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for the Northern Mariana Islands
By 
(Deputy Clerk)

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS**

UNITED STATES OF AMERICA,

Case No. 1:13-cr-00002

Plaintiff,

**ORDER DENYING MOTION TO
DISMISS FOR LACK OF
JURISDICTION**

v.

**HONG KONG ENTERTAINMENT
(OVERSEAS) INVESTMENTS, LTD., dba
TINIAN DYNASTY HOTEL & CASINO,**

Defendant.

I. INTRODUCTION

The Government is prosecuting Hong Kong Entertainment (Overseas) Investments, Ltd. (“HKE”), which operates the Tinian Dynasty Hotel & Casino (“Tinian Dynasty”), for failure to file reports on currency transactions and suspicious activity as required of casinos by the Department of the Treasury. HKE has moved to dismiss the indictment on grounds that it was not obligated to file such reports because Congress has not given Treasury the authority to regulate casinos in the Commonwealth of the Northern Mariana Islands (“CNMI” or “Commonwealth”). Having reviewed all the briefing papers submitted by the parties¹ and considered the arguments of counsel made at a hearing on May 8, 2015, the Court denies the Motion to Dismiss.

II. BACKGROUND

A. Legislative and Regulatory History

In 1970, Congress passed the Bank Secrecy Act (“BSA”), Pub. L. 91-508, 84 Stat. 1114. The BSA authorized the Secretary of the Treasury to require financial institutions to maintain

¹ HKE’s Motion to Dismiss Indictment for Lack of Federal Jurisdiction and Failure to State an Offense (“Motion to Dismiss”), ECF No. 73; Government’s Combined Opposition to Defendant’s Motions to Dismiss and Suppress, ECF No. 84; HKE’s Reply (Motion to Dismiss), ECF No. 90; Government’s Surreply (Motion to Dismiss), ECF No. 97; HKE’s Surreply (Motion to Dismiss), ECF No. 100.

1 records and make reports of certain types of transactions in order to facilitate criminal and tax
2 investigations. *See Cal. Bankers Ass'n v. Shultz*, 416 U.S. 21, 26 (1974). Criminal penalties
3 attached “only upon violation of regulations promulgated by the Secretary; if the Secretary were
4 to do nothing, the Act itself would impose no penalties on anyone.” *Id.* The BSA defined
5 “financial institution” as meaning any of nineteen types of businesses, ranging from banks and
6 insurance companies to pawnbrokers and travel agencies. BSA § 203(e). Casinos were not one of
7 the identified businesses.

8 In 1984, Treasury proposed to subject casinos to the reporting and record-keeping
9 requirements of the BSA. *See* 49 Fed. Reg. 32861-01. It noted that historically the regulation of
10 gaming industries had been the responsibility of the states, but found that narcotics traffickers
11 were taking advantage of the absence of federal regulation to use casinos to launder money. *Id.*
12 The final rule, promulgated in 1985, brought within Treasury’s own regulatory definition of
13 financial institution “[a] casino or gambling casino licensed as a casino or gambling casino by a
14 State or local government and having gross annual gaming revenue in excess of \$1,000,000.” 50
15 Fed. Reg. 5065-01. It required casinos to report currency transactions of more than \$10,000. *Id.*
16 Treasury located its authority to regulate casinos in two catch-all provisions of the BSA which
17 allow the Secretary to designate as financial institutions other businesses carrying out activities
18 “similar to” those in which listed businesses engage, or showing cash transactions that “have a
19 high degree of usefulness in criminal, tax, or regulatory matters.” *See* 60 Fed. Reg. 39665-01 fn.
20 1 (quoting 31 U.S.C. § 5312(a)(2)(Y) and (Z)).

