Federal Anti–Money Laundering Statutes is undefined; requiring courts to interpret the term in light of its plain meaning.

Particularly, “in construing a federal statute, a Florida court will look to related decisions of the federal courts in an attempt to construe it in a manner that will best effectuate its purpose.”⁷⁵ The Florida legislature’s intent to develop a “strategic state–based anti–money laundering initiative is clear from the tailored nature of the [Florida] statutes quilted together by federal statutory stitching.”⁷⁶ Although Espinoza was prosecuted under Florida statutes, these statutes were modeled after the federal money laundering statutes; therefore, the *Espinoza* court should have at least considered how federal courts addressed Bitcoin under the Federal Anti–Money Laundering Statute for guidance.⁷⁷ Because the Florida legislature, like the U.S. Congress, did not provide a statutory definition of “funds” within the pertinent money laundering statute, the *Espinoza* court should have, and indeed did, however incorrectly, construe “funds” in its ordinary sense by ascertaining the plain or ordinary meaning of “funds” by reference to a dictionary.⁷⁸

By conducting such plain and ordinary meaning analyses, several notable federal cases have concluded that bitcoins qualify as “funds,” and therefore Bitcoin transactions are “financial transactions,” pursuant to the

activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds . . . (A)(i) with the intent to promote the carrying on of specified unlawful activity; or . . . (B) knowing that the transaction is designed in whole or in part (i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity . . . shall be sentenced to a fine of not more than [five hundred thousand dollars] \$500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.”; 18 U.S.C. § 1956(c)(4) (1988). The statute defines “financial transaction” as “(A) a transaction which in any way or degree affects interstate or foreign commerce (i) involving the movement of *funds* by wire or other means or (ii) involving one or more *monetary instruments*” The statute further defines “monetary instruments” as “(i) coin or currency of the United States or of any other country, travelers’ checks, personal checks, bank checks, and money orders, or (ii) investment securities or negotiable instruments”

⁷⁵ 48A FLA. JUR. 2D *Statutes* § 108 (2014).

⁷⁶ Israel Reyes, *Florida’s Anti–Money Laundering Statutes*, FLA. BAR J. (July/Aug. 1999), <https://www.floridabar.org/divcom/jn/jnjournal01.nsf/Author/FA4AF4C5C0F457DE85256ADB005D6287> (last visited Mar. 19, 2017).

⁷⁷ See 48A FLA. JUR. 2D *Statutes* § 124 (2014). When the legislature has not given a term a statutory definition, the courts should construe a term in such a manner that would be in accordance with the literal meaning of the term as well as give effect to both the objective and the purpose of the statute.

⁷⁸ 48A FLA. JUR. 2D *Statutes* § 126 (2014). “Where the legislature has not defined the words used in a statute, the language should be given its plain and ordinary meaning.”

Federal Anti-Money Laundering Statute. In *United States v. Faiella*,⁷⁹ United States District Judge for the Southern District of New York, Jed S. Rakoff, held that Bitcoin “qualified as [both] ‘money’ or ‘funds’ under the plain meaning definitions of those terms because Bitcoin could be easily purchased in exchange for ordinary currency, acted as a denominator of value, and was used to conduct financial transactions.”⁸⁰ In acknowledging that the Federal Anti-Money Laundering Statute refers to “funds” rather than “money,” the *Faiella* court reasoned that Bitcoin fit the plain language meaning of “funds” according to the Merriam-Webster Dictionary, which is “‘available money’ or ‘an amount of something that is available for use: a supply of something.’” Similarly, in *United States v. Ulbricht*,⁸¹ United States District Court Judge for the Southern District of

⁷⁹ *United States v. Faiella*, 39 F. Supp. 3d 544, 544 (S.D.N.Y. 2014); See Tanaya Macheel, *Four Court Cases Helping Shape the U.S. Stance on Bitcoin*, COINDESK (Sept. 28, 2014, 2:09 PM), <http://www.coindesk.com/4-court-cases-helping-determine-stance-bitcoin/>. Amongst others, Robert Faiella was charged with two (2) counts of operating an unlicensed money transmitting business pursuant to 18 U.S.C. § 1960 and one (1) count of money laundering conspiracy pursuant to 18 U.S.C. § 1956(h) in connection with his alleged participation with the underground market website, the “Silk Road,” and the use of Bitcoin.

⁸⁰ *Faiella*, 39 F. Supp. 3d at 545. For support of his opinion, District Judge Rakoff looked to the ordinary meaning of “money” as defined by the Merriam-Webster Dictionary, which defined the term as “something generally accepted as a medium of exchange, a measure of value, or a means of payment.” Additionally, District Judge Rakoff held that Faiella “qualified as a ‘money transmitter’ for the purposes of 18 U.S.C. § 1960 because virtual currency exchangers constitute[s] ‘money transmitters.’”

⁸¹ See *United States v. Ulbricht*, 31 F. Supp. 3d 540, 569–70 (S.D.N.Y. 2014). Amongst three other counts including narcotics trafficking and computer hacking conspiracies, Ross Ulbricht was charged with money laundering conspiracy pursuant to 18 U.S.C. § 1956 by designing, launching, and administering the online marketplace website for the sale of illicit goods and services, known as the “Silk Road.” More specifically, the government alleged that Ulbricht conspired with individuals by engaging in thousands of unlawful transactions that occurred on the site over the course of three (3) years following its launch. These unlawful transactions were said to include the buying and selling of illegal narcotics and malicious computer software as well as opportunity to laundering the proceeds of such sales using Bitcoin. The Silk Road operated much like eBay in that “a seller would electronically post a good or service for sale; a buyer would electronically purchase the item; the seller would then ship or otherwise provide to the buyer the purchased item; the buyer would provide feedback; and the site operator would receive a portion of the seller’s revenue as a commission.” However, unlike eBay, the Silk Road was only available to users that utilized “Tor, a [computer] software and network that allows for anonymous, untraceable Internet browsing.” Also unlike eBay, the only form of payment permitted between buyers and sellers on the Silk Road was Bitcoin. This allowed the buyers and sellers, as well as Ulbricht, to engaged in transactions anonymously on the Silk Road while being anywhere in the world with an Internet connection. The only points of contact with the buyers and sellers were a username, which was often fake, and the address to where the items would be sent or the services rendered. When it began in 2011, the Silk road served primarily drug users who sought marijuana, Lysergic Acid Diethylamide (LSD), Ecstasy,

New York, Katherine B. Forrest, addressed Ulbricht's argument that bitcoins are not money because virtual currencies have some, but not all of the attributes of currency such as legal tender status, and, therefore, transactions involving Bitcoin cannot be prosecutable under current money laundering statutes.⁸² The *Ulbricht* court stated that it is clear from the plain meaning of the statutory language that "financial transaction" captures the movement of "funds" by any means.⁸³ Like money, "funds" are objects used either to pay for things directly or as a medium of exchange.⁸⁴ The *Ulbricht* court reasoned that "[b]itcoins carry value—that is their purpose and function—and act as a medium of exchange."⁸⁵ The *Ulbricht* court held that the Federal Anti-Money Laundering Statute is sufficiently broad to consider Bitcoin in financial transactions and that one can launder money using Bitcoin as a medium.⁸⁶

