Nos. 22-381 and 22-383

In the Supreme Court of the United States

ASHOT YEGIAZARYAN, AKA ASHOT EGIAZARYAN,
Petitioner,

v.

VITALY IVANOVICH SMAGIN, ET AL.,
Respondents.

CMB MONACO, FKA COMPAGNIE MONEGASQUE DE BANQUE,
Petitioner,

v.

VITALY IVANOVICH SMAGIN, ET AL.,
Respondents.

On Petitions for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

To sue under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), a party must allege a "domestic injury." *RJR Nabisco, Inc. v. European Cmty.*, 136 S. Ct. 2090, 2098, 2111 (2016). In a separate proceeding, Respondent Vitaly Smagin, a resident of Russia obtained a more than $92 million domestic judgment issued by a federal district court sitting in California against Petitioner Ashot Yegiazaryan, a resident of California (the "California Judgment"). Smagin later filed this civil RICO suit against Yegiazaryan and several others alleging that the defendants engaged in illegal activity, in violation of RICO, to thwart the execution of the California Judgment. The Ninth Circuit, reversing the district court's dismissal of Smagin's claims for lack of standing, held that Smagin's alleged injury to the California Judgment is a domestic injury for purposes of standing to file a civil RICO action. (CMB App. at 18a-19a.)

The question presented by Petitioners is whether Smagin's Russian residency alone deprives him of statutory standing to bring his civil RICO suit for injuries to the California Judgment.

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INTRODUCTION

This case centers on Petitioner Ashot Yegiazaryan, a former Russian politician turned fugitive on the Interpol Red list who fled Russia before his criminal convictions there and now resides in Beverly Hills, California. In the district court, Respondent Vitaly Smagin, a resident of Russia, alleges Yegiazaryan and his accomplices, including Petitioner CMB Monaco, have collectively engaged in an illegal scheme to prevent Smagin from collecting on his money judgment issued by a federal district court in California against Yegiazaryan (hereafter, the "California Judgment").

Framed in amorphous distinctions of property as tangible or intangible, the Petitioners ask this Court to decide whether alleged injury to the intangible California Judgment is domestic enough under *RJR Nabisco, Inc. v. European Cmty.*, 136 S. Ct. 2090, 2098, 2111 (2016) to confer standing on a foreign person to bring a civil claim under the Racketeer Influenced and Corrupt Organizations Act ("RICO"). The Ninth Circuit held that it was. (CMB App. at 13a.) According to Petitioners, however, the answer depends on where the owner of the judgment resides. Petitioners contend Respondent Vitaly Smagin's alleged economic injury to the *intangible* domestic judgment is not a domestic injury because he is a resident of Russia and therefore his injury is felt in Russia. Neither RICO nor *RJR Nabisco* support Petitioners' arguments.

Petitioners' residency test stems from the Seventh Circuit's opinion in *Armada (Singapore) PTE Limited v. Amcol International Group*, 885 F.3d 1090

(7th Cir. 2018). In *Armada*, the Seventh Circuit denied civil RICO standing to a Singapore corporation stating that "any harm to Armada's intangible bundle of litigation rights was suffered in Singapore[;] [t]hus, the injury is not domestic, and Armada has failed to plead a plausible claim under civil RICO." 885 F.3d at 1095. As described by the Third Circuit, the *Armada* residency test "effectively precludes all foreign plaintiffs alleging intangible injuries from recovering under § 1964(c) regardless of their alleged connection with the United States." *Humphrey v. GlaxoSmithKline PLC*, 905 F.3d 694, 709 (3d Cir. 2018) (internal citations omitted).

First, the Ninth Circuit's analysis and its rejection of the *Armada* residency test is correct and should not be disturbed in this Court. Second, since only three circuit courts have weighed in on this issue in the context of alleged injury to a domestic judgment since *RJR Nabisco* issued in 2016, further guidance from this Court is not warranted at this time. Moreover, because the inquiry into whether a domestic injury is alleged in a particular pleading is necessarily context-specific, an opinion from this Court on the issue presented would not likely extend beyond the unique facts of this particular case. For these reasons, the petitions lack merit and review should be denied.

