No. _____

IN THE SUPREME COURT OF THE UNITED STATES

SIDNEY PATTERSON,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

A conviction based on less than sufficient evidence is a due process violation.

1. Does the application of a vaguely written racketeering statute to prosecute unsophisticated criminal activity not contemplated by the legislative intent of RICO run afoul of due process requirements?

2. If the government fails to show that two or more persons joined together to pursue any unlawful objective and that there was no functioning cohesive RICO enterprise, can a conviction for a Federal Controlled Substances Act (FCS) conspiracy stand?

3. If the government fails to show a functioning RICO enterprise, coupled with a general lack of sufficient evidence, can a murder conviction stand?

PARTIES TO THE PROCEEDINGS IN THE COURT WHOSE JUDGMENT IS SOUGHT TO BE REVIEWED

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Sidney Patterson	Petitioner
United States of America	Respondent
Deloyd Jones	Co-Appellant below, and filing a separate Petition for writ of Certiorari on similar issues.
Byron Jones	Co-Appellant below, and filing a separate Petition for writ of Certiorari on similar issues.

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The original opinion of the United States Fifth Circuit Court of Appeals is reported at 873 F.3d 482 (October 13, 2017) and reprinted in the Appendix to the Petition ("App.") at 1a-24a. Following remand and resentencing, a second appeal was taken and that opinion is reported at 935 F.3d 266 (August 12, 2019) and reprinted in the Appendix to the Petition ("App.") at 25a-35a. Petitioner would note that there are no claims at issue from that opinion; remand and resentencing were again ordered. Following remand and resentencing on the second appeal, a Motion for Summary Disposition was filed. That motion was granted and is reported at 810 Fed.Appx. 333 (Mem) (June 23, 2020). It is reprinted in the Appendix to the Petition ("App.") at 36a-37a.

STATEMENT OF JURISDICTION

Petitioner seeks review of a decision rendered by the United States Court of Appeals for the Fifth Circuit in a published opinion on October 13, 2017, where the Court of Appeals found that Ride or Die (ROD) was an association-in-fact enterprise, that various criminal acts committed by Petitioner constituted racketeering activity, that Petitioner was part of a drug conspiracy, and that a murder he committed was in furtherance of the ROD conspiracy. This opinion was essentially reaffirmed in a Motion granting Summary Disposition on June 23, 2020. This Court has supervisory jurisdiction pursuant to 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

"No person shall . . . be deprived of life, liberty, or property, without due process of law." U.S. Const. Amend. V.

Further, the due process clause of the Fourteenth Amendment protects a defendant in a criminal case against conviction except upon proof beyond a reasonable doubt of every element of the crime with which he is charged. U.S. Const. Amend. XIV.

STATEMENT OF THE CASE

On September 19, 2013, an Indictment was filed in the Eastern District of Louisiana, charging Deloyd "Puggy" Jones, Byron "Big Baby" Jones, Sidney "Duda Man" Patterson, and 9 others with several violations of the Racketeer Influenced and Corrupt Organizations (RICO) Conspiracy. The 20-count indictment alleged that all named defendants were members of the group "Ride or Die" (ROD) that operated out of the Eighth Ward of New Orleans. Essentially, Count 1 charged three defendants with a RICO conspiracy[1]; Count 2 charged all defendants with a Federal Controlled Substances Act (FCS) conspiracy[2]; Count 3 charged all defendants with a Federal Gun Control Act (FGC) conspiracy[3]; Count 4 charged an individual defendant with violating the FCS; and Counts 5 through 20 charged individual Defendants with various violations of the Violent Crimes in Aid of Racketeering Act (VICAR) and the FGC[4].

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[1] This count charged "Deloyd Jones, Byron Jones, and Sidney Patterson with membership in a criminal enterprise operating in the Eighth Ward of New Orleans known as "Ride or Die." Count 1 further charged a broad RICO conspiracy beginning in or about 2007 to distribute controlled substances and to commit murder, robbery, battery, and assault in furtherance of the conspiracy. Count 1 contained 52 overt acts, including the murder of four individuals. Each of the non-RICO Defendants is mentioned at least once in the overt acts section of Count 1.

