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 MONÉGASQUE DE BANQUE,
Petitioner,

v.

VITALY IVANOVICH SMAGIN, *et al.*,
Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT BRIEF FOR PETITIONERS

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QUESTION PRESENTED

Whether a foreign plaintiff states a cognizable civil claim under the Racketeer Influenced and Corrupt Organizations Act when it suffers an injury to intangible property, and if so, under what circumstances.

PARTIES TO THE PROCEEDING

Petitioners Ashot Yegiazaryan and CMB Monaco, formerly known as Compagnie Monégasque de Banque, were defendants in the district court and appellees below. Each filed a petition for certiorari, which this Court granted and consolidated.

Respondent Vitaly Smagin was the plaintiff in the district court and appellant below.

The other respondents are the remaining defendants below. They are: Alexis Gaston Thielen, Suren Yegiazaryan, Artem Yegiazaryan, Stephan Yegiazaryan, Vitaly Gogokhia, Natalia Dorzortseva, Murielle Jouniaux, Ratnikov Evgeny Nikolaevich, Prestige Trust Company, and H. Edward Ryals.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Petitioner CMB Monaco hereby states that it is a wholly-owned subsidiary of Mediobanca, S.p.A. No publicly-held entity owns 10% or more of the stock of Mediobanca, S.p.A.

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INTRODUCTION

In *RJR Nabisco, Inc.* v. *European Community*, this Court held that, to maintain a private cause of action under RICO, a plaintiff must "allege and prove a *domestic* injury." 579 U.S. 325, 346 (2016) (emphasis in

original). As the plaintiffs there did not allege a domestic injury, however, *RJR Nabisco* did not consider "[t]he application" or scope of the "domestic injury" rule. *Id.* at 354.

This case picks up where *RJR Nabisco* left off. Here, Respondent Smagin alleges that Petitioners violated RICO by interfering with his attempts to collect on an arbitration award rendered in London, concerning a Russian real-estate transaction between Russian individuals. Although he is a Russian resident with no alleged connection to the U.S., Smagin contends that he suffered a "domestic" injury because the foreign arbitration award is unpaid and a U.S. court recognized that arbitration award and entered judgment against one of the alleged members of the RICO scheme, petitioner Ashot Yegiazaryan. The district court dismissed the case for lack of a domestic injury, but the Ninth Circuit, dividing with the Third and Seventh Circuits, held that his injuries were domestic.

This Court should reverse. RICO's text and structure, as well as relevant decisions of this Court, all establish that the private cause of action remedies only economic injuries, and a plaintiff necessarily suffers that injury at its residence. Relevant common-law choice-of-law principles in place at the time of RICO's adoption further confirm the point. Moreover, even if RICO permits consideration of whether there has been injury to property held by the plaintiff, a foreign-domiciled plaintiff cannot make out the requisite "domestic injury" based on a claim of injury to an award

or judgment, because injuries to intangible property of this nature are felt at the plaintiff's domicile. The Court should therefore reverse.

OPINIONS BELOW

The opinion of the court of appeals (J.A. 1a-17a) reversing the judgment of the district court is reported at 37 F.4th 562. The memorandum and order of the district court (J.A. 18a-31a) dismissing the complaint is unreported but available at 2021 WL 2124254.

JURISDICTION

The district court entered judgment on May 5, 2021. J.A. 18a. Respondent timely noticed an appeal on May 24, 2021. The court of appeals had jurisdiction under 28 U.S.C. 1291. That court filed its published decision on June 10, 2022, and denied rehearing *en banc* on July 22, 2022. J.A. 32a. Petitioners timely and separately petitioned for certiorari on October 20, 2022. This Court granted both petitions on January 13, 2023, and has jurisdiction under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

The Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961 *et seq*., is reprinted in full in an appendix to this brief. Pet. App. 1-30. The most relevant provision, 18 U.S.C. 1964(c), states:

> Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962. The exception contained in the preceding sentence does not apply to an action against any person that is criminally convicted in connection with the fraud, in which case the statute of limitations shall start to run on the date on which the conviction becomes final.

STATEMENT

A. Statutory Background

1. Enacted in 1970, the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. 1961 *et seq.*, targets "organized crime's infiltration of legitimate enterprises" through racketeering activity, *Russello* v. *United States*, 464 U.S. 16, 26 (1983).

The statute "defines 'racketeering activity' to encompass dozens of state and federal offenses, known in RICO parlance as predicates." *RJR Nabisco,* 579 U.S. at 329-330; see 18 U.S.C. 1961(1) (defining "rack-

eteering activity" by reference to enumerated predicate offenses). "A predicate offense implicates RICO when it is part of a 'pattern of racketeering activity'—a series of related predicates that together demonstrate the existence or threat of continued criminal activity." *RJR Nabisco*, 579 U.S. at 330 (quoting 18 U.S.C. 1961(5)).

In accordance with its aims of targeting the criminal infiltration of legitimate economic enterprises, RICO proscribes certain investments of income derived from "pattern[s] of racketeering activity," 18 U.S.C. 1962(a); the acquisition of interests in an enterprise through "pattern[s] of racketeering activity," 18 U.S.C. 1962(b); the conduct of an enterprise's affairs through a "pattern of racketeering activity," 18 U.S.C. 1962(c); and conspiracy to engage in any of the foregoing, 18 U.S.C. 1962(d).

To ensure compliance, Congress made violations of RICO a criminal offense, 18 U.S.C. 1963, and authorized the Attorney General of the United States to initiate civil enforcement proceedings, 18 U.S.C. 1964(b).

Most relevant here, Congress also enacted a private right of action in 18 U.S.C. 1964(c), permitting "[a]ny person injured in his business or property by reason of a violation of section 1962" (*i.e.*, RICO's substantive proscription) to sue for treble damages, costs, and attorneys' fees.

2. The Court addressed the extraterritorial reach of RICO's substantive and remedial provisions in *RJR*

Nabisco, 579 U.S. at 325, applying the presumption against extraterritoriality. Under that presumption, "[w]hen a statute has no clear indication of an extraterritorial application, it has none." *Morrison* v. *National Austl. Bank Ltd.*, 561 U.S. 247, 255 (2010). As the Court explained, whether or not a statute applies extraterritorially entails a two-step analytical framework: "At the first step, [courts] ask whether the presumption against extraterritoriality has been rebutted," and, at the second step, if the presumption has not been rebutted, courts look to a statute's "focus" to determine if a particular case involves a "domestic application." *RJR Nabisco*, 579 U.S. at 337; *WesternGeco LLC* v. *ION Geophysical Corp.*, 138 S. Ct. 2129, 2136 (2018).

In *RJR Nabisco*, the Court held that the presumption was rebutted with respect to certain of RICO's substantive provisions and underlying predicates, and that, therefore, RICO's substantive prohibitions reach some (but not all) unlawful conduct occurring outside the United States. 579 U.S. at 338-345.

Next, the Court considered the presumption's application to Section 1964(c), under which private plaintiffs can sue. The Court first held that the presumption applied independently to Section 1964(c), the remedial provision, even though "the presumption has been overcome with respect to [some of] RICO's substantive prohibitions." *RJR Nabisco*, 579 U.S. at 346. Then, applying the presumption to Section 1964(c), the Court instructed at the first step that

the presumption was not overcome. *Id.* at 349-354. At the second step, the Court held that the "focus" of Section 1964(c) is the plaintiff's "injury," *id.* at 346, and, therefore, that Section 1964(c) does not provide a private right of action for "injury suffered abroad," *id*. at 354.

Instead, to state a private right of action under RICO and be entitled to a private remedy under Section 1964(c), a "private RICO plaintiff [] must allege and prove a *domestic* injury." *RJR Nabisco*, 579 U.S. at 346. As the parties had stipulated that the injuries in-suit were foreign, the Court declined to address "[t]he application of this rule" in any particular case. *Id.* at 354.

B. Factual Background

This case arises out of the global attempts by a plaintiff, domiciled in Russia, to collect on an international arbitral award rendered in London stemming from a Moscow real-estate dispute—and to (mis)use the United States' treble-damages regime under RICO in service of that mission. The facts stated below are based on the allegations in the complaint, which, although disputed by petitioners, are assumed true here given the Rule 12(b) posture.[1]

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[1] As is evident given the posture, Petitioners dispute each and every allegation of the complaint, including without limitation the claim that there has been a conspiracy or any other sort of agreement between Ashot and CMB Monaco.

1. Petitioner Ashot Yegiazaryan ("Ashot") is a former Russian politician and businessperson who, until 2010, lived in Russia. J.A. 5a. He fled Russia after the Russian government accused him of fraud, and now resides in California. *Ibid.* The London Award that is discussed below was entered against petitioner Ashot.

Petitioner CMB Monaco, formerly Compagnie Monégasque de Banque ("CMB Monaco"), is a banking institution located in Monaco. Smagin alleges that Ashot, through entities under his control, deposited funds into an account with CMB Monaco, and Smagin has made (disputed) conspiracy allegations involving CMB Monaco entirely on that basis. J.A. 20a.

Respondent Vitaly Smagin ("Smagin") is a Russian businessman and Russian citizen who has lived in Russia at all times relevant to this dispute. J.A. 4a. He was the claimant in the London arbitration, and the sole plaintiff in the district court.

2. The events leading to the arbitration award and subsequent enforcement proceedings began in 2003. At the time, Ashot and Smagin, both based in Russia, partnered on a Moscow real-estate project called "Europark." J.A. 27a. After several years, the joint venture collapsed when the pair clashed over the use of the Europark property as security for a different project to refurbish a Moscow hotel. J.A. 27a-28a.

In 2010, after the project ran aground, Smagin commenced an arbitration against Ashot in the Lon-

don Court of International Arbitration ("LCIA"), seeking to recoup his claimed investment. J.A. 5a. In 2014, a three-arbitrator panel awarded Smagin $84 million (the "London Award"). *Ibid.*

3. Smagin then launched a worldwide effort to collect on the London Award. Those enforcement efforts have focused on the alleged proceeds of a $198 million settlement that Ashot later obtained in an unrelated arbitration against another Russian businessman, Suleymon Kerimov (the "Kerimov Award").

In furtherance of these collection efforts, Smagin moved to have the London Award recognized as judgments by the courts of Liechtenstein (where many of Ashot's assets were allegedly held) and California (where Ashot resides). The Liechtenstein Princely Court of Justice recognized the London Award and entered a judgment on February 24, 2016. The U.S. District Court for the Central District of California (Real, J.) did the same on March 31, 2016, in line with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) art. IV, June 10, 1958, 21 U.S.T. 2519; see 9 U.S.C. 201-208 (implementing the New York Convention). The parties refer to the latter order recognizing Smagin's award as the "California Judgment."

C. Procedural History

1. In his continued effort to collect on the London Award, Smagin filed the instant case in December

2020 in the United States District Court for the Central District of California. J.A. 18a. Seeking treble damages under RICO's private right of action, 18 U.S.C. 1964(c), Smagin's complaint pleaded two RICO claims against petitioners Ashot and CMB Monaco, as well as other individual co-defendants. J.A. 18a-19a.

