Nos. 22-381 and 22-383

IN THE

Supreme Court of the United States

ASHOT YEGIAZARYAN, AKA ASHOT EGIAZARYAN,
Petitioner,

v.

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

CMB MONACO, FKA COMPAGNIE 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 REPLY BRIEF FOR PETITIONERS

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JOINT REPLY BRIEF FOR PETITIONERS

The text of Section 1964(c) and longstanding precedents of this Court, as well as the common law, provide a clear answer to the question presented. For purposes of civil RICO, a plaintiff suffers an injury "in" his property only at his domicile, and that rule applies all the more so when the plaintiff claims to have suffered injury to intangible property such as a debt, judgment, or arbitral award. It follows that such foreign-domiciled plaintiffs do not suffer "*domestic* injur[ies]," and cannot bring private civil RICO claims under Section 1964(c) following *RJR Nabisco, Inc.* v. *European Community*, 579 U.S. 325, 346 (2016).

Respondent offers no good reason to question petitioners' reasoning, and does not address head-on the core of petitioners' arguments. Instead, he sponsors an undefined alternate approach to addressing the question presented that is as unsatisfactory as it is groundless. Citing *RJR Nabisco*, respondent asserts that the location of the plaintiff's injury should turn on a subjective appraisal of defendants' alleged U.S. conduct. That proposed test would unravel *RJR Nabisco*, and it finds no support in precedent, RICO, or the common law. It is neither what Congress legislated nor what this Court ruled in construing that legislation. The Court should reverse the decision below.

I. A RICO Plaintiff Is Injured At Its Domicile

A. Smagin's Response To Petitioners' Textual Analysis Of Section 1964(c) Fails

Petitioners explained why, given the statutory grant of a civil RICO remedy to plaintiffs "injured in [their] business or property" and this Court's longstanding precedents interpreting these same words, the statute covers injuries sited at the plaintiff's domicile. Pet. Br. 19-29.

Respondent hardly addresses petitioners' textual analysis and does not provide a competing textual approach of his own for determining where a plaintiff is injured. Instead, he takes issue with the result of petitioners' interpretation as allegedly inconsistent with Section 1964(c)'s grant of a civil remedy to "any person." Resp. Br. 11-12, 26. He also seeks to distinguish *Chattanooga Foundry*, even though that case interpreted the exact same words in the statute on which civil RICO is based. *Id.* at 28-29. Neither argument provides a sound basis for departing from Section 1964(c)'s plain text.

1. For his lead argument, respondent asserts that Section 1964(c)'s reference to "any person" defeats petitioners' rule, because (says he) the word "any" necessarily means that foreign-domiciled plaintiffs may sue. That argument ignores the statute's text and this Court's precedents, and should be rejected.

To begin, it is of course not the case that "any person" may sue under civil RICO. The text prescribes that only persons "injured in [their] business or property" may sue, Section 1964(c); and *RJR Nabisco* instructs that such persons must suffer a "*domestic* injury" to proceed. 579 U.S. at 346. In other words, the statute provides that those "person[s]" meeting the requirements set forth in Section 1964(c)—but only those—may sue, and one of the requirements for proceeding (as *RJR Nabisco* taught) is that such persons must have suffered a domestic injury. That being so, it simply does not matter that the word "any" precedes the word "person." The word "any" merely emphasizes that all persons meeting the statutory requirements may sue; it does not mean that foreign plaintiffs (or any other specific class of plaintiffs) necessarily *will* meet those requirements. The word "any" provides no assistance in locating the situs of the plaintiff's injury—the sole question here.

Respondent's assertion that the word "any" necessarily means that foreign-domiciled plaintiffs can sue also fails on its own terms. As is long settled, a statutory word, even a broad one, is presumed "to be confined in its operation and effect to the territorial limits over which the lawmaker has general and legitimate power." *American Banana Co.* v. *United Fruit Co.*, 213 U.S. 347, 357 (1909). "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." *Ibid.* (emphasis added). It is for this reason that "generic terms like 'any' or 'every' do not rebut the presumption against extraterritoriality," and do not, on their own force, sweep overseas—or capture foreign-domiciled plaintiffs. See *Kiobel* v. *Royal Dutch Petroleum Co.*, 569 U.S. 108, 118 (2013); *RJR Nabisco*, 579 U.S. at 349-350 (same).

