No. 15-138

In the Supreme Court of the United States

RJR NABISCO, INC., ET AL., PETITIONERS

v.

THE EUROPEAN COMMUNITY, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING VACATUR

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QUESTION PRESENTED

The Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. 1961 *et seq.*, makes it unlawful to invest in an enterprise any income derived from a pattern of racketeering activity, to acquire control of an enterprise through a pattern of racketeering activity, to conduct an enterprise's affairs through a pattern of racketeering activity, or to conspire to do any of those things. 18 U.S.C. 1962. RICO defines "racketeering activity" to include acts in violation of certain criminal provisions that expressly proscribe conduct outside of the United States. 18 U.S.C. 1961(1).

The question presented is whether, or to what extent, RICO applies extraterritorially.

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INTEREST OF THE UNITED STATES

The Department of Justice is responsible for criminal and civil enforcement of the Racketeer Influenced and Corrupt Organizations Act (RICO), Pub. L. No. 91-452, Tit. IX, 84 Stat. 941. See 18 U.S.C. 1963, 1964(a)-(b). Accordingly, the United States has a substantial interest in resolution of the question presented.

STATEMENT

1. a. In 1970, Congress enacted RICO, 18 U.S.C. 1961 *et seq.*, to combat racketeering. Section 1962 of Title 18 sets forth the conduct that RICO makes "unlawful." Under that provision, a person acts unlawfully by investing any income derived from "a pattern of racketeering activity" in an "enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce," 18 U.S.C. 1962(a); by acquiring or maintaining control of such an enterprise through "a

pattern of racketeering activity," 18 U.S.C. 1962(b); by "conduct[ing] or participat[ing] * * * in the conduct of" such an enterprise's "affairs" through "a pattern of racketeering activity," 18 U.S.C. 1962(c); or by conspiring to do any of those things, 18 U.S.C. 1962(d).

The statute defines "racketeering activity" as an "act or threat" involving specified federal offenses or state-law crimes. 18 U.S.C. 1961(1). A "pattern" of such activity "requires at least two" such acts that are related and continuous. 18 U.S.C. 1961(5); see *H.J. Inc.* v. *Northwestern Bell Tel. Co.*, 492 U.S. 229, 239-243 (1989). The statute defines "enterprise" to "include[] any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. 1961(4).

RICO sets forth both criminal sanctions and civil remedies. A person convicted of violating Section 1962 is subject to imprisonment, a fine, and forfeiture. 18 U.S.C. 1963(a)(1). The Attorney General also may institute civil proceedings to "prevent and restrain" Section 1962 violations. 18 U.S.C. 1964(a)-(b), 1966. And a private party "injured in his business or property by reason of a violation of [S]ection 1962" may bring a civil suit to recover treble damages and attorneys' fees. 18 U.S.C. 1964(c).

b. RICO's definition of "racketeering activity" encompasses a variety of federal offenses with extraterritorial application. See App. B, *infra* (non-exhaustive list). The original 1970 definition included any federal offense punishable by more than one year "involving * * * buying, selling, or otherwise dealing in narcotic or other dangerous drugs." 18 U.S.C. 1961(1)(D)

(1970); see 18 U.S.C. 1961(1)(D) (Supp. II 2014). Twelve days after enactment of that definition, a new federal law made it a felony for any person to manufacture or distribute certain controlled substances while intending or knowing that the substances will be unlawfully imported into this country—a proscription that expressly "reach[es] acts of manufacture or distribution committed outside the territorial jurisdiction of the United States." Pub. L. No. 91-513, Tit. III, § 1009, 84 Stat. 1289 (codified as amended at 21 U.S.C. 959). Subsequent amendments extended other federal crimes included in "racketeering activity" to reach extraterritorial conduct. See, *e.g.*, Pub. L. No. 103-322, Tit. XVI, § 160001(g), 108 Stat. 2037 (1994 amendment of 18 U.S.C. 2423, a provision listed in Section 1961(1)(B) beginning in 1970).

Congress also has expanded the definition of "racketeering activity" by incorporating additional federal criminal provisions into Section 1961 that apply extraterritorially (and did so at the time Congress added them to RICO). For example, in 1986, Congress enacted a new money laundering offense providing for extraterritorial jurisdiction if a prohibited transaction involves funds exceeding $10,000 and the unlawful conduct is committed by a U.S. person. Pub. L. No. 99-570, Tit. I, Subtit. H, § 1352(a), 100 Stat. 3207-18 to 3207-20 (codified as amended at 18 U.S.C. 1956(f)). In the same statute, Congress amended Section 1961 to designate as "racketeering activity" any "act which is indictable" under that new provision. § 1365(b), 100 Stat. 3207-35 (amending 18 U.S.C. 1961(1)(B)).

After the terrorist attacks of September 11, 2001, Congress amended RICO to include as predicate acts

numerous offenses related to "[a]cts of terrorism transcending national boundaries." 18 U.S.C. 2332b; see USA PATRIOT Act, Pub. L. No. 107-56, Tit. VIII, § 813, 115 Stat. 382 (adding to RICO's "racketeering activity" definition any act "indictable under any provision listed in [S]ection 2332b(g)(5)(B)"); 18 U.S.C. 2332b(g)(5)(B) (listing offenses that may be "Federal crime[s] of terrorism"). Many of those offenses apply extraterritorially, and some impose criminal liability for conduct that can occur only outside the United States. 18 U.S.C. 2332b(g)(5)(B) (listing, *inter alia*, 18 U.S.C. 1203, which criminalizes certain hostage taking "whether inside or outside the United States," and 18 U.S.C. 2332, which criminalizes killing a U.S. national "while such national is outside the United States").

2. a. Respondents are the European Community and 26 of its member states. Petitioners are RJR Nabisco and related corporate entities. Pet. App. 1a-2a. Respondents brought a civil RICO action against petitioners in the Eastern District of New York. *Ibid.*[1]

Respondents' second amended complaint alleges that petitioners "directed" and "controlled" a money-laundering scheme involving "sell[ing] cigarettes to and through criminal organizations" in Europe and "accept[ing] criminal proceeds in payment for cigarettes by secret and surreptitious means." Pet. App. 134a-135a. According to the complaint, petitioners were part of an association-in-fact enterprise and engaged in a pattern of racketeering involving the predicate RICO acts of money laundering, provision of

[1] In 2009, after the action began, the European Community merged with the European Union. See Consolidated Version of the Treaty on European Union, Art. I, 2010 O.J. C83/16.

material support to foreign terrorist organizations, wire fraud, mail fraud, and violation of the Travel Act. *Id.* at 237a-253a. The complaint alleges that petitioners' conduct was unlawful under each subsection of 18 U.S.C. 1962 and resulted in injury to respondents' business or property. Pet. App. 209a, 237a-260a.

In describing respondents' claimed injury, the complaint alleges many harms that are extraterritorial—and, in some instances, purely sovereign. *E.g.*, Pet. App. 216a-229a (alleging harm to foreign state-owned banks, devaluation of Euro, increased law-enforcement costs, and lost customs, duties, and taxes). The complaint also alleges that respondents directly compete with petitioners "in the market for [sales of] cigarettes" and that petitioners' RICO violations have caused respondents to lose sales in markets "including" the United States. *Id.* at 210a-213a.

b. Petitioners moved to dismiss, arguing that respondents failed to state RICO claims because RICO does not apply extraterritorially to the acts alleged. Pet. App. 40a. While that motion was pending, this Court held in *Morrison* v. *National Australia Bank Ltd.*, 561 U.S. 247 (2010), that, "[w]hen a statute gives no clear indication of an extraterritorial application, it has none." *Id.* at 255. The court of appeals subsequently applied *Morrison* in *Norex Petroleum Ltd.* v. *Access Industries, Inc.*, 631 F.3d 29 (2d Cir. 2010) (per curiam), cert. denied, 133 S. Ct. 21 (2011), which affirmed dismissal of a private RICO complaint involving "foreign actors and foreign acts." *Id.* at 31.

The district court granted petitioners' motion to dismiss. Pet. App. 44a; see *id.* at 52a. The court understood *Norex* as "prohibit[ing] any extraterritorial application of RICO." *Id.* at 45a. The court also un-

derstood respondents' claims as seeking such extraterritorial application. *Id.* at 46a-52a (stating that focus of RICO is the "enterprise" and applying nerve-center test akin to one adopted in *Hertz Corp.* v. *Friend*, 559 U.S. 77 (2010), to conclude that complaint alleged foreign enterprise).

3. a. The court of appeals reversed. Pet. App. 1a-36a. The court observed that RICO "incorporates by reference various federal criminal statutes," some of which "unambiguously and necessarily involve extraterritorial conduct" and others of which apply extraterritorially in specified circumstances. *Id.* at 9a-11a. The court explained that, "[b]y incorporating these statutes into RICO as predicate racketeering acts, Congress has clearly communicated its intention that RICO apply to extraterritorial conduct to the extent that extraterritorial violations of those statutes serve as the basis for RICO liability." *Id.* at 11a.

The court of appeals rejected any requirement that a defendant be "associated with a domestic enterprise in order to sustain RICO liability." Pet. App. 14a. The court stated that "the presumption against extraterritorial application of United States laws does not command giving foreigners carte blanche to violate the laws of the United States in the United States." *Ibid.* The court also explained that "[a]n interpretation of RICO that depends on the location of the enterprise would undermine" the "value" of "predictability." *Id.* at 15a.