STATEMENT OF THE CASE

In this case, Respondent Vitaly Smagin, a resident of Russia, brings a civil action under RICO against Petitioner Ashot Yegiazaryan—a Russian fugitive on the Interpol Red list who is residing in Beverly Hills, California—and numerous other alleged coconspirators, including Petitioner CMB Monaco, for their concerted efforts to deprive Smagin of recovering

over $100 million on a money judgment issued by a federal district court sitting in California (the "California Judgment") in a separate action. (CMB App. at 35a-38a.) The California Judgment is secured by a worldwide injunction that Yegiazaryan has violated on several occasions for which he has been sanctioned. (CMB App. at 62a, 81a-82a.) Although Smagin's alleges injury *to* the California Judgment issued in 2016, some pre-judgment background is provided for context into the nature of the initial dispute between Smagin and Yegiazaryan and to explain the basis for Smagin's U.S. legal proceedings against Yegiazaryan, including this RICO action.

I. Smagin Obtains The California Judgment And A Worldwide Injunction In The Enforcement Action And Yegiazaryan Colludes With Others To Frustrate Enforcement Of The California Judgment.

From 2003 to 2009, Yegiazaryan committed fraud against Smagin and stole shares in a joint real estate project worth more than $84 million from him. (CMB App. at 51a.) In 2010, Yegiazaryan and his accomplices, Artem Yegiazaryan and Vitaly Gogokhia, were criminally indicted in Russia for the fraud perpetrated against Smagin. (*Id.* at 52a.) All three fled Russia to avoid criminal prosecution. (*Id.*) Yegiazaryan was later convicted in Russia for his crimes in absentia and sentenced to prison. (*Id.*) Yegiazaryan now resides in Beverly Hills with his cousin Suren where he continues his criminal schemes. (*Id.*)

To recover the monies stolen from him by Yegiazaryan, Smagin pursued civil remedies against

Yegiazaryan in the London Court of International Arbitration (LCIA) and in November 2014 obtained an arbitration award against him for $84,290,064.20 (the "London Award"). (*Id.* at 51a-52a.) In a separate U.S. proceeding from this one referred to by the parties as the "Enforcement Action," a U.S. district court in California where Yegiazaryan resides confirmed the London Award and entered the California Judgment in favor of Smagin and against Yegiazaryan for $92 million plus interest. (CMB App. at 62.) Before that judgment was entered in 2016, the district court issued an injunction order prohibiting Yegiazaryan from concealing or dissipating his assets, including "the amounts received or to be received by Respondent Yegiazaryan or on his behalf and control in payment or satisfaction of an arbitration award from Suleyman Kerimov." (*Id.* at 54a.)

Shortly after the injunction issued and without notice to Smagin, Yegiazaryan settled the dispute with Kerimov for $198 million (the "Kerimov Award"). (*Id.* at 55a.) To conceal the settlement from Smagin, Yegiazaryan left the funds in the possession of his law firm while he created a trust along with a complex web of nominee entities with the aid of various financial advisors and institutions, including CTX Treuhand in Liechtenstein, CMB Monaco in Monaco, and Savannah Advisors in Nevis, to aid in the further concealment of the Kerimov Award settlement funds from Smagin. (*Id.* at 56a.)

With his complex structure set up and under his absolute control from Beverly Hills, Yegiazaryan directed his law firm to transfer $188,146,102.08 of the Kerimov Award settlement to Savannah Advisors' Monaco Account held with CMB Monaco. (*Id.*) Smagin alleges CMB Monaco knew of Yegiazaryan's illegal

conduct, but nevertheless aided Yegiazaryan in his schemes. (*Id.*)

On learning of the Kerimov Award settlement by chance after intervening in Yegiazaryan's separate divorce proceeding in California, Smagin obtained a worldwide preliminary injunction in the enforcement action that restrained Yegiazaryan and others working with him from concealing or dissipating the proceeds of the Kerimov Award and settlement. (*Id.* at 60a-61a.) The district court granted Smagin's motion stating in its order:

> The evidence demonstrates that Plaintiff Smagin will suffer irreparable harm if the current injunction is not expanded to encompass Defendant Yegiazaryan's worldwide reach ... Plaintiff Smagin has provided this Court with testimony from Defendant Yegiazaryan himself where he admits to using nominees and off-shore companies to conceal his assets.