At base, Smagin accused the defendants of subverting his efforts to collect on the London Award through a purported pattern of wire fraud and other RICO predicate racketeering acts. According to the complaint, Ashot and the co-defendants supposedly used a "complex web of offshore entities" to conceal the proceeds of the Kerimov Award abroad and to avoid using those proceeds to satisfy the London Award. J.A. 56a. That includes claims that Ashot channeled the Kerimov Award from Ashot's London-based attorneys to a trust that he set up in Liechtenstein, the Alpha Trust, and then deposited those funds into an account inaccessible to Smagin. J.A. 57a. Smagin also claims that Ashot used foreign shell entities in Nevis and Liechtenstein to mask the ownership structure of the Alpha Trust. J.A. 56a. These alleged acts occurred both before and after the London Award was recognized in the California Judgment.

Smagin contends that CMB Monaco participated in the supposed scheme. But the only facts pleaded are that the bank (1) accepted a deposit from Alpha Trust of the proceeds of the Kerimov Award in Monaco, J.A. 57a, (2) received contradictory instructions from

Smagin and from Ashot's alleged designees (defendants Suren Yegiazaryan, Vitaly Gogokhia, and Natalia Dozortseva) as to the disposition of the assets, J.A. 83a-84a, and (3) refused to immediately transfer the funds to Smagin in the face of these conflicting instructions, J.A. 84a.[2]

Smagin also accused the remaining defendants (who are respondents here) of various supposed misdeeds. This included the claims, for instance, that co-defendants Suren Yegiazaryan and Gogokhia filed sham lawsuits against Ashot in Europe and elsewhere that would compete with Smagin's claims for Ashot's assets; that co-defendants Dozortseva, Jouniaux, Thielen, and Stephan Yegiazaryan supposedly wrongly sought to control the Alpha Trust in Liechtenstein by falsely holding themselves out as trustees or filing suits to remove Smagin's appointees; and that co-defendant Ratnikov sought to intervene in Smagin's enforcement actions. J.A. 68a.

2. Ashot and CMB Monaco filed separate motions to dismiss Smagin's RICO complaint. Both argued, among other things, that the claims were barred under this Court's decision in *RJR Nabisco*. As noted

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[2] Smagin characterizes CMB Monaco's failure to blindly follow his commands as "fraudulent" and "pretextual," J.A. 84a, but omits that CMB Monaco responded to the competing banking instructions by submitting the dispute to the Monégasque courts, a course of action those courts described as "necessary," J.A. 210a.

above, *RJR Nabisco* held that, in light of the presumption against extraterritoriality, a civil RICO suit must allege a "domestic," and not a "foreign," injury in order to pursue a private remedy under 18 U.S.C. 1964(c). 579 U.S. at 354. Ashot and CMB Monaco argued that Smagin's injury—the claimed inability to collect on the California Judgment—was suffered (if at all) in Russia, where Smagin is domiciled.

The district court held that Smagin's injury was impermissibly foreign. J.A. 31a. "[T]he Court place[d] great weight on the fact that Smagin is a resident and citizen of Russia and therefore experiences the loss from his inability to collect on his judgment in Russia." J.A. 27a (internal quotation marks omitted). The district court recognized that the Third and Seventh Circuits had developed competing tests to conduct *RJR Nabisco*'s inquiry into the situs of an injury under Section 1964(c) and concluded that Smagin's injury was foreign under either approach. J.A. 25a-29a. Because *RJR Nabisco* barred foreign injuries like Smagin's, the district court held, Smagin could not obtain a remedy under RICO; it thus dismissed all claims. J.A. 31a.

3. The Ninth Circuit reversed. J.A. 4a. Addressing only whether Smagin pleaded a domestic injury, the court (Graber, J.) first held that awards and judgments such as the California Judgment qualify as intangible property. J.A. 10a. The panel also recognized that the circuits had split over the appropriate legal test for determining whether RICO claims involving

intangible property result in "domestic" or "foreign" injuries, with the Seventh Circuit adopting a bright-line plaintiff-residency rule and the Third embracing a multi-factor balancing test. J.A. 14a-16a (citing *Armada (Sing.) PTE Ltd.* v. *Amcol Int'l Corp.*, 885 F.3d 1090 (7th Cir. 2018) and *Humphrey* v. *GlaxoSmithKline PLC*, 905 F.3d 694 (3d Cir. 2018)).

Expressly parting with the Seventh Circuit, the Ninth Circuit purported to apply a multi-factor balancing test modeled on the Third Circuit's analysis, J.A. 16a, but the Ninth Circuit focused on the defendant's residence and conduct, J.A. 10a-11a. Specifically, unlike the Third Circuit, the Ninth Circuit centered on the conduct of one defendant (Ashot) as the touchstone of its analysis. *Ibid.* Because Smagin had confirmed the London Award in California (Ashot's domicile), and because Ashot's alleged misconduct occurred in California, the Ninth Circuit held that Smagin had alleged a permissible domestic injury under RICO and therefore had a civil RICO remedy (assuming he stated a RICO claim) against both U.S. and foreign defendants.

The Ninth Circuit denied CMB Monaco's motion to rehear the case *en banc* (a motion that Ashot joined by separate filing). J.A. 32a. Petitioners Ashot and CMB Monaco then each filed petitions for certiorari.

This Court granted both petitions on January 13, 2023, and consolidated the two cases. Petitioners now submit this joint brief in the consolidated cases.

SUMMARY OF ARGUMENT

I. The plain text and ordinary canons of constructions instruct that a plaintiff is "injured in" property at the plaintiff's domicile, without regard to whether the plaintiff may allege to possess property elsewhere.

A. Beginning with the text, Section 1964(c) redresses only economic injury suffered by the "person" of the plaintiff—not injury "to" property. The word "injured" modifies the "person" empowered to bring suit, not the "property." And RICO's private cause of action covers only injuries "in" the person's "business or property," not injury "to" property. This is significant: In *Chattanooga Foundry & Pipe Works* v. *City of Atlanta*, 203 U.S. 390 (1906), the Court construed the same statutory phrase—"injured in his business or property"—in the Sherman Act, and explained that, in contrast to a statute speaking of injury "*to*" property, when a statute speaks of a person injured "*in*" business or property, "[w]e do not go behind the person of the sufferer." *Id.* at 398-399 (emphases added). Therefore, a person suffers "injury in" property at his domicile.

It is significant that Congress modeled Section 1964(c) on the private right of action in the antitrust laws. See *Holmes* v. *Securities Inv. Prot. Corp.*, 503 U.S. 258, 267 (1992). Thus, the Court should "assume [Congress] intended" the words in RICO's private right of action "to have the same meaning that courts had already given them" in the context of the

antitrust laws. *Id.* at 268; see also *Shapiro* v. *United States*, 335 U.S. 1, 16 (1948). As the private-right-of-action contained in the antitrust laws remedies solely economic injury, so must RICO's private right of action: it protects economic injury (in the case of RICO, caused by the criminal infiltration of legitimate enterprises). And the legislative history is in accord. *Anza* v. *Ideal Steel Supply Corp.*, 547 U.S. 451, 473 (2006) (Thomas, J., concurring in part and dissenting in part).

B. Common-law principles governing the situs of injury corroborate what the text makes clear. At the "time of RICO's enactment in 1970," see *Beck* v. *Prupis*, 529 U.S. 494, 500-501 (2000), courts had occasion to consider where an economic injury was suffered when they applied common-law, conflict-of-law principles. Under the then-predominant common-law rule, an economic injury is "deemed to be suffered where its economic impact is felt, normally the plaintiff's residence." *Sack* v. *Low*, 478 F.2d 360, 366 (2d Cir. 1973) (Friendly, J.); Restatement (First) of Conflicts § 377 (1934). This rule accords with the statutory text and, given the overlap between common-law conflicts principles and the presumption against extraterritoriality, it makes particular sense to follow it here.

II. Although it is irrelevant that a plaintiff may claim to hold property that itself was "injured," in the alternative, the plaintiff-domicile rule should con-

tinue to apply where the plaintiff alleges injury in intangible property, such as awards or judgments (which are indisputably "intangible" in nature).

Respondent complains only that defendants allegedly deprived him of collection rights on an arbitral award entered in England that was later rendered into judgments by courts in Liechtenstein and the United States. The only claimed injury, therefore, is non-payment of a debt—*i.e.*, the loss of cash—which is a classic "economic injury." See *Pasquantino* v. *United States*, 544 U.S. 349, 355-356 (2005).

As a result, *Chattanooga Foundry*'s observations remain fully apt, and the common-law conflict rules remain instructive, regardless of the situs of the underlying award. In any event, "movable or personal property is looked on, in law, as having no situs of location of its own but as following the law of the owner's domicile." Grant Gilmore, *Security Interests In Personal Property* 600 (1965) (discussing the "mobilia sequuntur personam" rule); see also Joseph Story, *Commentaries on the Conflict of Laws* § 376 (1834) ("[T]he right and disposition of moveables is to be governed by the law of the domicil of the owner."). Decisions of this Court likewise adhere to "the old concept [that] intangible personal property is found at the domicile of its owner." *Texas* v. *New Jersey*, 379 U.S. 674, 680-681 & n.10 (1965). So too here.

III. A domicile-of-the-plaintiff rule is also most administrable and sensible.

A. When it comes to matters affecting the foreign relations of the United States, the Court has expressed a preference for clear rules. Principles of prescriptive comity require the same interpretation, which the plaintiff-domicile rule satisfies.

B. There is zero reason to believe that Congress intended for RICO to turbocharge judgment- and award-enforcement proceedings. Arbitral awards entered abroad may easily be turned into judgments in the United States, as Smagin has done here. Congress plainly did not have judgment-avoidance claims in mind when it passed RICO.

C. Finally, a domicile-of-the-plaintiff rule does not mean that foreign plaintiffs are without any remedy. A foreign-domiciled plaintiff may proceed if the foreign jurisdiction where he resides enacted a regime similar to RICO, or if he transacts business through U.S.-incorporated subsidiaries. Regardless, the foreign-domiciled plaintiff retains ample common-law and other remedies addressing injuries to property.

ARGUMENT

I. Foreign-Domiciled Plaintiffs May Not Maintain Civil RICO Claims Under Section 1964(c) Because Their Economic Injury Is By Definition Suffered Abroad

RICO's private cause of action, 18 U.S.C. 1964(c), provides that only "person[s] injured in [their] business or property by reason of a violation of" RICO may bring suit. As this Court has instructed, even though RICO's "substantive prohibitions" may "govern[] conduct in foreign countries," RICO's private cause of action does not authorize suit "for injuries suffered outside of the United States." *RJR Nabisco, Inc.* v. *European Cmty.*, 579 U.S. 325, 349-350 (2016). The question here is whether there has been a "domestic" rather than a "foreign" injury.

The answer to that question is clear: the injury occurs at the domicile of the plaintiff. That is the plain import of RICO's text and history—as clarified by this Court's decisions. First, RICO's private cause of action solely "remed[ies] economic injury." *Agency Holding Corp.* v. *Malley-Duff & Assocs., Inc.*, 483 U.S. 143, 151 (1987). Second, economic injury is suffered by the plaintiff at the plaintiff's domicile.[3] Thus, for purposes

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[3] For natural persons, "domicile is established by physical presence in a place in connection with a certain state of mind con-

of Section 1964(c), a RICO plaintiff who is domiciled abroad does not suffer a domestic injury. See *RJR Nabisco*, 579 U.S. at 362 (Ginsburg, J., concurring in part and dissenting in part) (reading the Court's holding that Section 1964(c) requires a domestic injury to mean that "foreign parties * * * would have no RICO remedy").