[2] This count charged "all defendants with a conspiracy beginning in or about 2008 to distribute and possess with the intent to distribute 280 grams or more of crack cocaine and non-specific quantities of heroin and marijuana."

[3] This count charged the defendants with a conspiracy beginning in or about 2007 to possess and use firearms in furtherance of the crimes charged in Counts 1 and 2..

[4] These counts charged one or more of the RICO Defendants with various violations of the VICAR and the FGC, and those pertinent to Mr. Patterson are: Count 5 charges B. Jones and Patterson with the February 24, 2010 murder of Travis Arnold in order to increase their position and status in Ride or Die. Count 6 charges the two defendants with discharging an unknown firearm which caused the death of Travis Arnold, in furtherance of the crimes charged in Counts 1 and 2. Count 7 charges B. Jones and Patterson with assaulting an individual identified as "I.R." with a dangerous weapon in order to increase their position and status in Ride or Die. Count 8 charges B. Jones and Patterson with discharge of an unknown firearm in furtherance of the crimes charged in Counts 1 and 2.

Count 13 charges D. Jones and Patterson with assaulting an individual identified as "J.J."

Mr. Patterson was specifically charged in Count 1 with a violation of the Federal RICO Act, in violation of 18 USC 1962; in Counts 5, 7, 13, and 19 with violations of the Federal RICO Act, in violation of 18 USC 1959; in Counts 3, 6, 8, 14, and 20 with violations of the Federal Gun Control Act, in violation of 18 USC 924(c)(1)(A), 924(j) and 924(o); and in Count 2 with a violation of the Federal Controlled Substance Act, in violation of 21 USC 846, 21 USC 841(a)(1).

On August 13, 2015, Defendants Tre Clements, Ervin Spooner, Romalis Parker, Nyson Jones, Morris Summers, Tyone Burton, Tyrone Burton, and Perry Wilson entered into plea agreements with the government and were rearraigned, pleading guilty to Counts 1 and 2 of a superseding bill of information.[5] A revised indictment was filed, naming only Byron, Deloyd, and Patterson.

Trial began August 17, 2015, and continued through August 28, 2015. At trial, it was alleged that ROD was responsible for drug dealing, murders, and general terrorizing of the Eighth Ward, in violation of RICO. As noted above, the indictment charged 20 counts, including a RICO conspiracy, a federal controlled substances conspiracy (the members would deal drugs in the St. Roch neighborhood); a federal gun control act conspiracy (the members would stash guns

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with a dangerous weapon on or about January 6, 2011 in order to increase their position and status in Ride or Die. Count 14 charges D. Jones and Patterson with discharging a known firearm on January 6, 2011 in furtherance of the crimes charged in Counts 1 and 2.

Count 19 charges D. Jones and Patterson with the murder of Corey Blue on or about January 18, 2011 in order to increase their position and status with Ride or Die. Count 20 charges the two defendants with discharging an unknown firearm and a known firearm which caused the death of Corey Blue, in furtherance of the crimes charged in Counts 1 and 2.

[5] Andrealie Lewis previously pled in March of 2014. Tyrone Burton received 10 years and one month; Ervin Spooner, who testified at trial, received nine years; Perry Wilson, who testified at trial, was sentenced to nine years; Tre Clements received eight years; Nyson Jones was sentenced to seven years and three months; Romalis Parker was sentenced to five years and 10 months; Tyrone Burton received five years; Morris Summers was sentenced to five years; and Andrealie Lewis, who testified at trial, was sentenced to four years.

for use to enforce and protect their territory); and several individual overt acts, all of which allegedly occurred from 2007-2013. Because of this alleged sprawling conspiracy, the government called approximately 60 witnesses at trial, many of whom were law enforcement officers merely responsible for unconnected and unrelated arrests of the Defendants over the years. As there were several individual acts comprising the many counts, no coherent factual story was presented at trial. In fact, many witnesses that testified did not connect any individual acts to ROD, either did not see who shot them or did not witness the actual crimes occurring, and did not show how these arrests were related to, and supported, a RICO enterprise. Moreover, many witnesses were testifying in exchange for leniency or had drug habits that prevented coherent recollection of facts.