21 In 1994, Congress amended the statutory definition of financial institution to codify the
22 application of the BSA to casinos. It adopted language closely tracking that of the Treasury
23 definition, so as to include any casino having in excess of \$1 million in annual gaming revenue
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1 which “is licensed as a casino, gambling casino, or gaming establishment under the laws of any
2 State or any political subdivision of any State[.]” 31 U.S.C. § 5312(a)(2)(X)(i); Money
3 Laundering Suppression Act (1994) § 409, Pub. L. 103-325, 108 Stat. 2160. It also brought into
4 the statutory definition Indian gaming operations conducted under the Indian Gaming Regulatory
5 Act of 1988. 31 U.S.C. § 5312(a)(2)(X)(ii).

6 In 1996, Treasury promulgated a final rule amending the regulatory definition of casino
7 to include casinos “duly licensed or authorized to do business as such in the United States,
8 whether under the laws of a State or of a Territory or Insular Possession of the United States . . .”
9 61 Fed. Reg. 7054-01 (revising 31 C.F.R. § 103.11(n)(7)(i), now 31 C.F.R. § 1010.100(t)(5)(i)).
10 The rule also revised the regulatory definition of “United States” so as to include “the Territories
11 and Insular Possessions,” and defined “Territories and Insular Possessions” as including the
12 Virgin Islands, Guam, and the CNMI. 31 C.F.R. § 103.11(mn) and (tt) (now 31 C.F.R. §
13 1010.100(hhh) and (zz)). Treasury noted that “[t]hese definitions are added as required
14 corollaries to the new casino definition.” 61 Fed. Reg. 7054-01.

15 B. Procedural Posture

16 On May 9, 2013, a grand jury indicted HKE and two of the Tinian Dynasty’s managers
17 for causing and conspiring to cause a financial institution to fail to file currency transaction
18 reports as required of financial institutions by the BSA. (Indictment, ECF No. 18.) The
19 indictment recites that “[c]asinos qualified as financial institutions within the meaning of the
20 BSA” (count 1 ¶ 2), that casinos are required to file a Currency Transaction Report for Casinos
21 for any transaction involving more than \$10,000 in currency (¶ 3), and that the Tinian Dynasty
22 “operated a casino” (¶ 7). The two superseding indictments that the Government subsequently
23 has obtained contain similar recitals. HKE filed its Motion to Dismiss on the same day the grand
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1 jury returned the first superseding indictment (ECF No. 69) and two months before the second
2 (ECF No. 105). At a status conference on January 16, 2015, the parties agreed that nothing in the
3 subsequent indictments mooted the Motion to Dismiss.

4 III. DISCUSSION

5 A. Arguments of the Parties

6 HKE asserts that it is not subject to Treasury regulation as a casino because it is not
7 “licensed as a casino . . . under the laws of any State or any political subdivision of any State[.]”
8 31 U.S.C. § 5312(a)(X)(i). The Tinian Dynasty casino is licensed under the laws of the CNMI,
9 which is not one of the fifty states. Although the BSA, as amended, defines “United States” to
10 include the Northern Mariana Islands “when the Secretary [of the Treasury] prescribes by
11 regulation,” 31 U.S.C. § 5312(a)(6), the statutory definition of casino doesn’t use the term “United
12 States.” Therefore, says HKE, the term “State,” which is not defined, cannot be read to include the
13 CNMI. The attempt by the Treasury Secretary to exert authority over a CNMI-licensed casino by
14 crafting the *regulatory* definition of “financial institution” that reaches casinos “duly licensed . . .
15 as such in the United States,” 31 C.F.R. § 1010.100(t)(5)(i), fails because it conflicts with the
16 statutory definition.