A. Section 1964(c)'s Text And History Show That It Redresses Only Economic Injury Suffered Directly By The Plaintiff

1. "As with any question of statutory interpretation, [the] analysis begins with the plain language of the statute." *Jimenez* v. *Quarterman*, 555 U.S. 113, 118 (2009); *Arellano* v. *McDonough*, 143 S. Ct. 543, 548 (2023) ("Start with the text."). The statutory text instructs that the cognizable injury giving rise to a private suit under Section 1964(c) is an economic injury suffered by the plaintiff personally, not an injury to the plaintiff's business or property.

Section 1964(c) permits "[a]ny person injured in his business or property" because of a violation of Section 1962 (RICO's substantive provisions) to sue for

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cerning one's intent to remain there." *Mississippi Band of Choctaw Indians* v. *Holyfield*, 490 U.S. 30, 48 (1989); *e.g.*, *White* v. *Tennant*, 8 S.E. 596, 597 (W. Va. 1888). This case does not raise the question of where a foreign corporation is domiciled, but the Court in other contexts has recognized a corporation's place of incorporation and principal place of business as "equivalent" to domicile. *Daimler AG* v. *Bauman*, 571 U.S. 117, 137 (2014).

treble damages. The text makes clear two points about the "injury" redressed by Section 1964(c): (1) the "injury" is *to the plaintiff*, not to property; and (2) the "injury" must be an economic one.

First, by its plain text, Section 1964(c) redresses harm suffered by the plaintiff, not harm to property. The "person" empowered to bring suit is the subject of Section 1964(c), and the qualifier "injured" narrows the category of "persons" who have private rights of action—only *injured* persons may sue; the word "injured" does not modify the word "property." See *Weyerhauser Co.* v. *United States Fish & Wildlife Serv.*, 139 S. Ct. 361, 368 (2018) ("Adjectives modify nouns—they pick out a subset of a category that possesses a certain quality."). Logically, the injury giving rise to a lawsuit under RICO must be felt by—and follow—the person bringing the suit. See *Nielsen* v. *Preap*, 139 S. Ct. 954, 965 (2019) ("[W]ords are to be given the meaning that proper grammar and usage would assign them.") (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 140-143 (2012) (Scalia & Garner)).

Second, RICO's cause of action redresses only *economic* injuries. Section 1964(c) provides that only injuries "*in*" the putative plaintiff's "business or property" provide a basis for suit. This means only certain injuries suffered by the plaintiff qualify. Moreover, the use of the word "in" to modify the words "business or property" (as compared to "to") is key. That textual phrasing again emphasizes that the statute's focus is

on the injured person, not the person's property. And the text covers only economic injuries—*i.e.*, injuries in "business or property"—suffered by the plaintiff personally.

Put together, Section 1964(c)'s text instructs that the harm it redresses is an economic injury suffered by the plaintiff, not a distinct injury to business or property. That is the teaching of several opinions of this Court.

In *Agency Holding*, the Court held that the Sherman Act's limitation period applied to private RICO claims; it reached that result, in part, because "[b]oth RICO and the Clayton Act are designed to remedy *economic* injury." 483 U.S. at 151 (emphasis added); see also *ibid.* ("[B]oth statutes aim to compensate *the same type of injury*.") (emphasis added); *id.* at 169 (Scalia, J., concurring) (equating "civil actions under RICO" with common-law "actions for economic injury").

What is more, over a century ago, Justice Holmes, writing for the Court, construed identical language in the Sherman Act in *Chattanooga Foundry & Pipe Works* v. *City of Atlanta*, 203 U.S. 390 (1906), and that decision confirms that Section 1964(c) covers only economic losses suffered by the plaintiff in his person. *Chattanooga Foundry* construed the relevant statutory phrase of Section 1964(c)—"injured in his business or property"—but in the context of the Sherman

Act (which, as discussed *infra* at pp. 23-25, is significant). In *Chattanooga Foundry*, the Court chiefly addressed whether the plaintiff's antitrust claim for injuries suffered "*in* his business or property" was subject to a state limitation period for "'actions for injuries *to* personal or real property.'" *Id.* at 398 (quoting Tenn. Code § 2773 (1858)) (emphases added). The Court held that particular statute of limitations did not apply because "there is a sufficiently clear distinction between injuries *to* property and 'injured *in* his business or property.'" *Id.* at 398-399 (emphases added).

As the Court saw it, when a statute speaks of injury "*to*" property, as did the Tennessee limitation period, the harm at issue is done to the "object [which is] capable of injury" itself—*i.e.*, the property. *Chattanooga Foundry*, 203 U.S. at 399 (emphasis added). But when a statute speaks of a person being injured "*in*" business or property, Justice Holmes explained, "[w]e do not go behind the person of the sufferer." *Ibid.* (emphasis added). That is because "[a] man is injured *in* his property when his property is diminished" and "[h]e would not be said to have suffered an injury *to* his property unless the harm fell upon some object more definite and less ideal than his total wealth." *Ibid.* (emphases added); see also *id.* at 396-397.

In other words, as the Court recognized over a century ago, whereas injury "to" property focuses on the property itself, injury to a person "*in* his property" focuses solely upon the economic losses felt by the "person of the sufferer"; specifically, the statute provides

redress for loss of "money of the plaintiff," a loss which is felt solely by "the person." *Chattanooga Foundry* 203 U.S. at 399 (emphasis added).

The plain text, in sum, shows that Section 1964(c) remedies solely economic injuries felt by the plaintiff. Thus, to identify the situs of the injury, the Court should look to the plaintiff, and "stop there." *Chattanooga Foundry*, 203 U.S. at 397, 399.

2. The conclusion that Section 1964(c) redresses only economic injury suffered by the plaintiff finds further support in Congress's decision to model RICO's private cause of action on the private right of action for enforcing the antitrust laws—and thus to import the Court's gloss on it. See *Bragdon* v. *Abbott*, 524 U.S. 624, 645 (1998) ("[R]epetition of the same language in a new statute indicates, as a general matter, the intent to incorporate its * * * judicial interpretations as well."). That background again instructs that the relevant "injury" for RICO purposes is an *economic* injury to the plaintiff, which is traditionally considered to be felt at his domicile. RICO does not remedy injuries "to" property felt wherever the property happens to be (to the extent it can be located).

Congress indeed "modeled § 1964(c)" in substantial part on the "civil-action provision of the federal antitrust laws, § 4 of the Clayton Act," which Congress in turn modeled on Section 7 of the Sherman Act. *Holmes* v. *Securities Inv. Prot. Corp.*, 503 U.S. 258, 267 (1992) (discussing RICO); *Klehr* v. *A.O. Smith*

Corp., 521 U.S. 179, 189 (1997) ("As the Court has explained, Congress consciously patterned civil RICO after the Clayton Act."); *Associated Gen. Contractors of Cal., Inc.* v. *California State Council of Carpenters*, 459 U.S. 519, 530 (1983) ("The critical statutory language [in the Clayton Act] was originally enacted in 1890 as § 7 of the Sherman Act.") (citing The Anti-Trust (Sherman) Act of July 2, 1890, ch. 647, § 7, 26 Stat. 210 (repealed 1955)); see also *Organized Crime Control: Hearings on S. 30, and Related Proposals, Before Subcomm. No. 5 of the H. Comm. on the Judiciary*, 91st Cong., 2d Sess. 520 (1970) (statement of Rep. Steiger) (explaining that Section 1964(c) is "similar to the private damage remedy found in the anti-trust laws").[4]

And, as this Court has previously instructed, "[w]e may fairly credit the 91st Congress, which enacted RICO, with knowing the interpretation federal courts had given the words earlier Congresses had used first in § 7 of the Sherman Act, and later in the Clayton Act's § 4." *Holmes*, 503 U.S. at 268. Thus, it must be "presum[ed]" that Congress "adopted * * * the judicial gloss" that this Court had placed upon the provision. *Associated Gen. Contractors of Cal., Inc.*, 459 U.S. at

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[4] Like the remedial provision at issue here, the federal antitrust laws currently authorize a "person" to sue when "injured in his business or property." 15 U.S.C. 15 (Section 4 of the Clayton Act). That was always so; "Section 7 of the Sherman Act was repealed in 1955 as redundant" of Section 4 of the Clayton Act. *Pfizer, Inc.* v. *Government of India*, 434 U.S. 308, 311 n.8 (1978).

534 (discussing Congress's decision to model the Clayton Act on the Sherman Act); see also *Lamar, Archer & Cofrin, LLP* v. *Appling*, 138 S. Ct. 1752, 1762 (2018) ("When Congress use[s] the materially same language * * * it presumptively [is] aware of the longstanding judicial interpretation [of the phrase] and intend[s] for [it] to retain its established meaning."); Scalia & Garner 323 ("[W]hen a statute uses the very same terminology as an earlier statute * * * it is reasonable to believe that the terminology bears a consistent meaning.").

In that light, "[i]n adopting the language used in the earlier act, Congress [in enacting RICO] 'must be considered to have adopted'" *Chattanooga Foundry*'s construction of the Sherman Act's remedial provision as capturing solely economic injury to the person—rather than injury to property—"and made [that] a part of the [RICO] enactment." *Shapiro* v. *United States*, 335 U.S. 1, 16 (1948) (citation omitted). Congress "used the same words" in Section 1964(c) as previously appeared in the antitrust laws, "and we can only assume [Congress] intended them to have the same meaning that courts had already given them." *Holmes*, 503 U.S. at 268.[5]

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[5] In *RJR Nabisco*, the Court declined to "import[] into RICO [certain antitrust] principles that are at odds with our current extraterritoriality doctrine." 579 U.S. at 354. Nothing in *Chattanooga Foundry* or *Reiter*, however, is inconsistent with the Court's "extraterritoriality jurisprudence" as "honed * * * in *Morrison* and *Kiobel*." *RJR Nabisco*, 579 U.S. at 353; see also Part III.A, *infra*.

The Court's construction of RICO's private cause of action as reaching "economic injury," *Agency Holding*, 483 U.S. at 151, is thus consistent with the statute's origin. By the same token, the Court continues to interpret the private cause of action in the antitrust laws to remedy economic injuries. Thus, in *Hawaii* v. *Standard Oil Co.*, the question was whether the state of Hawaii could invoke the Clayton Act's private right of action. 405 U.S. 251 (1972). The Court held that it could, but only if it suffered an injury "to its [own] commercial interests," because "the words 'business or property' * * * refer to commercial interests or enterprises." *Id.* at 264. The State of Hawaii could not seek "damages for other injuries." *Ibid.*

Further, it makes good sense to conclude that RICO's private cause of action was enacted to and does remedy similar injuries as the antitrust laws, as this Court has already instructed. See *Agency Holding*, 483 U.S. at 151 ("[B]oth statutes aim to compensate the same type of injury."). The antitrust laws proscribe anticompetitive activity and grant a private remedy for economic injuries suffered by reason of a violation. See *Chattanooga Foundry*, 203 U.S. at 396 (antitrust plaintiff "was [i]njured in its property, at least, if not in its business of furnishing water, by being led to pay more than the worth of the pipe. A person whose property is diminished by a payment of money wrongfully induced is injured in his property.").