Because there was no Florida case law precedent available to guide the *Espinoza* court in determining whether bitcoins are "funds" under the Florida Anti-Money Laundering Statute, it seems logical that the *Espinoza* court should have looked to the how the federal courts have dealt with the issue in regard to the substantively identical Federal Anti-Money Laundering Statute. However, the *Espinoza* court ignored the question of whether bitcoins qualified as "funds." Rather, the *Espinoza* court

and prescription medication from sellers across the world. As the website grew in popularity, it began to host sellers who offered other illicit products and services, including forged documents and fake driver's licenses. By the time the Silk Road was shut down, "the site had sales revenue of more than 9.5 million bitcoins, valued at about 1.2 billion dollars [(\$1,200,000,000)]." As mentioned, Ulbricht was arrested in San Francisco, California, on October 2, 2013 and was charged with one (1) count of participation in a narcotics trafficking conspiracy, one (1) count of continuing a criminal enterprise, one (1) count of computer hacking conspiracy, and one (1) count of money laundering conspiracy. Ulbricht's case was brought before a United States District Court Judge for the Southern District of New York, Katherine B. Forrest, and the trial began on January 13, 2015. Ulbricht was convicted by a jury on February 4, 2015, and sentenced to life in prison on May 29, 2015. See Joseph Goldstein, *Arrest in U.S. Shuts Down a Black Market for Narcotics*, N.Y. TIMES (Oct. 2, 2013), <http://www.nytimes.com/2013/10/03/nyregion/operator-of-online-market-for-illegal-drugs-is-charged-fbi-says.html>. Ulbricht, who was known by the username "Dread Pirate Roberts," was arrested in San Francisco, California, on October 2, 2013. The government estimates that Ulbricht collected sales commissions of more than six hundred thousand (600,000) bitcoins, the equivalent of eighty million dollars (\$80,000,000).

⁸² See *Ulbricht*, 31 F. Supp. 3d at 569.

⁸³ See *id.* at 570.

⁸⁴ See *id.*

⁸⁵ See *id.* at 548, 570. ("[T]he only value for Bitcoin lies in its ability to pay for things – it is digital and has no earthly form; it cannot be put on a shelf and looked at or collected in a nice display case.")

⁸⁶ See *id.* at 571. "Congress intended to prevent criminals from finding ways to wash proceeds of criminal activity by transferring proceeds to other similar . . . items that store significant value."

overlooked “funds” when considering the statutory definition of “financial transaction” and relied upon its earlier analysis of “payment instrument” under the Florida Business Services Statute as a surrogate for the statutory definition of “monetary instrument.”⁸⁷ However, the term “funds” is not included within the Florida Business Services Statute’s definition of “payment instrument” and is only within the Florida Anti–Money Laundering Statute’s first prong of “financial transaction.”⁸⁸ It is likely that if the *Espinoza* court considered whether bitcoins were “funds,” the court would have reached a concurring conclusion with those of the federal courts.

“Funds” are “a sum of money or other resources . . . set apart for a specific objective” or “available pecuniary resources”⁸⁹ and “money” is “something generally accepted as a medium of exchange, a measure of value, or a means of payment.”⁹⁰ The primary purpose and function of bitcoins, unlike cigarettes or other goods, is to act as a medium of exchange and means of payment. Without these exchange or payment functions, Bitcoin serves no other practical purpose to users.

The Espinoza Court Incorrectly Analyzed “Monetary Instruments”

Although the *Espinoza* court’s conclusion that bitcoins are not “monetary instruments” is correct, the court reached the conclusion through flawed reasoning and careless oversight of elements comprising the statutory definition of “financial transaction.” The *Espinoza* court’s analysis of *Espinoza*’s actions under the Florida Anti–Money Laundering Statute and conclusion that Bitcoin transactions were not “financial transactions” are incorrect because the court improperly relied upon its conclusion that bitcoins do not qualify as “payment instruments” within the Florida Business Services Statute to conclude that Bitcoin could not constitute a “monetary instrument” under the Florida Anti–Money Laundering Statute. The Florida Anti–Money Laundering Statute defines “monetary instruments” as

coin or currency of the United States or of any other country, travelers’ checks, personal checks, bank checks,

⁸⁷ See Order Granting Defendant’s Motion to Dismiss the Information, *State v. Espinoza*, No. F14–2923, at 6–7 (Fla. Cir. Ct. dismissed July 22, 2016); *United States v. Murgio*, No. 15–cr–769, 2016 LEXIS 131745 at *28 (S.D.N.Y. 2016).

⁸⁸ See Order Granting Defendant’s Motion to Dismiss the Information, *State v. Espinoza*, No. F14–2923, at 3–6 (Fla. Cir. Ct. dismissed July 22, 2016).

⁸⁹ Pecuniary, MERRIAM–WEBSTER, <https://www.merriam-webster.com/dictionary/pecuniary> (last visited Aug. 26, 2016) (meaning “consisting of or measured in money.”).

⁹⁰ *Money*, MERRIAM–WEBSTER, <https://www.merriam-webster.com/dictionary/money> (last visited Aug. 26, 2017).

money orders, investment securities in bearer form . . .
and negotiable instruments in bearer form or otherwise in
such form that title thereto passes upon delivery.⁹¹

While none of these enumerated items sufficiently qualifies bitcoins as “monetary instruments,” the *Espinoza* court immediately forewent any analysis of whether bitcoins are “monetary instruments” and concluded, that because bitcoins are not “payment instruments” under the Florida Business Services Statute, bitcoins are cannot be “monetary instruments” under the Florida Anti–Money Laundering Statute.⁹² Further, the *Espinoza* court reasoned that “if the statute is read to mean that in the transaction, [Espinoza] must be the party who uses the monetary instruments, then the money laundering statute would not apply . . . because Bitcoins, as previously discussed, are not monetary instruments.”⁹³ However, the *Espinoza* court reasoned that the “more likely interpretation of the [applicable money laundering] statute is that as long as one party of the transaction [(Espinoza or Arias)] . . . is using a monetary instrument, a financial transaction has occurred.”⁹⁴ This reasoning is deeply flawed and misleading to opinion readers. Not only does it ignore the first prong of “financial transaction” referring to “funds,” but it also implies that “payment instruments” within the Florida Business Services Statute and “monetary instruments” within the Florida Anti–Money Statute are defined identically and are comprised of the same items. This is not the case as a “payment instrument” is “a check, draft, warrant, money order, traveler’s check, electronic instrument, or other instrument, payment of money, or monetary value whether or not negotiable.”⁹⁵

While “payment instruments” of the Florida Business Services Statute and “monetary instruments” of the Florida Anti–Money Laundering Statute include overlapping items such as checks, money orders, and negotiable instruments, the statutory definitions have a few notable differences. The term “payment instruments” also includes electronic instruments and the payment of money while the term “monetary instruments” includes coin or currency of the United States or of any country. Arguably, “payment instruments” is defined more broadly and, therefore, renders analyzing “monetary instrument” unnecessary after concluding that bitcoins are not “payment instruments” because bitcoins are not “money” pursuant to the Florida Business Services Statute.