Following the close of the government's case, all defense counsel made Motions for Acquittal under Rule 29, which were denied. The defense did not put on any witnesses. Jury deliberations lasted approximately 13 hours over two days, during which the jury asked four questions. The jury thereafter returned verdicts as follows:

Count 1—guilty as to all three Defendants, with an answer of "yes" to the first special question relative to a conspiracy involving 280 grams or more of cocaine; and no to the remaining special questions; Counts 2 and 3—guilty as to all three Defendants; Count 5—guilty as to Byron Jones and not guilty as to Mr. Patterson; Count 6—guilty as to Byron Jones and not guilty as to Mr. Patterson; Count 7—

guilty as to Byron Jones and not guilty as to Mr. Patterson; Count 8— guilty as to Byron Jones and not guilty as to Mr. Patterson; Count 9—guilty as to Byron Jones; Count 10—guilty as to Byron Jones; Count 11—not guilty as to Deloyd Jones; Count 12—not guilty as to Deloyd Jones; Count 13—guilty as to Deloyd Jones and Mr. Patterson; Count 14— guilty as to Deloyd Jones and Mr. Patterson; Count 15—guilty as to Deloyd Jones; Count 16—guilty as to Deloyd Jones; Count 17—guilty as to Deloyd Jones; Count 18—guilty as to Deloyd Jones; Count 19—guilty as to Deloyd Jones and Mr. Patterson; and Count 20—guilty as to Deloyd Jones and Mr. Patterson.

Sentencing was ultimately held May 20, 2016. Finding an offense level of 46 and a criminal history category level of V, the district court sentenced Petitioner to life on Counts 1, 2, 19, and 20; 240 months on Counts 3 and 13 to run concurrent; and 120 months consecutive on Count 14, as required under 18 USC §924.

Appeal was taken to the United States Fifth Circuit Court of Appeals, and on October 13, 2017, that Court vacated Counts 13 and 14 of Mr. Patterson's conviction and remanded for resentencing. *United States v. Jones, et al.*, 873 F.3d 482 (5th Cir. 2017), App. 1a-24a. Resentencing was held February 21, 2018, and Petitioner was sentenced to the same term of life on Counts 1, 2, 19, and 20; and 240 months on Count 3, to run concurrent.

In the interim, *Sessions v Dimaya,* 584 U.S. __, 138 S.CT. 1204 (2018) was decided, and a second appeal was filed. The Fifth Circuit vacated Counts 3 and 20 of

Petitioner's conviction, and once again remanded for resentencing. *United States v. Jones*, 935 F.3d 266 (2019), App. 25a-35a. The second resentencing was held November 7, 2019, and Petitioner was sentenced to the same term of life on Counts 1, 2, and 19.

In order to preserve all of Mr. Patterson's claims, a Motion for Summary Disposition was then filed with the Fifth Circuit, which was granted on June 23, 2020. *United States v. Jones,* 810 Fed.Appx. 333 (Mem) (June 23, 2020). This Petition for Certiorari follows.

REASONS FOR GRANTING THE PETITION

A conviction based on less than sufficient evidence is a due process violation. When considering sufficiency of the evidence, the standard that guides a reviewing court is "whether viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found defendant guilty, beyond a reasonable doubt, of every element of the crime charged." *Jackson v. Virginia*, 443 U.S. 307 (1979). The Fifth Amendment provides that "[n]o person shall . . . be deprived of life, liberty, or property, without due process of law." The due process clause of the Fourteenth Amendment further protects a defendant in a criminal case against conviction except upon proof beyond a reasonable doubt of every element of the crime with which he is charged. *In Re Winship*, 397 U.S. 358 (1970).

A. The application of a vague racketeering statute to prosecute unsophisticated criminal activity not contemplated by the legislative intent of RICO runs afoul of due process requirements.