Considering RICO's purpose of addressing the criminal "infiltration of legitimate enterprises," *Russello*, 464 U.S. at 28, as well as Section 1964(c)'s origin, it is logical to conclude that, just like the private remedy codified in the federal antitrust laws, RICO's private remedy in Section 1964(c) was also meant to redress solely *economic* injuries, such as loss of profit, inflicted upon legitimate enterprises by patterns of racketeering activities. Indeed, "[t]he Court unanimously recognized in *Sedima* that one reason—and, for the dissent, the principal reason—Congress enacted RICO was to protect *businesses against competitive injury* from organized crime." *Anza* v. *Ideal Steel Supply Corp.*, 547 U.S. 451, 473 (2006) (Thomas, J., concurring in part and dissenting in part) (emphasis added) (citing *Sedima, S.P.R.L.* v. *Imrex Co.*, 473 U.S. 479 (1985)).

3. RICO's legislative history—which the Court has repeatedly cited in construing RICO—is in accord: RICO's private right is meant to remedy economic injuries to commercial activities.

Summarizing the record in *Anza*, Justice Thomas explained that the private right of action was designed to protect "competitive injury to a business" caused by organized crime. 547 U.S. at 474 (Thomas, J., concurring in part and dissenting in part). For example, Senator Roman Hruska, "[t]he sponsor of a Senate precursor to RICO," noted that "'the evil to be curbed is the unfair competitive advantage inherent in the large amount of illicit income available to organized crime."

Id. at 473 (cleaned up; quoting legislative record); *Sedima*, 473 U.S. at 514 (Marshall, J., dissenting) (same). Senator Hruska repeated much the same point when "adding a provision for a civil remedy in a subsequently proposed bill": RICO "'creates civil remedies for the honest businessman who has been damaged by unfair competition from the racketeer businessman.'" *Anza*, 547 U.S. at 473 (Thomas, J., concurring in part and dissenting in part) (quoting legislative record).

RICO's legislative record is replete with like statements, from Senate Reports extolling RICO as a means to protect "the economic well-being of the Nation," *Russello*, 464 U.S. at 27-28 (quoting S. Rep. No. 91-617, 1st. Sess. 79 (1969)), to individual remarks confirming that RICO was designed to "remove [the] corrupting influence from the channels of commerce," *id.* at 28 (quoting 116 Cong. Rec. 18955 (1970) (statement of Sen. McClellan)); see also *United States* v. *Turkette*, 452 U.S. 576, 592 n.14 (1981) (citing various legislative remarks and reports on how RICO is "designed to inhibit the infiltration of legitimate business by organized crime").

* * *

In short, when Congress enacted RICO's private remedial provision, Congress plainly intended to give a right of action to plaintiffs suffering economic injury.

That being so, a Section 1964(c) injury necessarily occurs where the plaintiff is. Accord *Reiter* v. *Sonotone*

Corp., 442 U.S. 330, 339 (1979) ("A consumer whose money has been diminished by reason of an antitrust violation has been injured 'in his . . . property.'"). In the law, the location of the plaintiff has traditionally been understood to be his domicile. See Part I.B, *infra*; *Mitchell* v. *United States*, 88 U.S. 350, 352 (1874) ("The place where a person lives is taken to be his domicile."). Thus, under Section 1964(c), there is no occasion to look "behind" the person of the plaintiff to the location of the person's property to determine where an asserted injury occurred. *Chattanooga Foundry*, 203 U.S. at 399. The Court should simply look to where the plaintiff is domiciled. Under this simple rule, foreign-domiciled plaintiffs cannot sue for injuries in property under Section 1964(c), because their economic losses are necessarily suffered abroad.

B. Choice-Of-Law Rules Applicable At The Time Of RICO's Enactment Show That A Section 1964(c) Plaintiff Suffers His Economic Injury At His Domicile

The statute, history, and decisional law are clear: a Section 1964(c) plaintiff can sue to remedy only an economic injury. See Part I.A, *supra*. Given that predicate, the Court should also look to common-law principles governing the situs of injury to confirm where the plaintiff's economic injury is suffered. Specifically, it should look to the prevailing choice-of-law rules that were in operation at the time of RICO's (and the Sherman Act's) enactment. Those common-law principles corroborate what the text makes clear: Civil RICO

plaintiffs are "injured in" their "property"—*i.e.*, suffer an economic injury in relation to property—at their domicile. Thus, a foreign-domiciled plaintiff injured in his property cannot suffer a "domestic" injury for purposes of Section 1964(c).

1. To begin, this Court has instructed that RICO should be construed in light of the "settled meaning at common law" of its statutory terms at the "time of RICO's enactment in 1970." See *Beck* v. *Prupis*, 529 U.S. 494, 500-501 (2000). Thus, it is appropriate in addressing the statutory question of where a plaintiff has been injured for purposes of Section 1964(c) to consider the background of the common law as of 1970.

This approach reflects the longstanding canon of interpretation that "when Congress uses language with a settled meaning at common law, Congress 'presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken and the meaning its use will convey to the judicial mind unless otherwise instructed." *Beck*, 529 U.S. at 500-501 (quoting *Morissette* v. *United States*, 342 U.S. 246, 263 (1952)); see Scalia & Garner 320-321 (discussing canon of imputed common-law meaning).

In line with that approach, this Court regularly has applied common-law concepts when interpreting RICO. See, *e.g.*, *Beck*, 529 U.S. at 500 (interpreting statutory term "conspiracy" by reference to common

law); *Holmes*, 503 U.S. at 267-268 (interpreting "by reason of" in Section 1964 by reference to common law of proximate causation).[6]

2. The concept of an "injury" and the question of its situs are well-parsed in the common law. For purposes of the question in this case—where a Section 1964(c) "injury" occurs—the common law of conflicts is most instructive. In that context, courts frequently had occasion to consider where an "injury" was suffered in applying "choice-of-law rule[s]," which are "a means of selecting which jurisdiction's law governs the determination of liability." *Cassirer* v. *Thyssen-Bornemisza Collection Found.*, 142 S. Ct. 1502, 1507 (2022).[7]

At the time of RICO's enactment and for more than a century prior, in cases sounding in fraud or other torts like RICO's predicates, "[t]he general conflict-of-laws rule, followed by a vast majority of the States, [wa]s to apply the law of the place of injury to the substantive rights of the parties." *E.g.*, *Richards* v. *United States*, 369 U.S. 1, 11-12, (1962) (footnote omitted); see

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[6] Outside of RICO, "[e]xamples of this phenomenon are legion." Caleb Nelson, *The Persistence of General Law*, 106 Colum. L. Rev. 503, 521 & n.98 (2006) (collecting cases); see, *e.g.*, *Field* v. *Mans*, 516 U.S. 59, 70-71 (1995) (construing the term "fraud" in the Bankruptcy Code); *Cox* v. *Roth*, 348 U.S. 207, 210 (1955) (interpreting Jones Act while considering "general law" in 43 states).

[7] Choice-of-law rules fall within the broader field of conflict of laws, Symeon Symeonides, *Choice of Law* 1 (2016), but in the context of this case they are referred to interchangeably.

also *J. McIntyre Mach., Ltd.* v. *Nicastro*, 564 U.S. 873, 904 n.11 (2011) (Ginsburg, J., dissenting) ("[T]he location of injury continues to hold sway in choice-of-law analysis."). Up to and after RICO's enactment, application of choice-of-law rules in the mine-run tort case thus required common-law courts to resolve precisely the question that *RJR Nabisco* left open and that this case raises—where a plaintiff is injured—making common-law conflicts rules directly in-point.

Consideration of the common law of conflicts is also conceptually appropriate here in light of its kinship with the presumption against extraterritoriality, which is historically rooted in the conflict of laws. *American Banana Co.* v. *United Fruit Co.*, 213 U.S. 347, 356 (1909) (citing conflicts authorities, including *Slater* v. *Mexican Nat'l R.R.*, 194 U.S. 120, 126 (1904)); Restatement (Fourth) of Foreign Relations Law § 404 note 1 (2018). The presumption against extraterritoriality is a means for ascertaining how broadly an act of Congress sweeps, what conduct it regulates, and in what circumstances it prescribes a remedy. See *RJR Nabisco*, 579 U.S. at 346. In doing so, the presumption helps determine the geographic scope of U.S. federal law and whether a plaintiff is "entitle[d] * * * to relief" under it. *Morrison* v. *National Austl. Bank Ltd.*, 561 U.S. 247, 254 (2010).

Choice-of-law principles traverse much the same ground as the presumption against extraterritoriality, albeit in the context of the common law (rather than

statute). Similar to the question addressed by the presumption against extraterritoriality, choice-of-law rules address which jurisdiction "determines the existence of the plaintiff's [common-law] claim." Herbert F. Goodrich, *Handbook on the Conflict of Laws* 191 (1927) (Goodrich) ("[T]he tort is complete only when the harm takes place, and it is the law of the state where this happens that determines the existence of the plaintiff's claim.").

Moreover, both the presumption against extraterritoriality and the common law of conflicts are firmly based on shared notions of territoriality and respect for the authority of sovereign states to regulate within their own borders. Both operate as a means of recognizing and respecting the sovereign authority of other nations.[8] Thus, the presumption ensures that, unless Congress expressly states, U.S. law will not prescribe remedies to persons beyond our borders. This is borne out of the "longstanding principle of American law 'that legislation of Congress, unless a contrary intent

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[8] Compare *E.E.O.C.* v. *Arabian Am. Oil Co.*, 499 U.S. 244, 248 (1991) (*Aramco*) ("In applying this rule of construction, we look to see whether language in the [relevant Act] gives any indication of a congressional purpose to extend its coverage beyond places over which the United States has sovereignty or has some measure of legislative control.") (citation omitted; brackets in original), with *Hartford Fire Ins. Co.* v. *California*, 509 U.S. 764, 817 (1993) (Scalia, J., dissenting) (judicial consideration of "the respect sovereign nations afford each other by limiting the reach of their laws * * * is a traditional component of choice-of-law theory").

appears, is meant to apply only within the territorial jurisdiction of the United States.'" *Morrison*, 561 U.S. at 255 (quoting *Aramco*, 499 U.S. at 248). Traditional choice-of-law rules, in much the same way, are based on the premise that no state's laws can apply outside of its own territory, since that would be "wholly incompatible with the equality and exclusiveness of the sovereignty of any nation." Joseph Story, *Commentaries on the Conflict of Laws* § 20 (1834) (Story).

In that light, in addressing the location of the plaintiff's injury for RICO purposes—a question that addresses whether Section 1964(c) is being applied domestically, as it must be—it makes eminent sense not just to presume that Congress enacted the statute against the background of then-applicable conflict-of-law rules, but also that Congress considered that those common-law conflict rules would help determine when RICO's private remedy is actionable. Indeed, around the time RICO was enacted, courts used exactly this approach to interpret the situs of an "injury" prescribed by statute in other contexts, and construed those statutes as limited to plaintiffs suffering in-state injuries. *E.g.*, *Graham* v. *General U.S. Grant Post No. 2665*, *V. F. W.*, 248 N.E.2d 657, 659 (Ill. 1969) (construing state dram-shop act using traditional choice-of-law rules); *Marmon* v. *Mustang Aviation, Inc.*, 430 S.W.2d 182, 187 (Tex. 1968) (same, regarding wrongful-death statute).