Examining respondents' complaint, the court of appeals determined that the RICO claims based on the predicate offenses of money laundering and provision of material support "meet the statutory requirements for extraterritorial application of RICO," be-

cause both of those offenses expressly encompass conduct by a U.S. citizen that occurs outside the United States. Pet. App. 16a-18a; see 18 U.S.C. 1956(f), 1957(d)(2), 2339B(d)(1)(A). The court reached the opposite conclusion with respect to the RICO claims based on the predicate offenses of mail fraud, wire fraud, and violation of the Travel Act—but it nevertheless permitted those claims to proceed, finding that the complaint alleges "domestic conduct" as to those three predicates. Pet. App. 18a-21a, 23a.

b. Petitioners sought panel rehearing, and the panel issued a separate per curiam opinion denying that request. Pet. App. 55a-58a. That opinion rejected the proposition that a private party asserting a claim under 18 U.S.C. 1964(c) must allege a domestic injury. Pet. App. 55a-56a. In the court of appeals' view, because the "injury requirement focuses on RICO's predicates," no basis exists for "import[ing] a domestic injury requirement" not found in a relevant predicate "simply because the victim sought redress through the RICO statute." *Id.* at 56a-58a.

c. Petitioners also sought en banc rehearing. The court of appeals denied the petition, with five judges dissenting. Pet. App. 59a-60a; see *id.* at 60a-68a (concurrence in denial by Judge Hall). Four dissenting judges wrote opinions. Pet. App. 68a-69a (Jacobs, J.); *id.* at 69a-74a (Cabranes, J.); *id.* at 74a-97a (Raggi, J.); *id.* at 97a-104a (Lynch, J.).

Judge Lynch dissented from the denial because he agreed that the case warranted en banc resolution, Pet. App. 97a—but he endorsed the panel's determination that a plaintiff states a RICO claim if "the foreign portion of the pattern [of racketeering activity] involved conduct that Congress has expressly

chosen to reach via the extraterritorial application of American law," *id.* at 99a. Discussing a hypothetical indictment of the leader of a foreign terrorist group that bombed a site in the United States and murdered an American journalist abroad, Judge Lynch explained that "whether Congress intended to reach such conduct by the RICO statute" is an "easy question," since the murder is a predicate RICO offense under a provision with extraterritorial application incorporated into RICO's definition of "racketeering activity." *Id.* at 98a-99a. He added that this conclusion would not "change if all of the predicate crimes alleged were committed abroad," so long as "Congress expressly extended its criminal prohibitions to the foreign conduct in question and incorporated those prohibitions into RICO." *Id.* at 101a (emphasis omitted). Judge Lynch expressed the hope that "the context of this case" would not "blind" this Court "to the clear intention of Congress to apply RICO to foreign terrorist groups who commit patterns of criminal acts that may occur abroad, but that violate American laws with express extraterritorial reach." *Id.* at 104a.

SUMMARY OF ARGUMENT

A. Congress "clearly expressed" its intention to give 18 U.S.C. 1962 limited extraterritorial reach. *Morrison* v. *National Austl. Bank Ltd.*, 561 U.S. 247, 255 (2010) (citation omitted) (discussing presumption against extraterritoriality). Congress incorporated into RICO's definition of "racketeering activity" multiple predicate crimes that unambiguously proscribe extraterritorial conduct. Indeed, some predicate crimes apply only extraterritorially. That incorporation would have been meaningless if RICO had no extraterritorial application at all. Thus, when proof of

unlawful conduct under Section 1962 depends on predicate crimes that themselves apply extraterritorially, Section 1962 applies extraterritorially as well.

B. Contrary to petitioners' claim, RICO contains no domestic-enterprise requirement. RICO's "focus" (*Morrison*, 561 U.S. at 266) is on the "pattern" as well as the enterprise. Accordingly, if a pattern of domestic racketeering activity occurs, RICO may be violated whether the enterprise is foreign or domestic.

The same is true for a pattern of racketeering activity that occurs overseas and that is encompassed by predicate offenses covering the extraterritorial conduct. When extraterritorial racketeering is covered by RICO, a clear congressional intent exists to cover a foreign enterprise: a foreign enterprise may be the vehicle for carrying out the criminal acts or the repository of any resulting profits. And because Section 1962 covers the enterprise only if it "is engaged in" or conducts "activities" that "affect[] interstate or foreign commerce," 18 U.S.C. 1962(a)-(c), no RICO case will extend to an enterprise without ties to the United States.

Petitioners' domestic-enterprise requirement would needlessly hamper the United States in prosecuting RICO cases involving foreign terrorist enterprises or other foreign criminal operations. It would also reward criminals for structuring their activities to involve foreign entities rather than domestic ones. Applying the presumption against extraterritoriality to produce those harmful effects would defeat Congress's expressed application of RICO's powerful remedies to extraterritorial crimes.

C. Petitioners are correct, however, that the private treble-damages remedy in 18 U.S.C. 1964(c)—a

narrower provision than Section 1962—requires proof of a domestic injury. Section 1964(c) requires an injury to the private plaintiff's "business or property," 18 U.S.C. 1964(c), that is proximately caused by violation of Section 1962. The principles underlying the presumption against extraterritoriality apply in deciding whether such an injury must be domestic—including the key principle of avoiding "unintended clashes between our laws and those of other nations which could result in international discord." *Kiobel* v. *Royal Dutch Petroleum Co.*, 133 S. Ct. 1659, 1664 (2013) (citation omitted).

When the United States brings a RICO suit, it can take steps to minimize such "clashes" and "discord." But a private RICO suit seeking treble damages for a foreign injury has significant potential to cause international friction. Accordingly, the bar for showing a clear congressional intent to allow private RICO actions on the basis of a foreign injury is high—and Section 1964(c) gives no indication that Congress intended foreign injury to support a private RICO claim. Dismissal is therefore required absent a showing of domestic injury. This case should be remanded to permit the lower courts to evaluate the complaint in light of that requirement.

ARGUMENT

A. Section 1962 Applies Extraterritorially To The Extent That Charged Predicate Offenses Apply Extraterritorially

1. Congress has "authority to enforce its laws beyond the territorial boundaries of the United States." *Equal Emp't Opportunity Comm'n* v. *Arabian Am. Oil Co.*, 499 U.S. 244, 248 (1991) (*Aramco*); see, *e.g.*, *Foley Bros., Inc.* v. *Filardo*, 336 U.S. 281, 284 (1949).

Because "Congress ordinarily legislates with respect to domestic, not foreign matters," however, this Court "presume[s]" when construing a statute that "legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States." *Morrison*, 561 U.S. at 255 (citations omitted). That presumption affords "a stable background against which Congress can legislate with predictable effects," *id.* at 261, and "protect[s] against unintended clashes between our laws and those of other nations which could result in international discord," *Kiobel*, 133 S. Ct. at 1664 (quoting *Aramco*, 499 U.S. at 248); see *Morrison*, 561 U.S. at 255.

To overcome the presumption against extraterritoriality, a statute must evince "the affirmative intention of the Congress, clearly expressed." *Morrison*, 561 U.S. at 255 (citation omitted). No particular language is required, and "context can be consulted as well" as text. *Id.* at 265; see *Kiobel*, 133 S. Ct. at 1665-1666; *Foley Bros.*, 336 U.S. at 285-291. But a statute must give a "clear indication of an extraterritorial application"—otherwise, "it has none." *Morrison*, 561 U.S. at 255.[2] Moreover, that one provision of a statute "pro-

[2] In *United States* v. *Bowman*, 260 U.S. 94 (1922), this Court held that the presumption against extraterritoriality is inapplicable to criminal statutes that are "not logically dependent on their locality for the Government's jurisdiction, but are enacted because of the right of the Government to defend itself"—as, for instance, where the government's own agents commit a "fraud" against it. *Id.* at 98; see, *e.g.*, *Vermilya-Brown Co.* v. *Connell*, 335 U.S. 377, 381 (1948) (describing *Bowman* rule "as to crimes directly affecting the Government"). In light of *Morrison* and *Bond* v. *United States*, 134 S. Ct. 2077, 2088 (2014), the United States understands *Bowman* to stand for the principle that a statute enacted to defend

vides for some extraterritorial application" does not indicate that every other part of the statute applies in the same fashion; rather, the presumption "operates to limit that provision to its terms." *Id.* at 265; see *Microsoft Corp.* v. *AT&T Corp.*, 550 U.S. 437, 456 (2007).

When a statute does not apply extraterritorially, a party must allege domestic conduct that is within "the 'focus' of congressional concern." *Morrison*, 561 U.S. at 266 (citation omitted). If the alleged domestic conduct involves the acts that "the statute seeks to 'regulate,'" and if the parties who are allegedly injured are among those "that the statute seeks to 'protec[t],'" then the claim qualifies as a domestic application, even if the case also involves some amount of foreign activity. *Id.* at 267 (citation omitted); see *id.* at 250-251, 266-267.

2. By incorporating into 18 U.S.C. 1962 predicate criminal offenses that unambiguously proscribe extraterritorial conduct, Congress has clearly indicated that it intends RICO to have limited extraterritorial application.

a. Section 1962 makes it "unlawful for any person" to make an "enterprise" the prize, victim, or vehicle of "a pattern of racketeering activity." 18 U.S.C. 1962(a)-(c); see G. Robert Blakey, *The RICO Civil Fraud Action in Context: Reflections on* Bennett *v.* Berg, 58 Notre Dame L. Rev. 237, 307-309 (1982). RICO defines "racketeering activity"—the "key term" in Section 1962, *Bridge* v. *Phoenix Bond & Indem. Co.*, 553 U.S. 639, 652 (2008)—as "any act which is

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the government contains the requisite indication of extraterritorial application. The allegations in this case do not implicate any such statute.

indictable under" enumerated federal criminal provisions or "any act or threat" involving certain state-law crimes, 18 U.S.C. 1961(1)(A)-(G). Some of the federal criminal provisions encompassed by that definition cover only extraterritorial conduct. For example, RICO includes as a predicate "any act that is indictable under any provision listed in [S]ection 2332b(g)(5)(B)." 18 U.S.C. 1961(1)(G); see 18 U.S.C. 2332b(g)(5)(B). Killing a U.S. national "while such national is outside the United States," in violation of 18 U.S.C. 2332(a), is such an indictable offense. *Ibid.*; see 18 U.S.C. 2332(b). So, too, is use by a U.S. national of "a weapon of mass destruction outside of the United States." 18 U.S.C. 2332a(b).

