No. 19- 176

IN THE

Supreme Court of the United States

RICHARD DAVID WEISSKOPF

Petitioner,

v.

JEWISH AGENCY FOR ISRAEL, *et al*

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

R. David Weisskopf
Petitioner, pro se
1300 Pennsylvania Ave., NW
Suite 190-610
Washington, DC 20004
(847) 230-4756
16cv7593@gmail.com

Petitioner, pro se
June 24, 2019

QUESTION PRESENTED

Congress enacted the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961-1968 and the Hobbs Act, 18 U.S.C. § 1951 to protect civilians from collections of unlawful debts, including extortion and fraudulent activities, by criminal enterprises. In *Sedima S.P.R.L. v. Imrex Corp (1985)* this Court held that a plaintiff can bring a private cause of action for racketeering patterns, specifically including wire and mail fraud. In *Nabisco vs. European Community (2016)* this Court further clarified that RICO applies extraterritorially for private civil claims to domestic damages to business and property in the United States. In *Humphrey v. GlaxoSmithKline PLC*, __F.3d __, 2018 U.S. App. Lexis 27433 (3d Cir. Sept. 26, 2018) the Third Circuit applied domestic injury to the location of the property. Meanwhile, in *Armada (Singapore) PTE Ltd. v. Amcol International*, 885 F.3d 1090 (7th Cir. 2018) the Seventh Circuit applied domestic injury to the location of the plaintiff's residence. In the instant case, the Second Circuit created a three-way circuit split by focusing on where the injury (predicate act) originated. The question presented is:

Whether the appellate court below erroneously held, in conflict with the decisions of this Court, and in a three-way split with the Third Circuit and Seventh Circuit, that the Plaintiff's injury to business and property in the United States resulting from RICO violations including extortion, mail fraud, and aiding & abetting is insufficient to satisfy the domestic injury requirement.

PARTIES TO THE PROCEEDING

R. DAVID WEISSKOPF,
Plaintiff-Appellant,

DOTAN NEWMAN, EITAN ELIAHU, ELDAD GIDON, MICHAEL ZAMANSKY, YAKOV BOSSIRA, DAN SILBERMAN,
Plaintiffs,

JEWISH AGENCY FOR ISRAEL, NEW ISRAEL FUND, JEWISH FEDERATIONS OF NORTH AMERICA, NA'AMAT, WOMEN'S INTERNATIONAL ZIONIST ORGANIZATION, P.E.F. ISRAEL ENDOWMENT FUNDS, INC., TZIPI LIVNI, SHMUEL CHAMDANI, NA'AMA BOLTIN, MIRIAM DARMONY, EINAT GILEAD-MESHULAM, TOMER MOSKOWITZ, CLANIT BERGMAN, JOHN HAGEE, INTERNATIONAL FELLOWSHIP OF CHRISTIANS AND JEWS, JERUSALEM INSTITUTE OF JUSTICE, CARY SUMMERS, AMERICAN FRIENDS OF BAR-ILAN UNIVERSITY, JEFFREY ROYER, NOA REGEV, ALON SALEH, ZEV GABAI, ARIEL LAGANA, ORIT AVIGAIL YAHALOMI, MICHAEL DUWANI,
Defendants-Appellees

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PETITION FOR WRIT OF CERTIORARI

Richard David Weisskopf hereby petitions for a *writ of certiorari* to review the final decision of the United States Court of Appeals for the Second Circuit entered in this action on March 27, 2019.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Second District Docket No. 18-244-cv (L); 18-246-cv (Con) is reproduced in Appendix A. The amended opinion of the United States District Court for the Southern District of New York Case No. 16-cv7593 (December 28, 2017) is reproduced in Appendix B. The original opinion of the United States District Court for the Southern District of New York Case No. 16-cv7593 (December 8, 2017) is reproduced in Appendix C.

JURISDICTION

The final decision of the Court of Appeals was entered on March 27, 2019. No petition for rehearing was filed. This court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Appendix D reproduces the full text of 18 U.S. Code § 1961, 1962, 1964, 1341, 1951; 28 U.S. Code §1602-1611; Amendment XIV to the U.S. Constitution.

STATEMENT OF THE CASE

This case raises issues of broad and general importance:

1) The Second Circuit in this case expressly rejected the standard allowed by the Third District that permits private civil cause of action for violations of the Hobbs Act – including extortion. Not only is the Second Circuit in conflict with the Third and Eighth Circuits in the instant decision, it's decision is also contrary to this Court's precedence in *RJR Nabisco v. European Community* concerning mail fraud. There is an akcnowledged conflict between the circuits on the analysis of domestic injury to

business and property in the United States resulting from extraterritorial violations of the Racketeer Influenced and Corrupt Organizations Act (RICO). Though the Plaintiff claimed injury to business and property in the United States within the instant Complaint that included a certification to that affect; the Second Circuit concluded that the plaintiffs, including the Appellant, failed to satisfy the domestic injury requirement based on an analysis of the injury's origin – i.e. where the predicate act occurred.

This issue is a matter of concern to all RICO victims seeking private civil relief for patterns of racketeering and violations of the Hobbs Act – especially when plaintiffs allege domestic injury to business or property. The outcome of this case affects over 192 million Americans at risk of falling victim to the fundraising prong of the racketeering scheme in this case and 80,000 Americans who have already fallen victim to the extortion prong of the same scheme to date as described herein.