Not one of respondent's cases is to the contrary. See Resp. Br. 12. None concerns the rule for determining where an injury is felt. And none concerned the extraterritorial scope of federal legislation. *Ali* v. *Federal Bureau of Prisons*, 552 U.S. 214 (2008) (federal Bureau of Prisons officers are "law enforcement officers" for purposes of the Federal Tort Claims Act); *Bread PAC* v. *Federal Election Comm'n*, 455 U.S. 577 (1982) (interpreting Federal Election Campaign Act).

In short, the statute's reference to "any" does not require that foreign plaintiffs can sue, and it says nothing about the question here, which asks for the circumstances when a plaintiff suffers a "*domestic* injury." *RJR Nabisco*, 579 U.S. at 346. Nor can it be "absurd" that the bright-line domestic injury rule from *RJR Nabisco* would yield a rule based on domesticity, Resp. Br. 26-27, when (i) the whole point of the presumption against extraterritoriality (which the Court applied in *RJR Nabisco*) is that the law draws and recognizes lines based on territory, and (ii) the rule that only domestic plaintiffs may bring RICO claims follows as a matter of logic, text, and precedent.

2. Respondent's only other textual argument is to complain that petitioners are just "parsing * * * the words 'in' versus 'to,'" and to contest the relevance of *Chattanooga Foundry & Pipe Works* v. *City of Atlanta*, 203 U.S. 390 (1906). Resp. Br. 28-29. But the words of a statute matter, and *Chattanooga Foundry* remains controlling, as petitioners explained. Pet. Br. 21-26.

Smagin argues *Chattanooga Foundry* is inapposite because "[t]he case here does not require a comparison of federal and state statutes," and does not "implicate the statute of limitations." Resp. Br. 28-29. So what? The point is that *Chattanooga Foundry* interpreted the cognate phrase "injured *in* his business or property" in the federal antitrust laws, and held that those words conveyed an intent to remedy economic injuries to the plaintiff "in his business or property" rather than injuries "to" property. 203 U.S. at 398-399.

The exact same statutory words are in issue here, and there is no basis for imposing upon them a different meaning than the settled one, particularly as "Congress consciously patterned civil RICO after the Clayton Act" (itself modeled on the Sherman Act). *Klehr* v. *A.O. Smith Corp.*, 521 U.S. 179, 189 (1997); Pet. Br. 22-24. Respondent does not engage with, let alone provide a reason to depart from, the canon that "when a statute uses the very same terminology as an earlier statute * * * it is reasonable to believe that the terminology bears a consistent meaning." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 323 (2012); see Pet. Br. 25.

3. Smagin does not bother to address the balance of petitioners' analysis showing that civil RICO remedies only economic injuries suffered by the person of the plaintiff. Compare Resp. Br. 25, with Pet. Br. 19-29. That analysis is therefore undisputed. Indeed, although respondent suggests that the issue has not been definitively resolved by the Court, he is wrong. See, *e.g.*, *Agency Holding Corp.* v. *Malley-Duff Assocs., Inc*, 483 U.S. 143, 151 (1987) ("RICO * * * [is] designed to remedy *economic* injury.") (emphasis added).

* * *

Petitioners showed that, in light of the statutory words and longstanding precedent, civil RICO plaintiffs may seek only to remedy economic injuries suffered by the person of the plaintiff, at the plaintiff's domicile. Smagin has not presented a colorable response. Instead, Smagin concedes that his claims are founded on an economic injury. Resp. Br. 25.[1] So, even if civil RICO may sweep more broadly in another case, in this case there is no warrant to question that Smagin complains of an economic injury to his person.

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[1] Respondent asserts (at 25) that the question whether RICO remedies only economic injuries was left open at note 13 of *RJR Nabisco*. In that footnote, the Court left open whether "equitable relief is available to private RICO plaintiffs." 579 U.S. at 354 n.13. It is unclear what that footnote has to do with this case.