(*Id.*)

After the district court confirmed the London Award and entered the California Judgment in March 2016, the court entered a post-judgment injunction prohibiting Yegiazaryan from disposing of any proceeds up to $115 million and enjoining Yegiazaryan from transferring the Kerimov settlement funds held by CMB Monaco without prior authorization from the court. (*Id.* at 62a-63a.)

Yegiazaryan's efforts to thwart Smagin's collection on the California Judgment did not cease however. Instead, Yegiazaryan hatched numerous additional schemes to either place the assets of the Alpha

Trust beyond Smagin's reach, render himself insolvent, (*Id.* at 66a-68a), or declare Smagin insolvent so he could gain control of the California Judgment through a Chapter 15 bankruptcy proceeding. *See, e.g.*, Order Granting Relief in Aid of Foreign Proceeding at 4 [Doc. 84], *In re Smagin*, No. 2:21-bk-15342-BB (C.D. Bankr.) (filed June 30, 2021) (providing that Ratnikov "shall administer and exercise all of the [Smagin's] rights and powers concerning or relating to the [Enforcement Action]").[1]

II. Smagin Pursues This RICO Action And The Defendants Challenge Smagin's Standing.

In December 2020, Smagin brought this civil RICO action alleging the defendants were all part of a collective enterprise constituted for the improper purpose of stealing, hiding, and protecting Yegiazaryan's ill-gotten gains to thwart Smagin's execution of the California Judgment. (CMB App. at 35a-38a.)

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[1] While this appeal has been pending, Ratnikov was dismissed as financial manager in the Russian bankruptcy proceedings and a new foreign representative appointed in the Chapter 15 bankruptcy case because "E.N. Ratnikov acts upon the instructions of A.G. Yegiazaryan" and therefore "significant doubts about the integrity and independence of [Ratnikov]" existed. Exhibit C to Supplemental Affidavit of Nicholas Kennedy in Support of Motion to Terminate Recognition of Foreign Proceedings at 19, 22, *In re Smagin*, No. 2:21-bk-15342-BB (C.D. Bankr.) (filed Sept. 12, 2022) [Doc. 205-3]. The Court may take judicial notice of the publicly available proceedings in the bankruptcy court. *See Shuttlesworth v. Birmingham*, 394 U.S. 147, 157 (1969); *United States v. Pink*, 315 U.S. 203, 216 (1942); *accord* Fed. R. Evid. 201.

Yegiazaryan moved to dismiss the claims against him on various grounds including the failure to allege a domestic injury. The district court granted Yegiazaryan's motion and dismissed Smagin's claims against all defendants stating that "[b]ecause Smagin fails to adequately plead a domestic injury in support of his two RICO claims, Smagin lacks standing to sustain his claims." (CMB App. at 24a-31a.)

The Ninth Circuit reversed, holding that "Plaintiff's well-pleaded allegations include a domestic injury" because "for purposes of standing under RICO, the California Judgment exists as property in California." The Ninth Circuit reasoned that

> [t]he rights that the California Judgment provides to Plaintiff exist only in California, the place where he can obtain a writ of execution against or obtain discovery from Ashot. Indeed, Plaintiff obtained the judgment in California, and that is where Plaintiff desires to exercise the rights conferred by the California Judgment. It would make no sense to conclude that the California Judgment exists as property in Russia, because the judgment grants no rights whatsoever in Russia.

(CMB App. at 12a, 19a.)

Petitioners now seek review of the Ninth Circuit's opinion in this Court. Such review is not warranted.

REASONS FOR DENYING CERTIORARI

I. The Decision Below Is Correct.

A. Injury To The California Judgment Is A Domestic Injury.

RICO provides that "[a]ny person injured in his business or property by reason of a violation of [18 U.S.C. § 1962] may sue therefore in any appropriate United States district court …." 18 U.S.C. § 1964(c). RICO defines "person" to "include any individual or entity capable of holding a legal or beneficial interest in property." 18 U.S.C. § 1961(3). Due to the breadth of reach occasioned by RICO's plain language, this Court imposed a "domestic injury" requirement for civil actions under § 1964(c) of RICO to account for the judicial presumption against extraterritoriality application of U.S. laws. *RJR Nabisco*, 136 S. Ct. at 2106. The Court found that, despite its "conclusion that the presumption [against extraterritoriality] has been overcome with respect to RICO's substantive prohibitions" in § 1962, the private right of action in § 1964(c) does not rebut the presumption; therefore, to maintain a private RICO action, a plaintiff must allege and prove a domestic injury." *Id.* at 346. The Court reasoned that "providing a private remedy for foreign conduct creates a potential for international friction beyond that presented by merely applying U.S. substantive law to that foreign conduct." *Id.* at 346-47.