Other federal criminal provisions incorporated into the definition of "racketeering activity" have extraterritorial application under specified circumstances. Pet. App. 10a-11a. The predicate RICO crime described in 18 U.S.C. 1203, for instance, is the taking of hostages "inside or outside the United States" to compel a "third person or a governmental organization" to act or refrain from acting. 18 U.S.C. 1203(a); see 18 U.S.C. 1961(1)(G). But extraterritorial hostage taking "is not an offense" under Section 1203—and therefore not a form of "racketeering activity"—unless "the offender or the person seized or detained is a national of the United States," "the offender is found in the United States," or "the governmental organization sought to be compelled is" the United States. 18 U.S.C. 1203(b)(1)(A)-(C); see, *e.g.*, 18 U.S.C. 2332g(a)-(b) (proscribing certain conduct involving missile systems designed to destroy aircraft and specifying jurisdiction over "offense occur[ing] outside of the United States" committed by a U.S. national, against

a U.S. national abroad, or against U.S. property abroad); 18 U.S.C. 1961(1)(G).[3]

b. By incorporating offenses with extraterritorial application as predicate acts under RICO, Congress clearly and affirmatively manifested its intent that Section 1962 "apply to extraterritorial conduct to the extent that extraterritorial violations of those statutes serve as the basis for" establishing liability. Pet. App. 11a. As Judge Lynch observed, "Congress's enactment of a law specifically designed to protect Americans abroad" or otherwise to extend outside the United States, and the "express incorporation of that law into RICO as a predicate crime," cannot be understood to "constitute anything other than a clear expression of congressional intent to apply RICO to persons who commit that crime, in furtherance of the affairs of an enterprise, as part of a pattern of racketeering." Pet. App. 100a (Lynch, J., dissenting).[4]

Interpreting Section 1962 to have extraterritorial reach coextensive with that of the RICO predicates gives the provision a confined, consistent, and predictable application that depends on careful parameters that Congress has established, and not on speculation about "what Congress would have wanted." *Morrison*, 561 U.S. at 261. Thus, a person commits an of-

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[3] To the extent that predicate offenses incorporated into RICO apply extraterritorially, that application is often limited to conduct that is committed by or against a U.S. national or that affects U.S. property or some other U.S. interest. See App. B, *infra*.

[4] Lower courts have consistently analyzed the extraterritoriality of other criminal statutes that involve commission of some underlying offense (such as 18 U.S.C. 2 and 924(c)) in just that way. See, *e.g.*, *United States* v. *Ballestas*, 795 F.3d 138, 144-145 (D.C. Cir. 2015).

fense under RICO if he participates in the conduct of an enterprise's affairs through a pattern of murdering U.S. nationals traveling abroad in violation of Section 2332(a). See 18 U.S.C 1961(1)(G), 1962(c). Likewise, a person commits an offense under RICO if he takes a group of U.S. nationals hostage in a foreign country in violation of Section 1203, so long as that conduct is part of a pattern of racketeering activity that has the requisite connection to an enterprise. See 18 U.S.C 1961(1)(G), 1962(a)-(c). In contrast, "[a] pattern of murders of Italian citizens committed by members of an Italian organized crime group in Italy cannot violate RICO," because no RICO predicate with extraterritorial reach applies to those bad acts. Pet. App. 101a (Lynch, J., dissenting). Similarly, hostage taking in a foreign country cannot give rise to RICO liability if neither the offender nor the victim is a U.S. national, the offender is not found in the United States, and the conduct does not aim to compel the U.S. government, because in those circumstances liability for extraterritorial conduct could not arise under the predicate hostage-taking statute. And such purely foreign murder or hostage taking remains outside RICO's scope even if a different predicate offense with extraterritorial application is alleged in the same case. See *Morrison*, 561 U.S. at 265 ("[W]hen a statute provides for some extraterritorial application, the presumption against extraterritoriality operates to limit that provision to its terms.").

A narrower reading of Section 1962 would render entirely superfluous the inclusion in Section 1961's definition of "racketeering activity" of predicate acts that cannot be committed inside the United States. If RICO has no application to extraterritorial conduct,

then Congress would have had no reason to identify acts such as killing a U.S. national abroad or use of a weapon of mass destruction by a U.S. national abroad as "racketeering activity" that can form an unlawful pattern under Section 1962. See Pet. App. 10a. Deeming the portions of Section 1961 that list such acts to be mere surplusage would violate the "'cardinal principle' of interpretation that courts 'must give effect, if possible, to every clause and word of a statute.'" *Loughrin* v. *United States*, 134 S. Ct. 2384, 2390 (2014) (quoting *Williams* v. *Taylor*, 529 U.S. 362, 404 (2000)); cf. *Morrison*, 561 U.S. at 264-265.

Refusing to give full effect to predicate offenses that have specified (but not exclusive) extraterritorial application would similarly contradict Congress's clearly expressed intention. If a predicate offense is listed in Section 1961 and covers both domestic conduct and particular foreign conduct, but could not form the basis for a RICO violation unless domestic conduct was alleged, then offenders who fall within the scope of the plain language of Section 1962 would nevertheless be permitted to escape RICO liability—a result that the Congress that selected such a predicate "in the first place" would find "astonish[ing]." Pet. App. 104a (Lynch, J., dissenting); see, *e.g.*, Stephen C. Warneck, Note, *A Preemptive Strike: Using RICO and the AEDPA to Attack the Financial Strength of International Terrorist Organizations*, 78 B.U. L. Rev. 177, 200 (1998).

3. In this case, the court of appeals correctly recognized that when an alleged violation of Section 1962 "depends on violations of a predicate statute that manifests an unmistakable congressional intent to apply extraterritorially," Section 1962 "will apply to

extraterritorial conduct, too, but only to the extent that the predicate would." Pet. App. 9a. None of the arguments advanced by the dissenters from denial of en banc rehearing undermines that analysis.

First, dissenters hypothesized (Pet. App. 85a (Raggi, J., dissenting)) that Congress might have included offenses with extraterritorial application as RICO predicates to allow the government to prove that "an essentially domestic pattern of racketeering" is sufficiently related and continuous. That speculation, to which petitioners briefly advert (Br. 42-43), lacks merit. To constitute a RICO "pattern," predicate acts must be "related" and "amount to or pose a threat of continued criminal activity." *H.J. Inc.* v. *Northwestern Bell Tel. Co.*, 492 U.S. 229, 239 (1989). If extraterritorial acts are necessary to that showing, then the statute necessarily applies extraterritorially to that extent. And since RICO permits the showing of a pattern with any two predicate offenses, 18 U.S.C. 1961(5), extraterritorial predicate offenses can form a pattern even in the absence of any allegation about domestic predicate crimes. The presumption against extraterritoriality is not a license to rewrite RICO to make liability depend on a pattern consisting of only a subset of the predicate offenses that Congress selected. See, *e.g.*, *Salinas* v. *United States*, 522 U.S. 52, 59 (1997); Pet. App. 101a (Lynch, J., dissenting).[5]

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[5] Legislative history dating from RICO's 1970 enactment does indicate that Congress wanted to attack "organized crime in the United States." *Beck* v. *Prupis*, 529 U.S. 494, 496 (2000) (quoting 84 Stat. 923). But this Court has rejected the notion that the statute is limited to effectuating that precise goal, see, *e.g.*, *Na-*

Second, dissenters suggested (Pet. App. 86a (Raggi, J., dissenting)) that giving RICO extraterritorial effect is not necessary because the government can prosecute a defendant whose extraterritorial conduct violates one of the predicate statutes for a violation of that statute alone. Petitioners (Br. 39) make a similar suggestion. That approach discounts entirely the importance of RICO as a law enforcement tool for combating racketeers and "assault[ing]" their "economic roots." *Russello* v. *United States*, 464 U.S. 16, 26 (1983). Congress enacted RICO, and listed certain offenses as predicates, because it wanted to "supplement old remedies and develop new methods for fighting crime." *Sedima S.P.R.L.* v. *Imrex Co.*, 473 U.S. 479, 498 (1985). For instance, RICO allows joint criminal trials of those engaged in the same enterprise, see, *e.g.*, Gerard E. Lynch, *RICO: The Crime of Being a Criminal, Parts I & II*, 87 Colum. L. Rev. 661, 663, 740 (1987); "strengthen[s] the legal tools" available to the government, *Beck* v. *Prupis*, 529 U.S. 494, 496 (2000); and provides "severe criminal penalties" (including a maximum term of imprisonment exceeding the maximum authorized for some predicate offenses that apply extraterritorially), *ibid.*; see *Russello*, 464 U.S. at 27-28; compare, *e.g.*, 18 U.S.C. 1963(a) with 18 U.S.C. 1029, 1957. If RICO's scope were circumscribed on the assumption that prosecution of the predicate offenses themselves is sufficient, then the government's efforts to fight serious transnational crime, including terrorism, would be hampered.