3. At the time of RICO's enactment, and for many years before, courts reasoned for conflicts purposes

that a wrongful act was "deemed to have been committed where the injury of which the plaintiff complains was inflicted, *not* where the defendant's acts were done." Goodrich, 191 & n.8 (collecting authority) (emphasis added); see, *e.g.*, *Alabama Great S. R.R.* v. *Carroll*, 11 So. 803, 806 (Ala. 1892) ("The fact which created the right to sue,–the injury,–without which confessedly no action would lie anywhere, transpired in the state of Mississippi * * * and whether a cause of action arose and existed at all, or not, must in all reason be determined by [Mississippi] law."). And when it came to economic injuries inflicted by tort—which, as noted above, are the only injuries cognizable under Section 1964(c)—courts held that a plaintiff's injury is suffered at the plaintiff's domicile, such that the law of that jurisdiction (rather than another) governed.

Judge Friendly's decision for the Second Circuit in *Sack* v. *Low*, rendered just three years after RICO's enactment, is illustrative of the then-prevailing rule. 478 F.2d 360 (2d Cir. 1973). In deciding which jurisdiction's law governed a securities-fraud claim, Judge Friendly explained that "a cause of action for fraud arises where the loss is sustained and that loss from fraud is deemed to be suffered where its economic impact is felt, normally the plaintiff's residence." *Id*. at 366. This rule was in line with "the weight of authority in other jurisdictions, which generally adopts the view of the First Restatement of Conflicts." *Ibid*; see also *Tafflin* v. *Levitt*, 493 U.S. 455, 465 (1990) ("[M]any RICO cases involve * * * fraud.").

As Judge Friendly noted, *Sack*, 478 F.2d at 365, the First Restatement of Conflicts indeed considered that a fraud plaintiff suffered an economic loss at the plaintiff's domicile. It explained that "[w]hen a person sustains loss by fraud, the place of wrong is where the loss is sustained, not where fraudulent representations are made." Restatement (First) of Conflicts § 377 note 4 (1934). For instance, if "A, in state X, owns shares in the M company" and "B, in state Y, fraudulently persuades A not to sell the shares" and "the value of the shares falls," then "the place of wrong is X"—*i.e.*, plaintiff's (A's) domicile. *Id.* § 377 note 4 illus. 6; *id.* § 378 ("Law Governing Plaintiff's Injury"); see also *Sack*, 478 F.2d at 366 (collecting cases). This "place of injury" rule has also historically applied when siting economic harms in other contexts. *E.g.*, *Albert Levine Assocs.* v. *Bertoni & Cotti*, 314 F. Supp. 169, 171 (S.D.N.Y. 1970) (siting venue in Clayton Act); *Seaboard Terminals Corp.* v. *Standard Oil Co.*, 24 F. Supp. 1018 (S.D.N.Y. 1938), *aff'd*, 104 F.2d 659 (2d Cir. 1939).

The First Restatement was adopted "in virtually all States in the United States"; it "dominated American conflicts law for more than a generation and continued to command a majority of states as late as 1979 in tort conflicts." Symeon Symeonides, *Choice of Law* 60 (2016).

And, even today (as the Seventh Circuit recognized in *Armada (Singapore) PTE Ltd.* v. *Amcol Int'l Corp.*,

885 F.3d 1090, 1094-1095 (7th Cir. 2018)), it still reflects the rule applied by many courts to consider which law remedies economic injuries. *E.g.*, *Kamel* v. *Hill-Rom Co., Inc.*, 108 F.3d 799, 805 (7th Cir. 1997) ("The place of injury was clearly Saudi Arabia, where Kamel's business would suffer as a result of Hill-Rom's conduct."); *SCO Grp., Inc.* v. *International Bus. Machs. Corp.*, 879 F.3d 1062, 1081 (10th Cir. 2018) ("Moreover, SCO's headquarters and principal place of business is in Utah, so that is where it suffered the alleged injury."); *CMACO Auto. Sys., Inc.* v. *Wanxiang Am. Corp.*, 589 F.3d 235, 247 (6th Cir. 2009) ("[T]he economic injury suffered by [the plaintiff] was clearly felt at its corporate headquarters."); *Sinatra* v. *National Enquirer, Inc.*, 854 F.2d 1191, 1202 (9th Cir. 1988) ("The harm suffered by Sinatra was economic, and thus felt by him at his domicile and the headquarters of his business."); *Engine Specialties, Inc.* v. *Bombardier Ltd.*, 605 F.2d 1, 19 (1st Cir. 1979) ("The place of injury is where plaintiff suffered the harm * * * at its place of business, Pennsylvania.").

In sum, at the time of RICO's enactment, the common-law rules governing the situs of economic injuries suffered by tort plaintiffs squarely placed those at the plaintiff's domicile. It therefore follows that foreign-domiciled plaintiffs suffer their economic injuries abroad and cannot allege or prove the requisite domestic injury to proceed under Section 1964(c).

C. This Court's Decision In *RJR Nabisco* Does Not Compel A Contrary Result

Respondent has asserted that a footnote in *RJR Nabisco* is inconsistent with the textual conclusion that a Section 1964(c) injury occurs at the plaintiff's domicile. Br. in Opp. at 11 (citing 579 U.S. at 353 n.12). That is wrong, putting aside that the question of where an injury occurs was plainly left open by *RJR Nabisco*.

The footnote at issue appears within the Court's analysis of the application of the presumption against extraterritoriality to Section 1964(c) and, specifically, where the Court rejects the argument that "§ 1964(c) [should] cover foreign injuries just because the Clayton Act does so." 579 U.S. at 352. The Court explained that it had read the Clayton Act as applying extraterritorially because "the Clayton Act's definition of 'person'—which in turn defines who may sue under that Act—'explicitly includes "corporations and associations existing under or authorized by . . . the laws of any foreign country."'" *Ibid.* (quoting *Pfizer* v. *Government of India*, 434 U.S. 308, 313 (1978)). The Court stated the same result should not obtain when considering RICO's scope in part because RICO's definition of the word 'person' lacked "the language that the *Pfizer* Court found critical." *Id.* at 352-353.

The footnote Respondent seizes upon accompanies that limited observation, and in the footnote the Court was stating only that the absence of "explicit foreign-

oriented language [in RICO's definition of 'person'] that the *Pfizer* Court found to support foreign-injury suits under the Clayton Act" did not, in and of itself, "mean that foreign plaintiffs may not sue under RICO." *Id.* at 353 n.12. In other words, the footnote conveyed only that the lack of "foreign-oriented language" does not rule *out* RICO claims by foreign plaintiffs; it did not hold by inverse, as Respondent suggests, that such claims were ruled *in*. Cf. *American Banana*, 213 U.S. at 357 ("Words having universal scope, such as 'every contract in restraint of trade,' 'every person who shall monopolize,' etc., will be taken, as a matter of course, to mean only everyone subject to such legislation, not all that the legislator subsequently may be able to catch.").

The Court did not resolve in that footnote the question presented here—of how to sort domestic from foreign injuries. It could not have, given that the Court expressly stated it did "not concern [itself] with that question," *RJR Nabisco*, 579 U.S. at 354, and the Court did not respond to the separate opinion's observation that, given the Court's reading of Section 1964(c), "foreign parties" will "have no RICO remedy," *id.* at 362 (Ginsburg, J., concurring in part and dissenting in part). That separate observation was accurate.

* * *

It is the Court's "task * * * to give effect to the will of Congress, and where its will has been expressed in

reasonably plain terms, that language must ordinarily be regarded as conclusive." *Negonsott* v. *Samuels*, 507 U.S. 99, 104 (1993). This case asks the straightforward question of where the "injury" referenced in Section 1964(c) is suffered, and under what circumstances that "injury" is either "foreign" or "domestic." The statutory text and common-law principles together provide the answer: the injury is suffered at the domicile of the person bringing suit—not where property is located, and not at the defendant's domicile.

II. At A Minimum, And In The Alternative, A RICO Plaintiff's Injury Is Economic And Is Suffered At His Domicile When The Property In Issue Is A Judgment, Award, Or Debt

As noted, the text and background of Section 1964(c) point to the injured plaintiff's domicile as the location of the injury regardless of whether the plaintiff may claim to hold individual items of personal or real property in the United States. In other words, for purposes of determining the situs of the injury that is the basis of a RICO claim, the location of the plaintiff is all that matters. But, if the Court considers that a plaintiff's claim of injury *to* a particular item of property and its location are relevant to determining where the plaintiff's RICO injury was suffered, then the Court should still conclude that where an intangible judgment, award, or debt is in issue, a civil RICO plaintiff suffers an economic injury at his domicile. As a result, a foreign-domiciled plaintiff (like

Smagin in this case) has no private right to sue in that context.

A. As is clear, the species of injury at issue here—a plaintiff allegedly thwarted in his efforts to collect on a judgment—corroborates the conclusion flowing more generally from the text and history of Section 1964(c): such a plaintiff complains of an economic injury, which (to the extent it is cognizable under RICO) is suffered by the plaintiff at his domicile.

On the facts alleged here, Respondent Smagin complains only that defendants deprived him of his collection rights on an arbitral award entered in England and then rendered into both a Liechtenstein judgment and a U.S. judgment. J.A. 5a; *see also* J.A. 79a-80a (alleging that defendants' actions "prevent[ed], hinder[ed], and delay[ed] Plaintiff's ability to collect on the assets of the Alpha Trust" and further asserting, by way of a quotation to an order of the Central District of California in the confirmation proceeding, that such collection was "pursuant to the current and forthcoming orders of the Liechtenstein Court *or* th[e] [California federal] Court") (emphasis added). The only injury in issue, therefore, is non-payment—*i.e.*, loss of cash. Restatement (Second) of Judgments § 18 cmt. c (1982) ("A judgment for the plaintiff awarding him a sum of money creates a debt in that amount in his favor."); *Blodgett* v. *Silberman*, 277 U.S. 1, 12 (1928) (right to receive payment is "a chose in action, and an intangible").

Equally clear, tortious non-payment of a debt, if actionable, causes an "economic injury" upon the wronged person—the wrong is the tortious "deprivation" of an "entitlement to collect." See *Pasquantino* v. *United States*, 544 U.S. 349, 355-356 (2005) (discussing wire-fraud statute). Indeed, the Court has explained, when a defendant carries out a "scheme to deprive a victim of his entitlement to money" or other right to be paid under a debt, such as by "conceal[ing] his assets when settling debts with his creditors," that defendant's (fraudulent) conduct "inflict[s] an economic injury" cognizable under the common law of torts. *Id.* at 356.

In this context, Justice Holmes's observations construing the Sherman Act remain fully apt to describe Smagin's claimed injury: As Smagin's complaint relates to his overall wealth only, "[h]e would not" and cannot "be said to have suffered an injury" in the United States "unless the harm fell upon some object more definite and less ideal than his total wealth." *Chattanooga Foundry*, 203 U.S. at 399. But that has not occurred. Smagin claims a diminution of his overall wealth due to non-payment of a debt, an injury that affects Smagin's wallet. Had Smagin successfully collected on the award or any judgment, the money would have accrued to him in Russia, and not where the judgment is or was collected upon. Russia is also where the loss is now felt.

So, to the extent a plaintiff's claim of injury "to" (rather than "in") his property is relevant, at least

when the claimed property injury is the inability to collect an award, judgment, or other debt, the injury is felt by the plaintiff alone at the plaintiff's domicile.