2) The District Court's anti-filing injunction against the Appellant was so harsh that it interferes with the Appellant's access to courts even in matters completely unrelated to the instant Complaint. The Second Circuit admitted the standard of review as, "accepting as true all factual claims in the complaint and drawing all reasonable inferences in the plaintiff's favor" and that the Complaint was filed *pro se*. On August 7, 2017 an attorney filed an appearance on behalf of the Appellant and the other plaintiffs. Thereafter the attorney requested leave to amend the complaint. Both the District Court and the Second Circuit ignored the requests to amend. Instead the Second Circuit upheld the dismissal and improperly blamed the Appellant for seven other lawsuits that had nothing to do with him while ignoring lawsuits that he won and settled. This resulted in a distorted portrayal that the appeal was frivilous and baselessly claimed that the Appellant has a "has a demonstrable history of vexatious

and baseless litigation against defendants". The court upheld an anti-filing injunction against the Appellant that goes far beyond litigation against the Appellees. Such abuse of power violates the Appellant's 14th Amendment right to due process.

This issue is a matter of concern to all *pro se* litigants, including those who retain attorneys during litigation. The 14th Amendment entitles litigants, including *pro se* litigants, to have fair and equal access to the court without fear that a court would abuse its power to hinder access to the court system. When a *pro se* litigant retains councel during litigation, as happened in the instant case, justice demands granting the litigant's attorney an opportunity to amend the complaint to cure misunderstandings as happened in the instant case.

FACTUAL BACKGROUND

Appellant is a natural-born American citizen who also holds dual Israeli citizenship. On September 28, 2016 a group of *pro se* plaintiffs, including the Appellant, filed the original complaint (*Dotan Newman, et al vs Jewish Agency, et al* 1:16-cv7593) in the District Court for the Southern District of New York. The original complaint alleged that Appellees are responsible for orchestrating one of the largest ongoing racketeering schemes in American history whereby they channel billions of dollars from all over the United States to fund systematic international extortion and enslavement of 80,000 American victims since 2009, including the Appellant.

According to the original complaint the Appellees exploit a mechanism in Israel under color of apparent authority called הוצאה לפועל (the Debt Collections Office) to extort bogus debts or paid-off debts from victims who currently or previously have contact with Israel. In some cases, the victims have nor further contact with Israel and some even live their lives exclusively in the United States. Victims

and their assets can be located anywhere in the world, including the United States. When victims or their assets are located outside direct reach of the Appellees, they resort to strong-arm tactics on families of the victims. In the Appellant's specific case, one of the Appellees contacted his elderly relatives who were located exclusively in the United States in the middle of the night to harass them without any justification in law or in fact. The exclusive purpose was to traumatize them as a means of inflicting emotional distress upon the Appellant and extort his money, business, and property located in the United States. The trauma resulted in two hospitalizations of two elderly relatives of the Appellant in the United States – one of whom died.

On January 23, 2017 the plaintiffs filed an amended complaint *pro se* to add parties and clarify the two-prong approach employed by the Appellees to defraud well-meaning Americans into donating to help "at-risk" Israelis when they were actually funding the Appellees' international extortion racket. This is the Fundraising prong of the scheme.

The Extortion prong of the scheme usually happens in Israel where the Debt Appellees act under color of law to create fictitious debts against targeted victims using kick-backs from the Fundraising Appellees in exchange for preferential status as service providers. Their tactics include forcing victims to pay for "services" from the Fundraising prong. This despite the fact that well-meaning donors across the United States already covered the costs of such "services". Though the Debt Appellees act under color of law, they also act in defiance against court orders from both Israeli courts and American courts.

The Complaint explained how the Appellant was specifically defrauded into donating to the Fundraising prong of the scheme before falling victim to the Extortion prong of the scheme. Under this prong the Appellees reached back across the ocean to damage business and

property belonging to the plaintiffs and specifically the Appellant. Thus, the entire scheme went full circle beginning with defrauding American donors in the United States, including the Appellant, to fund an extortion racket in Israel that reaches back to American soil to harass victims and their American family members and cause damage to business and property located in the United States. Appellant specifically fell victim to both prongs of the entire scheme.

Plaintiffs also filed certifications that itemized their loss to business and property located in the United States.

In a status conference on January 23, 2017 the judge encouraged the plaintiffs to find an attorney to represent them. The Appellant took this advice from the judge to heart. He searched for an attorney ready, willing, and able to represent him and other plaintiffs in the pending RICO case in SDNY. On August 7, 2017 Saul Roffee entered an appearance as counsel for the plaintiffs and requested leave to amend the complaint.

The District Court ignored Roffee's request and instead dismissed the complaint on December 8, 2017 with an anti-filing injunction against the Appellant and another plaintiff. Thereafter, the District Court amended its decision on December 28, 2017 that failed to resolve the unfair anti-filing injunction. It additionally failed to address the request by Appellant's counsel to amend the complaint despite the District Court's suggestion to the Appellant to retain an attorney precisely to assist with such issues as amending the complaint.

Appellant, represented by Roffee, was among the plaintiffs who appealed the dismissal and anti-filing injunction to the Second Circuit on January 24, 2018. The Second Circuit affirmed both the dismissal and the anti-filing injunction on March 27, 2019.

In its decision, the Second Circuit mischaracterized the complaint as arising "from their dissatisfaction with

the outcome of divorce proceedings and subsequent efforts by their ex-wives, with the assistance of the charitable organizations, to collect child support from them." This misrepresentation was the basis for an argument that the Israeli Appellees acted in an official capacity for the Israeli government and were therefore entitled to immunity under the Foreign Sovereigns Immunity Act (FSIA).

The Second Circuit further argued that the plaintiffs, including the Appellant, failed to satisfy the domestic injury requirement under 18 USC §1964 and argued that there is no private cause of action for aiding and abetting RICO; nor that 18 USC §1951 allows for private cause of action for extortion or mail fraud. The Second Circuit did not respond to the causes of action related to infliction of emotional distress.

Finally, the Second Circuit argued that the Appellant had no reasonable expectation of prevailing and therefore upheld the District Court's anti-filing injunction.