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tional Org. for Women, Inc. v. *Scheidler*, 510 U.S. 249, 260 (1994) (citing *H.J.*, 492 U.S. at 248), and Congress added predicate offenses with extraterritorial application to RICO's definition of racketeering activity subsequent to 1970, see pp. 3-4, *supra.*

See Pet. App. 98a-101a, 104a (Lynch, J., dissenting); *id.* at 61a (Hall, J., concurring) ("[m]any of the predicates that apply to foreign conduct relate to international terrorism"); see also, *e.g.*, Nat'l Sec. Staff, *Strategy to Combat Transnational Organized Crime: Addressing Converging Threats to National Security* 3, 5-8 (2011) ("[I]nternational—or transnational—organized crime has expanded dramatically in size, scope, and influence and * * * poses a significant threat to national and international security."); Gideon Mark, *RICO's Extraterritoriality*, 50 Am. Bus. L.J. 543, 545, 577-585 (2013).

4. The court of appeals also analyzed the predicate crimes on which respondents' RICO claims are based. See Pet. App. 238a-250a. As to money laundering and provision of material support to foreign terrorist organizations, the court correctly determined that extraterritorial conduct indictable under the relevant federal criminal provisions can give rise to RICO liability. See *id.* at 17a-18a; 18 U.S.C. 1961(1)(B), (G). The money laundering statutes impose criminal liability for proscribed conduct outside the United States involving funds in excess of $10,000 in value if the conduct is undertaken by a U.S. citizen. See 18 U.S.C. 1956(f), 1957(d). And the material support statute provides for "extraterritorial Federal jurisdiction" over the offense of knowingly providing material support to a foreign terrorist group. 18 U.S.C. 2339B(d)(1)-(2).

As to mail fraud, wire fraud, and violation of the Travel Act, the court of appeals held that those predicates do not apply extraterritorially but that the complaint "alleges sufficient domestic conduct for the claims involving * * * [those] violations to sustain

the application of RICO." Pet. App. 20a-21a; see *id.* at 23a (complaint "clearly states a domestic cause of action" even if "further conduct contributing to the violation occurred outside" this country). Given the court's ruling on the sufficiency of the allegations of domestic conduct with respect to those predicates, this case presents no occasion to separately analyze their extraterritorial scope. See *id.* at 19a.[6]

B. Section 1962 Covers Foreign Enterprises As Well As Domestic Ones

Petitioners contend that, regardless of whether Section 1962 applies extraterritorially to racketeering activity outside the United States in certain circumstances, the provision has no application to foreign enterprises. In their view (Br. 24-38), the "focus" of RICO is on the infiltration, acquisition, or use of an "enterprise," and Congress's sole concern was with domestic enterprises. Petitioners thus ask this Court to create a rule under which "members of a Mexican drug cartel, the Sicilian Mafia, or a foreign-based terrorist organization" would be immune from RICO prosecution despite "commit[ting] a series of violent crimes on U.S. soil that would clearly violate RICO if

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[6] Whatever the merit of the court of appeals' holding on the non-extraterritoriality of mail and wire fraud, it correctly concluded (Pet. App. 20a-23a) that a prosecution involving a foreign defendant's use of domestic mailings or wires in furtherance of a scheme to defraud—including wire communications sent from or into the United States—constitutes a permissible domestic application of those statutes. As for the Travel Act, the court's analysis is flawed; that statute criminalizes the very act of traveling to a foreign country with requisite criminal intent, so long as the defendant "thereafter" undertakes a prohibited activity. 18 U.S.C. 1952(a).

committed by a local drug distribution gang, a New York-based Mafia family, or the Weather Underground." Pet. App. 100a (Lynch, J., dissenting). As the court of appeals correctly concluded, the presumption against extraterritorial application of U.S. statutes does not require that interpretation of RICO. Pet. App. 14a; see *United States* v. *Chao Fan Xu*, 706 F.3d 965 (9th Cir. 2013) (reaching same conclusion).

1. a. When a pattern of racketeering activity is carried out by a foreign enterprise within the territorial boundaries of the United States, applying Section 1962 to a defendant with the requisite connection to that enterprise does not entail an extraterritorial application of RICO. See 18 U.S.C. 1962(c); cf. Pet. App. 99a-101a (Lynch, J., dissenting). Similarly, Section 1962 is not applied extraterritorially when deployed against a defendant who has engaged in a domestic pattern of racketeering activity and then leverages that activity into creation of, investment in, or control over a foreign enterprise. See 18 U.S.C. 1962(a)-(b).

Contrary to petitioners' view, a pattern of racketeering activity is a focus of Section 1962's concern. As this Court has stated, "the heart of any RICO complaint is the allegation of a *pattern* of racketeering." *Agency Holding Corp.* v. *Malley-Duff & Assocs., Inc.*, 483 U.S. 143, 154 (1987); see *H.J.*, 492 U.S. at 236. That pattern constitutes the primary conduct that RICO seeks to prevent, because a pattern of related criminal acts carried out in a concerted way, with a continuous criminal purpose underlying them, is more pernicious than scattered and isolated criminal acts. Moreover, a pattern of such acts, all of which are necessarily serious crimes, leaves an especially broad

trail of victims in its wake. A racketeering pattern is therefore one of the "objects of the statute's solicitude"—something that RICO seeks to "regulate," *Morrison*, 561 U.S. at 267, by means of the expanded powers and remedies that statute authorizes.

Accordingly, if the conduct constituting the racketeering happens within the United States, a RICO action based on those acts is a domestic application of the statute, see *Morrison*, 561 U.S. at 266-267, no matter who is acting or where the proceeds ultimately may be sent, cf. *Pasquantino* v. *United States*, 544 U.S. 349, 371-372 (2005). After all, the presumption against extraterritoriality reflects Congress's "primar[y] concern[] with domestic conditions," *Morrison*, 561 U.S. at 255 (quoting *Aramco*, 499 U.S. at 248)—but petitioners' proposed requirement of a domestic enterprise would exclude foreign organizations directly responsible for carrying out domestic criminal acts. See 18 U.S.C. 1962(c); *Chevron Corp.* v. *Donziger*, 871 F. Supp. 2d 229, 242-243 (S.D.N.Y. 2012).[7]

Imposing a domestic-enterprise requirement in cases involving domestic racketeering activity would hamstring the government's ability to prosecute transnational RICO cases. It would block the indictment under RICO of a person participating in the conduct of a foreign terrorist organization that sends operatives across the U.S. border to carry out domestic attacks. See Pet. App. 100a (Lynch, J., dissent-

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[7] When Congress decided shortly after 9/11 to add to RICO numerous predicate offenses related to terrorist activity, see Pet. App. 61a (Hall, J., concurring), it acted with just such a foreign terrorist enterprise in mind. See *Kiobel*, 133 S. Ct. at 1666 (consulting "historical background" of statute).

ing).[8] It would allow a person who profited from domestic racketeering activity to avoid criminal RICO liability by pouring those profits into a foreign enterprise that may become a source of economic power, or even a vehicle, for additional criminal acts in the United States. See, *e.g.*, *United States* v. *Parness*, 503 F.2d 430, 438-439 (2d Cir. 1974) (refusing to permit "those whose actions ravage the American economy" to "escape [RICO] prosecution simply by investing the proceeds of their ill-gotten gains in a foreign enterprise"), cert. denied, 419 U.S. 1105 (1975). And it would encourage criminals to structure their activities in exactly those sorts of liability-evading ways. See Melvin L. Otey, *Why RICO's Extraterritorial Reach Is Properly Coextensive with the Reach of Its Predicates*, 14 J. Int'l Bus. & L. 33, 63-64 (2015) (Otey). Bad actors should not be permitted to "evade the thrust" of U.S. law by "so simple a device" as involving a foreign rather than a domestic enterprise, *Steele* v. *Bulova Watch Co.*, 344 U.S. 280, 287 (1952)—particularly when the threat of transnational crime is so acute and RICO provides such important tools for combating it. See, *e.g.*, Otey 46-48, 54-55; pp. 18-19, *supra*.

b. A domestic-enterprise requirement would be equally misplaced when racketeering activity occurs

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[8] Petitioners contend (Pet. 40) that in such a case prosecutors could charge a "distinct domestic enterprise" consisting of the operatives themselves. But it is difficult to understand how, for instance, a foreign national attached to a foreign organization and sent into the country briefly to commit a crime and then depart again could be considered a "domestic enterprise" or how he would be "distinct" from any domestic enterprise, as Section 1962(c) requires. *Cedric Kushner Promotions, Ltd.* v. *King*, 533 U.S. 158, 161 (2001); see pp. 28-29, *infra* (discussing associations-in-fact).

outside the United States, but is encompassed by Section 1961 because a relevant predicate offense covers the extraterritorial conduct. In analyzing Congress's intent with respect to extraterritorial application, the "enterprise" under Section 1962 cannot be considered in isolation. Contrary to petitioners' view (Br. 25-34), Section 1962 "focuses" not merely on effects on an enterprise; it targets specific *interactions* of a pattern of racketeering activity and the enterprise. The racketeering activity must be used to acquire, infiltrate, establish, operate, or otherwise subvert the enterprise. See 18 U.S.C. 1962(a)-(c). In no case does a violation exist without both elements. *Boyle* v. *United States*, 556 U.S. 938, 946-947 (2009).

The linkage between the enterprise and the pattern may be particularly tight for illegal enterprises. There, the enterprise's significance may be solely as the vehicle for conducting specific patterns of crimes. 18 U.S.C. 1962(c); see *National Org. for Women, Inc.* v. *Scheidler*, 510 U.S. 249, 259 (1994) ("the 'enterprise' in [S]ubsection (c) connotes generally the vehicle through which the unlawful pattern of racketeering activity is committed"). In such instances, "the evidence used to prove the pattern of racketeering activity and the evidence establishing an enterprise 'may in particular cases coalesce.'" *Boyle*, 556 U.S. at 947 (quoting *United States* v. *Turkette*, 452 U.S. 576, 583 (1981)). It would make little sense in such cases to allow evidence of extraterritorial crimes to establish the "pattern," but not the "enterprise."