⁹¹ FLA. STAT. § 896.101(2)(e) (2016).

⁹² See Order Granting Defendant’s Motion to Dismiss the Information, *State v. Espinoza*, No. F14–2923, at 6–7 (Fla. Cir. Ct. dismissed July 22, 2016).

⁹³ *Id.*

⁹⁴ *Id.* at 4.

⁹⁵ FLA STAT. § 560.103(29) (2016).

However, the *Espinoza* court's use of "payment instruments" as a surrogate for the definition of "monetary payment" can mislead readers as well as cause errors in the analysis of "financial transactions." Such an error occurred when the *Espinoza* court overlooked "funds" as an independent prong under the definition of "financial transaction."

The Espinoza Court Improperly Applied the Doctrinal Rule of Lenity

The *Espinoza* court's application of the doctrinal rule of lenity is improper because, as in *Ulbricht*, there is no statutory ambiguity. The doctrinal rule of lenity directs courts to strictly construe criminal statutes in a manner most favorable to defendants when the statutory language is susceptible to different reasonable interpretations.⁹⁶ More specifically, "doubts regarding the meanings of terms . . . must be resolved in the defendant's favor" against the State.⁹⁷ However, the rule of lenity is "reserved . . . for those situations in which a reasonable doubt persists about a statute's intended scope even after resort[ing] to 'the language and structure, legislative history, and motivating policies.'"⁹⁸ That is, "this rule of lenity is a canon of last resort and only applies if the [penal] statute remains ambiguous after consulting traditional canons of statutory construction."⁹⁹ A statute is ambiguous if the language is subject to more than one reasonable interpretation and outcome; however, just because the legislature may not have contemplated the applicability of the statute in a particular situation does not make the statute ambiguous.¹⁰⁰ "For a statute

⁹⁶ 16 FLA. CRIM. JUR. 2D CRIM. LAW, *Construction in Favor of Accused* § 14 (2017); see also *United States v. Ulbricht*, 31 F. Supp. 3d 540, 566 (S.D.N.Y. 2014) (citing *United States v. Ford*, 435 F.3d 204, 211 (2d Cir. 2006), which stated, "[C]riminal statutes must be strictly construed most favorably to the accused when they are subject to competing, albeit reasonable, interpretations."); *Ulbricht*, 31 F. Supp. 3d at 566 (citing *Rewis v. United States*, 401 U.S. 808, 812 (1971), which stated that because "restraint must be exercised in determining the breadth of conduct prohibited by a federal criminal statute out of concerns regarding both the prerogatives of Congress and the need to give fair warning to those whose conduct is affected," the doctrinal rule of lenity requires "that when a criminal statute is susceptible to two different interpretations – one more and one less favorable to the defendant – 'leniency' requires that the court read it in the manner more favorable.").

⁹⁷ 16 FLA. CRIM. JUR. 2D CRIM. LAW, *Construction in Favor of Accused* § 14 (2017).

⁹⁸ *United States v. Faiella*, 39 F. Supp. 3d 544, 547 (S.D.N.Y. 2014).

⁹⁹ *Paul v. State*, 112 So. 3d 1188, 1195 (Fla. 2013); See also 16 FLA. CRIM. JUR. 2D CRIM. LAW, *Construction in Favor of Accused* § 14 (2017) (stating "[a]bsent any ambiguity, the rule of lenity does not apply.").

¹⁰⁰ See 48A FLA. JUR. 2D *Statutes* § 115 (2014). "A statute can be unambiguous without addressing every interpretative theory offered by a party. There is a difference between ambiguity and unexpressed [legislative] intention."

to be unambiguous, it need only be plain to anyone reading an act that the statute encompasses the conduct at issue.”¹⁰¹

The *Espinoza* court concluded that, although Arias conveyed that he was planning to trade the Bitcoin from Espinoza for stolen credit card numbers, Arias had not clearly represented that the cash that was being paid to Espinoza was the proceeds of any illegal transaction.¹⁰² The *Espinoza* court continued by stating that the money laundering statute requires that Espinoza “undertake the transaction with the intent to promote the carrying on of specified unlawful activity,” but finds the vagueness of the term “promote” to be troublesome.¹⁰³ Because there is no statutory definition of the term “promote,” the *Espinoza* court looked to the plain language meaning of the word “promoter,” which is “someone who encourages or incites.”¹⁰⁴ Concluding that the plain language meaning of the word is too vague, the *Espinoza* court stated that “[t]his Court is unwilling to punish a man for selling his property to another, when his actions fall under a statute that is so vaguely written that even legal professionals have difficulty finding a singular meaning.”¹⁰⁵

The *Ulbricht* court also addressed the question of whether statutes governing many of the charges that Ulbricht faced were ambiguous when applied to his alleged conduct and concluded that application of the doctrinal rule of lenity was inappropriate.¹⁰⁶ The *Ulbricht* court rejected Ulbricht’s argument for the doctrinal rule of leniency because Ulbricht had not alleged

that a word or phrase in a statute . . . is susceptible to more than one interpretation[, but rather Ulbricht] argues that even if the elements of a . . . conspiracy are well known, his particular conduct in designing and operating the website does not clearly fall within what the statute is intended to cover.¹⁰⁷

¹⁰¹ *Id.*

¹⁰² See Order Granting Defendant’s Motion to Dismiss the Information, *State v. Espinoza*, No. F14–2923, at 7 (Fla. Cir. Ct. dismissed July 22, 2016).

¹⁰³ *Id.*

¹⁰⁴ *Id.* (citing *Promoter*, Black’s Law Dictionary (10th ed., 2014)).

¹⁰⁵ *Id.*

¹⁰⁶ *United States v. Ulbricht*, 31 F. Supp. 3d 540, 566–67 (S.D.N.Y. 2014).

¹⁰⁷ *Id.* at 566–67. The *Ulbricht* court clarified that, as a general principle, the doctrinal rule of leniency does not require that clear, unambiguous statutes be applied in a lenient manner; the doctrinal rule of leniency should only be applied if and when there is ambiguity.