REASONS FOR GRANTING THE PETITION

A. Second Circuit's Policy Arguments and Analogies to Other Sources of Law Do Not Support Its Interpretation of RICO or Hobbs

The original complaint pled that the Appellees, through an association in fact, engaged in predicate acts as defined in the RICO statute in a pattern of racketeering activity with plaintiffs, including the Appellant, suffering a domestic harm. Among the predicate acts claimed were extortion and mail fraud in a pattern of racketeering. That is a claim under RICO. *Sedima S.P.R.L. v. Imrex Corp.* 473 U.S. 479, 496, 87 L.Ed.2d 346, 105 S. Ct. 3275 (1985).

The Second Circuit mischaracterized the Complaint as will be discussed below in Section D. This mischaracterization was the Second Circuit's foundation for its arguments and analogies to follow. Much of the

sources in law do not support the Second Circuit's arguments when properly characterizing the complaint.

1) *Misapplication of FSIA*

Firstly, the Second Circuit invoked the Foreign Sovereign Immunities Act, 28 U.S.C.A. §1332 *et.seq* to dismiss the Complaint. The logic was that, pursuant to *Underhill v. Hernandez, 168 US 250, 252 (1897)* the Appellees in the instant case were Israeli officials acting entirely within Israel under Israeli authority. However one of the Plaintiffs, Eitan Eliahu, is an American citizen and resident of California since 1997. He has not had jurisdictional contact with Israel for 20 years – which did not stop the Appellees from reaching across the ocean without any basis in law or fact to run the Extortion prong of their racket on him in California and in defiance of court orders issued California Superior Court that has personal jurisdiction over Plaintiff Eliahu.

Likewise several other Plaintiffs, including the Appellant, are American citizens with residences in the United States prior to the Appellees' patterns of racketeering that damaged their business and property in the United States, including their ability to return to their homes in the United States. In the Appellant's specific case, the complaint adds that the Appellees reached across the ocean and traumatized his elderly relatives in the United States causing the wrongful death of his grandmother who had never been outside the United States nor had jurisdictional contact with Israel. Her death resulted from the Appellees reaching out of the Israeli territory to terrorize the Appellant's elderly relatives in the United States.

Thousands of other Americans similarly situated fall victim to the Extortion prong of the Appellees' racketeering scheme. Since the Appellees regularly reach across the ocean for both prongs of their scheme to both extort and

defraud Americans out of business and property located in the United States, the Second Circuit misapplied *Underhill v. Hernandez* to this case. *Underhill v. Hernandez* applies to official acts by foreign officials acting within their official capacities and entirely within their own territories. (This is before *RJR Nabisco, Inc. v. European Cmty.*, U.S. 136 S.Ct. 2090, 195 L.Ed. 2D 476 (2016) clarifies that RICO violations cannot damage business or property located in the United States.) The instant Complaint details repeatedly how the Appellees reached across the ocean to traumatize family members in the United States and damage business and property of victims in the United States.

The Second Circuit reasoned, "even if challenged conduct was improper under Israeli law, there is no doubt that the conduct was official in nature" pursuant to *Larson v. Domestic & Foreign Commerce Corp, 337 US 682, 689-90 (1949).* This is based on the faulty assumption that the Appellees had any authority to create invalid debts in the first place. No court in the United States or Israel granted authority to any of the Appellees to create non-existent debts and then collect such unlawful debts in defiance of court orders both in Israel and in the United States.

The instant Complaint alleges repeatedly that the Appellees generated bogus and unlawful debts in the Extortion prong of their scheme and even acted in defiance of explicit court orders. For example, the Complaint alleges that the Appellees created a non-existent "child support" debt against the Appellant under color of law and against court orders that they cease and desist. In fact, as recently as May 26, 2019 the family court in Jerusalem (with jurisdiction over child support debts in the Jerusalem area) issued a cease-and-desist order against the Appellees' unlawful collection activities against the Appellant – specifically to cease issuing any arrest warrants against him. Despite

this court order, the Appellees still have an unlawful arrest warrant out for the Appellant "for child support" as of June 11, 2019 in an apparent attempt to obstruct his ability to file this petition to this Court.

In *Larson v. Domestic & Foreign Commerce Corp* this Court stated:

> "If the actions of an officer do not conflict with the terms of his valid statutory authority, then they are actions of the sovereign, whether or not they are tortuous under general law, if they would be regarded as the actions of a private principal under the normal rules of agency. A government officer is not thereby necessarily immunized from liability if his action is such that liability would be imposed by the general law of torts."

Even if the Appellees in this case were foreign officials, they are not entitled to immunity pursuant to this Court's precedence in *Larson v. Domestic & Foreign Commerce Corp* when they act outside alleged official capacities and even in defiance of valid court orders.

The fact that the Appellees act under color of law does not mean that they have any jurisdiction whatsoever over the Appellant or any other American who is similarly situated. The Second Circuit stated, "FSIA protects individuals acting within their official capacity as officers of corporations considered foreign sovereigns." However, the Appellees could not possibly be acting in an official capacity when they create unlawful non-existent debts as evidenced by cease-and-desist court orders against them. *Larson v. Domestic & Foreign Commerce Corp* itself stipulates that they may be subject to liability that would be imposed by the general law of torts in such cases.

Where a defendant acts outside his authority and those acts reach the United States, there is jurisdiction. *Doe I v. Liu Qi*, 349 F. Supp.2d 1258, 1280 (N.D.Ca. 2004). The Appellate court ignored that the Complaint pled spe-

cific acts of fraud outside the Appellees' authority, that they are using apparent authority to engage in acts they are not actually authorized to do. The Complaint spelled out specific wrongful acts of Appellees not within the scope of their authority, and Appellees have not demonstrated that the acts alleged are actually within the scope of their authority. The focus is on those acts, not the status. *Matar v. Dichter*, 563 F.3d 9, 14 (2d Cir. 2009). In fact the District Court admitted, "However, an official is 'not entitled to immunity under the FSIA for acts that are not committed in an official capacity,'" in its original order dated December 8, 2017 and then deleted the entire paragraph containing this admission in its amended order dated December 28, 2017.