Thus, Congress's deliberate extension of Section 1962 to cover a pattern of racketeering activity consisting of certain extraterritorial acts provides critical "context," *Morrison*, 561 U.S. at 265, for assessing the

enterprise requirement. It does not require "guess-[work]," *id.* at 261, to conclude that when Congress authorized RICO prosecutions based on extraterritorial predicate acts such as murdering U.S. nationals or taking U.S. persons hostage abroad, Congress clearly indicated that a foreign enterprise could be the vehicle for carrying out those acts or the repository of any profit that resulted. See 18 U.S.C. 1962(a), (c); Pet. App. 98a (Lynch, J., dissenting) (Section 1962(c) is "primary prohibition in RICO"); *id.* at 99a-104a.

That conclusion is bolstered by RICO's requirement that an enterprise that is the vehicle of racketeering activity, or its prize or victim, must be one that "is engaged in, or the activities of which affect, interstate or foreign commerce." 18 U.S.C. 1962(a)-(c). That means that the enterprise must participate in or have an impact on commerce between the States or between this country and a foreign country. See, *e.g.*, *United States* v. *Clark*, 435 F.3d 1100, 1113-1114 (9th Cir. 2006), cert. denied, 549 U.S. 1343 (2007). Wholly foreign enterprises divorced from domestic concerns lie outside RICO's compass. In addition, several of the underlying RICO predicates have extraterritorial application when the criminal is a U.S. person—a further linkage between the United States and any enterprise whose "affairs" are being conducted "through a pattern of racketeering activity" of which that act is part. 18 U.S.C. 1962(c); see, *e.g.*, 18 U.S.C. 1957(d)(2), 2332a(b), 2423(b)-(c). Thus, no reason exists to fear that without a domestic-enterprise rule Section 1962 will sweep so broadly as to capture cases involving enterprises that have no ties to the United States.

Imposing a domestic-enterprise requirement in cases in which some or all of the racketeering activity takes place on foreign soil would frustrate Congress's purposes and give rise to harmful consequences. Congress incorporated predicate offenses with extraterritorial application into RICO in recognition that "a pattern of such crimes strikes at American interests," Pet. App. 101a (Lynch, J., dissenting)—and most of those offenses apply extraterritorially only in limited circumstances in which the harm to those interests is quite apparent, see App. B, *infra*. A pattern of such racketeering "strikes at American interests" no less when it is carried out at the behest of a foreign enterprise, or when a foreign enterprise is taken over or financially strengthened as a result of the racketeering, so that it may lash out at the United States in the future. A contrary conclusion would immunize defendants involved with foreign criminal organizations, including terrorist groups, from RICO, despite Congress's concern with the specific threats that those enterprises pose.

c. Petitioners' attack on the court of appeals' ruling that Section 1962 covers foreign enterprises is flawed. First, petitioners argue (Br. 36) that the statutory focus on the "corruption" of domestic enterprises is "particularly obvious as to § 1962(a) and (b)." But while Congress was concerned with infiltration of legitimate enterprises, its overarching goal was "to deal with the unlawful activities of those engaged in organized crime," 84 Stat. 923—that is, with the pattern of crimes that cause harm to victims. A foreign enterprise that was captured through federal criminal racketeering acts may become a launching pad for further and more pernicious criminal activity—

including domestic crimes. 18 U.S.C. 1962(a)-(c) (enterprise must engage in or affect interstate or foreign commerce). Such a corrupted enterprise can allow crimes to be committed more efficiently, with more resources and greater frequency, than would be possible without the framework or revenues that the enterprise provides. Precisely because an enterprise that was initially a victim or prize of racketeering activity can be used to conduct further criminal activity, Congress would indeed have been "concerned with * * * investments in, or acquisitions of, foreign enterprises." Br. 37. Limiting Section 1962's application to domestic enterprises alone is inconsistent with that goal.

Second, petitioners are wrong to claim (Br. 36-37) that "[e]ven for § 1962(c), Congress's concern does not clearly extend to foreign enterprises." An initially "corrupt" enterprise is a threat *because* of its criminal conduct. *Scheidler*, 510 U.S. at 259 (enterprise in Section 1962(c) is "vehicle" for crime). And when the enterprise's affairs are conducted through a pattern of RICO predicate crimes, the heightened dangers posed to the United States exist, whether the enterprise is centered in New York or operating out of Europe, Asia, or the Middle East.

Finally, petitioners insist (Br. 30-31) that RICO is not an "aggravating statute that simply adds new consequences to the predicate offenses." Pet. App. 77a (Raggi, J., dissenting). It is true that the predicate offenses alone do not violate Section 1962. But racketeering acts that make up a pattern are central to the existence of such a violation, see, *e.g.*, *Malley-Duff & Assocs.*, 483 U.S. at 154, and "[t]hose acts are, when committed in the circumstances delineated in

[Section] 1962[], 'an activity which RICO was designed to deter,'" *Sedima*, 473 U.S. at 497. As the court of appeals concluded, when the predicate acts have extraterritorial application, RICO is designed to deter their commission whether the enterprise is foreign or domestic. See Pet. App. 15a.[9]

2. Although this Court should decline petitioners' invitation to create a new domestic-enterprise requirement, the Court also need not reach the issue in this case. Respondents allege that petitioners—corporations located in the United States—"directed, managed, and controlled a global money-laundering scheme" as part of an association-in-fact enterprise. Pet. App. 2a, 237a-238a. If categorizing such an enterprise as domestic or foreign were thought necessary, it would qualify as domestic.

RICO's "broad" definition of enterprise, *Boyle*, 556 U.S. at 944, includes not only any formal "legal entity" but also "any * * * group of individuals associated in fact," *Turkette*, 452 U.S. at 580 (citation omitted). Such an informal association must have some structure. See *Boyle*, 556 U.S. at 946. But "[m]embers of the group need not have fixed roles," let alone hierar-

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[9] The RICO statutory provisions on which petitioners rely (*e.g.*, Br. 33, 37) do not suggest otherwise. Dissolution of an enterprise is not the only remedy the government can obtain in a civil RICO suit; the government can ask for any "appropriate orders" to "prevent and restrain" Section 1962 violations. 18 U.S.C. 1964(a). And while a criminal defendant convicted of a RICO violation must forfeit any "interest" in an enterprise he has been involved with in violation of Section 1962, 18 U.S.C. 1963, such forfeiture does not extend judicial authority over entities not before the court; rather, it is a means of punishing the defendant by requiring surrender of his own property.

chical relationships, and decisions can be made "by any number of methods." *Id.* at 947-948.

An association-in-fact enterprise therefore may have a presence in numerous locations. If a domestic corporation, domiciled and regularly transacting business here, is alleged to have been a member of such an enterprise, the enterprise itself should be deemed domestic in any RICO action against the corporation. Here, taking the allegations of the complaint as true, petitioners had a significant role in the activities of the "RJR Money-Laundering Enterprise" (*e.g.*, Pet. App. 238a), and it therefore had a domestic presence. Moreover, such a domestic presence comes within one of the focuses of Section 1962's concern, which include preventing the use of legitimate businesses as enterprises to conduct racketeering activity. 18 U.S.C. 1962(c); see *H.J.*, 492 U.S. at 243.

The district court reached a different conclusion by employing a "nerve center" test and reading the complaint to assert that foreign "criminal organizations" planned the alleged scheme. Pet. App. 48a-52a. That test was created to ascertain the location of a *corporation's* "principal place of business"—that is, "the place where the corporation's high level officers direct, control, and coordinate the corporation's activities." *Hertz Corp.* v. *Friend*, 559 U.S. 77, 80 (2010). But an association-in-fact enterprise need not have a chain of command or centralized decision making, and therefore may well have no nerve center at all. Accordingly, the test is not a sensible tool for determining whether an association-in-fact enterprise is domestic or foreign.

C. A Private RICO Plaintiff Must Allege A Domestic Injury

The court of appeals ruled that RICO does not "require[] private plaintiffs to allege a domestic injury," concluding that a plaintiff injured abroad can invoke RICO in a private suit if he can establish that such injury "was proximately caused by the violation of a statute which Congress intended should apply to injurious conduct performed abroad." Pet. App. 55a, 57a-58a. As petitioners correctly argue (Br. 44-60), that ruling is erroneous. Because Congress did not clearly indicate an intent to permit foreign injuries to give rise to private RICO actions, a result that could have serious ramifications for foreign relations, Section 1964(c) should be interpreted to contain a domestic-injury requirement.

1. A criminal or civil RICO action instituted by the government is premised solely on a violation of Section 1962. See 18 U.S.C. 1963(a) ("[w]hoever violates any provision of [S]ection 1962 * * * shall be fined under this title or imprisoned"); 18 U.S.C. 1964(a)-(b) (authorizing Attorney General to "institute proceedings" to "prevent and restrain violations of [S]ection 1962"). Accordingly, in a government action, the permissible extraterritorial sweep of RICO turns solely on analysis of that provision.