The foreign sovereign plaintiffs' waiver of claims for domestic injuries in *RJR Nabisco* was dispositive in that case and crystalized the fact that the plaintiffs' alleged injuries—including, lost revenues to foreign state-owned businesses, lost tax revenues, currency instability, and increased cost for law enforcement—were purely foreign injuries. *Id.* at 2096

("Respondents' remaining RICO damages claims therefore rest entirely on injury suffered abroad and must be dismissed."). Nevertheless, the Court stated that its decision to exclude foreign injuries from reach through § 1964(c) was informed by its decision in *F. Hoffmann-La Roche Ltd. v. Empagran S.A.*, 542 U.S. 155, 158-59 (2004), which involved dismissal of antitrust claims asserted on behalf of a foreign person solely against foreign manufacturers of vitamins for price fixing that necessarily occurred exclusively outside the United States. *See RJR Nabisco*, 579 U.S. 352-53 (citing *Empagran S.A.*, 542 U.S. 155, 158-59 ("Respondents have never asserted that they purchased any vitamins in the United States or in transactions in United States commerce, and the question presented assumes that the relevant 'transactions occurr[ed] entirely outside U.S. commerce … .'")). Finally, in deciding the case, this Court counseled against reading the provisions of RICO as meaning foreign persons may not sue under RICO. *RJR Nabisco*, 136 S. Ct. 2090, n. 12.

Here, Smagin obtained recognition of his arbitration award in California because that is where the judgment debtor resides. And in this case, Smagin's civil RICO claims are centered on California and include allegations of conduct directed to and from California—*i.e.*, injury to a California Judgment against a California judgment debtor and alleged RICO violations originating and directed from California. (*E.g.*, CMB App. at 45a ("Defendants conducted their wrongful activities in California … in part as relates to Plaintiff Smagin's action centered here relating to the California Judgment."); *Id.* at 76a-78a (Yegiazaryan directed letters sent to CMB Monaco directing it to delay legal proceedings); *Id.* at 98a ("CMB

Bank agreed to create and maintain the Monaco Account to secret Mr. Yegiazaryan's assets and shield the funds from Plaintiff's enforcement action.").)

Smagin's RICO injury arises in California because the California Judgment was issued in California, by a district court sitting in California, and California is the only jurisdiction in which the California Judgment can be enforced. Similarly, as alleged in the Complaint, the injury *originates* in California where Yegiazaryan conceived his plan with the other defendants in this case to delay and prevent enforcement of the California Judgment. (*Id.* at 37a-38a.) Accordingly, injury to the California Judgment is a domestic injury for purposes of civil RICO standing as held by the circuit court below. Clearly, Congress intended RICO to cover domestic conduct causing domestic injuries regardless of the plaintiff's residency status. (CMB App. at 12a-13a.)

Accordingly, the Ninth Circuit's ruling that Smagin's complaint pleads a sufficient domestic injury was correct.

B. The *Armada* Residency Test That Petitioners Advocate For Is Not Supported By RICO Or *RJR Nabisco.*

Petitioners argue that review in this Court is warranted because the Ninth Circuit should have adopted the Seventh Circuit's residency test as stated in *Armada (Singapore) PTE Ltd. v. Amvol, Int'l Corp.,* 885 F.3d 1090, 1094 (7th Cir. 2018). The residency test announced in *Armada* focuses first on the characterization of the property injured. If the injured property is intangible, then the rule in *Armada* is that the residency of the plaintiff is determinative of whether the alleged injury is foreign or domestic. *Id.* (providing

that "a party experiences or sustains injuries to its intangible property at its residence" and that all judgments are intangible assets).