The Racketeer Influenced and Corrupt Organization Act (RICO) was passed in 1970 as one part of the Organized Crime Control Act of 1970, with the declared purpose of seeking to eradicate organized crime in the United States. *Russello v. United States*, 464 U.S. 16, 26-27 (1983); *United States v. Turkette*, 452 U.S. 576, 589 (1981); 18 U.S.C. §§ 1961–1968 (1970). Legislative history specifies that it was "designed to attack the infiltration of legitimate business". 115 Cong. Rec. 9566, 9567 (1969) (statement of Sen. John L. McClellan). Put another way, the purpose was to fight organized criminal activity "that annually drains billions of dollars from America's economy." Organized Crime Control Act of 1970, Pub. L. No. 91-452, 1970 U.S.C.C.A.N. (84 Stat. 922) 1073, 1073. Thus, RICO enabled the government to prosecute individual members of criminal enterprises that worked together as one entity, using disparate acts by individuals in order to try the group as a whole. The primary focus, then, was the Mafia and its effect on legitimate business. Beginning in the 1990s, however, street gangs became a target, thanks to RICO's broadly defined "enterprise" requirement.

Under the federal RICO Act, someone commits the crime of racketeering when he: (a) uses income received from a pattern of racketeering activity to acquire an interest in an enterprise, (b) acquires an interest in an enterprise through a pattern of racketeering activity, or (c) conducts or participates in the affairs of an

enterprise through a pattern of racketeering activity. 18 U.S.C. §1962. Enterprise is defined by 18 U.S.C. §1961(4) as "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity". However, there is not much statutory guidance on what constitutes an enterprise, and in fact seems to be disagreement as to how to apply this element. Essentially, it includes any association of a group of individuals, legally recognized or not, involved in either legitimate or illegitimate businesses. *United States v. Turkette*, 452 U.S. at 581–82. This Court has further held that an association-in-fact enterprise is "a group of persons associated together for a common purpose of engaging in a course of conduct" and "is proved by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit." *Boyle v. United States*, 556 U.S. at 944–45 (*citing Turkette*, 452 U.S. at 580, 583).

And that is what the United States Fifth Circuit Court of Appeals found when denying Mr. Patterson's direct appeal—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." *United States v. Jones* (2017), App. 6a. That Court then gave cursory review to the arguments raised by each appellant as to the individual acts comprising the RICO charge, finding those acts did show a pattern of racketeering activity, but without much discussion. *Id.* at 7a.

The law also provides no one may be charged under RICO unless his/her

enterprise is engaged in interstate commerce or the enterprise's activities affect interstate commerce. 18 U.S.C. § 1962(c). This Court has held that an enterprise is "engaged in commerce" when it is "directly engaged in the production, distribution, or acquisition of goods or services in interstate commerce." *United States v. Robertson*, 514 U.S. 669, 672 (1995) (*quoting United States v. Am. Bldg. Maint. Indus.*, 422 U.S. 271, 283 (1975)). This inclusion of a commerce element is designed to ensure the RICO statute is applied without violating the Constitution, namely Congress's permissible regulatory power under the Commerce Clause. *See* U.S. Const. art. I, §8, cl. 3 (granting Congress power to, inter alia, regulate interstate commerce); *United States v. Lopez*, 514 U.S. 549, 558–59 (1995). Yet the Fifth Circuit did not necessarily address this aspect of the elements, and while trial counsel stipulated to the firearms as affecting interstate commerce, if there is no enterprise these are simply individual crimes that cannot support racketeering.

In fact, the actions of ROD are the sort of unsophisticated criminal activities normally left to the states to prosecute. *See, e.g., United States v. Morrison*, 529 U.S. 598, 616–18 (2000) (discussing the Constitutional protections given by a division of power and the line between federal and state regulation, where noneconomic intrastate violence is properly left to states). Interestingly, the district court granted a motion in limine at trial preventing the government from "labeling the defendant with an alias, nickname, moniker or AKA"; to prevent the government from "offering Evidence that the Defendant was Affiliated with a

"Gang" and/or "ROD" and/or "Ride or Die""; and to prevent the government from "Referencing Fear of Retaliation or Other Adverse Consequences to Cooperating Witnesses", which suggests that references to gangs and gang activity to fit a prosecution into a RICO enterprise is overreaching.