With respect to a civil RICO action brought by a private plaintiff, however, a violation of Section 1962 is not sufficient. Under Section 1964(c), a separate provision that sets forth RICO's private right of action, a private plaintiff must also establish that he has been "injured in his business or property by reason of a violation of [S]ection 1962," 18 U.S.C. 1964(c); that the injury was proximately caused by the violation,

Holmes v. *Securities Investor Prot. Corp.*, 503 U.S. 258, 268 (1992); *Beck*, 529 U.S. at 505-507; and that the injury has given rise to damages, in which case the plaintiff "shall recover threefold the damages he sustains," 18 U.S.C. 1964(c).[10] Thus, activity "unlawful" under Section 1962, and therefore prosecutable by the United States, may nevertheless fail to support a private RICO action—as, for example, where the act involves injury to a person, or where the act is too attenuated from a plaintiff's property-related injury, see *Holmes*, 503 U.S. at 270.

2. Assessing whether Section 1964(c) contains a domestic-injury requirement does not involve a "typical[]" application of the presumption against extraterritoriality, which is generally used to "discern whether an Act of Congress regulating conduct applies abroad." *Kiobel*, 133 S. Ct. at 1664. Nevertheless, the "principles underlying th[at] canon of interpretation" continue to "constrain" the determination of whether a foreign injury suffices to meet Section 1964(c)'s requirements. *Ibid.*; see *Small* v. *United States*, 544 U.S. 385, 388-389 (2005).

One such principle is avoiding "unintended clashes between our laws and those of other nations which could result in international discord," lest "the Judiciary * * * erroneously adopt an interpretation of U.S. law that carries foreign policy consequences not clearly intended by the political branches." *Kiobel*, 133 S. Ct. at 1664 (citations omitted); see *Benz* v. *Compania Naviera Hidalgo, S.A.*, 353 U.S. 138, 147 (1957) (Congress can decide policy "where the possi-

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[10] Moreover, a private RICO plaintiff may not "rely upon * * * fraud in the purchase or sale of securities" unless the fraudster has been "criminally convicted." 18 U.S.C. 1964(c).

bilities of international discord are so evident and retaliative action so certain"). That principle animates the rule that this Court ordinarily "construes ambiguous statutes to avoid unreasonable interference with the sovereign authority of other nations." *F. Hoffman-LaRoche Ltd.* v. *Empagran, S.A.*, 542 U.S. 155, 164 (2004); see *id.* at 164-165.

When the United States decides to bring a RICO prosecution or civil suit, it takes into account the possibility of such "unintended clashes," *Kiobel*, 133 S. Ct. at 1664, and "unreasonable interference," *Empagran*, 542 U.S. at 164. Before the government prosecutes any defendant for a criminal RICO violation, it conducts a centralized review to determine whether such a prosecution is warranted. See *U.S. Attorneys' Manual* §§ 9-110.101, 9-110.210 to 9-110.400. And if the prosecution would involve acts of racketeering committed on foreign soil in violation of predicate provisions with extraterritorial reach, the government is in a good position to assess the relevant country's sovereign interests and, if necessary, to deal with that country directly in an attempt to avoid any adverse consequences. See *Pasquantino*, 544 U.S. at 369 (by bringing wire fraud prosecution based on defrauding Canada of tax revenue, "the Executive has assessed this prosecution's impact on * * * Canada, and concluded that it poses little danger of causing international friction"); see generally *Empagran*, 542 U.S. at 170-171.

In contrast, "private plaintiffs often are unwilling to exercise the degree of self-restraint and consideration of foreign governmental sensibilities generally exercised by the U.S. Government." *Empagran*, 542 U.S. at 171 (quoting Joseph P. Griffin, *Extraterritori-*

ality in U.S. and EU Antitrust Enforcement, 67 Antitrust L.J. 159, 194 (1999)). And private suits involving injuries suffered outside the United States have a propensity to produce significant international friction. Other nations may perceive our affording a private remedy to foreign plaintiffs as circumventing the (often more limited) causes of action and remedies that those nations provide their own citizens, particularly when a plaintiff's principal grievance is with foreign conduct or entities. See, *e.g.*, *Empagran*, 542 U.S. at 167 (disagreements over remedies can be source of international discord).

Special caution is therefore required in assessing the extraterritorial applicability of Section 1964(c)'s private right of action, and the hurdle for showing that Congress clearly intended to allow private RICO actions on the basis of a foreign injury is a high one. Cf. *Sosa* v. *Alvarez-Machain*, 542 U.S. 692, 727 (2004) (discussing creation of private right of action and stating that "the possible collateral consequences of making international rules privately actionable argue for judicial caution"); *Empagran*, 542 U.S. at 166 ("Why is it reasonable to apply [U.S. antitrust] law to conduct that is significantly foreign insofar as that conduct causes independent foreign harm and that foreign harm alone gives rise to the plaintiff's claim?") (emphasis omitted).

That hurdle has not been surmounted here. Section 1964(c), which is narrower than Section 1962, contains no indication that a foreign injury can give rise to a private RICO claim, see *Morrison*, 561 U.S. at 265—and allowing a plaintiff who suffered a RICO-related injury abroad to bring a private suit in the United States seeking treble damages has real poten-

tial to cause difficulties vis-à-vis the country where the injury took place, which may well seek to regulate the matter under its own legal framework.[11] Cf. *OBB Personenverkehr AG* v. *Sachs*, 136 S. Ct. 390 (2015). Nor is permitting such a suit necessary in order for RICO to function effectively and fulfill its purposes. Accordingly, absent a showing of domestic injury, a Section 1964(c) action should be dismissed.

3. In interpreting Section 1964(c) to encompass foreign injury, the court of appeals did not discuss any of those considerations. Rather, the court's analysis turned on *Sedima*, *supra*, which the court understood to require examination of "the relevant predicate statute to determine whether the injury caused by a violation thereof must be domestic." Pet. App. 57a.

Nothing in *Sedima*—which did not involve any extraterritoriality question—dictates the result reached by the court of appeals. In that case, the Court held that a private plaintiff need not allege a "distinct 'racketeering injury'" to bring suit under RICO's private right of action. 473 U.S. at 495. Interpreting Section 1964(c) to include a domestic-injury requirement does not contradict that holding. A plaintiff need not show an injury distinct from that caused by the underlying racketeering activity in order to establish a domestic injury; the plaintiff simply must show where the injury arising from that underlying activity took place.

4. In this case, the complaint alleges injury that is largely foreign. See p. 5, *supra*. The complaint also,

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[11] Although this case presents an unusual situation in which foreign governments are plaintiffs, the injury rule adopted by this Court will govern suits brought by non-governmental plaintiffs as well.

however, alleges that respondents suffered harm in the United States by losing cigarette sales that they would otherwise have made as market participants. See *ibid.*; Pet. Br. 59-60. Because the courts below did not impose a domestic-injury requirement, they had no occasion to consider whether that allegation was a plausible one and, if so, whether it was sufficient to support any of respondents' RICO claims. The lower courts should be permitted to make those determinations in the first instance.

CONCLUSION

The judgment of the court of appeals should be vacated.

Respectfully submitted.

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APPENDIX A

1. 18 U.S.C. 1961 provides:

Definitions

As used in this chapter—

(1) "racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1028 (relating to fraud and related activity in connection with identification documents), section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), section 1351 (relating to fraud in foreign labor contracting), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship pa-

pers), section 1427 (relating to the sale of naturalization or citizenship papers), sections 1461-1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1542 (relating to false statement in application and use of passport), section 1543 (relating to forgery or false use of passport), section 1544 (relating to misuse of passport), section 1546 (relating to fraud and misuse of visas, permits, and other documents), sections 1581-1592 (relating to peonage, slavery, and trafficking in persons).,[1] section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), section 1960 (relating to illegal money transmitters), sections 2251, 2251A, 2252, and 2260 (relating to sexual exploitation of children), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314

[1] So in original.

and 2315 (relating to interstate transportation of stolen property), section 2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of a copyright), section 2319A (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances), section 2320 (relating to trafficking in goods or services bearing counterfeit marks), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24 (relating to white slave traffic), sections 175-178 (relating to biological weapons), sections 229-229F (relating to chemical weapons), section 831 (relating to nuclear materials), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11 (except a case under section 157 of this title), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), punishable under any law of the United States, (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act, (F) any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and harboring

certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain, or (G) any act that is indictable under any provision listed in section 2332b(g)(5)(B);

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;

(3) "person" includes any individual or entity capable of holding a legal or beneficial interest in property;

(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

(6) "unlawful debt" means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political subdivision thereof, or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and

(B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate;

(7) "racketeering investigator" means any attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect this chapter;

(8) "racketeering investigation" means any inquiry conducted by any racketeering investigator for the purpose of ascertaining whether any person has been involved in any violation of this chapter or of any final order, judgment, or decree of any court of the United States, duly entered in any case or proceeding arising under this chapter;

(9) "documentary material" includes any book, paper, document, record, recording, or other material; and

(10) "Attorney General" includes the Attorney General of the United States, the Deputy Attorney General of the United States, the Associate Attorney General of the United States, any Assistant Attorney General of the United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter. Any department or agency so designated may use in investigations authorized by this chapter either the inves-

tigative provisions of this chapter or the investigative power of such department or agency otherwise conferred by law.

2. 18 U.S.C. 1962 provides:

Prohibited activities

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirect-

ly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

3. 18 U.S.C. 1963 provides:

Criminal penalties

(a) Whoever violates any provision of section 1962 of this chapter shall be fined under this title or imprisoned not more than 20 years (or for life if the violation is based on a racketeering activity for which the maximum penalty includes life imprisonment), or both, and shall forfeit to the United States, irrespective of any provision of State law—

(1) any interest the person has acquired or maintained in violation of section 1962;

(2) any—

(A) interest in;

(B) security of;

(C) claim against; or

(D) property or contractual right of any kind affording a source of influence over;

any enterprise which the person has established, operated, controlled, conducted, or participated in the conduct of, in violation of section 1962; and

(3) any property constituting, or derived from, any proceeds which the person obtained, directly or indirectly, from racketeering activity or unlawful debt collection in violation of section 1962.