The residency test in *Armada* was derived from the general economic-injury rule that provides that economic injuries are felt at a person's residence, which courts have employed in non-RICO contexts, including forum non-conveniens and choice-of-law determinations. *See Armada*, 885 F.3d at 1094-95 (citing *Kamel v. Hill-Rom Co.*, 108 F.3d 799, 805 (7th Cir. 1997); *CMACO Auto. Sys. Inc. v. Wanxiang Am. Corp.*, 589 F.3d 235, 246 (6th Cir. 2009); *Engine Specialties, Inc. v. Bombardier Ltd.*, 605 F.2d 1, 19 (1st Cir. 1979)). Modified for deployment as the arbiter of standing under RICO, the Seventh Circuit created an artificial distinction between economic injury to tangible property and economic injury to intangible property. In so doing, the *Armada* residency test "effectively precludes all foreign plaintiffs from alleging intangible injuries from recovering under § 1964(c) regardless of their alleged connection with the United States." *Humphrey*, 905 F.3d at 709. *Armada* is not supported by RICO or this Court's opinion in *RJR Nabisco*.

RICO itself does not distinguish between foreign or domestic plaintiffs. To the contrary, the civil RICO statute "provides a cause of action to '*[a]ny person* injured in his business or *property*.'" 18 U.S.C. § 1962(c). And again, in *RJR Nabisco* this Court counseled against a reading of RICO as depriving foreign persons of standing simply because they are foreign. *RJR Nabisco*, 136 S. Ct. 2090, n. 12.

In the decision below, the Ninth Circuit ably observed that the *Armada* test departs from *RJR Nabisco* because the Seventh Circuit test focuses on

the location of the Plaintiff as dispositive instead of the injury if the harm is to intangible property:

> [t]he Armada test strays from the Supreme Court's decision [in *RJR Nabisco*] in two ways. First, the test makes the location of the *plaintiff* dispositive when the Supreme Court stated that it is the location of the *injury* that is relevant to standing. *RJR Nabisco*, 579 U.S. at 346. Second, the Seventh Circuit's test effectively truncates the standing requirement set forth in *RJR Nabisco* if the harm is to intangible property. Rather than asking whether a plaintiff alleges 'a domestic injury to its business *or property*,' as the Supreme Court described, *id.* (emphasis omitted and added), the Seventh Circuit requires that a plaintiff allege a domestic injury to its business only, with the location of that business defined by the plaintiff's residence.

(CMB App. at 18a.) Similarly, the Third Circuit recognized that the *Armada* test is too inflexible to be useful and conflicts with this Court's recognition in *RJR Nabisco* that the RICO protections were not limited to domestic enterprises:

> [W]e think the *Armada* rule is too inflexible to be useful in resolving cases where the nature of the injured property interest in not self-evident.
>
> *Armada's* residency-based rule also effectively precludes all foreign plaintiffs alleging intangible injuries from recover-

> ing under § 1964(c) regardless of their alleged connection with the United States. It cannot be the case that the mere fact that a loss is economic means that foreign corporations are unable to avail themselves of the protections of civil RICO, even in cases where all of the actions causing the injury took place in the United States. There is no evidence that Congress meant to so preclude foreign corporations from the protections offered by § 1964(c) and doing so conflicts with the Supreme Court's recognition that 'Congress did not limit RICO to domestic enterprises.'

Humphrey, 905 F.3d at 709 (internal citations omitted).

Not only does the *Armada* residency test fail to tether itself to statutory language or to any edict from this Court, the foundations the Seventh Circuit relied on to generate this new rule do not support it. For example, reading *Bascuñán v. Elasca*, 874 F.3d 806 (2d Cir. 2017) ("*Bascuñán I*") as turning on the plaintiffs' allegation of injury to tangible property, the Seventh Circuit manufactured an inverse rule that focuses on the plaintiff's residence if the alleged injury is to intangible property. *See Armada*, 885 F.3d at 1093-95 (citations omitted). After the *Armada* decision issued, however, the Second Circuit impliedly rejected the *Armada* residency rule in its 2019 *Bascuñán II* opinion clarifying that in *Bascuñán I* it rejected "the district court's residency test." *Id.* at 116 (citing *Bascuñán I*, 874 F.3d at 814).

