No. _____

In the
Supreme Court of the United States

GENERAL MOTORS LLC;
GENERAL MOTORS COMPANY,
Petitioners,

v.

FCA US, LLC; FIAT CHRYSLER AUTOMOBILES N.V.;
ALPHONS IACOBELLI; JEROME DURDEN;
MICHAEL BROWN,
Respondents.

On Petition for Writ of Certiorari to the U.S. Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The defendants in this case (collectively, "FCA") illicitly funneled millions of dollars to officers of the labor union they share with General Motors ("GM"). That is an undeniable fact backed by multiple criminal pleas by FCA and the union. FCA did so not just to decrease its own labor costs and to obtain preferential work rules, but for the specific purpose of increasing GM's labor costs and imposing constraints to pressure GM to merge with FCA. The Sixth Circuit acknowledged that GM plausibly alleged that it was the intended target of that racketeering scheme and that GM was harmed in fact. But the court nevertheless held that GM could not proceed past the motion-to-dismiss stage under the Racketeer Influenced and Corrupt Organizations ("RICO") Act because the scheme corrupted the union to harm GM and aspects of the scheme required the approval of GM workers. The court reached this counterintuitive conclusion that the intended victim of a RICO conspiracy could not sue despite this Court's teaching that "[o]ne who intentionally causes injury to another is subject to liability" under RICO "to the other for that injury," *Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639, 657 (2008), and even though multiple other circuits have allowed the intended victims of RICO conspiracies to sue in comparable circumstances.

The question presented is:

Whether the direct and intended victim of a racketeering scheme who suffers injury by reason of the scheme is precluded from establishing proximate cause under RICO if the scheme by design involved the corruption or deceit of other parties.

PARTIES TO THE PROCEEDING

Petitioners are General Motors LLC; and General Motors Company.

Respondents are FCA US, LLC; Fiat Chrysler Automobiles N.V.; Alphons Iacobelli; Jerome Durden; and Michael Brown.

CORPORATE DISCLOSURE STATEMENT

General Motors LLC is a wholly owned subsidiary of General Motors Holdings LLC, which is wholly owned by General Motors Company. General Motors Company does not have a parent corporation, and no publicly held corporation owns more than ten percent of its stock.

STATEMENT OF RELATED PROCEEDINGS

This case arises from and is directly related to the following proceedings in the U.S. District Court for the Eastern District of Michigan and the U.S. Court of Appeals for the Sixth Circuit:

General Motors, LLC v. FCA US, LLC, No. 20-1791 (6th Cir.) (opinion issued Aug. 11, 2022); and

General Motors LLC v. FCA US LLC, No. 19-cv-13429 (E.D. Mich.) (opinion and order granting defendants' motion to dismiss issued on July 8, 2020, opinion and order denying plaintiffs' motion to alter or amend judgment on Aug. 14, 2020).

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PETITION FOR WRIT OF CERTIORARI

For nearly a decade, executives and employees of FCA US, LLC, and its parent company Fiat Chrysler Automobiles N.V. (collectively, "FCA") engaged in a classic racketeering scheme to corrupt labor relations and pattern bargaining in the automotive industry. That is not an allegation, but a matter of public record. Both FCA and the individual defendants in this case admitted in federal criminal plea agreements to having illegally funneled millions of dollars in bribes to officers of the United Automobile, Aerospace, and Agricultural Implement Workers of America ("UAW"), the union FCA shares with petitioners ("GM"). FCA's racketeering was textbook and pervasive. Much like a classic organized-crime scheme to corrupt a seemingly legitimate business to defraud third-party creditors, FCA's goal was to corrupt the shared union to injure GM. The scheme was not designed simply to reduce FCA's own labor costs illegally and to obtain favorable work rules for FCA. FCA also used its bought-and-paid-for relationship with union officials to intentionally injure its rival GM, including by deliberately increasing GM's labor costs, in service of FCA's goal of forcing GM into a merger, which GM had resisted.