B. As a result, if the Court considers that a plaintiff's claim of injury "to" property is relevant, then the conclusion still follows, in accord with Section 1964(c)'s text and history, that Smagin is complaining about an economic injury felt at his domicile. The common-law conflict rules cited above continue to instruct that the plaintiff's injury is felt at the plaintiff's domicile (see Part I.B, *supra*), as does the common-sense notion that the injury is to the plaintiff's overall wealth. There has been no concrete injury to any particular property—just the non-receipt of money—and so there is no occasion to consider where the plaintiff's property is located.[9]

In any event, to the extent the location of property is deemed relevant (as the court below considered, see J.A. 10a), Smagin's claim, which concerns intangible property, is still barred. *See Armada*, 885 F.3d at 1094-1095 ("[A] party experiences or sustains injuries to its intangible property at its residence."). That is because the authorities governing the location of intangible property point to the plaintiff's domicile, par-

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[9] Smagin does not plead that he has been injured in his "business," or that he has any (let alone significant) business activities in the United States.

ticularly when the claimed injury is an inability to collect on a judgment or debt. The Court need look no further than Joseph Story's synthesis when considering the topic: "the rule is, that personal property, including debts, has no locality, but follows * * * the law of the domicil of the owner." Story § 410; see also *id.* § 376 (describing same rule as the "general doctrine").[10]

Given that intangible property has no situs, many decisions of this Court have embraced the doctrine articulated by Story and thus adhered to "a variation of the old concept of 'mobilia sequuntur personam,' according to which intangible personal property is found at the domicile of its owner." See *Texas* v. *New Jersey*, 379 U.S. 674, 680-681 & n.10 (1965) ("[T]he right and power to escheat [a] debt should be accorded to the State of the creditor's last known address."). As this Court explained in 1928, "the maxim 'mobilia sequunter [*sic*] personam'"—generally locating intangible property at the domicile of its owner—"is so fixed in the common law of this country and England, in so far as it relates to intangible property, including choses in action, * * * and is so fully sustained by cases

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[10] What is now understood as "intangible property" is encompassed by the common-law concept of "personal property." See Story § 375 (providing definition). See also Gilmore, *Security Interests in Personal Property* 600 ("[M]ovable or personal property is looked on, in law, as having no situs of location of its own but as following the law of the owner's domicile.").

in this and other courts, that it must be treated as settled." *Blodgett*, 277 U.S. at 9-10 ("[I]ntangible personalty has * * * a *situs* at the domicile of its owner.").[11]

As regards debts in particular, the Court observed even before the Sherman Act's enactment that a "debt, although a species of intangible property, may, for purposes of taxation, if not for all others, be regarded as situated at the domicile of the creditor." *Kirtland* v. *Hotchkiss*, 100 U.S. 491, 498 (1879) ("The debt is property in [the creditor's] hands constituting a portion of his wealth."). This is a particularly apt analogy given the allegation of injury here. Taxation is imposed on income at the location where the creditor is to be paid. Smagin's injury is the very converse of this: he claims he did not receive a sum of money on account of a debt. So, as the common law instructs, the asset is located where the creditor is domiciled, not (as the Ninth Circuit believed) where the debtor is located.

Indeed "a debt is property of the creditor, not of the debtor," *Texas*, 379 U.S. at 681, and, in this case,

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[11] See also *Miller Bros. Co.* v. *Maryland*, 347 U.S. 340, 345 n.9 (1954) (listing "cases deal[ing] with intangible property and apply[ing] the maxim mobilia sequuntur personam"); *Curry* v. *McCanless*, 307 U.S. 357, 365-366 (1939) (intangibles "are but relationships between persons, natural or corporate," and "as sources of actual or potential wealth * * * they cannot be dissociated from the persons from whose relationships they are derived"); Aaron D. Simowitz, *Siting Intangibles*, 48 N.Y.U. J. Int'l L. & Pol. 259, 272-279 (2015) (discussing the development of the *mobilia* rule between the nineteenth and early twentieth centuries).

Smagin remains in control of the London Award and any judgments that might be based on it. It makes no sense to consider that the London Award (and hence the injury) is located wherever Smagin happens to have the London Award recognized as a judgment, particularly because Smagin may have it recognized with ease almost anywhere in the world, see pp. 53-54, *infra*. California and Liechtenstein courts have already recognized the London Award, and Smagin can pursue enforcement proceedings in these and many other places. It makes all the sense in the world, and accords with the common law, to conclude that when a creditor is not paid on a debt, he is injured at his domicile. *Chicago, R. I. & P. R. Co.* v. *Sturm*, 174 U.S. 710, 717 (1899) ("[D]ebts, as such, have no locus or situs, but accompany the creditor everywhere, and authorize a demand upon the debtor everywhere.").[12]

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[12] For enforcement purposes, "it has been held that a State may allow an unpaid creditor to garnish a debt owing to his debtor wherever the person owing that debt is found." *Texas*, 379 U.S. at 681 n.12 (citing *Harris* v. *Balk*, 198 U.S. 215 (1905)). This reflects that the "unpaid creditor," when proceeding directly against his debtor's debtor (the "garnishee"), may proceed against him at the source and assert jurisdiction where the garnishee is located. That has nothing to do with where the creditor is injured. See *Harris*, 198 U.S. at 222 ("[I]f the garnishee be found in that state, and process be personally served upon him therein, we think the court thereby acquires jurisdiction over him, and can garnish the debt due from him to the debtor of the plaintiff, and condemn it, provided the garnishee could himself be sued by his creditor in that state."); see also *Shaffer* v. *Heitner*,

* * *

Although RICO's private-remedial provision points to the plaintiff's domicile without regard to the specific property that the plaintiff may own and its location, in the alternative the same rule governs when the plaintiff claims injury to intangible property—and, in particular, awards, judgments, or debts. There again, the injury being nonpayment of a sum due to the plaintiff, the plaintiff suffers the injury at his domicile (both because the plaintiff's loss is economic and because the plaintiff's property, which is a judgment, is best considered as situated at his domicile). The foreign-domiciled plaintiff, therefore, lacks a basis to proceed with a private RICO suit under Section 1964(c).

III. A Bright-Line Plaintiff-Domicile Rule Is Sensible And Administrable

A. A Plaintiff-Domicile Rule Adheres To The Court's Preference For Bright-Line Rules And The Doctrine Of Prescriptive Comity

A bright-line, plaintiff-domicile rule adheres to this Court's preference for clear rules in matters affecting the foreign relations of the United States, and the doctrine of prescriptive comity.

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433 U.S. 186, 209 (1977) ("[I]n cases such as *Harris* and this one, the only role played by the property is to provide the basis for bringing the defendant into court.").

Recent decisions of this Court affecting the foreign affairs of the United States indeed follow the trend of applying bright-line rules. *E.g.*, *ZF Auto. US, Inc.* v. *Luxshare, Ltd.*, 142 S. Ct. 2078 (2022); *Daimler AG* v. *Bauman*, 571 U.S. 117 (2014). The Court's extraterritoriality decisions are no exception. See, *e.g.*, *Nestlé USA, Inc.* v. *Doe*, 141 S. Ct. 1931, 1933 (2021); *RJR Nabisco*, 579 U.S. at 340. And it makes good sense to apply a clear, bright-line rule here, not just because "[s]imple * * * rules * * * promote greater predictability." *Hertz Corp* v. *Friend*, 559 U.S. 77, 94-95 (2010); see also Antonin Scalia, *The Rule of Law as a Law of Rules*, 56 U. Chi. L. Rev. 1175 (1989).

A bright-line, domicile-of-the-plaintiff rule also aligns with the doctrine of prescriptive comity, which addresses "the respect sovereign nations afford each other by limiting the reach of their laws." *Hartford Fire Ins. Co.* v. *California*, 509 U.S. 764, 817 (1993) (Scalia, J., dissenting); see also *WesternGeco LLC* v. *ION Geophysical Corp.*, 138 S. Ct. 2129, 2143 (2018) (Gorsuch, J., dissenting) ("[P]rinciples of comity counsel against an interpretation of our patent laws that would interfere so dramatically with the rights of other nations to regulate their own economies.").[13]

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[13] Under the doctrine of prescriptive comity, which operates as a rule of statutory construction separate from the presumption against extraterritoriality, "this Court ordinarily construes am-

Consider the Court's decision in *F. Hoffmann-La Roche Ltd.* v. *Empagran S.A.*, 542 U.S. 155, 165 (2004), where the Court invoked prescriptive comity to categorically carve out of the reach of the antitrust laws injuries suffered abroad independently of any injury suffered here. The Court was interpreting the Foreign Trade Antitrust Improvements Act (FTAIA), 15 U.S.C. 6a, an act that refined the geographic scope of U.S. antitrust law. The Court considered the text of the statute, policy considerations underlying it, and the extent to which "America's antitrust policies," specifically the treble-damages remedy embodied in them, "commend[ed] themselves to other nations." 542 U.S. at 163-169. Concluding that proceeding "case by case" would be "too complex to prove workable," *id.* at 168, the Court held that the Sherman Act's private right of action, as limited by the FTAIA, categorically does not apply to "independent" foreign injuries. *Id.* at 165-166, 175.[14]

The Court's reasoning in *Empagran* and that decision's application of the doctrine of prescriptive comity further support a bright-line domicile-of-the-plaintiff

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biguous statutes to avoid unreasonable interference with the sovereign authority of other nations." *F. Hoffmann-La Roche Ltd.* v. *Empagran S.A.*, 542 U.S. 155, 164 (2004) (collecting cases); see also Restatement (Fourth) of Foreign Relations Law § 405 (2018).

[14] The Court was addressing "anticompetitive price-fixing activity that is in significant part foreign, that causes some domestic antitrust injury, and that independently causes separate foreign injury." *Id.* at 158.

rule in this case. *Empagran* limited the FTAIA's application in recognition of the fact that, while nations may agree that certain conduct should be regulated, "they disagree dramatically about appropriate remedies" such as "American private treble-damages remedies"—basically the same remedy that Respondent now seeks to deploy in furtherance of his award-enforcement efforts. 542 U.S. at 167. The Court drew a sharp distinction between government enforcement of the federal antitrust laws, and private enforcement through a private cause of action incentivized by a treble-damages bounty. *Id.* at 170-171. It emphasized that the United States should not impose its own views of enforcement-by-private-action on foreign jurisdictions where a foreign injury is felt. *Id.* at 166. And, in that light, it limited the remedy by bright-line rule.

Much the same may be said here. This case concerns the enforcement of RICO by way of a private remedy where a foreign-domiciled plaintiff is injured in his overall wealth, and leaves to the side government enforcement of RICO's primary obligations that, per *RJR Nabisco*, will apply to some extraterritorial conduct. The primary means of enforcing RICO's proscriptions—by way of criminal prosecution and civil enforcement proceedings brought by the Attorney General—remain intact. Meanwhile, as regards private treble-damages suits, a bright-line domicile-of-the-plaintiff rule reflects deference to other nations in accord with principles of comity. Foreign jurisdictions

remain fully able to adopt civil remedies like RICO's private right of action. In the meantime, foreign-domiciled plaintiffs are not dragooned into service as private attorneys general for enforcement of U.S. law. See *Agency Holding*, 483 U.S. at 151 ("Both RICO and the Clayton Act * * * bring to bear the pressure of 'private attorneys general' on a serious national problem for which public prosecutorial resources are deemed inadequate."); *Rotella* v. *Wood*, 528 U.S. 549, 557 (2000) ("The object of civil RICO is * * * not merely to compensate victims but to turn them into prosecutors * * * dedicated to eliminating racketeering activity.").

