No. 22-381

IN THE

Supreme Court of the United States

ASHOT YEGIAZARYAN, AKA ASHOT EGIAZARYAN,

Petitioner,

v.

VITALY IVANOVICH SMAGIN, *et al.*,

Respondents.

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

REPLY BRIEF

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REPLY IN SUPPORT OF PETITION FOR CERTIORARI

I. The Decision Below Deepens The Acknowledged Split

Respondent does not dispute that the courts of appeals are deeply divided over whether, and under what circumstances, a foreign plaintiff can plead a domestic RICO injury to intangible property. See Opp. 10-11 (discussing the conflict between the Ninth and Seventh Circuits); *id.* at 12-13 (discussing the conflict between the Seventh and Third Circuits); *id.* at 13-14, 16 (acknowledging Second Circuit's decision in *Bascuñán* v. *Elasca*, 874 F.3d 806 (2d Cir. 2017) as deepening split). Instead, Respondent seeks to defend the decision below on the merits, and then wrongly seeks to diminish a three-way split into a two-way split by aligning the decision below with the decision from the Third Circuit. Neither assertion passes muster.

A. Respondent's primary argument is that certiorari should not be granted because the Ninth Circuit's decision is "correct." Opp. 8-10. But in describing why the decision below is correct, Respondent highlights all the ways in which the Ninth Circuit departed from this Court's guidance in *RJR Nabisco, Inc.* v. *Eur. Cmty.*, 579 U.S. 325 (2016).

First, defending the Ninth Circuit's reasoning, Respondent says that his injury is domestic, and thus cognizable under RICO, because (i) "the judgment debtor [Petitioner] resides" in California and any

judgment rights exist there, and (ii) the "civil RICO claims are centered on . . . allegations of conduct directed to and from California." Opp. 9; see also Pet. App. 10a-11a (decision below holding the same). But under *RJR Nabisco*, whether or not a foreign plaintiff such as Smagin suffers a cognizable "domestic" injury turns on whether the "injuries [are] suffered outside the United States," 579 U.S. at 329, not where the defendant's alleged racketeering activity took place or where he is subject to execution on the judgment. Indeed, it is this aspect of the Ninth Circuit's decision—focusing principally on the defendant—that so plainly departs from the reasoning of the Third Circuit. Compare *Humphrey* v. *GlaxoSmithKline PLC*, 905 F.3d 694, 702 (3d Cir. 2018) ("[T]he location of a RICO injury depends on where the plaintiff 'suffered the injury'—*not where the injurious conduct took place*." (emphasis added)).

Second, Respondent says the Ninth Circuit must be right because "[c]learly, Congress intended RICO to cover domestic conduct causing domestic injuries regardless of the plaintiff's residency status." Opp. 10. This argument just begs the ultimate question, and the authority relied upon—footnote 12 of this Court's decision in *RJR*, see Opp. 9, 11—does not solve the problem. That footnote explains that the holding in *RJR Nabisco* "does not mean that foreign plaintiffs may not sue under RICO. The point is that RICO does not include the explicit foreign-oriented language" included in statutes such as the Clayton Act. *RJR Nabisco*, 579 U.S. at 353 n.12. But had the Ninth Circuit adopted a different holding below, one more

aligned with the Third or Seventh Circuit, that would not foreclose foreign plaintiffs for suing under RICO for injury to *tangible* property located in the United States. But this case concerns *intangible* property, which does not permit identification by physical location. See Pet. 7-8 (citing Aaron D. Simowitz, *Siting Intangibles*, 48 N.Y.U. J. Int'l L. & Pol. 259 (2015)).

B. Respondent also denies that the decision below created a *further*, three-way split. Opp. 16-18. That position is not only wrong but also irrelevant. This Court routinely grants certiorari in matters concerning the extraterritorial application of federal law even where only two circuits have divided, given the sensitivity implicit in, and importance of resolving, splits over the foreign application of American law. *E.g.*, *RJR Nabisco*, 579 U.S. at 325 (resolving split between two circuits); *Kiobel* v. *Royal Dutch Petroleum Co.*, 569 U.S. 108 (2013) (same); see also *Nestlé USA, Inc.* v. *Doe*, 141 S. Ct. 1931 (2021) (resolving two-way split among three circuits).

Regardless, Respondent's description of the circuit split is incorrect. The decision below undoubtedly creates a three-way split: although the Ninth and Third Circuits both apply multi-factor analyses, those tests have produced polar-opposite results in judgment-injury cases like this one. See Pet. 12 (discussing *Cevdet Aksut Ve Ogullari Koll.Sti* v. *Cavusoglu*, 756 F. App'x 119, 124 (3d Cir. 2018), which, applying the Third Circuit's published decision in *Humphrey*, held that injury to a foreign plaintiff's U.S. judgment was not domestic in nature). Indeed, the district court here, applying the Third Circuit's *Humphrey* test, found that

the injury suffered by foreign-domiciled Smagin was not properly "domestic" in nature—a holding the Ninth Circuit reversed in full below. Pet. App. 25a-29a. The upshot is clear: the decision below clashes not only with the Seventh Circuit as set forth in *Armada*, see Pet. 11 (discussing *Armada (Sing.) PTE Ltd.* v. *Amcol Int'l Corp*, 885 F.3d 1090 (7th Cir. 2018)) but also with the Third Circuit.

