No. _____

In the Supreme Court of the United States

DELOYD JONES,
Petitioner,
v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Is concerted criminal activity by individuals within a group sufficient to establish an "enterprise" under RICO even if there is no evidence of shared profits or a common group purpose, and did the Fifth Circuit err in finding the existence of a structured "enterprise" based on a "common purpose" of "selling drugs" absent evidence of a centralized drug distribution chain or decision-making framework?

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PETITION FOR WRIT OF CERTIORARI

Petitioner Deloyd Jones respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit.

JUDGMENT AT ISSUE

On August 28, 2015, a jury convicted Mr. Jones of participating in a RICO conspiracy, drug conspiracy, and firearms conspiracy, as well as substantive firearm and racketeering offenses under 18 U.S.C. § 924 and 18 U.S.C. § 1959. The district court sentenced him to life imprisonment. Mr. Jones timely appealed his judgment, and a panel of the Fifth Circuit reversed two of his § 1959 convictions based on insufficient evidence and remanded the case for resentencing. *See* Opinion, *United States v. Jones*, No. 16-30525, at 11–12, 23 (5th Cir. Oct. 13, 2017) (*Jones I*).

Following resentencing, Mr. Jones timely appealed the district court's judgment. While the second appeal was pending, this Court issued its decision in

United Stated v. Davis, 139 S. Ct. 2319 (2019). Mr. Jones challenged the validity of his four § 924 convictions in light of *Davis*, and a panel for the Fifth Circuit vacated those convictions based on a finding of plain error. *See* Opinion, *United States v. Jones*, No. 18-30256, at 11 (5th Cir. Aug. 12, 2019) (*Jones II*). The Fifth Circuit remanded the matter to the district court for further proceedings.

Following resentencing, Mr. Jones timely appealed his district court judgment and filed an unopposed motion for summary disposition of his appeal, recognizing that all remaining challenges had been adjudicated and were foreclosed by the Fifth Circuit's ruling on his first appeal. A panel for the Fifth Circuit granted the motion and entered judgment on June 23, 2020. *See* Opinion, *United States v. Jones*, No. 19-30935, at 2 (5th Cir. June 23, 2020) (*Jones III*).

Copies of the three panel decisions are attached to this petition as an Appendix.

JURISDICTION

The final judgment of the Fifth Circuit Court of Appeals was entered on June 23, 2020. No petition for rehearing was filed. Mr. Jones's petition for a writ of certiorari is timely filed pursuant to Supreme Court Rule 13.1, as modified by this Court's Order dated March 19, 2020, which extended the deadline for petitions for writs of certiorari to 150 days from the date of the lower court judgment. This Court has jurisdiction under 28 U.S.C. § 1254(1).

FEDERAL STATUTES INVOLVED

18 U.S.C. § 1962(c) provides:

> 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.

18 U.S.C. § 1962(d) provides:

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

18 U.S.C. § 1959(a) provides, in relevant part:

> Whoever . . . for the purpose of gaining entrance to or maintaining or increasing position in an enterprise engaged in racketeering activity, murders, kidnaps, maims, assaults with a dangerous weapon, commits assault resulting in serious bodily injury upon, or threatens to commit a crime of violence against any individual in violation of the laws of any State or the United States, or attempts or conspires so to do, shall be punished . . . .

18 U.S.C. § 1961(4) defines "enterprise" as:

> [A]ny individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.

STATEMENT OF THE CASE

Deloyd Jones was indicted in a 20-count, 12-defendant indictment charging violations of the Racketeer Influence and Corrupt Organizations Act ("RICO"), the Federal Gun Control Act, the Federal Controlled Substances Act, and violent crimes in aid of racketeering. The charges all related to the Government's allegation that Mr. Jones and his co-defendants were members of a group called "Ride or Die," or "ROD," which the Government claimed to be a criminal enterprise operating in New Orleans's crime-ridden and impoverished Eighth Ward neighborhood—though Mr. Jones was one of only three defendants charged in the RICO conspiracy. According to the indictment, the conspiracy allegedly began in 2007, when Mr. Jones was only 15 years old.