The *Ulbricht* court concluded that “there is no statutory ambiguity and thus no basis for the application of the rule of lenity.”¹⁰⁸

Like in *Ulbricht*, dismissal based on the doctrinal rule of lenity was improper in *Espinoza* because the term “promote” is not susceptible to more than one interpretation such that the statute becomes ambiguous. Even assuming that the *Espinoza* court was correct in concluding that Arias had not clearly represented that the cash paid to Espinoza in the Bitcoin exchange were the proceeds of any illegal transaction, it is reasonable that Espinoza knew, or at least should have known, that the cash, or a portion of the cash, was acquired by Arias through some illegal activity, particularly considering Arias’ proposition to pay Espinoza for the bitcoins with stolen credit card information.¹⁰⁹ With such knowledge regarding the origins of the cash paid in exchange for the bitcoins, Espinoza encouraged or, at the very least, facilitated the carrying on of the unlawful sale of stolen credit card information, even if Arias did not explicitly state that the proceeds were the gained from the unlawful activity. Additionally, just because Congress and the Florida Legislature may not have contemplated the applicability of the Federal or Florida Anti-Money Laundering Statutes in a particular situation involving cryptocurrency does not make the statute ambiguous.¹¹⁰ “For a statute to be unambiguous, it need only be plain to anyone reading an act that the statute encompasses the conduct at issue.”¹¹¹ In *Espinoza*, it is clear that Espinoza’s supply of bitcoins “promoted” and enabled Arias’ fabricated stolen credit card scheme in violation of the Florida Anti-Money Laundering Statute; therefore, there is neither ambiguity nor grounds for the application of the doctrinal rule of lenity.

Application of the Void-for-Vagueness Doctrine is Improper

Although not specifically cited to by the *Espinoza* court in its decision, it is important to note that application of the void-for-vagueness doctrine would be improper as a means of dismissing the money laundering charges. The *Espinoza* court suggested a possible application of the void-for-vagueness doctrine when it concluded that it was “unwilling to punish

¹⁰⁸ *Id.* at 567; *see also* United States v. Budovsky, No. 13cr368 (DLC), 2015 U.S. Dist. LEXIS 127717, at *35 (rejecting arguments in favor of application of the rule of lenity because “[h]aving considered the text, purpose, and legislative history . . . , there is no ambiguity that would require resort to the rule of lenity.”).

¹⁰⁹ *See* Order Granting Defendant’s Motion to Dismiss the Information, State v. Espinoza, No. F14-2923, at 2 (Fla. Cir. Ct. dismissed July 22, 2016).

¹¹⁰ *See* 48A FLA. JUR. 2D Statutes §115 (2014) (stating that “[a] statute can be unambiguous without addressing every interpretative theory offered by a party. There is a difference between ambiguity and unexpressed [legislative] intention”).

¹¹¹ *Id.*

a man for selling his property to another, when his actions fall under a statute that is so *vaguely* written that even legal professionals have difficulty finding a singular meaning.”¹¹² The void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.¹¹³ The underlying justification of the void-for-vagueness doctrine is that no individual should be held criminally liable or responsible for conduct that a reasonable person would not have known to be prohibited under the applicable statute.¹¹⁴ In order for the void-for-vagueness doctrine to apply, a court must hold that “the statute is so vague and lacking in ascertainable standards of guilt that . . . it failed to give a person of ordinary intelligence fair notice that his contemplated conduct was forbidden.”¹¹⁵ However, it is important to note that the statute must be impermissibly vague in all of its applications for a valid void-for-vagueness claim to be established.¹¹⁶

Although Bitcoin’s involvement in a defendant’s actions prosecuted pursuant to the Florida Anti-Money Laundering Statute complicates the case’s analysis, application of the void-for-vagueness doctrine is improper because Espinoza had fair notice that his contemplated conduct was forbidden. In *Ulbricht*, the court stated that “the fact that a particular defendant [Ulbricht] is the first to be prosecuted for novel conduct under a pre-existing statutory scheme does not *ipso facto* mean that the statute is ambiguous, . . . vague, or that [the defendant] has been deprived of constitutionally appropriate notice.”¹¹⁷ Holding that the void-for-vagueness doctrine is inapplicable, the *Ulbricht* court stated that a vagueness challenge is avoided when a statute “define[s] a criminal offense in a manner that ordinary people . . . understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.”¹¹⁸ Because “no person of ordinary intelligence could believe that [Ulbricht’s] conduct, [the intentional

¹¹² See Order Granting Defendant’s Motion to Dismiss the Information, *State v. Espinoza*, No. F14-2923, at 7 (Fla. Cir. Ct. dismissed July 22, 2016) (emphasis added).

¹¹³ See 16 FLA. JUR. 2D *Requirement of certainty; vagueness* § 10 (2014) (stating that “[t]he language of the statute must provide adequate notice of the conduct it prohibits when measured by common understanding and practice . . .”).

¹¹⁴ See *id.*

¹¹⁵ See *id.*

¹¹⁶ See *id.* (stating that “[t]he legislature’s failure to define a statutory term does not in and of itself render a penal provision unconstitutionally vague, nor does imprecise language render a statute fatally vague, so long as the language conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices”).

¹¹⁷ *United States v. Ulbricht*, 31 F. Supp. 3d 540, 566 (S.D.N.Y. 2014).

¹¹⁸ See *id.* at 567.

conduct to join with narcotics traffickers or computer hackers to help sell illegal drugs or hack into computers], is somehow legal,” the *Ulbricht* court concluded that there was nothing vague about the application of the statute to Ulbricht’s alleged conduct.¹¹⁹

Similar to the Federal Anti-Money Laundering Statute in *Ulbricht*, the Florida Anti-Money Laundering Statute in *Espinoza* is neither ambiguous nor vague. As in *Ulbricht*, the *Espinoza* court must reason that no person of ordinary intelligence could believe that Espinoza’s sale of bitcoins to Arias to further facilitate a scheme involving the illegal sale of stolen credit card information is somehow legal. Furthermore, the Florida Anti-Money Laundering Statute must be impermissibly vague in all of its applications for a valid void-for-vagueness claim to be established, which it is not. The alleged vagueness of the term “promote” is improper as it has been relied upon in many prior cases pursuant to the prosecution of money laundering violations in Florida. Therefore, because the Florida Anti-Money Laundering Statute provided Espinoza with sufficient notice that his sale of bitcoins was prohibited and the Statute is not impermissibly vague in all situations, a dismissal based on the void-for-vagueness doctrine is inappropriate.

III. THE UNLAWFUL MONEY SERVICES BUSINESS CHARGE

The *Espinoza* court dismissed the Florida Business Services Statute charge against Espinoza for reasons that depend on determining whether Bitcoin qualifies as “monetary value.” By erroneously concluding that bitcoins cannot be “money” or constitute “monetary value,” the *Espinoza* court held that Espinoza could not be engaged in a money services business because he was not acting as an “instrument seller.” Moreover, the *Espinoza* court also concluded that Espinoza was not a “money transmitter” under the Florida Business Services Statute because the sale of bitcoins to Arias in exchange for cash was not done for the purpose of transmitting the same by any means. Although this paper agrees that Espinoza’s sale of bitcoins to Arias should not qualify Espinoza as a “money transmitter” pursuant to the Florida Business Services Statute, the conclusion that Espinoza did not engage in a “money services business” is nonetheless incorrect because bitcoins do constitute “monetary value” and, therefore, qualify as “payment instruments.”

The Florida Business Services Statute states that “a person may not engage in the business of a *money services business* . . . in this state unless the person is licensed or exempted from licensure.”¹²⁰ Similar to the two-

¹¹⁹ See *id.* at 568.