The District Court also stated in its original order dated December 8, 2017:

> "Plaintiffs contend that no such immunity applies here because the Israeli Officials' alleged actions went "beyond the scope of [their] official responsibilities." *Leutwyler v. Office of Her Majesty Queen Rania Al-Abdullah*, 184 F. Supp. 2d 277, 287 (S.D.N.Y. 2001). Acts exceeding the scope of an official's duties are usually those of "a personal and private nature." *Leutwyler*, 184 F. Supp. 2d at 287. The focus, in determining whether the Israeli Officials' actions were properly within the ambit of their official duties, should be on "the individual[s'] alleged actions, rather than the alleged motives underlying them." *Leutwyler*, 184 F. Supp. 2d at 287."

This paragraph was likewise deleted in the amended order dated December 28, 2017.

It is beyond doubt that the Israeli government does not countenance the creation of fictitious debts, fictitious charges and then the imposition of significant penalties based upon those charges. In *Weisskopf vs. Marcus, et al, 695 F. App'x 977* the State of Israel via the Israeli Ministry

of Justice provided a written waiver surrendering jurisdiction to the American court. At issue was a former judge and to social workers who were forced into early retirement for hate-crime violations that exceeded the authorities of their offices. Though the defendants in that case claimed to request a suggestion of immunity from the State Department they never filed the State Department's response. Neither the Israeli authorities nor the American authorities suggested FSIA immunity for Israeli defendants who acted outside their authorities.

The law is clear that FSIA does not apply to individuals of a foreign state, but the state itself. *Samantar v. Yousuf*, 560 U.S. 305, 322-324, 130 S. Ct. 2278, 176 L. Ed. 2d 1047 (2010). Instead, for individuals, it is subject to common law. Under common law, there is a two-step procedure. The first step is for the diplomatic representative of the sovereign to request a "suggestion of immunity" from the United States Department of State. *Ex Parte Republic of Peru*, 318 U.S. 578, 63 S. ct. 793, 87 L. Ed. 1014 (1943). If the Department of State grants the request, then the court may, but is not required to, surrender jurisdiction. In making the determination, the court "inquires whether the ground of immunity is one which is established policy of the State Department to recognize." *Ex Parte Republic of*
, 318 U.S. 578, 587, 63 S. Ct. 793, 87 L. Ed. 1014 (1943); *Al Qaida*, supra, 122 F. Supp.3d at 185. Appellees have claimed that they sought a suggestion of immunity from the Department of State but have neither put forth evidence of same nor indicated whether there was a response. Had they gotten the suggestion that they claimed to have requested from the State Department, there is no doubt they would have shared it with the court. Such a grant or denial would make clear what the United States policy is regarding this action. The fact that the Appellees never produced the suggestion of immunity that they sought

from the State Department speaks volumes about their lack of immunity in this matter.

In making a decision as to whether immunity applies under common law, the court looks at two types of immunity, status-based immunity and conduct based immunity, namely immunity for official acts. *Moriah v. Bank of China, Ltd.*, 107 F. supp. 3d 272 (S.D.N.Y. 2015); *Sikhs for Justice v. Singh*, 64 F. Supp. 3d 190, 193 (D.D.C. 2014). For conduct-based immunity, the person seeking immunity seeks immunity for acts performed on behalf of the state during their tenure in office. *Matar v. Dichter*, 563 F.3d 9, 14 (2d Cir. 2009). "[T]o determine the scope of a foreign official's immunity, the relevant inquiry focuses on the official's acts, and not the official's status." *Moriah, supra*, at 277. A foreign official may assert immunity for official acts performed within the scope of his duty, but not for private acts where "the officer purports to act as an individual and not as an official, [such that] a suit directed against that action is not a suit against the sovereign." *Bashi Abdi Yousuf v. Mohamed Ali Samantar*, 699 F.3d 763, 775 (4th Cir. 2012), quoting, *Chuidian v. Philippine Nat'l Bank*, 912 F.2d 1095, 1106 (9th Cir. 1990).

Where a foreign official acts beyond his or her authority, the law is clear that conduct-based immunity is does not apply. *Doe I v. Liu Qi*, 349 F. Supp.2d 1258, 1280 (N.D.Ca. 2004); *Baoanan v. Baja*, 627 F. Supp.2d 155, 162 (S.D.N.Y. 2009) (Diplomat's immunity only applies to acts in the exercise of diplomatic function). The Appellate Court failed to parse out the actions alleged in the Complaint. If a victim did not owe a debt, then Appellees had no authority over him. Where an Appellee recorded a nonexistent debt on the Debt Collections Office books to create a nonexistent authority and basis for that Appellee to act, that is beyond the authority of the Appellee and not an official act. For Appellees to knowingly impose penalties against victims, including the Appellant, over debts they

know are fictitious or could be paid if the victim could access his funds and blocked that ability, such acts go beyond the authority of the Appellees. Further, the official must demonstrate that the actions at issue were pursuant to the performance of their duties and within their authority. There is no such showing here.

2) Misapplication of 18 USC §1962 & 1964

As for the Fundraising Appellees, the Appellate Court claimed that there is no private cause of action for aiding & abetting RICO, mail fraud or extortion under 18 USC §1962. Under such a misapplication of both RICO sections by the Appellate Court the Complaint's causes of action related to 18 USC §1962 would not allow the plaintiffs to claim civil damages under 18 USC §1964. However, this Court ruled that to state a RICO claim, the Complaint must show "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity." *Sedima, S.P.R.L. v. Imrex Co., Inc., 473 U.S. 479, 496, 105 S.Ct. 3275, 87 L.Ed.2d 346 (1985)* (footnote omitted).