Eventually, all but the three RICO defendants pled guilty to some or all of their charges, and the case against Mr. Jones and the other two RICO defendants proceeded to trial. The Government called roughly 60 witnesses at trial, and the picture that emerged was of a violent and chaotic neighborhood in which some or all of the defendants lived, socialized, and committed crimes. Much of the evidence focused on discrete criminal acts committed by individuals during the charged time period, and in many cases, the Government did not attempt to prove any connection between the alleged criminal act and the actor's association with ROD.

Multiple witnesses with personal knowledge of the defendants' activities testified that ROD was not an organized "gang," but a name adopted by a group of people who lived in the neighborhood. Witnesses also testified that, while some of

ROD "members" sold drugs, they acted independently and did not share profits or pool their drugs. The Government's primary evidence of coordinated criminal conduct was testimony that some of them used the same house on Mandeville Street to store, cook, package, and sell crack over an 18-month period, and that on one occasion, Mr. Jones and two other individuals pooled their money together to buy a quantity of cocaine from a local dealer. The witness who testified to that joint purchase also testified, however, that they "split it up" after returning to the house. Likewise, while witnesses testified that people associated with ROD had access to guns stored in various locations, the guns were not acquired or maintained to facilitate drug deals or for any other specific purpose, nor was there any group control over the stashed guns. They were merely available to anyone who knew of their location.

On August 28, 2015, a jury found Mr. Jones guilty of the charged RICO conspiracy, drug conspiracy, and firearms conspiracy, and they also convicted him of the substantive firearms offenses set forth in Counts 13–20 of the indictment, each of which related to one of three shooting incidents that occurred between January 6 and January 18, 2011. Those convictions consisted of mirroring offenses for each violent incident: one charged under § 1959 (as a violent crime in the aid of racketeering), and one charged under § 924(c) or (j) (as a use of a firearm in furtherance of a crime of violence or drug trafficking offense). Mr. Jones was sentenced to life imprisonment.

In his first appeal, Mr. Jones argued, in relevant part, that the evidence presented at trial was insufficient to support his convictions of the RICO conspiracy and substantive racketeering offenses because the Government had failed to prove

that "ROD" was an enterprise or that it had a "common RICO purpose." As Mr. Jones explained, the evidence at trial established only that ROD was a loose-knit group of men, women, and boys from the same area who associated with one another. The group did not have a common and overarching purpose, nor did its "members" operate anything jointly, share proceeds of crimes, or have any formalized leadership that sanctioned or directed the conduct of others. At best, the evidence showed that some of the individuals who associated themselves with the "ROD" name may have committed crimes with or near each other, but there was no evidence that those crimes were motivated by anything other than the actors' own self-interest, much less a shared, group purpose. Mr. Jones further argued that the Government presented no evidence at trial linking any of the violence incidents underlying Counts 13–20 to the alleged conspiracies.

While agreeing with Mr. Jones that there was insufficient evidence connecting one of the shootings to the charged conspiracies (or to ROD itself), the Fifth Circuit rejected his argument that the Government failed to establish ROD as an "enterprise" with a "common purpose." *Jones I*, at 11–12. The court determined that "ROD had a clear purpose—selling drugs and protecting those drug sales and the group's members—and its members were associated with one another." *Id.* at 5. In support of that conclusion, the court relied on testimony regarding the shared use of the Mandeville Street house for drug activity, the shared access to guns, and the single allegation of a joint drug purchase among certain ROD members, further noting that "[m]embers [of the group] committed a large number of violent crimes alongside other

members." *Id.* The court thus concluded that the evidence "was sufficient for the jury to conclude that ROD fell within RICO's expansive definition of 'enterprise.'" *Id.* at 5–6. Accordingly, the court reversed Mr. Jones's convictions related to the unconnected shooting, affirmed his remaining convictions, and remanded the case for resentencing. *Id.* at 23.