¹²⁰ See FLA. STAT. § 560.125(1) (2016) (emphasis added).

pronged definition of “financial transaction” in the Florida Anti–Money Laundering Statute, the Florida Business Services Statute defines “money services business” by providing mutually exclusive categories. The Florida Business Services Statute defines “money services business” as “a person . . . who acts as a *payment instrument seller*, foreign currency exchanger, check cashier, or *money transmitter*.”¹²¹ For the purposes of this analysis, such a definition means that an individual has engaged in the business of a money services business in violation of the Florida Business Services Statute if he either (1) acted as a “payment instrument seller” or (2) acted as a “money transmitter.”

The statutory language of the Florida Business Services Statute specifically defines “payment instrument seller” as “a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which sells a payment instrument,”¹²² and defines a “payment instrument” as “a check, draft, warrant, money order, traveler’s check, electronic instrument, or other instrument, payment of money, or monetary value whether or not negotiable.”¹²³ The Florida Business Services Statute defines “money transmitter” as “a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which receives currency, monetary value, or *payment instruments* for the purpose of transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, [or] the Internet”¹²⁴ “Monetary value” is defined within the Florida Business Services Statute as “a medium of exchange, whether or not redeemable in currency.”¹²⁵

Bitcoins Constitute “Money” or “Monetary Value”

Like “funds” pursuant to the Florida Anti–Money Laundering Statute charges, precedent was not available to the *Espinoza* court to determine whether Bitcoin qualified as “monetary value” under the Florida Business Services Statute charge. However, also like the money laundering charges, there is substantial precedent in regards to how the federal courts have

¹²¹ FLA. STAT. § 560.103(22) (2016) (emphasis added).

¹²² § 560.103(30).

¹²³ See § 560.103(29)–(30).

¹²⁴ § 560.103(23) (emphasis added); see also § 560.125(5)(a) and (b). The statute continues by stating that “a person who violates this section, if the violation involves: (a) currency or payment instruments exceeding [three hundred dollars] \$300 but less than [twenty thousand dollars] \$20,000 in any 12–month period, commits a felony of the third degree . . . or (b) currency or payment instruments totaling or exceeding [twenty thousand dollars] \$20,000 but less than [one hundred thousand dollars] \$100,000 in any 12–month period, commits a felony of the second degree.”

¹²⁵ § 560.103(21).

dealt with Bitcoin and its involvement in the unlawful engagement into a money services business.¹²⁶ In regards to the federal government's prohibition of an unlicensed money transmitting business, 18 U.S.C. § 1960 (the "Federal Money Services Business Statute") states that "[w]hoever knowingly conducts, controls, manages, supervises, directs, or owns all or part of an unlicensed money transmitting business, shall be fined . . . or imprisoned not more than 5 years, or both."¹²⁷ The Federal Money Services Business Statute defines "unlicensed money transmitting business" and "money transmitting" differently than the Florida Business Services Statute defines "money services business" and "money transmitter."¹²⁸ However, because the Florida Legislature enacted the Florida Business Services Statute largely based upon the Federal Money Services Business Statute,¹²⁹ Congress' legislative intent in enacting the Federal Money Services Business Statute should be considered when analyzing the Florida Business Services Statute.

The legislative history of the Federal Money Services Business Statute is clear. It was enacted to serve as an anti-money laundering statute; particularly intended to stop or thwart the movement of illegitimate funds connected to the drug trade.¹³⁰ At the time of enactment, Congress feared that drug dealers would begin to more frequently utilize "non-bank financial institutions" in order to convert illegitimate cash and currency into "monetary instruments," thereby allowing the drug dealers to more easily launder the proceeds of any illicit transaction.¹³¹ That is, Federal Money Services Business Statute "was enacted to address the fact that 'money launderers with illicit profits ha[d] found new avenues of entry into the financial system [and prevent innovative ways of transmitting

¹²⁶ See *United States v. Murgio*, 209 F. Supp. 3d 698, 707–15 (S.D.N.Y. 2016); *United States v. Faiella*, 39 F. Supp. 3d 544, 545–47 (S.D.N.Y. 2014).

¹²⁷ 18 U.S.C. §1960(a) (2006).

¹²⁸ An "unlicensed money transmitting business" is "a money transmitting business which affects interstate or foreign commerce in any manner or degree and . . . involves the transportation or transmission of *funds* that are known to the defendant to have been derived from a criminal offense or are intended to be used to promote or support unlawful activity." 18 U.S.C. § 1960(b)(1) (emphasis added). A "money transmitting" to include "transferring funds on behalf of the public by any and all means including but not limited to transfers within this country or to locations abroad by wire, check, draft, facsimile, or courier . . ." 18 U.S.C. § 1960(b)(2).

¹²⁹ "By express action, the Florida Legislature has directly tied federal money laundering and [unlawful money services business] violations to the code. For example, [pursuant to Fla. Stat. § 560.111(1)(d)], it is a violation . . . to engage in an act that violates the Federal Anti-Money Laundering Statute [and the Federal Money Services Business Statute] . . .," See Israel Reyes, *Florida's Anti-Money Laundering Statutes*, FLA. B.J., July/Aug. 1999, at 66, 67.

¹³⁰ See *Faiella*, 39 F. Supp. 3d at 545–46.

¹³¹ See *id.*

such money].”¹³² Moreover, Congress intended the Federal Money Services Business Statute to modernize the law governing money laundering and to safeguard from any evolving threats, which is made obvious by the statute’s broad language which makes it applicable to any business involved in transferring “funds . . . by any and all means.”¹³³

The *Espinoza* court dismissed the unlawful money services business charge against Espinoza after it concluded that Bitcoin could not fall under the statutory definition of “payment instrument” because virtual or digital currency is not specifically included in the definition, nor does Bitcoin fall under one of the categories defined within the “payment instrument.”¹³⁴ While acknowledging that Bitcoin did share some qualities in common with what people generally refer to as money, the *Espinoza* court concluded that “Bitcoin has a long way to go before it is the equivalent of money.”¹³⁵ The *Espinoza* court reasoned that while Bitcoin could be exchanged for items of value, (1) Bitcoin is not a commonly used means of exchange because it is accepted by some, but not all, merchants or service providers, (2) the value of Bitcoin fluctuates wildly due to the uncertainty of Bitcoin’s future value and lack of stabilization, and (3) Bitcoin has a limited ability to act as a store of value.¹³⁶ Furthermore, Judge Pooler reasoned that Bitcoin differed from “money” in that sense that it was a decentralized system, thereby not backed by anything, and did not have tangible wealth like cash or gold.¹³⁷ Therefore, Judge Pooler concluded that Espinoza’s sale of Bitcoin did not constitute the operation of a money services business and dismissed the count.¹³⁸ While these characteristics of Bitcoin may be of some consideration when determining the differences between Bitcoin and traditional government-supported currencies, they are not determinative characteristics of “money” or “monetary value.” “Monetary value” is defined within the Florida Business Services Statute as “a medium of exchange, whether or not redeemable in currency.”¹³⁹ Contrary to the analysis conducted by the *Espinoza* court, the Florida Business Services Statute does not require, nor even contemplate, that an item of monetary value be commonly accepted

¹³² *United States v. Murgio*, 209 F. Supp. 3d 698, 707–15 (S.D.N.Y. 2016).