Mail fraud, aiding & abetting, and extortion are defined in §1961 as predicate acts. They are therefore forbidden patterns of racketeering activities under §1962(b), (c) and (d). Therefore a plaintiff has a right to seek relief for such causes of action under §1964. If Congress did not intend to include these as "pattern of racketeering activity" under §1962(a), then the Appellate Court should have granted the Appellant's multiple requests to amend the Complaint. He could have easily cured such a defect in the stated cause of action to more accurately reflect Congress' intent forbidding pattern of racketeering activity under §1962(a). Likewise if Congress did not intend "any person employed by or associated with any enterprise" to engage in aiding and abetting under §1962(c) nor conspiracy under §1962(d) then the Appellate Court should have granted the Appellant's multiple requests to amend the Complaint.

He could have easily cured such a defect in the stated cause of action to more accurately reflect Congress' intent under §1962(c) and (d). In *RJR Nabisco, Inc. v. European Cmty.*, U.S. 136 S.Ct. 2090, 195 L.Ed. 2D 476 (2016) this Court stated explicitly that mail fraud, "would seem to fall well within what Congress meant to capture in enacting RICO."

In reaching its determination, the Appellate Court misapplied *Wisdom v. First Midwest Bank of Poplar Bluff, 167 f. 3d 402, 408-09 (8th cir. 1999).* In *Wisdom v. First Midwest Bank of Poplar Bluff* the Eighth Circuit explicitly reasoned that RICO mail fraud and extortion are legitimate private civil causes of action under RICO. The problem was the plaintiffs in that case failed to demonstrate an ongoing pattern of racketeering activity. The Eighth Circuit therefore turned to 18 U.S.C.§1341 and 18 U.S.C.§1951 to examine stand-alone civil causes of action for mail fraud and extortion under relevant federal criminal statutes. Not only does the Second Circuit's examination conflict with the Third Circuit as will be discussed in Section B, it is also irrelevant to the instant Complaint that alleges an ongoing pattern of racketeering activity for more than 10 years. Lastly, the Eighth Circuit still granted the plaintiffs leave to amend their complaint with a clear explanation that would allow the plaintiffs to cure defects in an amended complaint. The Second Circuit failed to extend a similar opportunity to the plaintiffs in the instant case.

In order to plead extortion pursuant to the Hobbs Act a plaintiff must plead "the obtaining of property from another, with his consent, induced by a wrongful use of actual or threatened force, violence or fear, or under color of official right." *G-I Holdings, Inc. v. Baron & Budd,* 179 F. Supp.2d 233, 256 (S.D.N.Y. 2001). In addition to being a claim for relief, and there being a civil claim under New York and Federal law, it is a predicate act. Appellant plead-

ed that Debt Appellees, through their apparent authority, *inter alia,* to freeze bank accounts, for the arrest of Appellant and others similarly situated, barring them from leaving Israel, and harassing and threatening their family members in the United States, Appellees extorted substantial sums from Appellant and others similarly situated that went directly to certain Appellees and indirectly to others. Such funds were provided solely due to the threats and intimidation by Appellees directed to victims – including the Appellant.

In order to plead a claim for mail fraud, one must plead a scheme to defraud plaintiffs through false pretenses, the making of false representations and the use of mails or wires in either the transmission of funds or the false representations. It is sufficient that, if it is reasonably foreseeable that a fraud is being committed by the acts in the ordinary course of business, even if the mailing or wire themselves are not fraudulent, there is a claim for mail and wire fraud. *Pereira v. United States,* 347 U.S. 1, 8 (1953). This Court specifically addressed mail fraud in *Sedima S.P.R.L. v. Imrex Corp.* 473 U.S. 479, 496, 87 L.Ed.2d 346, 105 S. Ct. 3275 (1985).

There need not be an affirmative misrepresentation in order to plead mail and wire fraud. The failure to disclose is sufficient. In the instant case, the Complaint pleaded that the fees, fines and other charges attributed to the plaintiffs, including the Appellant, are materially false and fictitious. The Complaint pleaded that the Fundraising Appellees used mail and wires to send and receive funds using the fictitious charges brought against victims, including Appellant, as fundraising materials. Furthermore, the Complaint alleges that the Fundraising Appellees used mail and wire to send funds raised fraudulently in the United States to advance the scheme in Israel. Appellant alleged that the mail and wire were used for the Appellees to communicate among themselves and

with others in furtherance of the scheme, and that the Israeli Appellees used the mail and wire to contact Appellant's family members, send and receive funds and communicate with others.

3) Aiding and Abetting

The Appellate Court additionally relied on *Pennsylvania Association of Edwards Heirs v. Reightenour, 235 f. 3d 839, 843-44 (3d cir. 2000)* to argue that RICO does not allow for aiding & abetting. However, the relevant defendant in that case for aiding and abetting was Wachovia Bank. Nothing in that complaint alleged that Wachovia Bank actively participated in any RICO activities, but rather passively "allowed itself to be used as a conduit" to the alleged RICO scheme. Firstly, such a claim falls within the securities exception within 18 USC §1962(a). Secondly, the Third Circuit cited this Court in *Central Bank, 511 U.S. at 177, 191, 114 S.Ct. 1439*, ruling that private aiding and abetting suits were not authorized by § 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j. Such a scenario is not relevant to the instant case because none of the Appellees in the instant Complaint are subject to the Securities Exchange Act of 1934 nor are any allegations in the instant Complaint subject to the securities exception of 18 USC §1962(a). Lastly, unlike Wachovia Bank in *Pennsylvania Association of Edwards Heirs v. Reightenour* the instant Complaint alleges that the Appellees were active participants in the RICO scheme.