Empagran's rejection of a multifactor balancing test that would have required "case-by-case" adjudications is also instructive here. Consider the experience of the Courts of Appeals following *RJR Nabisco* that applied a multi-factor test when considering the question this case presents. The court below purported to apply the Third Circuit's multi-part balancing test first devised in *Humphrey* v. *GlaxoSmithKline PLC*, 905 F.3d 694 (3d Cir. 2018). But the court below reached precisely the opposite result as the Third Circuit on indistinguishable facts. Both the decision below and the Third Circuit's *Cavusoglu* case concerned a foreign-located plaintiff alleging interference with a U.S. judgment, and on those facts the two circuits reached opposite conclusions. Compare J.A. 10a (domestic injury), with *Cevdet Aksut Ve Ogullari Koll.Sti* v. *Cavusoglu*, 756 F. App'x 119, 123-124 (3d Cir. 2018) (foreign injury); cf. *Agency Holding*, 483 U.S. at 150

("[A] uniform statute of limitations [for civil RICO] is required to avoid intolerable 'uncertainty and time-consuming litigation.'") (citation omitted).

Respondent will no doubt argue that some domestic activity or property ought to be enough, "[b]ut the presumption against extraterritorial application would be a craven watchdog indeed if it retreated to its kennel whenever *some* domestic activity is involved in the case." *Morrison*, 561 U.S. at 266 (emphasis in original). The Court already held in *RJR Nabisco* that the private civil remedy in RICO covers only domestic injuries, and Congress remains free to revise Section 1964(c)'s geographic scope if it desires. Such "fine tuning of legislation" is "better left to Congress." *Spector* v. *Norwegian Cruise Lines Ltd.*, 545 U.S. 119, 158 (2005) (Scalia, J., dissenting). "To attempt it through the process of case-by-case adjudication is a recipe for endless litigation and confusion." *Ibid.*

B. RICO Was Not Enacted To Function As A Global Arbitral-Award Enforcement Tool

There is no reason to believe that, when Congress enacted RICO, it intended to make the United States a "Shangri–La of [enforcement] litigation for lawyers representing those allegedly cheated" of payments due on foreign arbitration awards and judgments. *Morrison*, 561 U.S. at 270. Yet, that is what a judgment affirming the decision below will condone.

Owing to multiple international treaties to which the United States is a party,[15] arbitral awards entered abroad may easily be converted into judgments here. *Commodities & Mins. Enter. Ltd.* v. *CVG Ferominera Orinoco, C.A.*, 49 F.4th 802, 814 (2d Cir. 2022) ("[C]onfirmation of an arbitration award is a summary proceeding that merely makes what is already a final arbitration award a judgment of the court.") (cleaned up; citation omitted). Similarly, U.S. jurisdictions permit swift recognition of a foreign-country judgment, some without requiring any jurisdictional "nexus" between the judgment and the defendant or its property—in other words, a foreign-judgment creditor may have little difficulty turning a foreign-court judgment into a U.S. judgment, even if the parties have no connection to the United States. See Linda J. Silberman & Aaron D. Simowitz, *Recognition and Enforcement of Foreign Judgments and Awards: What Hath* Daimler *Wrought?*, 91 N.Y.U. L. Rev. 344, 352-359 (2016).[16]

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[15] See 9 U.S.C. 201-208 (implementing New York Convention); 9 U.S.C. 301-07 (implementing Inter-American Convention on International Commercial Arbitration, Jan. 30, 1975, 1438 U.N.T.S. 245); 22 U.S.C. 1650-1650a (implementing Convention on the Settlement of Investment Disputes between States and Nationals of Other States, March 18, 1965, 575 U.N.T.S. 159).

[16] See also, *e.g.*, *Lenchyshyn* v. *Pelko Elec., Inc.*, 723 N.Y.S.2d 285, 286 (App. Div. 2001) ("We hold that the judgment debtor need not be subject to personal jurisdiction in New York before the judgment creditor may obtain recognition and enforcement of the

Recognition of a foreign judgment or award here should not be enough to permit the foreign judgment- or award-creditor to claim injury under RICO for non-payment. Said differently, whether a foreign plaintiff suffered a RICO injury should not turn on the possibility of enforcing foreign arbitral awards (or foreign court judgments) in U.S. courts. The plaintiff may be permitted to obtain discovery in support of enforcement of a foreign award or judgment, and may have a panoply of other tools under state law to assist it in collecting on an arbitral-award-turned-judgment (or on a foreign judgment recognized here).[17] But that does *not* mean the failure to pay the foreign arbitral award or judgment, once converted into a U.S. judgment, is transformed into an injury giving rise to an action for treble damages under RICO, even if the failure to pay may be accompanied by allegedly unlawful activities.

Quite simply, it makes no sense to conclude that Congress intended to arm foreign-domiciled award-creditors with treble-damages private remedies upon their having a foreign arbitral award recognized by a

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foreign country money judgment."); *Haaksman* v. *Diamond Offshore (Berm.), Ltd.*, 260 S.W.3d 476, 480-481 (Tex. App. 2008) (no property and no constitutional exercise of in personam jurisdiction required to recognize foreign-money judgment).

[17] Fed. R. Civ. P. 69(a)(2); *e.g.*, N.Y. C.P.L.R. § 5223 (McKinney 2023); see also *Republic of Argentina* v. *NML Cap., Ltd.*, 573 U.S. 134, 138 (2014) ("The rules governing discovery in post-judgment execution proceedings are quite permissive.").

U.S. court, and upon the making of allegations in a complaint stating that the judgment-debtor, in concert with alleged sham entities created by him to "hide assets," misrepresented the source of assets, and did so by using U.S. wires (which is standard-fare for U.S. dollar transactions). The RICO private remedy is meant to redress economic harm felt by reason of the criminal infiltration of legitimate enterprises, not allegedly fraudulent nonpayment of a judgment, or allegedly fraudulent conveyances.

C. Foreign-Domiciled Plaintiffs Retain Other Remedies

A domicile-of-the-plaintiff rule for determining where the Section 1964(c) injury is felt does not mean foreign plaintiffs are without any remedy or protection for (intangible) property—just that they may not invoke RICO's treble-damages private right of action, at least absent further direction by Congress.

Of course, as earlier noted, nothing stands in the way of the foreign jurisdiction where the plaintiff is domiciled to itself enact a regime like RICO. But that should be up to the foreign jurisdiction. Cf. *Empagran*, 542 U.S. at 168 (citing the briefs of foreign government urging that "a decision permitting independently injured foreign plaintiffs to pursue private treble-damages remedies would undermine foreign nations' own antitrust enforcement policies"); *Alabama Great*, 11 So. at 807 ("[F]or an injury inflicted elsewhere than in Alabama our statute gives no right

of recovery, and the aggrieved party must look to the local law to ascertain what his rights are.").

In any event, a foreign plaintiff conducting substantial business activities in the United States and injured by a violation of RICO will generally have a basis to proceed under RICO, as it will generally conduct business here through a U.S.-incorporated entity that will itself suffer a "domestic" injury. See, *e.g.*, Internal Revenue Serv., *Foreign-Controlled Domestic Corporations, Tax Year 2018* (2022), <https://tinyurl.com/IRSStatistics> (reporting nearly "130,000 returns of active domestic corporations controlled by a foreign entity" for Tax Year 2018). It may also be that, in certain circumstances, a plaintiff conducting substantial U.S. business on an unincorporated basis will be able to proceed here as well.[18]

And, beyond RICO, the foreign-domiciled plaintiff will always be able to press claims in U.S. court sounding in the common law to remedy injuries to their property rights, including for fraud, fraudulent conveyance, conversion, trespass, trespass to chattels, et cetera. Foreign-domiciled plaintiffs, in short, retain ample remedies to protect their rights, but they will not be private attorneys general enforcing RICO.

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[18] In that regard, compare *Perkins* v. *Benguet Consol. Mining Co.*, 342 U.S. 437, 448-449 (1952) (foreign corporation constitutionally subject to general personal jurisdiction in certain circumstances); see also *Daimler*, 571 U.S. at 139 n.19.

CONCLUSION

The judgment of the Ninth Circuit should be reversed, with direction to remand to the district court for entry of judgment in defendants' favor.

Respectfully submitted,

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APPENDIX

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APPENDIX A — RELEVANT STATUTORY PROVISIONS

18 U.S.C.A. § 1961

Effective: June 25, 2022

As used in this chapter--

> **(1)** "racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 932 (relating to straw purchasing), section 933 (relating to trafficking in firearms), section 1028 (relating to fraud and related activity in connection with identification documents), section 1029 (relating

to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), section 1351 (relating to fraud in foreign labor contracting), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), sections 1461-1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1542 (relating to false statement in application and use of passport), section 1543 (relating to forgery or false use of passport), section 1544 (relating to misuse of passport), section 1546 (relating to fraud and misuse of visas, permits, and other documents), sections 1581-1592 (relating to peonage, slavery, and traffickingin persons).,[1] sections 1831 and 1832 (relating to economic espionage and theft of trade

1. So in original.

secrets), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), section 1960 (relating to illegal money transmitters), sections 2251, 2251A, 2252, and 2260 (relating to sexual exploitation of children), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of a copyright), section 2319A (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances), section 2320 (relating to trafficking in goods or services bearing counterfeit marks), section 2321 (relating to trafficking in certain motor

vehicles or motor vehicle parts), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24 (relating to white slave traffic), sections 175-178 (relating to biological weapons), sections 229-229F (relating to chemical weapons), section 831 (relating to nuclear materials), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11 (except a case under section 157 of this title), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), punishable under any law of the United States, (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act, (F) any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain, or (G) any act that is indictable under any provision listed in section 2332b(g)(5)(B);

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;

(3) "person" includes any individual or entity capable of holding a legal or beneficial interest in property;

(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

(6) "unlawful debt" means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political subdivision thereof, or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with

the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate;

(7) "racketeering investigator" means any attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect this chapter;

(8) "racketeering investigation" means any inquiry conducted by any racketeering investigator for the purpose of ascertaining whether any person has been involved in any violation of this chapter or of any final order, judgment, or decree of any court of the United States, duly entered in any case or proceeding arising under this chapter;

(9) "documentary material" includes any book, paper, document, record, recording, or other material; and

(10) "Attorney General" includes the Attorney General of the United States, the Deputy Attorney General of the United States, the Associate Attorney General of the United States, any Assistant Attorney General of the United States, or any employee of the Department of Justice or any employee of any

department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter. Any department or agency so designated may use in investigations authorized by this chapter either the investigative provisions of this chapter or the investigative power of such department or agency otherwise conferred by law.

18 U.S.C.A. § 1962

§ 1962. Prohibited activities

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the

aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) 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.

(d) 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.A. § 1963

§ 1963. Criminal penalties

Effective: December 1, 2009

(a) Whoever violates any provision of section 1962 of this chapter shall be fined under this title or imprisoned not more than 20 years (or for life if the violation is based on a racketeering activity for which the maximum penalty

includes life imprisonment), or both, and shall forfeit to the United States, irrespective of any provision of State law--

> **(1)** any interest the person has acquired or maintained in violation of section 1962;
>
> **(2)** any--
>
> > **(A)** interest in;
> >
> > **(B)** security of;
> >
> > **(C)** claim against; or
> >
> > **(D)** property or contractual right of any kind affording a source of influence over;
> >
> > any enterprise which the person has established, operated, controlled, conducted, or participated in the conduct of, in violation of section 1962; and
>
> **(3)** any property constituting, or derived from, any proceeds which the person obtained, directly or indirectly, from racketeering activity or unlawful debt collection in violation of section 1962.