And yet this overly vague federal statute was improperly expanded in this case to prosecute ordinary street crime, where it is arguable that this alleged criminal street gang 1) is an enterprise that 2) *substantially* affects interstate commerce. A conviction fails to comport with due process if the statute under which it is obtained fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement. *Hill v. Colorado*, 530 U.S. 703, 732 (2000); *see also Grayned v. City of Rockford*, 408 U.S. 104, 108–109 (1972). And that is precisely how RICO was used.

In the instant case, the broad ranging conspiracy charge alleged that beginning in or about 2007, members of ROD distributed controlled substances and committed murder, robbery, battery, and assault in furtherance of the RICO conspiracy. Count 1 contained 52 overt acts, including the murder of four people. Importantly, the district court instructed that:

> In order to convict a defendant on the RICO conspiracy offense based on an agreement to violate Section 1962(c), the government must prove the following five elements beyond a reasonable doubt: *First, the existence of an enterprise or that an enterprise would exist*; second, the enterprise was or would be engaged in, or its activities affected or would affect, interstate or foreign commerce; third, a conspirator was or would be employed by or associated with the enterprise; fourth, a

> conspirator did or would conduct or participate in, either directly or indirectly, the conduct of the affairs of the enterprise; and fifth, a conspirator did or would knowingly participate in the conduct of the affairs of the enterprise through a pattern of racketeering activity, as described in the indictment; that is, a conspirator did or would commit at least two acts of racketeering activity.

Emphasis added. This analysis is dependent on the acknowledgment of an enterprise, which does not exist in Mr. Patterson's case. What renders a statute vague is not the possibility that it will sometimes be difficult to determine whether the incriminating fact it establishes has been proved; but rather the indeterminacy of precisely what that fact is. *See, e.g., United States v. Williams*, 553 U.S. 285, 306 (2008).

The government argued, and the Fifth Circuit appeared to agree, that ROD was an association-in-fact enterprise falling under the strictures of RICO. "[A]n association-in-fact enterprise is simply a continuing unit that functions with a common purpose. Such a group need not have a hierarchical structure or a 'chain of command'; decisions may be made on an ad hoc basis and by any number of methods—by majority vote, consensus, a show of strength, etc.". *Boyle v. United States*, 556 U.S. at 948. A conspirator must know of, and agree to, the overall objective of the RICO offense. *Salinas v. United States*, 522 U.S. 52, 61-66 (1977). Here, however, the government entirely failed to show an enterprise, and merely calling it an association-in-fact does not make it so. Without an enterprise, the RICO conspiracy must fall. Moreover, this vague application of an 'enterprise' must fail as an element, as it clearly authorizes and even encourages "arbitrary and

discriminatory enforcement." *City of Chicago v. Morales*, 527 U.S. 41, 56 (1999) (*referencing Kolender v. Lawson*, 461 U.S. 352, 357 (1983). Petitioner would respectfully suggest guidance is necessary on this issue.

A criminal law…must not permit policemen, prosecutors, and juries to conduct " 'a standardless sweep ... to pursue their personal predilections.' " *City of Chicago v. Morales*, 527 U.S. at 65 (1999) (O'Conner concurring). In fact, there is some argument to be made that the application of RICO to street gangs is a racially biased process. *See, e.g.,* Jordan B. Woods, *Systemic Racial Bias and RICO's Application to Criminal Street and Prison Gangs*, 17 MICH. J. RACE & L. 303 (2012). "The urgent need for a federal statute to protect American society from criminal groups like the Mafia (Italian and Sicilian "outsiders") has transformed into an urgent need for a federal statute to protect American society from criminal groups like the Bloods, Crips, and MS-13 (Black and Latino "outsiders")." *Id.* at 311. While these "figures are not conclusive evidence of systemic racial bias, [] they do indicate a high representation of racial minorities in terms of the prosecuted groups and individuals associated with those groups in the sample." *Id.* at 330, finding that roughly 86% percent of prosecutions were directed at groups containing at least one racial minority group.