4) Kidnapping

In addition, the Complaint alleges kidnapping as a predicate act. Appellant specifically pleaded that he was arrested and detained in Israel without a legal or proper basis. Indeed, Appellant wrote the District Court about precisely such detention on a false charge of owing funds through the creation of fictitious debts, the very claims

this action is about. This incident happened on September 14, 2017 after the original Complaint was filed. Had the court granted the requests to amend, kidnapping could have been added as a predicate act. As recently as June 2019 the Appellees have an arrest warrant against the Appellant in defiance of a cease-and-desist order from a legitimate court of law. It is axiomatic that holding someone and not allowing him the freedom to leave without proper judicial authority or real, actual charges is kidnapping. Appellant alleged that he has been subject to such arrest without proper judicial or legal basis and without a proper legal charge, and thus being periodically held against his will without a proper legal basis.

5) Infliction of Emotional Distress not Dismissed

Of the six causes of action enumerated in the Complaint, neither the District Court nor the Second Circuit dismissed two counts of infliction of emotional distress and therefore improperly dismissed the entire action, including those two counts, under Rule 12(b). In fact, both courts had subject matter jurisdiction over such causes of action and the Complaint did state such claims clearly enough to be cured in an amended complaint if necessary.

In order to plead a claim in intentional infliction of emotional distress, a plaintiff must plead (a) extreme or outrageous conduct; (b) the intent to cause or the disregard of the substantial probability of causing severe emotional distress; (c) a causal connection between the conduct and the injury; and (d) severe emotional distress. *Taggert v. Costabile,* 131 A.D. 3d 243 (2d Dept. 2015); *Howell v. New York Post Co.,* 81 N.Y. 2d 115, 121, 596 N.Y.S. 2d 350 (1993); *Bender v. City of New York,* 78 F. 3d 787 (2d Cir. 1996). Appellant pleaded that Appellees knowingly and deliberately interfered with his relationship with his children, illegal and/or inappropriate false charges and costs to

his accounts and used those acts to issue orders of arrest and/or barring Appellant from leaving Israel, freezing his bank accounts so he lack money to live, harass his family, and other acts specifically designed to put pressure on, cause extreme stress to and harm Appellant for Appellees' own purposes and profit. As a direct result of those acts, Appellant pleaded he suffered extreme emotional distress. Appellant thus pleaded all four prongs of a pleading for the intentional infliction of emotional distress. The Court erred in holding otherwise. Indeed, the Court, in its decision did not even address these issues.

B. The Decision Below Conflicts with Decisions of the Third and Eighth Circuits on a Fundamental Issue of the Hobbs Act and its Application to Civil Remedies for RICO Extortion

Prior to the Appellate Court's decision in the instant case, the Third Circuit and Eighth Circuit addressed the issue whether a plaintiff can seek civil relief for extortion under the Hobbs Act in addition to extortion under RICO. The Appellate Court observed that in *Wisdom v. First Midwest Bank of Poplar Bluff, 167 f. 3d 402, 408-09 (8th cir. 1999)* the Eighth Circuit did not allow for private civil action under 18 U.S.C.§1951 *et. seq.* This was because there was no justification for allowing the RICO aspect of the extortion claim in that case to pass without amending the complaint. The plaintiffs in that case had not established an ongoing pattern of racketeering to justify RICO extortion and therefore the Eighth Circuit granted them leave to amend their complaint.

Prior to *Wisdom v. First Midwest Bank of Poplar Bluff*, the Third Circuit had determined that 18 U.S.C.§1951 allows for private civil action in *Northeast Women's Center, inc. v. McMonagle (1989).* This was because, "Attempted extortion and conspiracy to commit extortion are crimes under the Hobbs Act, *see* 18 U.S.C. §

1951(a), and 'any act which is indictable under [the Hobbs Act]' is a predicate offense under RICO. 18 U.S.C. § 1961(1)(B). We thus reject Defendants' challenges dealing with the RICO verdict." Prior to the Eighth Circuit ruling cited by the Appellate Court, the Third Circuit had already determined that indictable acts under the Hobbs Act, including extortion, create predicate acts under RICO.

Though the Appellate Court stated it was not aware of "a private cause of action under either federal or state law" for extortion, mail fraud or aiding & abetting – the Third Circuit had already weighed in that the Hobbs Act justifies predicate acts for private causes of action under RICO. By misapplying *Wisdom v. First Midwest Bank of Poplar Bluff* to the instant Complaint (without similarly granting the plaintiffs' requests to amend) the Second Circuit is in conflict with the Third Circuit over the issue whether the Hobbs Act creates an underlying predicate acts for civil RICO claims. This conflict is also contrary to this Court's observation in *RJR Nabisco, Inc. v. European Cmty:*

> "that a foreign corporation has operations in the United States and that one of the corporation's managers in the United States conducts its U. S. affairs through a pattern of extortion and mail fraud. Such domestic conduct would seem to fall well within what Congress meant to capture in enacting RICO."

This Court's above-referenced observation is precisely what the Appellant alleges in the instant Complaint.

C. The Circuits are in Acknowledged Conflict over the Correct Domestic Injury Analysis of Extraterritorial RICO Complaints

RJR Nabisco, Inc. v. European Cmty., U.S. 136 S.Ct. 2090, 195 L.Ed. 2D 476 (2016) held that a civil RICO claim must plead a domestic injury. The Amended Complaint demonstrates that Appellant, in fact, pleaded both a RICO

claim and a domestic injury. In addition, Appellant filed a certification which detailed examples of specific domestic injuries he suffered clarifying his injuries precisely.

The Appellate Court held that plaintiffs failed to satisfy domestic injury requirement. The only statement why the plaintiffs' claim fell short of the domestic requirement was, "Plaintiffs' allegations that they suffered business-related injuries fall short because the alleged injuries lack the requisite connection to Plaintiffs' domestic property." However, the Second Circuit did not clarify what constitutes a requisite connection. This Court, in *RJR Nabisco, Inc. v. European Cmty* held that RICO applies to extraterritorial acts, and even applies to acts that are almost exclusively extraterritorial. Specifically, this Court held that where the underlying predicate act had an extraterritorial affect, then a RICO claim and that predicate act stands even if it is extraterritorial. This Court specifically said that money laundering predicate acts have extraterritorial effects and are an appropriate RICO claim. *Id.*, 136 S.Ct. at 2105. The instant complaint pleaded, *inter alia*, money laundering as a predicate act, which the Appellate Court ignored.