17 The Government responds that it is prosecuting the Tinian Dynasty not as a state-licensed
18 casino, directly under the statute, but as a CNMI-licensed casino as prescribed by Treasury
19 regulation. It asserts that the Tinian Dynasty is subject to BSA’s reporting requirements for
20 financial institutions under the first catch-all definition of that term, codified at 31 U.S.C. §
21 5312(a)(2)(Y), which allows the Secretary to regulate activities it determines are “similar to,
22 related to, or a substitute for any activity” specifically listed as a financial institution. Alternatively,
23 the Government argues that the power to regulate comes from the second catch-all definition,
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1 which permits the Secretary to designate as a financial institution “any other business . . . whose
2 cash transactions have a high degree of usefulness in criminal, tax, or regulatory matters.” 31
3 U.S.C. § 5312(a)(2)(Z). Treasury has so designated CNMI-licensed casinos by expressly defining
4 as a financial institution “[a] casino or gambling casino that: Is duly licensed . . . in the United
5 States, whether under the laws of a State or of a Territory or Insular Possession of the United
6 States,” 31 C.F.R. § 1010.100(t)(5)(i), and expressly defining “Territories and Insular Possessions”
7 to include the CNMI. 31 C.F.R. § 1010.100(zz).

8 B. Legal Standard

9 When reviewing an agency’s construction of a statute it administers, a court must follow
10 the two-pronged approach established by the Supreme Court in *Chevron U.S.A., Inc. v. Natural*
11 *Resources Defense Council, Inc.*, 467 U.S. 837 (1984). *Garcia-Quintero v. Gonzales*, 455 F.3d
12 1006, 1011–12 (9th Cir. 2006). “If congressional intent is clear, both the court and the agency must
13 ‘give effect to the unambiguously expressed intent of Congress.’” *Id.* at 1012 (quoting *Chevron*,
14 467 U.S. at 843). If the intent is not clear and Congress has delegated rulemaking authority to the
15 agency, courts must defer to reasonable agency interpretations that are not “arbitrary, capricious,
16 or manifestly contrary to the statute[.]” *Id.* (quoting *Chevron*, 467 U.S. at 844).

17 C. Treasury Cannot Regulate CNMI-Licensed Casinos as “Other” or “Similar”
18 Businesses Under 31 U.S.C. § 5312(a)(2)(Y) or (Z)

19 The Government’s argument that Treasury’s regulation of CNMI-licensed casinos is a
20 reasonable exercise of its authority to regulate “other” financial institutions “similar to” those listed
21 in the statute is seriously flawed. Casino gambling is not “an activity which is similar to, related
22 to, or a substitute for” an activity listed in § 5312. It *is* one of those activities: casino gambling.
23 Nor is it an “other” business; it is one of *the* listed businesses, a casino. A particular casino may or
24 may not be state-licensed; it may or may not have over \$1 million in annual gaming revenue. But

1 that doesn't make the business it runs anything other than a casino business, or the activity that it
2 engages in anything less than casino gambling. When it comes to casino gaming, Congress has
3 determined, in clear and unambiguous language, to limit the reach of the BSA to establishments
4 that are licensed by a state (or state subdivision) and that meet a \$1 million revenue threshold. The
5 statutory definition "controls and trumps" the regulatory definition. *Ocampo v. Holder*, 629 F.3d
6 923, 927 (9th Cir. 2010). Likewise, specific terms of a statute prevail over general ones. *United*
7 *States v. Wenner*, 351 F.3d 969, 976 (9th Cir. 2003). Treasury cannot expand the definition of
8 "casino" in reliance on either of the catch-alls.

9 The history of casino regulation under the BSA bears out this conclusion. When "casino"
10 was not among the types of businesses the statute listed as financial institutions, Treasury relied
11 on the catch-all to regulate casinos as a type of business similar to those listed in the statutes. At
12 that time, in the mid-1980s, Treasury was properly exercising agency rulemaking authority to fill
13 a gap explicitly left by Congress. *See Chevron*, 467 U.S. at 843. But once Congress filled the gap,
14 by not only adding casinos to the list but also specifying the kind of casinos to be regulated,
15 Treasury lacked authority to expand that definition. If Treasury has authority to ignore the state
16 licensing requirement, it must also have authority to ignore other restrictions on the casino
17 definition. For example, it could lower the revenue floor to \$500,000. Indeed, at the motion
18 hearing, counsel for the Government took that position. When pressed to consider how low
19 Treasury could go, he conceded that dropping it to one single dollar might be too far, although he
20 did not articulate an analytical framework to determine how low was too low. The same problem
21 plagues the Government's licensing argument.