B. Smagin's Response To The Common-Law Location-Of-Injury Rules Fails

Although Section 1964(c)'s text and this Court's precedents dispose of this case, petitioners further explained that "the Court should also look to common-law principles governing the situs of injury to confirm where the plaintiff's economic injury is suffered." Pet. Br. 29. Petitioners pointed to choice-of-law rules from RICO's enactment (1970), because (i) they provided a common-law rule for determining where an injury is suffered (*i.e.*, the question here); (ii) RICO is construed in light of the "settled meaning at common law" at the "time of RICO's enactment in 1970," *Beck* v. *Prupis*, 529 U.S. 494, 500-501 (2000); and (iii) conflict rules are cousins to the extraterritoriality presumption. Pet. Br. 29-37. Those rules—reflected in the First Restatement—"corroborate what the text makes clear": the plaintiff is injured at its domicile. Pet. Br. 35.

In response, Smagin claims that "Petitioners do not offer any choice-of-law authority that supports [petitioners' position]." Resp. Br. 31. That is wrong. The relevant common-law principle was discussed at length by Judge Friendly in *Sack* v. *Low*, 478 F.2d 360 (2d Cir. 1973), and addressed in various authorities that petitioners cited, most of which Smagin ignores. Those authorities held, as of RICO's enactment, that a tort plaintiff complaining of economic harm suffered injury at his domicile. Pet. Br. 35-37.

Smagin addresses just one of petitioners' cases, *Richards* v. *United States*, 369 U.S. 1 (1962), which

petitioners cited for the point that the "place of injury" test was then "followed by a vast majority of the States" addressing choice-of-law disputes. Pet. Br. 31. Smagin does not claim that this case holds otherwise, but he asserts that it "proves only (if anything) that the location of [a defendant's] challenged conduct is highly relevant and cannot be ignored." Resp. Br. 32. But *Richards* never suggested that was so as a matter of common law. Rather, the case was interpreting a federal statute, the FTCA, which explicitly instructed courts to apply "the law of the place *where the act or omission occurred*." 28 U.S.C. 1346(b)(1) (emphasis added). That was a departure from the common law.

The point remains, first, that common-law conflict rules before RICO's enactment looked to the place of the plaintiff's "*injury*"—which is what *RJR Nabisco* directed courts to ascertain. 579 U.S. at 346. And, second, that the common-law rule for determining the injury's location pointed to the plaintiff's domicile, as respondent's amicus agrees. Bermann Br. 11 ("Th[e] [First] Restatement made decisive, for choice-of-law purposes in tort, the plaintiff's place of domicile, to the exclusion of all other factors and circumstances.").

Finally, joined by his amicus, respondent argues that the common law of conflicts has since moved on from the First Restatement, and both appear to urge reliance on the Second Restatement of Conflicts. Resp. Br. 32 n.8, 38; Bermann Br. 11-15. But the question in this case, left open by *RJR Nabisco*, is *where* a civil

RICO plaintiff's injury is located. The First Restatement provided an answer to that question as of "RICO's enactment in 1970," because at that time conflict rules applied the law of the place of the injury. *Beck*, 529 U.S. at 500-501. As is undisputed, the First Restatement rule "continued to command a majority of states as late as 1979." Pet. Br. 36 (quoting Symeon Symeonides, *Choice of Law* 60 (2016)).

The resolution of the question presented here is not advanced one iota by the fact that, after RICO's enactment, states shifted away from applying the law of the jurisdiction where a plaintiff's *injury* occurred, and moved toward a multifactor balancing test looking to the jurisdiction with the predominant interest in a dispute. Those states did not devise a different rule for determining where an injury occurred—the sole question after *RJR Nabisco*. 579 U.S. at 349 ("Nothing in § 1964(c) provides a clear indication that Congress intended to create a private right of action for injuries suffered outside of the United States."). The fact that there was, after 1970, a "conflict of laws revolution"—and a new multifactor balancing test was devised for assessing the interests of various jurisdictions, Bermann Br. 11-17—is quite irrelevant.