1) Third Circuit Standard Based on Location of Property

The Third Circuit analyzed the "domestic injury" question in *Humphrey v. Glaxo Smith Kline PLC*, __F.3d __, 2018 U.S. App. Lexis 27433 (3d Cir. Sept. 26, 2018). It adopted a multi-factor analysis to identify the location of the property. When applying this standard to the instant case, the plaintiffs demonstrated to the Second Circuit that the injury to their business and property was domestic. All of the plaintiffs attached certifications that detailed injury to their business and property located in the United States. All business and property itemized in these certifications were located within the United States. All of the plaintiffs, including the Appellant, satisfied the domes-

tic injury requirement under *RJR Nabisco, Inc. v. European Cmty* when applying the Third Circuit's analysis to determine the location of the business or property.

2) Seventh Circuit Standard Based on Residence of Plaintiff

The Seventh Circuit likewise analyzed the "domestic injury" question in *Armada (Singapore) PTE Ltd. v. Amcol International*, 885 F.3d 1090 (7th Cir. 2018) . It adopted a multi-factor analysis to identify the residence of the plaintiff. When applying this standard to the instant case, several of the plaintiffs demonstrated to the Second Circuit that the injury to their business and property was domestic. Plaintiff Eliahu's only residence since 1997 was located in California. In fact, he has had no residence or assets outside the United States since 1997. Plaintiff Silberman's residence is also in the United States. The Appellant alleged that he lost his primary residence in the United States resulting from the Appellees' pattern of racketeering and their stop-exit order prevents him from returning to his residence in the United States. The Appellant along with Plaintiffs Eliahu and Silberman demonstrated residences (and/or loss thereof) in the United States and therefore satisfied the domestic injury requirement under the Seventh Circuit's method.

Second Circuit Standard Based on Origin of Injury

The Second Circuit's inquiry into the "domestic injury" question was to determine where the injury occurs. Appellant pleaded that he has business, property, and bank accounts in the United States that were negatively impacted by the acts of Appellees, and that, for example, he had to pay funds from United States bank accounts to Appellees. The law is clear that such pleading is sufficient. The Appellate Court erred in holding that the domestic injury turned on where the injury (predicate act) originated. Not only

did this create a three-way circuit split, it was contrary to this Court's standard in *RJR Nabisco, Inc. v. European Cmty* that the location of the predicate act is not the determining factor for domestic injury.

In *City of Almaty v. Ablyazov*, 2016 U.S. Dist. LEXIS 183338 at *19 (S.D.N.Y. Dec. 23, 2016) the Court observed that the determination of where the injury occurs does not turn on where the predicate acts take place, but where the injury arose. The Court, citing *Tatung Co. Ltd. v. Shu Tse Hsu,* 2016 U.S. Dist. LEXIS 157450 at *6-7 (C.D.Ca. Nov- 14, 2016) held that part of that analysis includes, not where the plaintiff resides, but where the assets are held or travel through. In *Tatung*, the Court held that because the assets in question traveled by way of the internet to the United States and wired to United States based banks in order to move money away from the jurisdiction of plaintiff in order to avoid paying judgments, there was a domestic injury. Here, the Appellant alleged sufficient domestic injury, and the Court simply did not consider them. As demonstrated above, Appellant pleaded the specific acts which took place and provided certifications demonstrating how the acts affected his domestic assets. Some acts of Appellees may have taken place in Israel, but the harm to the Appellant was felt both in the United States and in Israel, and implicated Appellant's businesses and assets in the United States. Appellant alleged virtually all the payments made to the Appellees came from or used United States assets, and in some cases required that the transaction or payment go through the United States.

This Court in *RJR Nabisco, Inc. v. European Cmty.* made it clear that defendants need not ever set foot in the United State for there to be a domestic injury in the United States. These effects could even be acts overseas that create penalties and require a plaintiff to take assets in the United States and send them overseas, or loss of em-

ployment in the United States. Certifications of the Plaintiffs, including the Appellant, spell out specific harms they have suffered within the United States, and they are specific harms which include a substantial loss of business and money. What is clear is that the injury is not where the acts take place, but where the injury, e.g. loss of assets, occurs – which is the United States in the Appellant's case.

D. The Appellate Court Erroneously Affirmed the Anti-filing Injunction Against the Appellant.

The Appellate Court affirmed the anti-filing injunction against the Appellant based upon a mischaracterization of the Complaint and mischaracterization of the Appellant's litigation history. If a reasonable person could interpret the Complaint as the Appellate Court did; then justice would have demanded granting the multiple requests to amend and eliminate confusion.

The decision below mischaracterized the Complaint as arising "from their dissatisfaction with the outcome of divorce proceedings and subsequent efforts by their ex-wives, with the assistance of the charitable organizations, to collect child support from them." The lead plaintiff, Dotan Newman, is happily married with full custody of his children. The California Superior Court awarded Plaintiff Eitan Eliahu full custody of his children and ordered his ex-wife to pay him child support. Plaintiff Yakov Bossira likewise received full custody of his children from the family court in the end. Plaintiffs Eldad Gideon and Michael Zamansky enjoyed shared custody of their children. The Appellant and Plaintiff Dan Silberman had visitation rights and joint guardianship of their children. Both paid child support several years in advance. Each plaintiff had a unique story concerning divorce proceedings. The common denominator was that the Appellees created unlawful debts without any basis in law or fact and falsely labeled

such debts as "child support" to create a color of law for the unlawful debts.