22 The Government cannot save this prosecution by recasting the question as whether the
23 Tinian Dynasty "is a 'financial institution' within the meaning of Section 5312(a)(2) – not whether
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1 it's a 'casino' within the scope of Section 5312(a)(2)(X)." (Opp'n 15.) To be a financial institution
2 legitimately regulated by Treasury outside the scope of subparagraph (X), the Tinian Dynasty
3 would have to be another type of business or activity than a casino. In its briefings, the Government
4 has shown impatience with HKE's insistence that its casino is different in a legally significant way
5 from casinos in Nevada or New Jersey. And yet the Government's argument is based on a similar
6 but even more confounding move: it requires one to accept that a casino licensed by a state is a
7 different type of business or activity from a casino licensed by the Commonwealth. It is not.

8 The Government asserts that Ninth Circuit precedent interpreting § 5312 says otherwise.
9 In *United States v. Mouzin*, Barbara Mouzin was charged with currency transaction reporting
10 violations after making large cash deposits for clients that involved exchanging Colombian pesos
11 for dollars. 785 F.2d 682, 686 (9th Cir. 1986). Mouzin claimed that as an individual, she was not
12 a "financial institution," such as a currency exchange, with an obligation to report large cash
13 transactions. *Id.* at 688. Treasury had relied on its power under the statutory catch-all to expand
14 the definition of "financial institution" from commercial enterprises to persons who engaged in
15 activities similar to those of listed enterprises. *Id.* at 689. The court affirmed the validity of the
16 regulatory definition as applied to Mouzin and found that her conduct "qualified her as a 'financial
17 institution' under the [BSA]." *Id.* at 690. It acknowledged that Congress had not given Treasury
18 "unfettered discretion to define those institutions upon which the reporting obligations will fall."
19 *Id.* at 689. In determining that Treasury's expansion of the definition to include individuals was
20 within the Secretary's discretion, the court noted that the text of the statutory definition, prior to a
21 1976 amendment to eliminate surplusage, had made it clear that a single individual could constitute
22 a financial institution. *Id.* at 689 and n.2. It also observed that Treasury's definition specified that
23 to be subject to reporting duties, a person must be engaged in a covered business and not simply
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1 be involved in a one-off transaction. *Id.* at 689–90.

2 The reasoning in *Mouzin* does not compel a similar result here. The Treasury regulation
3 that defined “financial institution” as including “a person who engages as a business in dealing in
4 or exchanging currency,” *id.* at 689 (quoting 31 C.F.R § 103.11, now § 1010.100), was compatible
5 with the statutory definition that listed “currency exchange” as a type of business without
6 delimiting the precise meaning of the term. Because Congress had not directly addressed whether
7 individuals engaged in currency exchange can be financial institutions, the court properly deferred
8 to the agency’s reasonable interpretation of the statute. In contrast, as to casinos, Treasury was not
9 drawing on a blank slate. Congress expressly limited regulation of casinos to those meeting the \$1
10 million revenue threshold which are licensed as casinos “under the laws of any State or any
11 political subdivision of any State[.]” 31 U.S.C. § 5312(a)(2)(X)(i). The “unambiguously expressed
12 intent of Congress,” *Chevron*, 467 U.S. at 843, to which the court and Treasury must give effect,
13 is to place only state-licensed casinos under a reporting requirement.