II. At Minimum, Injuries To "Intangible" Property Are Suffered At The Plaintiff's Domicile

Petitioners explained in their opening brief that a civil RICO plaintiff is always injured "in his property"

at his domicile (and that any claim of injury "to" property is irrelevant). But, in the alternative, petitioners further showed that, if a plaintiff may state a Section 1964(c) claim based upon harm "to" intangible property such as a judgment, arbitral award, or debt, the common law still sited that property, and hence the injury, at the plaintiff's domicile. Pet. Br. 40-47.

In response, respondent's main argument is that the "California judgment is uniquely domestic." Resp. Br. 34. Respondent cites no case in support of this *ipse dixit* (other than the decision below), although he apparently believes the California judgment exists only in California because (he says) it and its attendant rights are enforceable only in California. Accord Bermann Br. 9-10 (same). He is incorrect.

A. Respondent cites no authority contradicting petitioner's showing that Smagin's California Judgment is a debt. Pet. Br. 41-43. With that premise established, the long-settled rule at common law, as petitioners explained, is that a debt is an asset of the creditor and thus is sited where the creditor is domiciled. Pet. Br. 43-46; *e.g.*, *Blodgett* v. *Silberman* , 277 U.S. 1, 9-10 (1928) ("[T]he 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 in this and other courts, that it must be treated as settled,"" and therefore "intangible personalty has * * * a situs at the

domicile of its owner"); see also *Texas* v. *New Jersey*, 379 U.S. 674, 680-681 & n.10 (1965).

Respondent does not dispute the common-law rule on which petitioners rely, and cites no law to the contrary. Instead, he takes aim at the reasoning of the Seventh Circuit's decision in *Armada*, and favorably quotes the Ninth Circuit decision on review. Resp. Br. 36-39 (citing *Armada (Sing.) PTE Ltd.* v. *Amcol Int'l Corp*, 885 F.3d 1090 (7th Cir. 2018)). That neither assists the Court in resolving the circuit split nor helps respondent. The circuit cases relied upon by Smagin do not address the common-law rule for determining the situs of intangible property. Still less do they provide a basis to depart from the long-prevailing common-law rule.[2]

The common-law rule siting debts at the domicile of the creditor is not undone (as Smagin appears to assert) by the separate principle that, as a matter of personal jurisdiction, debts (including arbitral awards and judgments) can be collected upon where a debtor or his assets are found. See Pet. Br. 46 n.12 (discussing *Harris* v. *Balk*, 198 U.S. 215 (1905)). Because the California judgment is an intangible property owned by Smagin—specifically, a right to collect sums of money—the common law as of RICO's enactment sites

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[2] At page 35, Smagin cites *Bascuñán* v. *Elsaca*, but that case considered *tangible* property, not the situs of intangible rights like judgments, awards, and debts. 927 F.3d 108, 117 (2d Cir. 2019).

that property at Smagin's domicile, regardless of the rules governing enforcement of judgments and debts.

B. The fact that Smagin obtained recognition of his arbitral debt as a judgment in California is no basis to claim that he suffered a "uniquely domestic" injury. Resp. Br. 34. The just-cited jurisprudence shows otherwise, and the assertion that a California judgment can be enforced only in California is thus irrelevant. It is also incorrect. See U.S. Const. Art. IV, § 1; 28 U.S.C. 1738, 1963; Pet. Br. 53-54. Respondent's judgment can be enforced throughout the United States and his award can be enforced world-wide, as shown by Smagin's enforcement activities in Lichtenstein, where he obtained a separate judgment recognizing the same award. Plainly, if he collects on his "Lichtenstein judgment," he will be unable to collect in California. In the meantime, the California Judgment remains valid—he can continue to call upon the California courts for post-judgment remedies, such as discovery or a turnover order. Resp. Br. 34.

* * *

In short, Smagin provides no basis to depart from the common law, against which RICO should be construed. Smagin's property is a debt, and he admits that his real complaint is the inability to "collect[]" on his arbitral-award-turned-judgment. Resp. Br. 33. His loss—which he concedes is purely economic (*id.* at 25)—was necessarily felt by Smagin at his domicile, as the common law has long instructed.