The court, in imposing sentence on such person shall order, in addition to any other sentence imposed pursuant to this section, that the person forfeit to the United States all property described in this subsection. In lieu of a fine otherwise authorized by this section, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

(b) Property subject to criminal forfeiture under this section includes—

(1) real property, including things growing on, affixed to, and found in land; and

(2) tangible and intangible personal property, including rights, privileges, interests, claims, and securities.

(c) All right, title, and interest in property described in subsection (a) vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter

shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (*l*) that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

(d)(1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) for forfeiture under this section—

(A) upon the filing of an indictment or information charging a violation of section 1962 of this chapter and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

(B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that—

(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered:

Provided, *however*, That an order entered pursuant to subparagraph (B) shall be effective for not more than ninety days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

(2) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than fourteen days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time, and prior to the expiration of the temporary order.

(3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

(e) Upon conviction of a person under this section, the court shall enter a judgment of forfeiture of the property to the United States and shall also authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following the entry of an order declaring the

property forfeited, the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to, or derived from, an enterprise or an interest in an enterprise which has been ordered forfeited under this section may be used to offset ordinary and necessary expenses to the enterprise which are required by law, or which are necessary to protect the interests of the United States or third parties.

(f) Following the seizure of property ordered forfeited under this section, the Attorney General shall direct the disposition of the property by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with or on behalf of the defendant be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or a person acting in concert with or on behalf of the defendant, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm or loss to him. Notwithstanding 31 U.S.C. 3302(b), the proceeds of any sale or other disposition of property forfeited under this section and any moneys for-

feited shall be used to pay all proper expenses for the forfeiture and the sale, including expenses of seizure, maintenance and custody of the property pending its disposition, advertising and court costs. The Attorney General shall deposit in the Treasury any amounts of such proceeds or moneys remaining after the payment of such expenses.

(g) With respect to property ordered forfeited under this section, the Attorney General is authorized to—

(1) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this chapter, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this chapter;

(2) compromise claims arising under this section;

(3) award compensation to persons providing information resulting in a forfeiture under this section;

(4) direct the disposition by the United States of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and

(5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

(h) The Attorney General may promulgate regulations with respect to—

(1) making reasonable efforts to provide notice to persons who may have an interest in property ordered forfeited under this section;

(2) granting petitions for remission or mitigation of forfeiture;

(3) the restitution of property to victims of an offense petitioning for remission or mitigation of forfeiture under this chapter;

(4) the disposition by the United States of forfeitted property by public sale or other commercially feasible means;

(5) the maintenance and safekeeping of any property forfeited under this section pending its disposition; and

(6) the compromise of claims arising under this chapter.

Pending the promulgation of such regulations, all provisions of law relating to the disposition of property, or the proceeds from the sale thereof, or the remission or mitigation of forfeitures for violation of the customs laws, and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof. Such duties as are imposed upon the Customs Service or any person with respect to the disposition of property under the customs law shall be performed under this chapter by the Attorney General.

(i) Except as provided in subsection (*l*), no party claiming an interest in property subject to forfeiture under this section may—

(1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or

(2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

(j) The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

(k) In order to facilitate the identification or location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States the court may, upon application of the United States, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under Rule 15 of the Federal Rules of Criminal Procedure.

(*l*)(1) Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property in

such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

(2) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within thirty days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

(4) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within thirty days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

(5) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in re-

buttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

(6) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that—

(A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

(B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section;

the court shall amend the order of forfeiture in accordance with its determination.

(7) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

(m) If any of the property described in subsection (a), as a result of any act or omission of the defendant—

(1) cannot be located upon the exercise of due diligence;

(2) has been transferred or sold to, or deposited with, a third party;

(3) has been placed beyond the jurisdiction of the court;

(4) has been substantially diminished in value; or

(5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).

4. 18 U.S.C. 1964 provides:

Civil remedies

(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enter-

prise, making due provision for the rights of innocent persons.

(b) The Attorney General may institute proceedings under this section. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962. The exception contained in the preceding sentence does not apply to an action against any person that is criminally convicted in connection with the fraud, in which case the statute of limitations shall start to run on the date on which the conviction becomes final.

(d) A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States.

5. 18 U.S.C. 1965 provides:

Venue and process

(a) Any civil action or proceeding under this chapter against any person may be instituted in the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs.

(b) In any action under section 1964 of this chapter in any district court of the United States in which it is shown that the ends of justice require that other parties residing in any other district be brought before the court, the court may cause such parties to be summoned, and process for that purpose may be served in any judicial district of the United States by the marshal thereof.

(c) In any civil or criminal action or proceeding instituted by the United States under this chapter in the district court of the United States for any judicial district, subpenas issued by such court to compel the attendance of witnesses may be served in any other judicial district, except that in any civil action or proceeding no such subpena shall be issued for service upon any individual who resides in another district at a place more than one hundred miles from the place at which such court is held without approval given by a judge of such court upon a showing of good cause.

(d) All other process in any action or proceeding under this chapter may be served on any person in any judicial district in which such person resides, is found, has an agent, or transacts his affairs.

6. 18 U.S.C. 1966 provides:

Expedition of actions

In any civil action instituted under this chapter by the United States in any district court of the United States, the Attorney General may file with the clerk of such court a certificate stating that in his opinion the case is of general public importance. A copy of that certificate shall be furnished immediately by such clerk to the chief judge or in his absence to the presiding district judge of the district in which such action is pending. Upon receipt of such copy, such judge shall designate immediately a judge of that district to hear and determine action.

7. 18 U.S.C. 1967 provides:

Evidence

In any proceeding ancillary to or in any civil action instituted by the United States under this chapter the proceedings may be open or closed to the public at the discretion of the court after consideration of the rights of affected persons.

8. 18 U.S.C. 1968 provides:

Civil investigative demand

(a) Whenever the Attorney General has reason to believe that any person or enterprise may be in possession, custody, or control of any documentary materials relevant to a racketeering investigation, he may, prior to the institution of a civil or criminal proceeding thereon, issue in writing, and cause to be served upon such person,

a civil investigative demand requiring such person to produce such material for examination.

(b) Each such demand shall—

(1) state the nature of the conduct constituting the alleged racketeering violation which is under investigation and the provision of law applicable thereto;

(2) describe the class or classes of documentary material produced thereunder with such definiteness and certainty as to permit such material to be fairly identified;

(3) state that the demand is returnable forthwith or prescribe a return date which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

(4) identify the custodian to whom such material shall be made available.

(c) No such demand shall—

(1) contain any requirement which would be held to be unreasonable if contained in a subpoena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged racketeering violation; or

(2) require the production of any documentary evidence which would be privileged from disclosure if demanded by a subpena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged racketeering violation.

(d) Service of any such demand or any petition filed under this section may be made upon a person by—

(1) delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such person, or upon any individual person;

(2) delivering a duly executed copy thereof to the principal office or place of business of the person to be served; or

(3) depositing such copy in the United States mail, by registered or certified mail duly addressed to such person at its principal office or place of business.

(e) A verified return by the individual serving any such demand or petition setting forth the manner of such service shall be prima facie proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

(f)(1) The Attorney General shall designate a racketeering investigator to serve as racketeer document custodian, and such additional racketeering investigators as he shall determine from time to time to be necessary to serve as deputies to such officer.

(2) Any person upon whom any demand issued under this section has been duly served shall make such material available for inspection and copying or reproduction to the custodian designated therein at the principal place of business of such person, or at such other place as such

custodian and such person thereafter may agree and prescribe in writing or as the court may direct, pursuant to this section on the return date specified in such demand, or on such later date as such custodian may prescribe in writing. Such person may upon written agreement between such person and the custodian substitute for copies of all or any part of such material originals thereof.

(3) The custodian to whom any documentary material is so delivered shall take physical possession thereof, and shall be responsible for the use made thereof and for the return thereof pursuant to this chapter. The custodian may cause the preparation of such copies of such documentary material as may be required for official use under regulations which shall be promulgated by the Attorney General. While in the possession of the custodian, no material so produced shall be available for examination, without the consent of the person who produced such material, by any individual other than the Attorney General. Under such reasonable terms and conditions as the Attorney General shall prescribe, documentary material while in the possession of the custodian shall be available for examination by the person who produced such material or any duly authorized representatives of such person.

(4) Whenever any attorney has been designated to appear on behalf of the United States before any court or grand jury in any case or proceeding involving any alleged violation of this chapter, the custodian may deliver to such attorney such documentary material in the possession of the custodian as such attorney determines to be required for use in the presentation of such case or proceeding on behalf of the United States. Upon the con-

clusion of any such case or proceeding, such attorney shall return to the custodian any documentary material so withdrawn which has not passed into the control of such court or grand jury through the introduction thereof into the record of such case or proceeding.

(5) Upon the completion of—

(i) the racketeering investigation for which any documentary material was produced under this chapter, and

(ii) any case or proceeding arising from such investigation, the custodian shall return to the person who produced such material all such material other than copies thereof made by the Attorney General pursuant to this subsection which has not passed into the control of any court or grand jury through the introduction thereof into the record of such case or proceeding.

(6) When any documentary material has been produced by any person under this section for use in any racketeering investigation, and no such case or proceeding arising therefrom has been instituted within a reasonable time after completion of the examination and analysis of all evidence assembled in the course of such investigation, such person shall be entitled, upon written demand made upon the Attorney General, to the return of all documentary material other than copies thereof made pursuant to this subsection so produced by such person.