14 The Government also directs the Court’s attention to a Fifth Circuit case that upheld the
15 conviction of an individual for failure to report substantial cash transactions. In *United States v.*
16 *Levy* (5th Cir. 1992), a lawyer laundered hundreds of thousands of dollars for drug traffickers
17 through client trust accounts. 969 F.2d 136, 138. The court held that Treasury had not
18 impermissibly expanded the statutory definition when it defined “financial institution” to include
19 a “currency dealer or exchanger.” *Id.* at 139–40. The court observed that Congress granted the
20 Treasury Secretary authority to prescribe for other similar businesses and declared, without any
21 further analysis, that the regulatory definition was “well within that grant of authority.” *Id.* at 140.
22 This is clearly the right conclusion: currency dealers are engaged in activity similar or related to
23 that of listed businesses such as currency exchanges, investment bankers, and securities brokers.

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1 However, the cursory analysis in *Levy* adds nothing to the reasoning of *Mouzin*, which involved
2 almost the identical issue.

3 The Government further relies on *United States v. Goldberg*, 756 F.2d 949 (2d Cir. 1985).
4 Like *Levy*, *Goldberg* involves individuals charged with failure to report transactions as currency
5 dealers under the regulatory definition of “financial institution.” The Second Circuit held that the
6 breadth of the regulatory definition, which included a “person who engages as a business in dealing
7 in . . . currency[,]” 31 C.F.R. § 103.11 (now §1010.100), “reflects Congress’s intent . . . to provide
8 a sweeping law enforcement tool for locating . . . large transfers, in currency, of the proceeds of
9 unlawful transaction.” *Goldberg*, 756 F.2d at 954. In support of this conclusion, it cited extensively
10 from House Reports and representatives’ floor statements affirming their intent to give the
11 Treasury Secretary the broadest authority to reach all types of entities that transfer money. *Id.* at
12 955–56.

13 The intent of Congress to delegate sweeping authority to Treasury, in part through the
14 catch-all provisions of the statute, in order to fill gaps in the list of businesses and activities that
15 might emerge as criminal enterprises find innovative means to launder money, is not subject to
16 serious doubt. When it comes to casinos, however, there’s no gap to fill. To find that there is would
17 run afoul of the “cardinal principle of statutory construction” to read a statute so that no word is
18 insignificant or superfluous. *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (citation and internal
19 quotation marks omitted). The plain language of subparagraph (X), standing alone, narrows the
20 definition of “casino” to casinos “licensed by any State[,]” and the catch-all provisions are not a
21 tool to widen it.

22 D. Treasury’s Regulation of CNMI-Licensed Casinos Is Within Its Express Authority
23 Under the BSA to Regulate Financial Institutions in the Northern Mariana Islands

24 The statutory definition of “financial institution” does not, however, provide the full

1 context to appreciate the scope of Treasury authority. Other statutory provisions may also be
2 relevant. In the BSA, as amended, Congress has defined “United States” to mean “the States of
3 the United States, the District of Columbia, and, when the Secretary prescribes by regulation, the
4 Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, [etc.]”
5 31 U.S.C. § 5312(a)(6). It has not separately defined the term “State.” A basic rule of statutory
6 construction is that an undefined term “is to be construed in accord with its ordinary or natural
7 meaning.” *United States v. van den Berg*, 5 F.3d 439, 441 (9th Cir. 1993). Ordinarily, “State”
8 refers to any one of the fifty United States. *See Morse v. Republican Party of Virginia*, 517 U.S.
9 186, 254 (1996) (Thomas, J., dissenting) (observing that “that word [State] – particularly when
10 capitalized – is generally understood to mean one of the 50 constituent States of the Union.”) HKE
11 asserts that because the BSA expressly regulates only casinos “licensed by any State” – not those
12 licensed by any of the United States – Treasury’s regulation of CNMI-licensed casinos is
13 unauthorized.