III. Smagin's Conduct-Based Test Is Meritless

Although it is far from clear what rule Smagin asks the Court to adopt, he appears to favor a test that evaluates whether there has been U.S. "conduct" by the defendant, citing *RJR Nabisco* as his main authority. Resp. Br. 13-16. In fact, his position directly contradicts *RJR Nabisco*, and is wrong on its own terms.

A. *RJR Nabisco* drew a deliberate distinction between RICO's substantive, conduct-regulating provisions and its remedial provision. Yet Smagin now seeks to conflate the place of injury with the location of the defendant's conduct—exactly what *RJR Nabisco* refused to do. Smagin's not-so-subtle position appears to be that *RJR Nabisco* should be overruled.

Recall that, in *RJR Nabisco*, the Court "first consider[ed] whether RICO's *substantive* prohibitions in § 1962 may apply to foreign conduct." 579 U.S. at 338 (emphasis added). That was in Part III of the Court's opinion, and the Court held the statute *did* cover foreign conduct. It was in Part IV that the Court "turn[ed] to RICO's private right of action"; the Court held that, regardless of the situs of a defendant's conduct, the private right of action reached only "domestic injury," because the plaintiff's injury—not the defendant's conduct—was the focus of Section 1964(c). *Id.* at 346-354. This was because Congress "cabin[ed] RICO's private cause of action" so that "the civil remedy is *not* coextensive with RICO's substantive provisions." *Id.* at 350 (emphasis added).

In so holding, the Court expressly rejected the core of Smagin's argument—*i.e.*, that the statute's substantive reach vis-à-vis a defendant's conduct is coterminous with the domestic injury needed to invoke Section 1964(c). That was indeed the first point the Court made in Part IV, and the Court expressly "rejected" the Second Circuit's view—now repeated by Smagin—"that the presumption 'is primarily concerned with the question of what *conduct* falls within a statute's purview.'" *Id.* at 346.

The Court's reasoning is instructive. The Court cited *Kiobel*, explaining "that the presumption 'constrains courts considering causes of action' under the ATS, a 'strictly jurisdictional' statute that 'does not directly regulate conduct or afford relief.'" *RJR Nabisco*, 579 U.S. at 346 (alteration omitted). It reasoned that, as a result, the Court would "separately apply the presumption against extraterritoriality to RICO's cause of action," Section 1964(c), even though RICO's substantive provisions covered overseas activities. *Id.* at 346 (discussing *Kiobel*, 569 U.S. at 115-120).

And it held this was because, *inter alia*, "'[t]he creation of a private right of action raises issues beyond the mere consideration whether underlying primary conduct should be allowed or not, entailing, for example, a decision to permit enforcement without the check imposed by prosecutorial discretion.'" *RJR Nabisco*, 579 U.S. at 346 (quoting *Sosa* v. *Alvarez-Machain*, 542 U.S. 692, 727 (2004)). Construing the text of Section 1964(c), the Court then instructed that

although the substantive provisions focused on the defendant's *conduct*, and although they did cover some foreign conduct, the focus of civil RICO's remedial provision was the plaintiff's *injury*, and a domestic injury was needed. *RJR Nabisco*, 579 U.S. at 349-354. This reflects the Court's recognition in other contexts that whether a defendant has engaged in wrongdoing cognizable under federal law is altogether distinct from the question whether a plaintiff has a right to sue. Cf. *Alexander* v. *Sandoval*, 532 U.S. 275, 286-287 (2001).

By foregoing an inquiry into the location of the injury and instead centering on the defendant's conduct, Smagin would have the Court effectively overrule *RJR Nabisco*. First, because his domestic-conduct test would contravene Part III of *RJR Nabisco*, which interprets RICO to reach foreign conduct. And second, because the Court held in Part IV that the focus of Section 1964(c) is *not* conduct but injury. Indeed, respondent's authorities suggest such an overruling is what he seeks. Resp. Br. 14 (citing *Dobbs* v. *Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022), and *Janus* v. *AFSCME, Council 31*, 138 S. Ct. 2448 (2018)).