This vague and discriminatory enforcement becomes especially violative of due process considering the government's *own witnesses* in this case did not support the development of an enterprise, testifying that every one of them acted as a "lone

wolf". Witnesses the government argued were members and associates of ROD testified that no money was pooled, no drugs were shared, no one bought drugs together, no one sold together; basically it was each person for himself. While the Fifth Circuit noted this, it did not appear to consider the specifics of the testimony or how it did not support a ROD "enterprise". Lone wolves are not a collective acting together to further a unified association-in-fact.

For example, Aaron Rudolph, an alleged ROD member from 2008-2011, testified that there was no leader of ROD, that all members were independent, that they did not share money, and Rudolph never got drugs from any other members of ROD. Andrealie Lewis, an alleged member/associate of ROD, testified that the people she named as being involved with ROD never pooled their money from drug sales, and that they each kept what they made. Erick Garrison, who claimed to be a founding member of ROD, testified that he and other 'members' did not buy drugs together, that there was no swearing in to be a part of ROD, and that no tattoo was needed to be part of the supposed group. Garrison confirmed that ROD did not share money or drugs. Chakia Boutte, who grew up in the area and was familiar with ROD, testified that the men were not in a gang, and that ROD was just the name of those who hung out at the neighborhood park.

Moreover, several of the alleged incidents charged in the indictment, if admitting that they did occur, occurred for reasons other than ROD. For example, Officer Rodney Vicknair testified about the March 20, 2011 traffic stop involving a

reported stolen car. Mr. Patterson was the only person caught from the occupants, and no guns or drugs were found on him or in the vehicle. Officer Michael Pierce testified about a March 3, 2008 traffic stop that resulted in finding crack cocaine on Mr. Patterson's person. The amount was consistent with personal use, and no firearms were found. He was 16 at the time. Officer Jehan Senanayake conducted a May 26, 2010 traffic stop where he testified he saw Mr. Patterson place a firearm between the seat and center console. Petitioner stated that he had been shot previously and had the gun for protection.

It cannot be argued that these incidents were in furtherance of a ROD enterprise, a fact the Fifth Circuit glosses over in its opinion. "On sufficiency review, a reviewing court makes a limited inquiry tailored to ensure that a defendant receives the minimum that due process requires: a "meaningful opportunity to defend" against the charge against him and a jury finding of guilt "beyond a reasonable doubt."" *Musacchio v. United States*, 136 S. Ct. 709, 715 (2016), (*citing Jackson v. Virginia*, 443 U.S. at 314–315). Petitioner cannot meaningfully defend himself against a vague statute that allows the prosecution to simply claim an enterprise exists, and therefore all activities by anyone alleged to be a part of that enterprise must therefore be in support of racketeering.

This Court discussed in *Boyle v. United States* that because there are no specific enterprise requirements in the RICO statute, a broad application is permitted under this vague statute.

[T]he breadth of the "enterprise" concept in RICO is highlighted by

> comparing the statute with other federal statutes that target organized criminal groups. For example, 18 U.S.C. § 1955(b), which was enacted together with RICO as part of the Organized Crime Control Act of 1970, Pub. L. 91–452, 84 Stat. 922, defines an "illegal gambling business" as one that "involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business." A "continuing criminal enterprise," as defined in 21 U.S.C. § 848(c), must involve more than five persons who act in concert and must have an "organizer," supervisor, or other manager. Congress included no such requirements in RICO.

556 U.S. at 949. Petitioner would again argue that this vague definition of enterprise is a direct violation of due process, and resulted in his conviction absent adequate evidence. "The prohibition of vagueness…is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law," and a statute that flouts it "violates the first essential of due process." *Johnson v. United States*, 576 U.S. 591, 595–96 (2015) (*citing Connally v. General Constr. Co.*, 269 U.S. 385, 391 (1926)). "The "enterprise" is not the "pattern of racketeering activity"; it is an entity separate and apart from the pattern of activity in which it engages.