The *Armada* residency-based test also finds its strained genesis in a collection of unrelated appeals of

lower court decisions involving forum non-conveniens and choice-of-law determinations. *See Armada*, 885 F.3d at 1094-95 (*citing Kamel v. Hill-Rom Co.*, 108 F.3d 799, 805 (7th Cir. 1997) (balancing forum non-conveniens factors)); *CMACO Auto. Sys. Inc. v. Wanxiang Am. Corp.,* 589 F.3d 235, 246 (6th Cir. 2009) (reviewing Michigan borrowing statute to determine which state's limitations period applies); *Engine Specialties, Inc. v. Bombardier Ltd.*, 605 F.2d 1, 19 (1st Cir. 1979) (conflict of law analysis applying most significant relationship test under Restatement Second of Conflict of Laws §§ 145, 146 (1971)). In these cases cited in *Armada*, the courts reviewed the location where the injury is felt as part of just one factor among many and only determined that *economic* injuries are felt in a plaintiff's residence or principal place of business. *Kamel*, 108 F.3d at 803-05 (holding district court reasonably balanced private and public interests dismissing case on forum non-conveniens ground and stating that Saudi Arabia had "most significant connection" to the case under Indiana choice-of-law rules); *CMACO Auto. Sys.*, 589 F.3d at 246 (applying Michigan borrowing statute and the Michigan Court of Appeals' "economic impact" analysis and concluding the California limitations period applied because the "economic injury suffered by [California corporation] … was clearly felt at its headquarters."). These non-RICO cases do not distinguish between economic injuries to tangible or intangible property, nor do any of those cases suggest it is appropriate to import the rules in those non-RICO cases into the domestic-injury inquiry under RICO.

In the end, the *Armada* rule is little more than an artificial slicing of the general (residency-based) economic-injury rule based on the characterization of

the alleged property injured as tangible or intangible. The problem with the rule is not that it finds a plaintiff's residence relevant to the inquiry, but that it makes the plaintiff's residence dispositive. The better approach to the domestic-injury inquiry is to focus on the actual injury alleged rather than on the plaintiff's residence as the more fulsome approaches of the Second, Third, and Ninth Circuits permit.

II. This Case Is An Exceptionally Poor Vehicle For Addressing The Question Presented.

Petitioners frame their questions presented as concerning the nature of a foreign person's injury to *intangible* property. (Yegiazaryan Pet. at I; CMB Pet. at i.) This case is not the proper vehicle to address the question as framed. All this case presents is whether injury to a judgment issued by a federal district court against a California resident may be considered a domestic injury under the particular facts of this case. As reflected in the abbreviated statement of the case above and in Smagin's well-pleaded complaint, the facts here are extraordinary and an inappropriate spring board from which to make or clarify U.S. law.

Again, this case involves a Russian criminal hiding in Beverly Hills seeking to conceal his assets from Smagin and thwart collection efforts on the California Judgment in California where Yegiazaryan resides through a complex web of financial instruments and personal relationships. Petitioners concede that much of the alleged enterprise conduct that Smagin claims violates RICO occurred in and/or was directed from California.

In addition, there are numerous categories of intangible properties, including patents, trade names,

copyrights, and trade secrets. The facts of this case are ill-equipped to inform the application of Petitioners' proposed residency test to other cases involving other types of intangible properties. This is primarily because whether an alleged injury to property may be considered foreign or domestic for purposes of RICO standing requires review of the particular facts of each case. And that is precisely how the Second, Third, and Ninth Circuits have addressed the issue in the cases before them. Not only do the unique facts of this case counsel against review in this Court, but the supposed "deep" divide among the circuit courts claimed by Petitioners is also lacking.

III. Further Percolation In The Circuit Courts Is Warranted In Light Of The Developing Case Law.

Contrary to Petitioners' arguments, the circuit courts are not deeply divided on the domestic-injury inquiry under RICO. Only four of the thirteen circuit courts (i.e., the Second, Third, Seventh, and Ninth Circuits) have even addressed the issue since *RJR Nabisco* issued in 2016. And only three circuit opinions address the RICO domestic-injury inquiry in the context of a domestic judgment. (CMB App. at 4a); *Cevdet Aksut Ve Ogullari Koll.Sti v. Cavusoglu*, 756 Fed. App'x 119, 123-24 (3d Cir. 2018); *Armada*, 885 F.3d 1090. Notably, to date, no other circuit has expressly adopted *Armada's* inflexible residency-based test that Petitioners advocate for here. Unanimous rejection of the *Armada* residency test by three of the remaining twelve circuit courts does not establish a chasm of division among the circuit courts warranting review in this Court.