The court, in imposing sentence on such person shall order, in addition to any other sentence imposed pursuant to

this section, that the person forfeit to the United States all property described in this subsection. In lieu of a fine otherwise authorized by this section, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

(b) Property subject to criminal forfeiture under this section includes--

> **(1)** real property, including things growing on, affixed to, and found in land; and
>
> **(2)** tangible and intangible personal property, including rights, privileges, interests, claims, and securities.

(c) All right, title, and interest in property described in subsection (a) vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (l) that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

(d)(1) Upon application of the United States, the court may enter a restraining order or injunction, require the

execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) for forfeiture under this section--

> **(A)** upon the filing of an indictment or information charging a violation of section 1962 of this chapter and alleging thatthe property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or
>
> **(B)** prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that--
>
> > **(i)** there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and
> >
> > **(ii)** the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered:

Provided, however, That an order entered pursuant to subparagraph (B) shall be effective for not more than ninety days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

(2) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than fourteen days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time, and prior to the expiration of the temporary order.

(3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

(e) Upon conviction of a person under this section, the court shall enter a judgment of forfeiture of the property to the United States and shall also authorize the Attorney

General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following the entry of an order declaring the property forfeited, the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to, or derived from, an enterprise or an interest in an enterprise which has been ordered forfeited under this section may be used to offset ordinary and necessary expenses to the enterprise which are required by law, or which are necessary to protect the interests of the United States or third parties.

(f) Following the seizure of property ordered forfeited under this section, the Attorney General shall direct the disposition of the property by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with or on behalf of the defendant be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or a person acting in concert with or on behalf of the defendant, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if

the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm or loss to him. Notwithstanding 31 U.S.C. 3302(b), the proceeds of any sale or other disposition of property forfeited under this section and any moneys forfeited shall be used to pay all proper expenses for the forfeiture and the sale, including expenses of seizure, maintenance and custody of the property pending its disposition, advertising and court costs. The Attorney General shall deposit in the Treasury any amounts of such proceeds or moneys remaining after the payment of such expenses.

(g) With respect to property ordered forfeited under this section, the Attorney General is authorized to--

> **(1)** grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this chapter, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this chapter;
>
> **(2)** compromise claims arising under this section;
>
> **(3)** award compensation to persons providing information resulting in a forfeiture under this section;

(4) direct the disposition by the United States of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and

(5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

(h) The Attorney General may promulgate regulations with respect to--

(1) making reasonable efforts to provide notice to persons who may have an interest in property ordered forfeited under this section;

(2) granting petitions for remission or mitigation of forfeiture;

(3) the restitution of property to victims of an offense petitioning for remission or mitigation of forfeiture under this chapter;

(4) the disposition by the United States of forfeited property by public sale or other commercially feasible means;

(5) the maintenance and safekeeping of any property forfeited under this section pending its disposition; and

> **(6)** the compromise of claims arising under this chapter.

Pending the promulgation of such regulations, all provisions of law relating to the disposition of property, or the proceeds from the sale thereof, or the remission or mitigation of forfeitures for violation of the customs laws, and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof. Such duties as are imposed upon the Customs Service or any person with respect to the disposition of property under the customs law shall be performed under this chapter by the Attorney General.

(i) Except as provided in subsection (l), no party claiming an interest in property subject to forfeiture under this section may--

> **(1)** intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or
>
> **(2)** commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

(j) The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

(k) In order to facilitate the identification or location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States the court may, upon application of the United States, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under Rule 15 of the Federal Rules of Criminal Procedure.

(l)(1) Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

(2) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within

thirty days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

(4) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within thirty days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

(5) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

(6) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that--

> **(A)** the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or
>
> **(B)** the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section;

the court shall amend the order of forfeiture in accordance with its determination.

(7) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

(m) If any of the property described in subsection (a), as a result of any act or omission of the defendant--

> **(1)** cannot be located upon the exercise of due diligence;
>
> **(2)** has been transferred or sold to, or deposited with, a third party;
>
> **(3)** has been placed beyond the jurisdiction of the court;
>
> **(4)** has been substantially diminished in value; or
>
> **(5)** has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).

18 U.S.C.A. § 1964

§ 1964. Civil remedies

(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future

activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(b) The Attorney General may institute proceedings under this section. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962. The exception contained in the preceding sentence does not apply to an action against any person that is criminally convicted in connection with the fraud, in which case the statute of limitations shall start to run on the date on which the conviction becomes final.

(d) A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter shall estop the defendant from denying the essential allegations of the criminal

offense in any subsequent civil proceeding brought by the United States.

18 U.S.C.A. § 1965

§ 1965. Venue and process

(a) Any civil action or proceeding under this chapter against any person may be instituted in the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs.

(b) In any action under section 1964 of this chapter in any district court of the United States in which it is shown that the ends of justice require that other parties residing in any other district be brought before the court, the court may cause such parties to be summoned, and process for that purpose may be served in any judicial district of the United States by the marshal thereof.

(c) In any civil or criminal action or proceeding instituted by the United States under this chapter in the district court of the United States for any judicial district, subpenas issued by such court to compel the attendance of witnesses may be served in any other judicial district, except that in any civil action or proceeding no such subpena shall be issued for service upon any individual who resides in another district at a place more than one hundred miles from the place at which such court is held without approval given by a judge of such court upon a showing of good cause.

(d) All other process in any action or proceeding under this chapter may be served on any person in any judicial district in which such person resides, is found, has an agent, or transacts his affairs.

18 U.S.C.A. § 1966

§ 1966. Expedition of actions

In any civil action instituted under this chapter by the United States in any district court of the United States, the Attorney General may file with the clerk of such court a certificate stating that in his opinion the case is of general public importance. A copy of that certificate shall be furnished immediately by such clerk to the chief judge or in his absence to the presiding district judge of the district in which such action is pending. Upon receipt of such copy, such judge shall designate immediately a judge of that district to hear and determine action.

18 U.S.C.A. § 1967

§ 1967. Evidence

In any proceeding ancillary to or in any civil action instituted by the United States under this chapter the proceedings may be open or closed to the public at the discretion of the court after consideration of the rights of affected persons.

Appendix A

18 U.S.C.A. § 1968

§ 1968. Civil investigative demand

(a) Whenever the Attorney General has reason to believe that any person or enterprise may be in possession, custody, or control of any documentary materials relevant to a racketeering investigation, he may, prior to the institution of a civil or criminal proceeding thereon, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such material for examination.

(b) Each such demand shall--

> **(1)** state the nature of the conduct constituting the alleged racketeering violation which is under investigation and the provision of law applicable thereto;
>
> **(2)** describe the class or classes of documentary material produced thereunder with such definiteness and certainty as to permit such material to be fairly identified;
>
> **(3)** state that the demand is returnable forthwith or prescribe a return date which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

(4) identify the custodian to whom such material shall be made available.

(c) No such demand shall--

(1) contain any requirement which would be held to be unreasonable if contained in a subpena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged racketeering violation; or

(2) require the production of any documentary evidence which would be privileged from disclosure if demanded by a subpena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged racketeering violation.

(d) Service of any such demand or any petition filed under this section may be made upon a person by--

(1) delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such person, or upon any individual person;

(2) delivering a duly executed copy thereof to the principal office or place of business of the person to be served; or

> **(3)** depositing such copy in the United States mail, by registered or certified mail duly addressed to such person at its principaloffice or place of business.

(e) A verified return by the individual serving any such demand or petition setting forth the manner of such service shall beprima facie proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

(f)(1) The Attorney General shall designate a racketeering investigator to serve as racketeer document custodian, and suchadditional racketeering investigators as he shall determine from time to time to be necessary to serve as deputies to such officer.

(2) Any person upon whom any demand issued under this section has been duly served shall make such material available forinspection and copying or reproduction to the custodian designated therein at the principal place of business of such person, or at such other place as such custodian and such person thereafter may agree and prescribe in writing or as the court may direct,pursuant to this section on the return date specified in such demand, or on such later date as such custodian may prescribe in writing. Such person may upon written agreement between such person and the custodian substitute for copies of all or any part of such material originals thereof.

(3) The custodian to whom any documentary material is so delivered shall take physical possession thereof, and shall be responsible for the use made thereof and for the return thereof pursuant to this chapter. The custodian may cause the preparation of such copies of such documentary material as may be required for official use under regulations which shall be promulgated by the Attorney General. While in the possession of the custodian, no material so produced shall be available for examination, without the consent of the person who produced such material, by any individual other than the Attorney General. Under such reasonable terms and conditions as the Attorney General shall prescribe, documentary material while in the possession of the custodian shall be available for examination by the person who produced such material or any duly authorized representatives of such person.

(4) Whenever any attorney has been designated to appear on behalf of the United States before any court or grand jury in any case or proceeding involving any alleged violation of this chapter, the custodian may deliver to such attorney such documentary material in the possession of the custodian as such attorney determines to be required for use in the presentation of such case or proceeding on behalf of the United States. Upon the conclusion of any such case or proceeding, such attorney shall return to the custodian any documentary material so withdrawn which has not passed into the control of such court or grand jury through the introduction thereof into the record of such case or proceeding.

(5) Upon the completion of--

> **(i)** the racketeering investigation for which any documentary material was produced under this chapter, and
>
> **(ii)** any case or proceeding arising from such investigation,

the custodian shall return to the person who produced such material all such material other than copies thereof made by the Attorney General pursuant to this subsection which has not passed into the control of any court or grand jury through the introduction thereof into the record of such case or proceeding.

(6) When any documentary material has been produced by any person under this section for use in any racketeering investigation, and no such case or proceeding arising therefrom has been instituted within a reasonable time after completion of the examination and analysis of all evidence assembled in the course of such investigation, such person shall be entitled, upon written demand made upon the Attorney General, to the return of all documentary material other than copies thereof made pursuant to this subsection so produced by such person.

(7) In the event of the death, disability, or separation from service of the custodian of any documentary material produced under any demand issued under this section or the official relief of such custodian from responsibility for the custody and control of such material, the Attorney General shall promptly--

(i) designate another racketeering investigator to serve as custodian thereof, and

(ii) transmit notice in writing to the person who produced such material as to the identity and address of the successor so designated.

Any successor so designated shall have with regard to such materials all duties and responsibilities imposed by this section upon his predecessor in office with regard thereto, except that he shall not be held responsible for any default or dereliction which occurred before his designation as custodian.

(g) Whenever any person fails to comply with any civil investigative demand duly served upon him under this section or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the Attorney General may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of this section, except that if such person transacts business in more than one such district such petition shall be filed in the district in which such person maintains his principal place of business, or in such other district in which such person transacts business as may be agreed upon by the parties to such petition.

(h) Within twenty days after the service of any such demand upon any person, or at any time before the

return date specified in the demand, whichever period is shorter, such person may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon such custodian a petition for an order of such court modifying or setting aside such demand. The time allowed for compliance with the demand in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of such demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person.

(i) At any time during which any custodian is in custody or control of any documentary material delivered by any person in compliance with any such demand, such person may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by this section.

(j) Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section.