On remand, the district court resentenced Mr. Jones to life imprisonment. Mr. Jones appealed his judgment to the Fifth Circuit again, re-raising his previously rejected (and thus foreclosed) claims to preserve them for further review. *See* Appellant's Brief, *United States v. Jones, et al.*, No. 18-30256, at 13–14 (Sept. 14, 2018). He also raised a new challenge to the validity of his § 924 convictions based on this Court's ruling in *Davis*. The Fifth Circuit held that it was plain error to permit the jury to convict Mr. Jones of the § 924 offenses based on the RICO conspiracy predicate, which no longer qualifies as a crime of violence post-*Davis*, vacated those convictions, and remanded the case for resentencing on the remaining counts. *Jones II*, at 11.

On remand, Mr. Jones was resentenced to life imprisonment, and he again appealed to the Fifth Circuit. Recognizing that all remaining challenges were foreclosed by the Fifth Circuit's decision in his first appeal, Mr. Jones filed a motion for summary disposition, re-raising the denied claims from his first appeal to preserve them for further review by this Court. The motion for summary disposition was granted on June 23, 2020. *See Jones III*, at 2.

REASONS FOR GRANTING THE PETITION

"In order to secure a conviction under RICO, the Government must prove both the existence of an 'enterprise' and the connected 'pattern of racketeering activity.'" *United States v. Turkette*, 452 U.S. 576, 583 (1981). The meaning of an "enterprise" has been the subject of extensive debate and controversy since the statute's inception. While the driving force behind RICO was the infiltration of legitimate businesses by highly sophisticated criminal organizations like the Italian Mafia, Congress's goal in enacting the 1970 law was to eradicate criminal influences from a broader spectrum of institutions, such as labor unions and government bodies. *See* Gerard E. Lynch, *RICO: The Crime of Being a Criminal, Parts I & II*, 87 Colum. L. Rev. 661, 667–82 (1987). Congress thus defined "enterprise" to encompass corporations and other legal entities *as well as* "any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(4). The latter part of the definition begged the question: what types of group "associations" qualify as enterprises?

This Court has attempted to provide clarity on that issue over the years, resolving specific disputes regarding the reach of the RICO statute. In *Turkette*, the Court rejected the idea that RICO is limited to "legitimate" business enterprises. 452 U.S. at 583. While acknowledging that "the legislative history [of the RICO statute] forcefully supports the view that the major purpose of [RICO] is to address the infiltration of legitimate business by organized crime," the Court nevertheless concluded that the statutory text "is equally applicable to a criminal enterprise that has no legitimate dimension or has yet to acquire one." *Id.* at 591. The Court noted

that the bill's supporters "recognized that organized crime uses its primary sources of revenue and power—illegal gambling, loan sharking and illicit drug distribution—as a springboard into the sphere of legitimate enterprise." *Id.* at 591. It thus determined that Congress intentionally opted for a broader definition of "enterprise" that would reach "organized criminal activities that *give rise to the concerns* about infiltration" of legitimate businesses. *Id.* at 593 (emphasis added). Accordingly, the Court held that an enterprise may be "a group of persons associated together for a common purpose of engaging in a course of conduct," which "is proved by evidence of an ongoing organization, formal or informal, and by evidence that various associates function as a continuing unit." *Id.* at 583.

More recently, in *Boyle v. United States*, the Court confronted the question of whether an "association-in-fact" enterprise must have an "ascertainable structure beyond that inherent in the pattern of racketeering activity in which it engages." 556 U.S. 938, 940–41 (2009). In a 7-2 decision, the majority held that "an association-in-fact enterprise must have a structure" and stated that it requires "at least three structural features: a purpose, relationships among those associated with the enterprise, and longevity sufficient to permit these associates to pursue the enterprise's purpose." *Id.* at 945–46. The Court declined to adopt specific structural requirements suggested by the petitioner in that case, reiterating that "an association-in-fact enterprise is simply a continuing unit that functions with a common purpose." *Id.* at 948.