The existence of an enterprise at all times remains a separate element which must be proved by the Government." *United States v. Turkette*, 452 U.S. at 583. Petitioner acknowledges that this Court's historical take on association-in-fact enterprises is a broad one, but suggests that, given the expanding use of RICO and the implicit biases connected its enforcement, this issue is ripe for reconsideration. There is no evidence, or even suggestions, of "rules, routines, or processes through which the entity maintains its continuing operations and seeks to conceal its illegal

acts." *Boyle v. United States*, 556 U.S. at 956, J. Stevens dissenting, J. Breyer joining. After all, "where Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word". *Morissette v. United States*, 342 U.S. 246, 263 (1952). *See also Molzof v. United States*, 502 U.S. 301, 307–308 (1992) (the principle of statutory construction provides that, absent contrary indications, Congress intends to adopt the common law definition of statutory terms). With no clear and easily definable usage of "enterprise" however, no petitioner can defend himself against activity only the government can determine to be racketeering.

The Constitution does not permit a legislature to "set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained, and who should be set at large." *City of Chicago v. Morales*, 527 U.S. at 60, (*citing United States v. Reese*, 92 U.S. 214, 221 (1876)). Yet that is precisely what has happened in this case—and Mr. Patterson respectfully argues his conviction cannot stand. After all, the fact that the application of "enterprise" to street gangs under RICO prosecutions continues to be a disputed argument demonstrates "that the failure of "persistent efforts ... to establish a standard" can provide evidence of vagueness. *Johnson v. United States*, 576 U.S. at 598 (*citing United States v. L. Cohen Grocery Co.*, 255 U.S. 81, 91 (1921)).

B. The government failed to show that two or more persons joined together to pursue any unlawful objective and that there was no functioning cohesive RICO enterprise, thus Mr. Patterson's conviction for a Federal Controlled Substances Act (FCS) conspiracy cannot stand.

Petitioner also was found guilty of a Federal Controlled Substances Act (FCS) conspiracy, alleging that beginning in or about 2008, members conspired to distribute and possess with the intent to distribute 280 grams or more of crack cocaine and non-specific quantities of heroin and marijuana. As argued above under Count 1, and as testified to by several witnesses at trial, there was no evidence of concerted drug sales, shared profits, an organized distribution method or even regular drug sales, and the government failed to show that two or more persons joined together to pursue any unlawful objective. They did not present any evidence that clearly demonstrated ROD was functioning as a cohesive enterprise or that it even had an objective. At no time was any testimony presented showing this group of people were acting in concert or working to advance the objective of a unified group.

C. The government failed to show a functioning RICO enterprise, which coupled with a general lack of sufficient evidence, shows Mr. Patterson's murder conviction cannot stand.

Petitioner was convicted of murder in aid of racketeering for the January 18, 2011 death of Corey Blue. Under this Count, the district court charged that in order to find Mr. Patterson guilty, the government had to prove:

> *First, the existence of an enterprise* as defined in 18. U.S.C., 1959(b)(2) on or about the time period described in the relevant counts (which I may refer to as the Section 1959 enterprise); second, the charged enterprise engaged in or its activities affected, interstate or foreign

> commerce; third, the enterprise engaged in racketeering activity as defined in 18 U.S.C., 1959(b)(1) and 1961(1); fourth, the defendant committed the alleged crime of violence in violation of state or federal law; and fifth, the defendant's purpose in committing the crimes of violence was to gain entrance to, or to maintain, or to increase position in the enterprise.

Emphasis added. First, as argued above, the government failed to prove the existence of an enterprise in this case, such that Petitioner cannot be convicted of this Count. Curiously, the Fifth Circuit found insufficient evidence to connect Counts 13 and 14 (murder of Rodney Coleman) to ROD activity, under similar circumstances. "[T]here is insufficient proof regarding the relationship between the shooting and ROD or the charged conspiracies and thus a failure of proof on how the shooting was in "aid of racketeering." App. 12a-13a. However, no analysis was ever given as to where the proof fell short. Here, the Court's determination that "Deloyd 'punished' Blue in relation to ROD's drug trade" is an overstatement of the testimony at trial, and attributes motives where no enterprise exists. App. 15a.