It comes as no surprise that Smagin's only cited support for his rule comes from portions of the decision discussing the substantive scope of RICO. Smagin purports to cite Part IV of *RJR Nabisco* for the proposition that "[i]f the conduct relevant to the statute's focus occurred in the United States, then the case involves a permissible domestic application." Resp. Br. 15 (claiming to cite 579 U.S. at 346). But this

statement actually appears in Part II, in which the Court was simply articulating the "two-step framework for analyzing extraterritoriality issues" as applied to substantive provisions. 579 U.S. at 337. As noted, it was after this discussion that the Court expressly "rejected" the Second Circuit's view that the presumption concerned only "conduct," and held that the presumption applied to Section 1964(c) and required a domestic *injury*. *Id.* at 346.

The other extraterritoriality cases cited by Smagin (Pet. Br. 19) are no more helpful to him. True, they include discussion of the presumption against extraterritoriality, but the focus of *those* statutes is on a defendant's alleged conduct. *Nestlé* v. *Doe*, 141 S. Ct. 1931, 1937 (2021) (addressing argument regarding reach of Alien Tort Statute to "conduct"); *Hetronic Int'l, Inc.* v. *Hetronic Germany GmbH*, 10 F.4th 1016, 1035 (10th Cir. 2021) (application of Lanham Act to foreign conduct). That is simply not true here, as *RJR Nabisco* held.

B. Next, *F. Hoffman-La Roche Ltd.* v. *Empagran S.A.*, 542 U.S. 155 (2004), a prescriptive-comity case discussed at length in petitioners' brief, Pet. Br. 49-51, does not help respondent. Contra Resp. Br. 16-18. That decision, like *RJR Nabisco*, recognized the need for U.S. courts to tread lightly when, as here, it is asserted that Congress intended to dragoon foreign persons into the enforcement of U.S. public law by granting them treble-damages bounties. *Empagran*, 542 U.S. at 167-68; cf. *RJR Nabisco*, 579 U.S. at 348

("[T]here is a potential for international controversy that militates against recognizing foreign-injury claims without clear direction from Congress.").

Thus, although Smagin tries to say otherwise,[3] *Empagran* supports petitioners. As petitioners explained and as the Private International Law Scholars' amicus brief further shows, foreign jurisdictions do not have remedies similar to RICO. Scholars' Br. 3-11; see also WLF Br. 6-8. It makes good sense to apply petitioners' rule not just because it follows from the text of the statute and the common law, but also because, as in *Empagran*, it avoids international friction. Pet. Br. 47-55.

C. Not only does Smagin provide no support for his approach, and not only is it directly contrary to (and indeed apparently seeks to overrule) his main authority, but he does not even provide a workable or indeed meaningful test. It seems he believes there is a domestic injury if there has been some U.S. conduct by the defendant, or perhaps if the U.S. conduct is "primary." Resp. Br. 13, 16, 18-20. That is no test at all.

The fact that there may be "*some* domestic activity" cannot be sufficient to satisfy the domestic-injury requirement. See *Morrison* v. *National Austl. Bank Ltd.,* 561 U.S. 247, 266 (2010) ("[T]he presumption against

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[3] Respondent suggests *Empagran* is inapposite because, he says, "[t]here is no similar exception from the RICO private right of action" to the statute considered there. Resp. Br. 17-18. But Section 1964(c)'s domestic-injury requirement is that "exception."

extraterritorial application would be a craven watchdog indeed if it retreated to its kennel whenever *some* domestic activity is involved in the case."); and compare Resp. Br. 15 (arguing that a plaintiff's "injury" depends on whether "relevant conduct" took place in the United States without defining what conduct is relevant); *id.* at 26 (arguing relevant alleged conduct was not "solely foreign").

Respondent offers no criterion for determining how much U.S. activity is enough. Respondent claims the "primary RICO conduct" occurred in California. Pet. Br. 20. But why is that so? After all, respondent accuses Ashot of a sprawling international scheme involving London law firms, Liechtensteiner trusts, a Monégasque bank, and various alleged confederates acting throughout Europe. The funds Smagin seeks to recover are alleged to be abroad, under the stewardship of foreign individuals and entities, and he has tried to enforce his award there too. The vast majority of the alleged RICO acts unfolded abroad, not here—and CMB Monaco (among others) is not itself alleged to have done anything in the United States. There is no explanation why the U.S. conduct alleged here is "primary," or how to resolve the next case.