The decision below further makes a baseless mischaracterization, "Having achieved minimal success in Israel, they seek to find any forum in the United States that will entertain any one of their claims". In fact, the Appellant has repeatedly maintained that the Appellees ignore valid court orders issued both in the United States and in Israel. The Appellant seeks relief in American courts for damages he suffered in the United States under American laws where American courts have jurisdiction. American courts have determined that they have jurisdiction over matters that the Appellant filed with them.

The decision below ignores the Appellant's successful litigation and focuses exclusively on 12 cases that it blames on the Appellant and concludes that the Appellant, "has a history of vexatious and baseless litigation against defendants." Of the 12 lawsuits itemized in the decision below, 7 had nothing to do with the Appellant whatsoever. The fact that other plaintiffs unrelated to each other and unrelated to the Appellant – yet have similar grievances in multiple federal courts reinforces that the problem is widespread far beyond the Appellant. It is unjust to punish the Appellant for the Appellees' ongoing violations of numerous American laws against numerous victims unrelated to the Appellant in numerous American jurisdictions.

Four of the remaining five cases related to matters that happened years before the events that gave rise to the instant Complaint. They could not be "similar, if not identical" as they involved different sets of facts, different parties, and different laws. The last case, *Weisskopf vs. Jerusalem Foundation, et al*, involves three elementary schools and their donors on matters unrelated to the instant Complaint. The anti-filing injunction at issue here is the sole reason that the Appellant cannot exercise his 14th

Amendment right to access the court for relief in that matter completely unrelated to the instant case.

The record is bare as to the justification for such a broad, overarching injunction. The Court simply denies Appellant his right to seek judicial review of any claim he may have against anyone – even when he is represented by an attorney. There is no basis to restrict his 14th Amendment right so harshly.

There is no evidence whatsoever that Appellant has been filing frivolous claims "without reasonable expectation of success". He has filed claims that have won or settled. Further, no prior court has held him in violation of Rule 11. There is simply no record that Appellant has routinely filed frivolous claims.

Lastly, on January 23, 2017 the District Court suggested that the *pro se* plaintiffs retain an attorney in this matter. The Appellant followed the District Court's advice and retained an attorney who filed an appearance on his behalf on August 7, 2017. The attorney requested leave to amend the Complaint in both the District Court and the Appellate Court. Both courts ignored counsel's request. It begs the question why the court suggested retaining an attorney and then not allow that attorney to amend the Complaint and cure whatever defects that may have caused the court to mischaracterize the Complaint. If a reasonable person could misinterpret the Complaint as the Appellate Court did – then justice demanded granting the requests by the Appellant's attorney to amend the Complaint prepared *pro se* and cure the misunderstanding.

THIS CASE PRESENTS A RECURRING QUESTION OF EXCEPTIONAL IMPORTANCE WARRANTING THE COURT'S IMMEDIATE RESOLUTION

This case raises a question of vital importance concerning the three-way circuit split over the analysis of domestic injury in an extraterritorial RICO claim. Of the

2,372 civil RICO cases filed in federal courts in 2018; 560 involved extraterritorial claims. Within those the Appellees in the instant case and their associates in their RICO enterprise were the most frequently involved. Resolving the instant case addresses one of the largest RICO enterprises in American history affecting nearly 70% of Americans.

According to the latest Gallup Poll in March 2019, over 192 million Americans support Israel; of whom 111,932,100 are Protestants, 45,126,000 are Catholics, 29,161,860 are unaffiliated, and 5,905,620 are Jewish. The Fundraising Appellees act as gatekeepers for American donations from Christian and Jewish communities that get transferred to Israel. In their own fundraising materials and tax returns, the Appellees show that they collect over $3 billion per year in donations from millions of well-meaning American donors across the United States and then steer donations to help finance their racketeering scheme. The Complaint alleges that the Appellant has himself fallen victim to this Fundraising prong of the Appellees' scheme prior to being aware of the fraud that the Fundraising Appellees perpetrate upon the American people.

Records from the Israeli Ministry of Justice show that only $2 billion reaches Israel each year – of which less than 25% actually reaches the needy populations for whom the funds were raised in the United States. The Israeli population is half the size of New York City with a fraction of the social welfare needs as in New York. The donations raised from millions of Americans by the Fundraising Appellees over the past ten years was enough to pay off every debt of every Israeli in the Debt Collections Office, eliminate poverty in Israel and give a $10,000 check to every Israeli child for education. However, child poverty has doubled in Israel over the past 10 years while the Fundraising Appellees raise $3 billion annually in the

United States. It begs the question - What did the Appellees in this matter do with all those billions of dollars? The Appellant fully intends to show in court exactly how the Appellees defraud Americans out of billions of dollars in donations plus billions more in their extortion scheme if allowed his 14th amendment right to have his day in court.

In addition to the 192 million Americans who get defrauded under the Fundraising prong of this scheme, including the Appellant, another 80,000 American citizens have fallen victim to the Extortion prong of the scheme, including the Appellant. In this prong of the scheme, the Debt Appellees receive kick-backs from the Fundraising Appellees to create fictitious debts for victims to strong-arm them and their families out of everything they own. Along the way, victims get strong-armed into paying for "services" by the Fundraising Appellees – though "services" were already covered by donations raised from over 192 million Americans in the United States. These "services" in addition to "interest" and "penalties" unlawfully enrich the Appellees by billions more dollars.

The outcome of this matter involving the Appellant's complaint as a victim of both prongs of the Appellees' pattern of racketeering affects over 192 million Americans who reside in the United States and abroad. The open issue is how many of these Americans can claim domestic injury to this international scheme. This case is an ideal vehicle for resolving the three-way circuit conflict over the correct domestic injury analysis and whether it should be based on the location of the property, location of the plaintiff's residence, or the origin of the injury (predicate act).

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully Submitted

Richard David Weisskopf
Appellant, pro se

June 24, 2019