Moreover, the testimony falls woefully short of proof, violating Mr. Patterson's due process right to be convicted on sufficient evidence. Officer Richard Chambers responded to the scene, and testified that any witnesses were uncooperative. Officer Chambers did clarify that alleged eyewitness Kevin Johnson had only heard gunshots, meaning he could not have witnessed the shooting. Yet Kevin Johnson, Blue's convicted felon cousin, claimed at trial that he heard gunshots and ran outside where he saw Mr. Patterson and Deloyd jump into a car. His trial testimony was directly contradicted by a 911 call that reported this

incident as a drive-by shooting. It also was directly contradicted by the physical evidence at the scene, and Johnson could not explain why there were no bullet holes in the doorframe of the house, considering he testified that Petitioner shot at the house. Jamal Holmes testified that while he was in jail with the Defendants, they admitted their roles in Blue's death. However, it was learned on ATF Agent Doreck's that the statements allegedly made by Byron Jones to Jamal Holmes and Darryl Arnold likely did not happen, as these men were not housed together at the right times. A reasonable factfinder could not have found Mr. Patterson guilty of this count. In addition to the government's failure to prove an enterprise existed, it did not prove that Mr. Patterson killed Corey Blue. There was no physical evidence connecting him to the crime, and the sole eyewitness' testimony was contradicted by all other testimony and evidence presented, and that eyewitness had a definite motive to change his story to point the finger at Petitioner. Mr. Patterson's conviction, based on insufficient evidence and the lack of an enterprise, violates due process and must be corrected.

D. Petitioner adopts by reference the arguments raised by his co-defendants.

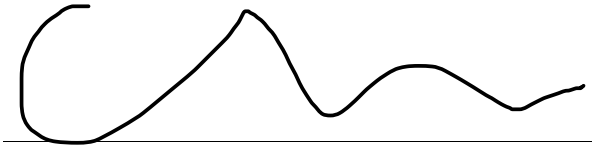
To the extent these arguments do not conflict with Mr. Patterson's, he would respectfully adopt the arguments of his co-defendants, filing petitions separately but stemming from the same direct appeal.

CONCLUSION

The RICO statute does not sufficiently define "enterprise" such that a defendant has adequate notice of what that entails. Moreover, there does not appear to be a consensus as to when unsophisticated criminal activity crosses the line into racketeering, and the application of this vague reasoning means everyday criminals are swept up into prosecutions that are intended for organized groups affecting legitimate businesses. The lower Court's decision broadens this application even further, finding a mere association-in-fact even though according to every fact witness that testified, all acts herein were done individually, and for personal gain. There was no sharing, no pooling of resources, no selling together, and no real knowledge of what the other people were even doing. There was no enterprise, and thus all other counts dependent on that enterprise must also fall. It is well settled that the burden of proof rests with the government, and a defendant is not required to prove his innocence. A court must "guard against dilution of the principle that guilt is to be established by probative evidence and beyond a reasonable doubt". *Estelle v. Williams*, 425 U.S. 501, 503 (1976). There is no clear direction as to the application of "enterprise", and Petitioner respectfully suggests guidance from this Court is warranted.

For the foregoing reasons, this Honorable Court should grant the Petition.

LAW OFFICE OF AUTUMN TOWN, LLC



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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

SIDNEY PATTERSON,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent

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

APPENDIX

A. Opinion of the United States Fifth Circuit Court of Appeals (October 13, 2017) Affirming Petitioner's Conviction on all counts except 13 and 14, and remanding for resentencing in conformity therewith 1a-24a

B. Opinion of the United States Fifth Circuit Court of Appeals (August 12, 2019) Granting Petitioner's second appeal and dismissing counts 3 and 20 and remanding for resentencing in conformity therewith 25a-35a

C. Opinion of the United States Fifth Circuit Court of Appeals (June 23, 2020) Granting Petitioner's Motion for Summary Disposition 36a-37a