Dissenting from the majority, the late Justice John Paul Stevens, joined by Justice Breyer, espoused the view that Congress intended the term "enterprise" "to refer only to businesslike entities that have an existence apart from the predicate acts committed by their employees or associates." *Boyle*, 556 U.S. at 952 (Stevens, J., dissenting, joined by Breyer, J.). He further opined that the evidence in *Boyle* was insufficient to support the RICO convictions. *Id.* As the dissent explained, the "primary goals" of the alleged enterprise "included generating money for its members and associates through the commission of criminal activity, including bank robberies, bank burglaries and interstate transportation of stolen money," and "its *modus operandi* was to congregate periodically when an associate had a lead on a night-deposit box that the group could break into," at which point any associates that were available would come together to commit the burglary or robbery and then split the proceeds. *Id.* at 958. Thus, "the group's purpose and activities . . . were limited to sporadic acts of taking money from bank deposit boxes," and, in the dissent's view, "[t]here is no evidence in RICO's text or history that Congress intended it to reach such ad hoc associations of thieves." *Id.*

Since *Boyle*, there continues to be confusion among courts regarding the point at which an associated group of individuals becomes sufficiently "structured" to qualify as an "enterprise," including what qualifies as a "common purpose." This confusion has led to multi-faceted circuit splits over the proper interpretation of *Boyle* and application of the RICO statute. It also has led to the improper expansion of RICO to cases like this one, where the "group" in question lacks any discernable structure,

organization, or centralized purpose. Accordingly, this Court's guidance is needed to ensure proper application of the RICO statute and to secure and maintain uniformity among the federal Courts of Appeals.

I. The Fifth Circuit's interpretation of "enterprise" conflicts with the statutory text, Congressional intent, and this Court's precedent.

In this case, the Fifth Circuit determined that ROD qualified as an enterprise because its members "were associated with another" and the group "had a clear purpose—selling drugs and protecting those drug sales and the group's members." *Jones I*, at 5. But there was no evidence at trial that any drug sales were committed by ROD members for the benefit of the group or as part of any centralized distribution chain. To the contrary, the trial testimony revealed that those who sold drugs did so independently, maintaining their own supply and keeping their own profits. Thus, while "selling drugs" may have been a universal goal shared by several individuals, it was not a "common purpose" of the group itself. Moreover, while there was evidence of collaborative criminal activity among some members of the group, such as shared access to guns and drug dealing locations, there was no evidence that any concerted efforts were intended to further some unified group purpose, as opposed to simply being mutually beneficial for the individual actors. In short, while some members may have worked together to commit crimes, there was no criminal "enterprise."

The Fifth Circuit's ruling—and its classification of this type of loose-knit association lacking any discernable structure or organization as an "enterprise"—betrays the language and intent of the RICO statute and this Court's prior decisions interpreting it. The statute itself was directed to the infiltration of legitimate

businesses by organized crime, and as this Court recognized in *Turkette*, the broader definition of "enterprise" was intended to target organizations that threaten such infiltration. Nothing in the statutory language or legislative intent supports its application to all forms of concerted criminal conduct by individual actors, especially when, like here, there is no evidence of any centralized operation, decision-making, or unified purpose. *See United States v. Nascimento*, 491 F.3d 25, 32 (1st Cir. 2007) (explaining that an enterprise must possess "some goal or purpose more pervasive and more enduring than the instant gratification that can accrue from the successful completion of each particular criminal act").

Indeed, when this Court held in *Boyle* that an "enterprise" requires a "structure" consisting of at least a common purpose, relationships, and longevity, it clearly was referring to a *centralized* purpose of the group as an entity—not similar personal goals shared by independent actors within the group. For example, in describing an enterprise as a "continuing unit," the Court recognized group decisions as a central feature, even if not made through a traditional hierarchy or "chain of command." *Boyle*, 556 U.S. at 948 (stating that "decisions may be made on an ad hoc basis and by any number of methods—by majority vote, consensus, a show of strength, etc."). There was no evidence of any decision-making framework in this case. Similarly, the Court recognized the feature of role differentiation, even if those roles are not fixed. *Id.* (stating that "different members may perform different roles at different times"). The evidence here did not establish a singular, functional unit in this case, much less individualized roles within such a unit. Instead, it illustrated a

group of individuals who associated with each other and adopted a group name, some of whom committed crimes together.

