

# AML Red Flags in Human Smuggling and Human Trafficking Video

A Practical Guidance® Practice Note by Jill Steinberg, Ballard Spahr LLP



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 Video: AML Red Flags in Human Smuggling and Human Trafficking

This video highlights key FinCEN's guidance for financial institutions to help them recognize transactions that potentially involve Human Smuggling and Human Trafficking.



## Video Transcript

### AML Red Flags in Human Smuggling and Human Trafficking

**Jill Steinberg:**

Hello, my name is Jill Steinberg, and this video discusses FinCEN's guidance to financial institutions to help them recognize transactions that potentially involve human smuggling and human trafficking.

First, what is the difference between human smuggling and human trafficking?

Human smuggling is an act or attempt to bring in unauthorized alien to or into the United States, transport them within the United States, harbor lawful aliens, encourage entry of illegal aliens, or conspire to commit these violations knowingly or in reckless disregard of a person's illegal status.

Human trafficking, by contrast, is the act of recruiting, harboring, transporting, providing, or obtaining a person for forced labor or commercial sex acts through the use of force, fraud, or coercion.

Human trafficking does not require the crossing of an international border and is distinct from human smuggling. Human smugglers engage in the crime of bringing people across international borders through deliberate evasion of immigration laws, often for financial benefit. While human trafficking and human smuggling are distinct crimes, individuals who are smuggled are vulnerable to becoming victims of human trafficking and other serious crimes.

Second, financial institutions have a responsibility to detect and report transactions indicative of human smuggling and trafficking.

In September 2014, FinCEN, in collaboration with law enforcement agencies, non-governmental organizations and members of the financial industry, identified financial indicators or red flags that may indicate financial activity relating to human smuggling or human trafficking.

The FinCEN 2014 guidance was supplemented in October 2020 by additional guidance that identified 20 new financial and behavioral indicators of labor and sex trafficking, and four additional typologies. The 2014 advisory remained relevant and provides information related to human smuggling in addition to human trafficking.

FinCEN identified in 2020 forced typologies gathered from Bank Secrecy Act data that human traffickers and facilitators have used to launder money.

First, front companies. Human traffickers routinely establish and use front companies, sometimes legal entities to hide the true nature of a business and its illicit activities, owners, and associates.

Second, exploitative employment practices. Some seemingly legitimate businesses use exploitative employment schemes, such as visa fraud and wage retention to amass profit from labor and sex trafficking. Some labor recruiters also mislead workers about the conditions and nature of a job, engage in contract switching, and confiscate or destroy workers' identity documents. Another common practice is to charge exploitative fees to workers by withholding their salary or paying less than promised.

Third, funnel accounts. Funnel accounts generally involve an individual or business account in one geographic area that receives multiple cash deposits, often amounts below the cash reporting threshold from which the funds are withdrawn in a different geographic area with little time elapsing between the deposits and the withdrawals. Human traffickers may use interstate funnel accounts to transfer funds between geographic areas, move proceeds rapidly and maintain anonymity.

Fourth, alternative payment methods. In addition to payment via cash, traffickers also have accepted payment by credit card, prepaid cards, mobile payment applications and convertible virtual currency. Buyers of commercial sex use prepaid cards, a method of payment using funds paid in advance, which can be acquired anonymously or with cash or on darknet websites to register with escort websites and to purchase sexual services, flights, throw away phones, and hotel rooms. Illicit actors also use virtual currency to advertise commercial sex online.

With respect to red flags, no single one is a clear indicator of trafficking activity, although each can be indicative of trafficking. Given that human trafficking is a predicate offense to money laundering, the financial red flags also may be indicative of other money laundering related offenses. Financial institutions should consider additional factors, such as a customer's previous financial activity when determining whether transactions may be associated with trafficking.

Common behavioral red flags for financial institutions include:

- A third party speaks on behalf of a customer, insists on being present for every aspect of a transaction, or completes paperwork without consulting the customer.