D. Respondent also supports his result by pointing to, as an additional ingredient in the broth of U.S. conduct he cites, the existence of his California judgment. *E.g.*, Pet. Br. 20. As noted above, the location of Smagin's property is irrelevant (Point I), and the debt is in fact sited in Russia, not California (Point II). It is

also unclear what role this additional factor plays in Smagin's proposed approach. Perhaps he aspires for the sort of center-of-gravity test his amicus sponsors, based upon the Second Restatement, on the theory that conflicts rules now do not look only to the place of injury. That is an interesting factoid—but, again, *RJR Nabisco* tells us *a domestic injury* (not a domestic "center of gravity") is required under Section 1964(c).

Moreover, as petitioners explained in their opening brief, Smagin's *ad hoc* approach is entirely unworkable: the court below determined, based on a multi-factor test Smagin apparently sponsors, that his injury was domestic, but the Third Circuit applied the same test to essentially the same facts to reach the opposite result. Pet. Br. 51 (citing *Cevdet Aksut Ve Ogullari Koll.Sti* v. *Cavusoglu*, 756 F. App'x 119, 123-124 (3d Cir. 2018)). Any test that admits opposite results on parallel facts cannot be the law. See *Empagran*, 542 U.S. at 168 (applying rule "that would exclude independent foreign injury cases *across the board*" over a loose standard).

* * *

In sum, Smagin's multifactor conduct-plus approach finds no home in the statutory text or this Court's cases. The relevant text of Section 1964(c) provides that "any person injured in his business or property by reason of a violation of section 1962 of [RICO]" may sue. As *RJR Nabisco* recognized, Congress chose to give Section 1964(c) a narrower focus than RICO's substantive provisions, one trained on the situs of a

plaintiff's "injury," rather than a defendant's conduct. 579 U.S. at 350. Examining a defendant's conduct to determine the situs of a Section 1964(c) injury (as Smagin urges) would unravel *RJR Nabisco*'s holding.

IV. Smagin's Remaining Arguments Are Unpersuasive

As respondent admits, "bright line rules are favored" and "simplicity is desirable." Resp. Br. 39-40. Petitioners' rule is thus ideal. Pet. Br. 47-48. Adopting Smagin's ill-defined, conduct-centric balancing test is not. In fact, it is precisely this sort of multifactor balancing that contributed to the circuit split requiring this Court's attention. See *id.* at 51.

Smagin asserts his approach is sound because, he says, petitioners' plaintiff-domicile rule "would sow more international discord, not less." Resp. Br. 41. That is clearly not the case, given other countries' recalcitrance toward U.S. treble-damages actions like the ones permitted under civil RICO. See Scholars' Br. 7-11; see also *Empagran*, 542 U.S. at 167-168. No other country permits judgment- or award-creditors such as Smagin to seek up to three times the value of their judgment or award for non-payment—let alone from third parties such as petitioner CMB Monaco. Scholars' Br. 4-7. Neither respondent nor his amicus dispute this, and nothing stops Smagin from seeking other remedies or from seeking to enforce his award in jurisdictions where assets were supposedly hidden.

Smagin also argues that limitations found in the New York Convention and the doctrine of personal jurisdiction curb the problems his amorphous approach, Resp. Br. 41-42, but this is not true for the reasons petitioners explained in their opening brief. Pet. Br. 53-54. Smagin's position is also belied by the fact that, in this case, he is suing a third-party foreign bank (CMB Monaco) for treble damages, despite CMB Monaco having no activities in the United States. And regardless, neither personal jurisdiction nor a statute's other substantive limitations have served as a basis for reading a statute to have broad extraterritorial effect favoring foreign-domiciled plaintiffs. *E.g.*, *Kiobel*, 569 U.S. at 125; *Morrison,* 561 U.S. at 273.

Whatever Smagin would have the Court believe, there is no reason to conclude based on RICO, federal arbitration law, the New York Convention, or any other authority that Smagin should be able to sue under RICO and seek treble damages for non-payment of a foreign arbitral award recognized as a judgment.

CONCLUSION

The judgment below should be reversed and the RICO claims dismissed.

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