14 “Statutory definitions control the meaning of statutory words . . . in the usual case.” *Lawson*
15 *v. Suwanee Fruit & Steamship Co.*, 336 U.S. 198, 201 (1949). And yet statutory definitions must
16 not be read “in a mechanical fashion” that would “create obvious incongruities in the language,
17 and . . . destroy one of the major purposes” of the legislation. *Id.* Sometimes the “meaning – or
18 ambiguity – of certain words or phrases may only become evident when placed in context.” *Food*
19 *and Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000). The “overall
20 statutory scheme” must be taken into consideration. *Id.* at 134 (quoting *Davis v. Michigan Dept.*
21 *of Treasury*, 489 U.S. 803, 809 (1989)). The statutory definition of “United States” plainly and
22 unambiguously expresses Congress’s intent to give Treasury broad authority to regulate in the
23 CNMI and other territories and insular areas. In this context, Treasury’s regulation of CNMI-

1 licensed casinos, as an analog of state-licensed casinos, is reasonable and not arbitrary and
2 capricious.

3 Historical perspective once again illuminates the point. From its inception in 1970, the
4 BSA granted the Treasury Secretary authority to expand the term “United States” to include “the
5 possessions of the United States[.]” BSA § 203(d). In 1986, just a week before the Covenant
6 between the United States and the people of the Northern Mariana Islands came fully into effect,²
7 Congress amended the definition expressly to include the Northern Marianas, as well as other
8 U.S. territories and possessions. Pub. L. 99-570 (Oct. 27, 1986) § 1362(b). Prior to 1995, this
9 definition, in conjunction with the subparagraph giving Treasury authority to regulate “similar”
10 businesses, unquestionably would have allowed Treasury to make rules requiring casinos in the
11 CNMI to report large cash transactions. However, in the 1980s there were no casinos in the
12 Commonwealth. The authority for a Commonwealth municipality to grant casino licenses was
13 first established in 1990, after the Tinian Casino Gaming Control Act of 1989 was passed by
14 local initiative. 10 C.M.C. § 2511; *see Commonwealth v. Tinian Casino Gaming Control*
15 *Comm’n*, 3 N.M.I. 134 (1992). Around this same time, casino gaming had just begun to branch
16 out from Nevada to other states, with New Jersey amending its constitution in 1976 to allow
17 casino gambling in Atlantic City. *See Brown v. Hotel and Restaurant Employees and Bartenders*
18 *Int’l Union Local 54*, 468 U.S. 491, 494 (1984). Hence Treasury’s first regulation of casino
19 gaming was targeted, understandably, at casinos licensed “by a State or local government.” 50
20 Fed. Reg. 5065-01. In the 1994 Money Laundering Suppression Act, Congress clearly modeled
21 the first part of its definition of casino on the Treasury definition. Two years later, Treasury
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24 ² Covenant to Establish a Commonwealth of the Northern Marianas Islands in Political Union with the
United States of America (“Covenant”). Proclamation No. 4534, 42 Fed. Reg. 56,593 (Oct. 24, 1977).

1 extended the reach of the BSA again to include the CNMI when it revised the regulatory
2 definitions of “United States” and “Territories and Insular Possessions.” 61 Fed. Reg. 7054-01.

3 “It is a ‘fundamental canon of statutory construction that the words of a statute must be
4 read in their context and with a view to their place in the overall statutory scheme.’” *Brown &*
5 *Williamson*, 529 U.S. at 133 (quoting *Davis*, 489 U.S. at 809). The Court finds, for the reasons set
6 forth above, that when read in the context of the history of federal casino regulation and the
7 Secretary’s express authority under § 5312(a)(6), subparagraph (a)(2)(X) does not preclude
8 Treasury from regulating CNMI-licensed casinos.

9 **IV. CONCLUSION**

10 Because Treasury has been duly authorized by Congress under 31 U.S.C. § 5312(a)(6) to
11 expand the definition of United States to include the CNMI, and because Treasury has in fact
12 promulgated regulations consistent with that authority, it has the authority to enact regulations to
13 prevent money laundering by casinos licensed in the CNMI. Accordingly, Defendant HKE’s
14 Motion to Dismiss Indictment for Lack of Federal Jurisdiction and Failure to State an Offense
15 must be DENIED.

16 SO ORDERED this 1st day of June, 2015.

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RAMONA V. MANGLONA
Chief Judge