The Petitioners' arguments aimed at establishing a deep divide among the circuit court are also premised on their mischaracterization of the Ninth Circuit's opinion below. Both Petitioners contend that the Ninth Circuit imposed a "defendant-centric" analysis to the domestic-injury inquiry. (Yegiazaryan Pet. at 9; CMB Pet. at 19.) They are wrong. The Ninth Circuit instead focused on the nature of the injured property, here the California Judgment. (CMB App. at 12a ("The key question, then, is *where* the California Judgment exists as property." (emphasis added)).) Again, the below circuit court concluded that injury to the California Judgment occurs in California because the rights the California Judgment provides exist only in California "where [Smagin] can obtain a writ of execution against or obtain discovery from [Yegiazaryan]." (*Id.*); *accord* Fed. R. Civ. P. 64 and 65; Cal. Code Civ. P. 695.010. The Ninth Circuit's statement that its conclusion regarding domestic injury was "*bolstered* by the fact that much of the conduct underlying the alleged injury also occurred in, or was targeted at, California" does not suggest that the court found a domestic injury *because* the defendant's illegal conduct occurred in California. (*Id.* (emphasis added).) In any event, the Ninth Circuit was correct to consider the defendant's conduct in this case to determine whether Smagin's claims were solely aimed at foreign conduct. After all, "providing a private civil remedy for foreign conduct creates a potential for international friction beyond that presented by merely applying U.S. substantive law to that foreign conduct." *See RJR Nabisco*, 579 U.S. at 346-47.

Petitioners further point to the Third Circuit's rejection of *Armada* in *Humphrey*. But *Humphrey* did not involve a domestic judgment as is the case here

and in *Armada*. In *Humphrey*, the plaintiff was a Chinese corporation whose business involved assisting "foreign companies doing business in China with American anti-bribery compliance." 905 F.3d 694, 696 (3d Cir. 2018). In that case, the plaintiff complained that its *business* was destroyed by defendant's bribery conduct in China. *Id.* at 697. Because plaintiff's business was solely in China, any injuries to that business, including its alleged loss of goodwill, could not be considered injuries occurring in the U.S. even though some of the plaintiff's customers were in the U.S. *Id.* at 707-08. The *Humphrey* case did not address the nature of an injury to a U.S. judgment against a U.S. resident as is the issue presented to this Court.

As noted above, to date, only two other circuit decisions have addressed RICO standing in the context of alleged injury to a domestic judgment in favor of a foreign plaintiff, *i.e.*, *Armada* and *Cevdet*. Those cases both found that the plaintiff's foreign residence is dispositive of the domestic-injury inquiry because injuries to intangible judgments are felt at the foreign plaintiff's residence. *Cevdet*, 756 Fed. App'x at 123-24; *Armada*, 885 F.3d at 1095.

Although *Armada* and *Cevdet* are both incorrectly decided for the reasons stated by the Ninth Circuit, the score in the early innings of this nascent issue stemming from this Court's 2016 *RJR Nabisco* opinion stands only at two to one with ten other circuit courts yet to take a swing at whether injury to a domestic judgment is a domestic injury under RICO. On this score, further percolation of this domestic-injury issue in the circuit courts is warranted before it is taken up by this Court.

Finally, Petitioners contend the question presented is important because RICO is a drastic remedy

that tips the scales in favor of plaintiffs due to its allowance for treble damages and attorney's fees. (CMB Pet. at 21-23; Yegiazaryan Pet. at 13-15.) The argument is no basis to grant review of this case as the questions presented only addresses the requisite initial pleading standards in a civil RICO case, not the propriety of Congress's allowance of damages and fees. In any event, Petitioners' dissatisfaction with the civil RICO remedies are better directed towards Congress, not this Court.

CONCLUSION

The petitions for writ of certiorari from the Ninth Circuit's opinion in this case should be denied.

Respectfully submitted,

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