¹³³ *See Faiella*, 39 F. Supp. 3d at 546; *see also Murgio*, 209 F. Supp. 3d at 708 (stating that the Court must give effect to the broad language Congress employed – namely that 18 U.S.C. § 1960 “applies to any business involved in transferring ‘funds by any and all means’”).

¹³⁴ *See Order Granting Defendant’s Motion to Dismiss the Information, State v. Espinoza*, No. F14–2923, at 5 (Fla. Cir. Ct. dismissed July 22, 2016).

¹³⁵ *Id.* at 6.

¹³⁶ *See id.* at 5–6.

¹³⁷ *See id.* at 6.

¹³⁸ *See id.*

¹³⁹ FLA. STAT. § 560.103(21) (2016).

by merchants or service providers, stable, or centralized. Therefore, in order for bitcoins to fall under the express statutory definition of “monetary value,” and therefore within the scope of “payment instruments,” it must be determined that bitcoins are “medium of exchange, whether or not redeemable in currency.”¹⁴⁰

In *United States v. Murgio*,¹⁴¹ United States District Court Judge for the Southern District of New York, Alison J. Nathan, directly addressed the flawed “monetary value” analysis of the *Espinoza* court and concluded, contrary to the *Espinoza* court, that bitcoins are “monetary value” pursuant to the Florida Business Services Statute.¹⁴² The *Murgio* court addressed the *Espinoza* decision because Murgio was being indicted pursuant to the Federal Money Services Business Statute, which required an analysis of the Florida Business Services Statute in order to determine if Murgio’s business operation was indeed “unlicensed.”¹⁴³ The *Murgio* court reasoned that “[b]itcoins can be accepted as ‘payment for goods and services’ or bought ‘directly from an exchange with a bank account.’”¹⁴⁴ Additionally, the *Murgio* court concluded that bitcoins function as pecuniary resources and that Bitcoin is “used as a medium of exchange and a means of payment.”¹⁴⁵ Because Bitcoin “can be easily purchased in exchange for ordinary currency, act as a denominator of value, and [is] used to conduct financial transactions,”¹⁴⁶ the *Murgio* court concludes that Bitcoin falls

¹⁴⁰ *See id.*

¹⁴¹ *See United States v. Murgio*, 209 F. Supp. 3d 698, 708 (S.D.N.Y. 2016). Anthony Murgio and his co-defendants were charged with a nine-count indictment, including the operation of an unlicensed money transmitting business in violation of 18 U.S.C. § 1960. It was alleged that Murgio and his co-defendants operated an unlawful Bitcoin exchange website called “Coin.mx” and bribed the chairman of the board of a federal credit union, Trevon Gross, to obscure the illegal nature of the website. The *Murgio* court held that bitcoins are “funds” within the plain meaning of the term and, therefore, fall within the statutory definition of “funds” under the Federal Money Services Business Statute.

¹⁴² *See id.* at 712–16. District Judge Nathan reasoned that, although the Federal Money Services Business Statute does not define what qualifies as “money” other than to state that it includes “funds,” funds are intended to mean “pecuniary resources, which are generally accepted as a medium of exchange or means of payment.” This is because Bitcoin “can be easily purchased in exchange for ordinary currency, act as a denominator of value, and [is] used to conduct financial transaction.”

¹⁴³ 18 U.S.C. § 1960(b)(1)(A) (2006). *See also Murgio*, 209 F. Supp. 2d at 712–14. The Federal Money Services Business Statute determines if a money transmitting business is unlicensed by considering whether the business operates “without an appropriate money transmitting license in a State where such operation is punishable as a misdemeanor or a felony.” § 1960(b)(1)(A).

¹⁴⁴ *Murgio*, 209 F. Supp. 2d at 707 (citing *Getting started with Bitcoin*, BITCOIN, <https://bitcoin.org/en/getting-started> (last visited Sept. 16, 2016)).

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* (quoting *United States v. Faiella*, 39 F. Supp. 3d 544, 545 (S.D.N.Y. 2014)).

within the Florida Business Services Statute's express definition of "monetary value."¹⁴⁷

It was Improper to Rely on IRS Notice 2014–21

Incorrectly concluding that Espinoza did not qualify as a "payment instrument seller" because Bitcoin did not fall under the statutory definition of "payment instrument," the *Espinoza* court improperly cited and relied on Internal Revenue Service (the "IRS") Notice 2014–21.¹⁴⁸ Notice 2014–21 declared that "[t]he federal government . . . has decided to treat virtual currency as property for tax purposes."¹⁴⁹ Notice 2014–21, however, does not address the question of whether bitcoins constitute "payment instruments" pursuant to the Florida Business Services Statute and is irrelevant to the analysis.¹⁵⁰ It seems logical to conclude that the *Espinoza* court erred when it sought guidance from a federal government regulatory agency and found its directives to be persuasive, but failed to find persuasive, or at least consider with proper regard, the abundant federal case law conducting a parallel analysis on the Florida Business Services Statute's model statutes.

¹⁴⁷ *Id.* at 712 (citing FLA. STAT. § 560.103(21) (2016)). *See also id.* at 713 ("[Because] the *Espinoza* court is the first Florida court to have considered the reach of Chapter 560 [the Florida Business Services Statute] in the context of Bitcoin, and neither the state's Supreme Court nor the District Courts of Appeal have weighed in[,] [t]his Court is . . . not bound by the decision in *Espinoza*, though it owes the decision 'proper regard.'").

¹⁴⁸ *See* Order Granting Defendant's Motion to Dismiss the Information, *State v. Espinoza*, No. F14–2923, at 5 (Fla. Cir. Ct. dismissed July 22, 2016) (citing § 560.103(29)); *see* *United States v. Murgio*, 209 F. Supp. 3d 698, 713 (S.D.N.Y. 2016) ("[W]ith respect to the meaning of 'payment instrument,' the only reason the *Espinoza* court cites for concluding that bitcoins are not 'payment instruments' is that the IRS 'has decided to treat virtual currency as property for federal tax purposes.'").

¹⁴⁹ *See* Order Granting Defendant's Motion to Dismiss the Information, *State v. Espinoza*, No. F14–2923, at 5 (Fla. Cir. Ct. dismissed July 22, 2016); I.R.S. Notice 2014–21, 2014–16 I.R.B. 938.