Accordingly, the Fifth Circuit's ruling in this case violates the RICO text, Congressional intent, and this Court's interpretive precedent, expanding the reach of the statute beyond the structured "enterprises" to which it is directed.

II. The Fifth Circuit's ruling contributes to growing circuit conflict and confusion over the meaning and scope of the term "enterprise."

Importantly, the Fifth Circuit's decision also contributes to complex circuit conflict that has developed around the meaning of "enterprise" following *Boyle*. For example, contrary to the Fifth Circuit's decision, the D.C. Circuit appears to require a unified distribution chain to find a RICO "enterprise" based on drug dealing activity. *See, e.g.*, *United States v. Eiland*, 738 F.3d 338, 371 (D.C. Cir. 2013) (finding an enterprise when "[t]he defendants organized themselves so each would carry out a separate role in the distribution chain, with [two specific individuals] overseeing the operation"); *United States v. McGill*, 815 F.3d 846, 931 (D.C. Cir. 2016) (finding an enterprise when the defendants had titles and roles in the distribution chain).

Similarly, the Second Circuit has recognized that the "common purpose" requirement of *Boyle* mandates a centralized group purpose rather than shared, individual goals. *See D'Addario v. D'Addario*, 901 F.3d 80 (2d Cir. 2018). In *D'Addario*, the Second Circuit concluded that an enterprise did not exist when an individual coordinated with several others to complete a series of fraudulent schemes against a single estate. *Id.* at 100. Relying on the individualized nature of each defendant's motivation, the court found that evidence of agreements and

collaborative criminal activity among individual defendants and subgroups did not establish "that they acted with a sufficiently common purpose" or agreed to join forces to pursue a centralized goal of defrauding the estate over decades. *Id.* at 101–02.

The Fifth Circuit's ruling in this case also creates *intra*-circuit conflict over the meaning of "enterprise." In conflict with its affirmance in this case, the Fifth Circuit more recently held that an association-in-fact enterprise "must have some sort of hierarchical or consensual decision-making structure[.]" *Walker v. Beaumont Indep. Sch. Dist.*, 938 F.3d 724, 738 (5th Cir. 2019). The Government proved no such structure in this case. Meanwhile, other circuits have explicitly held that a group "need *not* have some decisionmaking framework or mechanism for controlling the members" to qualify as an enterprise, creating further circuit conflict. *United States v. Rodriguez-Torres*, 939 F.3d 16, 24 (1st Cir. 2019) (emphasis added).

These decisions and others continue to obscure the meaning of "enterprise" and blur the line between general conspiracy and racketeering. The Fifth Circuit's decision in this case suggests that any coordination of criminal activity among a group of individuals qualifies the group as a criminal "enterprise," regardless of whether there is any centralized purpose or structure. Other circuits have applied the statute even more broadly, for example, by determining that a married couple who conspired to hide the husband's assets from creditors through multiple acts of mail and wire fraud can constitute an "enterprise" in light of *Boyle*. *Al-Rayed v. Willingham*, 914 F.3d 1302, 1309–10 (11th Cir. 2019). These expansions of the statute beyond the statutory language and intended purpose not only impact the individual defendants

in those cases, but they give rise to vagueness concerns regarding the statute itself. Indeed, it is unclear where the line is drawn between a criminal conspiracy and a criminal enterprise based on the current landscape, and the answer may often depend on the circuit in which the crime occurred.

Put simply, it is clear from the statutory text, legislative history, and this Court's rulings that a RICO "enterprise" does not encompass every instance of concerted or conspiratorial criminal conduct among individuals within a group, and courts applying the statute post-*Boyle* continue to contradict each other and themselves and, in some case, erroneously expand its reach. Accordingly, this Court's intervention and guidance is necessary to clarify the scope of the statute and ensure uniformity in the federal court system.

CONCLUSION

For the foregoing reasons, Mr. Jones respectfully requests that his petition for a writ of certiorari be granted.

Respectfully submitted November 19, 2020,

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