(7) In the event of the death, disability, or separation from service of the custodian of any documentary material produced under any demand issued under this section or the official relief of such custodian from responsibility

for the custody and control of such material, the Attorney General shall promptly—

(i) designate another racketeering investigator to serve as custodian thereof, and

(ii) transmit notice in writing to the person who produced such material as to the identity and address of the successor so designated.

Any successor so designated shall have with regard to such materials all duties and responsibilities imposed by this section upon his predecessor in office with regard thereto, except that he shall not be held responsible for any default or dereliction which occurred before his designation as custodian.

(g) Whenever any person fails to comply with any civil investigative demand duly served upon him under this section or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the Attorney General may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of this section, except that if such person transacts business in more than one such district such petition shall be filed in the district in which such person maintains his principal place of business, or in such other district in which such person transacts business as may be agreed upon by the parties to such petition.

(h) Within twenty days after the service of any such demand upon any person, or at any time before the return date specified in the demand, whichever period is shorter,

such person may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon such custodian a petition for an order of such court modifying or setting aside such demand. The time allowed for compliance with the demand in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of such demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person.

(i) At any time during which any custodian is in custody or control of any documentary material delivered by any person in compliance with any such demand, such person may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by this section.

(j) Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section.

APPENDIX B

Selected RICO Predicates With
Extraterritorial Application

18 U.S.C. 37(b): providing for jurisdiction over, *inter alia*, acts of violence against a person at an international airport "outside the United States," if (1) the offender is found in the United States or (2) the offender or victim is a national of the United States;

18 U.S.C. 175(a): providing for "extraterritorial Federal jurisdiction" over certain offenses involving biological weapons when committed by or against a U.S. national;

18 U.S.C. 175c(b): providing for jurisdiction over certain offenses involving the variola virus if the offense is (1) committed "outside of" the United States by a U.S. national; (2) committed against a U.S. national "while the national is outside" the United States; or (3) committed against property that is owned, leased, or used by the United States "whether the property is within or outside" the United States;

18 U.S.C. 229(c): providing for jurisdiction over certain chemical weapons offenses if the offense (1) "takes place outside" of the United States and is committed by a U.S. national, (2) is committed against a U.S. national while the national is outside the United States, or (3) is committed against U.S. property "whether the property is within or outside" the United States;

18 U.S.C. 351(i): providing for "extraterritorial jurisdiction" over assassination, kidnapping, or assault of an individual who is, *inter alia*, a Member of Congress, a sen-

ior Executive Branch official, or a Justice of the United States;

18 U.S.C. 831(c)(3): criminalizing certain offenses involving nuclear material committed "outside the United States" if the defendant is found in the United States;

18 U.S.C. 832(b): providing for "extraterritorial Federal jurisdiction" over offenses involving participation in a nuclear weapons program or other weapons of mass destruction program of a foreign terrorist power;

18 U.S.C. 1029(h): criminalizing fraud and related activity in connection with an "access device" committed "outside the jurisdiction of the United States" under specified circumstances;

18 U.S.C. 1116(c): providing for jurisdiction over murder or manslaughter of an "internationally protected person outside the United States * * * if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States";

18 U.S.C. 1203(b): criminalizing certain acts of hostage taking committed "outside the United States" if (1) the offender or hostage is a U.S. national, (2) the offender is found in the United States, or (3) the offender sought to compel the United States Government to do or abstain from doing any act;

18 U.S.C. 1512(h): providing for "extraterritorial Federal jurisdiction" over certain offenses involving witness, victim, informant, or evidence tampering, committed in

connection with an official proceeding in the United States;

18 U.S.C. 1513(d): providing for "extraterritorial Federal jurisdiction" over certain offenses involving retaliation against a witness, victim, or informant in connection with an official proceeding in the United States;

18 U.S.C. 1585: criminalizing the seizure "on any foreign shore [of] any person with the intent to make that person a slave" if committed by (1) a U.S. citizen or resident who is a crewmember on a foreign vessel engaged in the slave trade, or (2) a crewmember of "any vessel owned in whole or in part, or navigated for, or in behalf of, any citizen of the United States";

18 U.S.C. 1586: criminalizing U.S. citizen or resident's service on a vessel used "in the transportation of slaves from any foreign country or place to another";

18 U.S.C. 1596(a): providing for "extra-territorial jurisdiction over any offense (or any attempt or conspiracy to commit any offense) under" section 1581 (peonage), 1583 (enticement into slavery), 1584 (sale into involuntary servitude), 1589 (forced labor), 1590 (human trafficking), or 1591 (sex trafficking) if the offender is (1) a U.S. national or permanent resident, or (2) present in the United States, irrespective of nationality;

18 U.S.C. 1751(k): providing for "extraterritorial jurisdiction" over crimes involving the assassination, kidnapping, or assault of a U.S. President or other enumerated officials;

18 U.S.C. §1956(f): providing for "extraterritorial jurisdiction" over money laundering offenses under specified circumstances;

18 U.S.C. 1957(d)(2): criminalizing monetary transactions in property derived from specified unlawful activity if the offense "takes place outside the United States" but "the defendant is a United States person";

18 U.S.C. 2260: criminalizing conduct related to the production of sexually explicit depictions of a minor "outside the United States" where the defendant intends the visual depiction to be imported or transmitted into the United States;

18 U.S.C. 2280(b): providing for jurisdiction over certain offenses of violence against maritime navigation committed outside the United States and its territorial seas under specified circumstances;

18 U.S.C. 2280a(b): providing for jurisdiction over certain offenses against maritime navigation involving weapons of mass destruction committed outside the United States and its territorial seas under specified circumstances;

18 U.S.C. 2281(b): providing for jurisdiction over certain offenses of violence against or on board a maritime fixed platform located on the continental shelf of another country where the offense is committed, *inter alia*, by a U.S. national;

18 U.S.C. 2281a(b): providing for jurisdiction over additional offenses against or on board a maritime fixed platform located on the continental shelf of another country

where the offense is committed, *inter alia*, by a U.S. national;

18 U.S.C. 2332(a): criminalizing killing "a national of the United States, while such national is outside the United States";

18 U.S.C. 2332a: criminalizing the use, attempted use, threatened use, or conspiracy to use a weapon of mass destruction (1) "against a national of the United States while such national is outside of the United States," (2) against U.S. property located outside the United States, or (3) outside the United States by a U.S. national;

18 U.S.C. 2332f(b)(2): providing for jurisdiction over certain offenses involving bombing of a place of public use, government facility, public transportation system, or infrastructure facility "outside the United States" where, *inter alia*, a perpetrator or a victim is a U.S. national;

18 U.S.C. 2332g(b): providing for jurisdiction over certain offenses involving missile systems designed to destroy aircraft where, *inter alia*, the offense is committed by or against a U.S. national "outside the United States";

18 U.S.C. 2332h(b): providing for jurisdiction over certain offenses involving radiological dispersal devices where, *inter alia*, the offense is committed by or against a U.S. national "outside the United States";

18 U.S.C. 2332i(b): providing for jurisdiction over certain acts of nuclear terrorism committed "outside of the United States" where, *inter alia*, the offense is committed by or against a U.S. national, corporation, or legal entity;

18 U.S.C. 2339B(d)(2): providing for "extraterritorial Federal jurisdiction" over offenses relating to the provision of material support or resources to designated foreign terrorist organizations;

18 U.S.C. 2339C(b)(2): providing for jurisdiction over offenses relating to terrorist financing "tak[ing] place outside the United States" where, *inter alia*, the offense is committed by or against a U.S. national;

18 U.S.C. 2339D(b): providing for "extraterritorial Federal jurisdiction" over offenses relating to the receipt of military-type training from a foreign terrorist organization where, *inter alia*, the offender is a U.S. national or the offender is brought into or found in the United States;

18 U.S.C. 2340A: criminalizing torture committed "outside the United States" and providing for jurisdiction if the offender is a U.S. national or is present in the United States;

18 U.S.C. 2423(c): criminalizing illicit sexual conduct in foreign places by a U.S. citizen or permanent resident under specified circumstances;

21 U.S.C. 959: criminalizing "acts of manufacture or distribution [of a controlled substance] committed outside the territorial jurisdiction of the United States" with the intent or knowledge that the substance will be imported into the United States;

21 U.S.C. 960a(b): providing for jurisdiction over specified offenses related to narco-terrorism involving conduct "outside the United States";

42 U.S.C. 2122(b): providing for jurisdiction over certain offenses involving atomic weapons where, *inter alia*, the offense is committed by or against a U.S. national "outside the United States" or against U.S. property "outside the United States";

46 U.S.C. 70503: criminalizing the manufacture, distribution, or possession of a controlled substance by a U.S. citizen or resident alien on board any vessel or by any individual on board a vessel of the United States, "even though the act is committed outside the territorial jurisdiction of the United States";

49 U.S.C. 46502: criminalizing "aircraft piracy" both "in the special aircraft jurisdiction of the United States"[*] and "on an aircraft in flight outside the special aircraft jurisdiction of the United States" and providing for jurisdiction over the latter offense where (1) a U.S. national was aboard the aircraft, (2) the offender is a U.S. national, or (3) the offender is found in the United States;

49 U.S.C. 46504, second sentence: criminalizing assault or intimidation of flight crew or attendants on board an aircraft in the special aircraft jurisdiction of the United States[*];

49 U.S.C. 46506: criminalizing homicide or attempted homicide committed by an individual on an aircraft in the special aircraft jurisdiction of the United States.[*]

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[*] 49 U.S.C. 46501(2) defines the term "special aircraft jurisdiction of the United States" to include "aircraft outside the United States" under specified circumstances.