¹⁵⁰ *United States v. Murgio*, 209 F. Supp. 3d 698, 709 (S.D.N.Y. 2016) ("[T]he IRS Notice . . . makes clear that it 'addresses only U.S. federal tax consequences of transactions in, or transactions that use, convertible virtual currency.'") (quoting I.R.S. Notice 2014–21, 2014–16 I.R.B. 938). *See also* *United States v. Ulbricht*, 31 F. Supp. 3d 540, 569 (S.D.N.Y. 2014) (addressing Ulbricht's argument that bitcoins cannot form the basis for a money laundering conspiracy, the *Ulbricht* court rejected the application of Notice 2014–21 because "neither the IRS nor FinCEN has addressed the question of whether a 'financial transaction' can occur with Bitcoins"). *See also* *United States v. Budovsky*, No. 12cr368 (DLC), 2015 U.S. Dist. LEXIS 127717, at *36 (S.D.N.Y. Sept. 23, 2015). Pursuant to the Federal Anti–Money Laundering Statute, the *Budovsky* court rejected the argument that virtual currency is not "funds" in light of Notice 2014–21 because "[t]hese documents are inapposite and do not suggest that the term 'funds' should not be read to encompass virtual currencies." *Id.* at *36 (citing I.R.S. Notice 2014–21, 2014–16 I.R.B. 938; *Ulbricht*, 31 F. Supp. 3d at 569).

The *Murgio* court specifically rejected the *Espinoza* court's reference to Notice 2014–21 when deciding that bitcoins are not “payment instruments” for two reasons. First, an argument that bitcoins fail to fall under the statutory definition of “payment instruments” based on Notice 2014–21 “ignores the fact that [the Florida Business Services Statute] defines ‘payment instrument’ as including ‘monetary value.’”¹⁵¹ Second, the *Espinoza* court failed to acknowledge that “[t]he IRS’s classification is divorced from the basic statutory interpretation question at issue”¹⁵² Therefore, like how the *Murgio* court remained persuaded that the Florida Business Services Statute applied to persons and businesses that conducted transactions using Bitcoin,¹⁵³ this paper fails to identify or acknowledge the relevance of Notice 2014–21 in addressing the question of whether Bitcoin constitutes a “payment instrument.”

Espinoza Qualifies as a “Payment Instrument Seller”

Following the statutory structure of the Florida Business Services Statute, because bitcoins constitute “monetary value” and “payment instrument” is defined, among other categories, as “payment of money or monetary value whether or not negotiable,” Bitcoin qualifies as a “payment instrument.”¹⁵⁴ Furthermore, because the Florida Business Services Statute defines “money services business” to include “a person who acts as a *payment instrument seller*”¹⁵⁵ and a “payment instrument seller” is something “qualified to do business in this state which sells a payment instrument,”¹⁵⁶ *Espinoza* must be considered a “payment instrument seller” and, therefore, a person who unlawfully engaged in the business of a “money services business.”¹⁵⁷

The hesitation of the *Espinoza* court to prosecute *Espinoza*'s transactions involving Bitcoin may be partly because of a lack of precedent. However, it is established under Florida law that statutes may “apply to new situations, cases, conditions, things, subjects, [or] methods . . . coming into existence subsequent to its enactment; [provided h]owever, [these new aspects] must be in the same general class as those

¹⁵¹ *Murgio*, 209 F. Supp. 3d at 713 (S.D.N.Y. 2016) (citing Order Granting Defendant's Motion to Dismiss the Information, *State v. Espinoza*, No. F14–2923, at 4–5 (Fla. Cir. Ct. dismissed July 22, 2016)).

¹⁵² *Id.* at 713–14.

¹⁵³ *See id.* at 714.

¹⁵⁴ FLA. STAT. § 560.103(29) (2016). *Murgio*, 209 F. Supp. 3d at 712 (“Because bitcoins are ‘monetary value,’ they are also ‘payment instruments.’”).

¹⁵⁵ § 560.103(22) (emphasis added).

¹⁵⁶ § 560.103(30).

¹⁵⁷ § 560.103(29).

treated in the statute.”¹⁵⁸ That is, such new situations, cases, conditions, and the like must reasonably be “within the general purview, scope, purpose, and policy of the statute.”¹⁵⁹ In light of the Florida Business Services Statute’s text and purpose, it seems clear that bitcoins fall within the purview and scope of the Florida Business Services Statute because bitcoins qualify as payment instruments. Additionally, it is also well-established that “motion to dismiss charges against a defendant should rarely be granted, and granted only when the facts and inferences arising there from, taken in the light most favorable to the State, do not establish a prima facie case.”¹⁶⁰ Under this standard, the *Espinoza* court should not have granted Espinoza’s pre-trial motion to dismiss even if it remained uncertain about whether bitcoins constituted “monetary value” and, therefore, “payment instruments.”

IV. CONCLUSION

The *Espinoza* court incorrectly dismissed all three counts pursuant to the Florida Anti-Money Laundering Statute and Florida Business Services Statute because of flawed analyses of both statutes. Although the *Espinoza* court correctly concluded that bitcoins do not qualify as “monetary instruments” pursuant to the Florida Anti-Money Laundering Statute, the *Espinoza* court conducted a flawed analysis by using its reasoning of “payment instrument” pursuant to the Florida Business Services Statute as a surrogate for the statutory definition of “monetary instruments” and completely ignored the first prong of the statutory definition of “financial transaction,” which included the term “funds.”¹⁶¹ If the *Espinoza* court had not overlooked the term “funds” within the definition of “financial transaction” of the Florida Anti-Money Laundering Statute, it likely would have reached the conclusion that Espinoza’s Bitcoin transactions qualified as “financial transactions” based on the same analyses that multiple federal courts have conducted. Furthermore, the *Espinoza* court’s application of the doctrinal rule of lenity and void-for-vagueness is improper because there is no ambiguity as to the Florida Anti-Money Laundering Statute’s language or its statutory definitions.

¹⁵⁸ 48A FLA. JUR. 2D *Statutes* § 125 (2004) (“When a statute is expressed in general terms and in words of the present tense, it is generally construable to apply not only to things and conditions existing at the time of its passage, but also will be given a prospective effect and made to apply to such as come into existence thereafter.”).

¹⁵⁹ *Id.*

¹⁶⁰ *State v. Gensler*, 929 So. 2d 27, 29 (3d Fla. Dist. Ct. App. 2006) (internal citations omitted).

¹⁶¹ See Order Granting Defendant’s Motion to Dismiss the Information, *State v. Espinoza*, No. F14-2923, at 6-7 (Fla. Cir. Ct. dismissed July 22, 2016).

Additionally, the *Espinoza* court improperly concluded that bitcoins did not qualify as “monetary value” because the court failed to acknowledge that, pursuant to the Florida Business Services Statute, “monetary value” is “a medium of exchange, whether or not redeemable in currency.”¹⁶² Rather than analyzing whether Bitcoin is a medium of exchange, the *Espinoza* court reasoned that Bitcoin is not a commonly used means of exchange, the value of Bitcoin fluctuates wildly, and Bitcoin has a limited ability to act as a store of value.¹⁶³ This ignores the fact that Bitcoin, although possibly an uncommon and volatile medium of exchange, remains a medium of exchange. If the *Espinoza* court had concluded that Bitcoin is a medium of exchange, Bitcoin would clearly qualify as a “payment instrument” pursuant to the Florida Business Services Statute and *Espinoza* would constitute a “payment instrument seller.” Therefore, *Espinoza*’s Bitcoin transactions to Arias must fall within the purview of the Florida Business Services Statute and a preliminary dismissal of such charges by the *Espinoza* court was unwarranted.