Seeking to construe the split as a lopsided one, Respondent invokes the Second Circuit's decision in *Bascuñán*. See Pet. 13. But *Bascuñán* only highlights the three-way divide. Respondent suggests that *Bascuñán* "reject[ed] the *Armada* residency rule." Opp. 13; see also *id.* at 16. Not so. Rather, relying on prior Second Circuit decisions, including *Atlantica Holdings* v. *Sovereign Wealth Fund Samruk-Kazyna JSC*, 813 F.3d 98 (2d. Cir. 2016), *Bascuñán* suggested that intangible injuries generally occur at the plaintiff's *residence*—just as *Armada* held. *Bascuñán*, 874 F.3d at 823 ("The injury alleged in *Atlantica Holdings* involved the diminished value of ownership interest in a company, for which the clear locational nexus was the shareholder's place of residence."). Moreover, *Bascuñán* is in line with cases arising in other contexts—such as *forum non conveniens* and conflicts of laws—holding that intangible injuries are typically suffered at the place of residence, not the situs of the asset. See, *e.g.*, *Kamel* v. *Hill-Rom Co., Inc.*, 108 F.3d 799, 805 (7th Cir. 1997) (*forum non conveniens*); *CMACO Auto. Sys., Inc.* v. *Wanxiang Am. Corp.*, 589 F.3d 235, 246 (6th Cir. 2009) (choice of law); *Engine Specialties, Inc.* v.

Bombardier Ltd., 605 F.2d 1, 19 (1st Cir. 1979) (conflict of laws).

Lastly, Respondent wrongly suggests that Petitioner endorses the Seventh Circuit's *Armada* test. Opp. 1, 10. As explained in the Petition, however, Petitioner would prevail under either the Seventh Circuit's *Armada* rule or the Third Circuit's application of *Humphrey*—so Respondent is wrong to suggest that Petitioner "advocates" for *Armada*. *Supra* p. 3-4 (discussing *Cevdet Aksut*, 756 F. App'x at 124 and the district court decision below); see also Pet. 12-13. Besides, the question of the proper test to apply is a merits issue. Respondent's queries as to whether *Armada*'s residency-based test is or is not the proper doctrinal test ably demonstrates why the petition should indeed be granted.

II. This Case Presents An Ideal Vehicle

Respondent's vehicle concerns are passing strange. *First*, Respondent argues that this case is an "exceptionally" poor vehicle because it involves only one kind of intangible property—injuries to judgments. Opp. 15.

So what? This will be true in any case brought to this Court's attention—most, if not all, intangible-asset RICO cases allege injury to one particular type of intangible property. See, *e.g.*, *Armada*, 885 F.3d at 1093 (alleging only injury to a "judgment and other claims"); *Cevdet*, 756 F. App'x at 123-24 (same); *Humphrey*, 905 F.3d at 702 (alleging only injury to "intangible business interests").

Under Respondent's theory, the Court should abstain from resolving an important circuit split until a unicorn case presents itself that combines a bevy of intangible rights—patents, domesticate judgments, business reputation, and the like. See Pet. 8. There is no reasonable prospect of this ever occurring, and Respondent provides no reason to wait. Indeed, the Court can and should simply decide this case and resolve the circuit split that this case implicates. If other intangible assets raise distinguishing characteristics, those could be addressed subsequently by the courts of appeals or this Court. It is no impediment to resolving the circuit split presented.

Second, Respondent tries to cast this case as involving "unique facts." Opp. 16. To the contrary, this case's facts—injury to a domesticated judgment—are routinely present in RICO cases, and has led to multiple appellate decisions, including the very decisions creating the split here. See *Armada*, 885 F.3d at 1093; *Cevdet*, 756 F. App'x at 123-24; Pet. App. 2a. Moreover, the decision below invites even more foreign plaintiffs to file these RICO judgment claims in the Ninth Circuit, as it is the only appellate court to date that has allowed such a claim to proceed past the pleadings and into discovery. Compare Pet. App. 2a (reviving foreign Respondent's RICO judgment claim), with *Armada*, 885 F.3d at 1093 (rejecting foreign plaintiff's RICO judgment claim) and *Cevdet*, 756 F. App'x at 123-24 (same).

III. Further Percolation Is Unnecessary

Finally, there is no need to wait for "further percolation." Opp. 16. As Respondent acknowledges, four separate courts of appeals have weighed in with published opinions, *id.*, and many other district-court rulings have issued in reliance on the courts of appeals, see, *e.g.*, *Ramiro Aviles* v. *S & P Glob., Inc.*, 380 F. Supp. 3d 221, 267 (S.D.N.Y. 2019); *Martin Hilti Fam. Tr.* v. *Knoedler Gallery, LLC*, 386 F. Supp. 3d 319, 347 (S.D.N.Y. 2019); *Unigestion Holdings, S.A.* v. *UPM Tech., Inc.*, 412 F. Supp. 3d 1273 (D. Or. 2019); *MedImpact Healthcare Sys., Inc.* v. *IQVIA Inc.*, 2020 WL 5064253, at *26 (S.D. Cal. Aug. 27, 2020); *Nuevos Destinos, LLC* v. *Peck*, 2019 WL 6481441, at *18 (D.N.D. Dec. 2, 2019); *Catano* v. *Capuano*, 2019 WL 3890343, at *4 (S.D. Fla. May 28, 2019); *Bandurin* v. *Aeroflot Russian Airlines*, 2020 WL 362781, at *10 (N.D. Ill. Jan. 22, 2020).

Moreover, the circuits have expressly stated that they disagree with each other, meaning the split will not resolve itself. And each circuit has produced a different test—including a brightline rule and two multifactor balancing tests—which gives the Court ample doctrinal angles to consider in fashioning the correct rule. See Pet. 8 (Seventh Circuit's bright-line rule); *id.* at 9 (Third Circuit's plaintiff-centric balancing test); *id.* at 10 (Ninth Circuit's defendant-centric balancing test). These differences among the circuits are outcome-dispositive. There is no need for further percolation and forum-shopping.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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