- A third party maintains possession and/or control of all customer documents or money or claims to be the customer but doesn't know their personal details.
- A third party commits acts of physical aggression or intimidation toward the customer, or the customer abuse.
- And a customer lacks knowledge of their whereabouts, cannot identify where they live, and/or provides inconsistent personal information

Common financial red flags for financial institutions include:

- A customer frequently appears to move through and transact from different geographic locations in the United States.
- Transactions are inconsistent with a customer's expected activity or line of business, and/or occur outside business hours and in cash.
- A customer frequently makes cash deposits with no ACH payments, or frequently transacts using prepaid access cards.
- A customer frequently sends or receives funds via cryptocurrency to or from darknet markets, escort agencies or other services known to be associated with illegal activity.
- And a customer avoids or seeks to avoid transactions that require identification documentation or that trigger reporting requirements.

Financial institutions are required to file a SAR with FinCEN upon the occurrence of suspected and actual violations of the law. When reporting instances of human smuggling and trafficking FinCEN requests that in addition to the narrative on the SAR form financial institutions should include the following language in SAR field two: Human Trafficking FIN-2020-A008, or Human Smuggling.

Please review the 2014 and 2020 advisories for complete information on FinCEN's indicators of human trafficking and the 2014 advisory in particular for indicators of human smuggling.

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- [Know Your Customer: Customer Identification Requirements Pursuant to the Bank Secrecy Act](#)
- [Sanctions and Penalties for Violations of the Bank Secrecy Act and OFAC Requirements](#)

### Templates

- [Know Your Customer: Customer Identification Requirements Pursuant to the Bank Secrecy Act 1 Bank Secrecy Act and Anti-Money Laundering Service § 1.01](#)

### Checklists

- [Bank Secrecy Act \(BSA\), USA PATRIOT Act, AMLA, OFAC, and Other Anti-money Laundering / Anti-terrorism Regulations Compliance Checklist](#)
- [Know Your Customer Checklist](#)
- [SAR Filing Requirements Checklist](#)

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### **Jill Steinberg, Partner, Ballard Spahr LL**

Jill Steinberg is a litigator with more than a decade of experience handling high-profile white collar and violent crime matters for the U.S. Department of Justice (DOJ). Prior to joining Ballard Spahr, she served in the DOJ's senior leadership.

Jill's experience includes over 15 years as a prosecutor in state and federal courts. She has investigated and prosecuted a wide range of criminal violations, including complex fraud and corruption cases, which have led to the indictment of high-level public officials and city contractors. She also has extensive experience handling matters involving sexual abuse, child exploitation, and human trafficking.

Jill served as Deputy Criminal Chief in the United States Attorney's Office for the Northern District of Georgia, helping manage its Criminal Division. Further, Jill served as Associate Deputy Attorney General in the Office of the Deputy Attorney General in Washington, D.C. In that position, she advised senior leadership on policy matters and oversaw the Department's enforcement programs relating to criminal sexual exploitation and human trafficking. She oversaw the work of Department components, testified before Congressional committees, and served as the Department's representative on interagency policy committee meetings at the White House. During her tenure, she coordinated and published the DOJ's national strategy on child exploitation. She recently served as lead counsel for the government in the Crime Victims' Rights Act (CVRA) litigation stemming from the Jeffrey Epstein criminal investigation, arguing successfully before the Eleventh Circuit Court of Appeals sitting *en banc*.

Jill started her legal career at the Philadelphia District Attorney's Office. After leaving the District Attorney's Office, she worked at an Atlanta law firm, handling complex civil litigation matters, in particular securities litigation and arbitration cases, before joining the DOJ.

For many years, Ms. Steinberg served as an instructor for the DOJ at its national training center, the National Advocacy Center. She has trained hundreds of new and experienced Department trial lawyers and Assistant United States Attorneys from across the country on criminal trial advocacy, introductory and advanced evidence, and criminal discovery.

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