The Third District Court of Appeal should reverse and remand the decision of the *Espinoza* court to be consistent with the well-established rules of statutory interpretation. Such rules of statutory interpretation demand both an appropriate plain meaning analysis divorced from the influence of the irrelevant IRS Notice 2014–21 as well as an analysis of the legislative intent in enacting the relevant statutes.

Public Policy Importance

The *Espinoza* court’s decision to dismiss the Florida Anti–Money Laundering Statute and the Florida Business Services Statute charges creates a precedent in Florida that leaves a gaping hole in the state’s ability to regulate and prosecute illicit acts involving cryptocurrencies. Florida’s inability to regulate or prosecute acts that would ordinarily constitute money laundering, but now fall outside the purviews of both the Florida Anti–Money Laundering Statute and the Florida Business Services Statute because cryptocurrencies are utilized, opens the door for tech–savvy criminals. Such precedence cannot be allowed to stand and must be overturned by the Third District Court of Appeal or addressed by the Florida legislature.

¹⁶² FLA. STAT. § 560.103(17) (2016).

¹⁶³ See Order Granting Defendant’s Motion to Dismiss the Information, *State v. Espinoza*, No. F14–2923, at 5–6 (Fla. Cir. Ct. dismissed July 22, 2016).

Domestic Legislative and Judicial Action

In *Espinoza*, Judge Pooler calls for legislative action to clarify the statutory language of the applicable Florida statutes.¹⁶⁴ Although no legislative measures have yet been taken within Florida to directly address cryptocurrencies pursuant to the Florida Anti–Money Laundering Statute and the Florida Business Services Statute, two members of the United States Congress have established the new Congressional Blockchain Caucus, which “will study Bitcoin and Blockchain technology.”¹⁶⁵ Congressmen Jared Polis and Mick Mulvaney organized the Congressional Blockchain Caucus “to educate lawmakers on Capitol Hill about cryptocurrency . . . and the [legal] issues surrounding it.”¹⁶⁶ However, any legislation that may result from the efforts of the Congressional Blockchain Caucus will not be binding on the Florida state courts when they analyze issues pursuant to the Florida Anti–Money Laundering Statute and the Florida Business Services Statute.

As mentioned, *Espinoza* has been appealed to Florida’s Third District Court of Appeal. Although this appeal will likely provide greater clarity in regards the applicability of money laundering statutes to actions involving cryptocurrency, the Supreme Court of Florida will not have an opportunity to speak to the issue until another District Court of Appeal renders a decision that directly conflicts with the Third District Court of Appeal decision after the decision is rendered.¹⁶⁷

Bitcoin in Foreign Policies

The United States and Florida are not the only governing bodies that are grappling with the new legal challenges that cryptocurrencies are presenting. The European Court of Justice (ECJ) ruled that Bitcoin exchange transactions should be exempt from applicable value-added

¹⁶⁴ See Order Granting Defendant’s Motion to Dismiss the Information, *State v. Espinoza*, No. F14–2923, at 7 (Fla. Cir. Ct. dismissed July 22, 2016) (“Without legislative action geared towards a much[–]needed update to the particular language within [these] statute[s], this Court finds that there is insufficient evidence as a matter of law . . .”).

¹⁶⁵ Bob Garcia, *Congress Sets up Brand New Bitcoin Caucus*, BIG BLIND (Sept. 27, 2016, 1:28 PM), <https://www.americascardroom.eu/blog/2016/09/congress-sets-up-brand-new-bitcoin-caucus/>.

¹⁶⁶ *Id.*

¹⁶⁷ See *Supreme Court of Florida*, FLORIDA COURTS, <http://www.flcourts.org/florida-courts/supreme-court.shtml> (last visited Aug. 27, 2017). The Supreme Court of Florida has mandatory jurisdiction and, therefore, must review (1) final orders imposing death sentences, (2) district court decisions declaring a Florida statute unconstitutional, (3) bond validations, and (4) select orders of the Public Service Commission involving utility rates and services. However, the Supreme Court of Florida has limited discretionary jurisdiction and, therefore, may grant and review various petitions that would result in the case being decided on the merits.

taxes.¹⁶⁸ This ECJ decision treats Bitcoin similarly to currency, bank notes and coins used as legal tender.¹⁶⁹ The ECJ made this decision only about one month after the United States Commodity Futures Trading Commission (CFTC) reached a contradictory conclusion, which deemed Bitcoin to be a commodity.¹⁷⁰ Importantly, the ECJ's decision "squarely places [B]itcoin and similar digital currencies within the ambit of 'financial transactions' [under certain European Union Directives]."¹⁷¹

Countries around the world, however, have also expressed negative views of digital currencies and implemented bans of varying degrees.¹⁷² Most notably, countries such as Ecuador, Bolivia, and Bangladesh have implemented total bans on the use of Bitcoin, while countries like China, Sweden, India, and Russia have quasi-bans on the cryptocurrency.¹⁷³ Canada and Australia are still deliberating on how to treat Bitcoin legally.¹⁷⁴

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¹⁶⁸ Ian Allison, *European Court of Justice: Bitcoin is a Currency and Exchanges are VAT-Exempt*, INT'L BUS. TIMES (Oct. 22, 2015), <http://www.ibtimes.co.uk/european-court-justice-ruling-bitcoin-currency-exchanges-are-vat-exempt-1525169>.

¹⁶⁹ *Id.*

¹⁷⁰ *See id.*

¹⁷¹ *Id.*

¹⁷² Evander Smart, *Top Ten Countries in which Bitcoin is Banned*, CRYPTOCOINS NEWS (May 27, 2015), <https://www.cryptocoinsnews.com/top-10-countries-bitcoin-banned/>.

¹⁷³ *See id.* Bangladesh, citing concerns over the cryptocurrencies' lack of centralization, has deemed "[a]ny transaction through Bitcoin or any other cryptocurrency . . . a punishable offense." *Id.* Bolivia has stated that "it is illegal to use any currency that is not issued and controlled by a government or an authorized entity." *Id.* Ecuador has banned the use of cryptocurrencies "as [it is] building a national electronic cash system" and expressed a desire to protect the exclusivity of its system. *Id.* Although China has not completely banned cryptocurrencies and it is not illegal for Chinese citizens to trade or mine Bitcoin, Chinese "[b]anking institutions and employees are banned from engaging in [B]itcoin business . . . as well as servicing or doing business with the [B]itcoin industry." *Id.* Sweden has instituted a narrow ban on using Bitcoin to purchase and sell scrap metal and waste products. *Id.* Indian banks have instituted self-regulated general policies prohibiting the servicing of Bitcoin businesses. *Id.* Russia has not legally banned Bitcoin, but banks and the national government generally opposed investment in digital currencies. *Id.*

¹⁷⁴ *See id.*

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