This case is about whether the intended victim of a racketeering scheme that corrupts or dupes one party to injure another can recover for the damage the scheme intentionally inflicted on it. While this Court seemingly answered that question in the affirmative in *Bridge v. Phoenix Bond & Indemnity Co.*, 553 U.S. 639 (2008), the Sixth Circuit held to the contrary in the decision below based on its reading of other

precedents of this Court. The Sixth Circuit concluded that GM's suit could not proceed past the motion-to-dismiss stage because FCA's scheme to corrupt the union in order to harm GM involved multiple parties and multiple victims and required GM workers to approve the corrupt deal that injured GM. In the Sixth Circuit's view, that meant GM could not establish proximate cause under the Racketeer Influenced and Corrupt Organizations ("RICO") Act as a matter of law, even though GM was the direct and intended object of the scheme and suffered injuries distinct from any injuries anyone else may have suffered because of FCA's actions. That result cannot be squared with statutory text, this Court's precedent, or common sense.

Congress determined that "[a]ny person injured in his business or property by reason of [racketeering activity] may … recover threefold the damages he sustains." 18 U.S.C. §1964(c). Nothing in that text gives any indication that Congress meant to preclude the direct and intended victim of a racketeering scheme from recovering for its injuries just because the scheme worked by corrupting or duping a third party or involved multiple steps and multiple victims. Indeed, the whole point of RICO is to provide additional tools to attack sophisticated, multi-victim racketeering schemes, and the whole point of RICO's civil provisions is to provide compensation for the intended victims of such complicated patterns and enterprises. Nor does precedent support such a counterintuitive rule. To the contrary, this Court in *Bridge* made clear unanimously that RICO's proximate-cause requirement, whatever its other sensible limits, is broad enough to incorporate the

"well established … 'principle'" that "'one who intentionally causes injury to another is subject to liability to the other for that injury.'" 553 U.S. at 656-57 (alterations omitted) (quoting Restatement (Second) of Torts §870 (1979)). That does not mean that GM could sue FCA for a racketeering scheme designed to corrupt the union solely to lower FCA's labor costs, on the theory that GM suffers an indirect injury as a competitor. This Court has been rightly skeptical of such claims. *See Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451 (2006). But when the object of FCA's racketeering was to harm GM by corrupting the union to directly increase GM's labor costs and to force GM into an unwanted merger, there is no proximate-cause obstacle to GM's suit, as *Bridge* makes clear.

In addition to flouting text, precedent, and common sense, the decision below entrenches a circuit split on how to reconcile this Court's precedents. The Sixth Circuit read *Anza* to deem a defendant's intent to harm the victim irrelevant, and it insisted that *Bridge* did not mean what it said when it stated that "one who intentionally causes injury to another is subject to liability to the other" under RICO "for that injury," 553 U.S. at 657. The circuits on the other side of the split take *Bridge* at its word. Only this Court can resolve the conflict and restore RICO's basic promise. Under the decision below, a racketeer may escape RICO liability altogether, even for injuries it intentionally set out to inflict, simply because it devises a complicated scheme. Nothing in law or logic supports that outcome. The Court should grant certiorari.

OPINIONS BELOW

The district court's order granting defendants' motion to dismiss, 2020 WL 3833058, is reproduced at App.32-59. The court's order denying plaintiffs' motion to alter or amend the judgment, 2020 WL 4726941, is reproduced at App.60-72. The Sixth Circuit's opinion, 44 F.4th 548, is reproduced at App.1-32.

JURISDICTION

The Sixth Circuit entered judgment on August 11, 2022. Justice Kavanaugh extended the time to file a petition to January 8, 2023. This Court has jurisdiction under 28 U.S.C. §1254(1).

STATUTORY PROVISION INVOLVED

The full text of 18 U.S.C. §1964 is reproduced at App.73-74.

STATEMENT OF THE CASE

A. Legal Background

1. Congress passed the RICO Act in 1970 to "seek the eradication of organized crime." *Russello v. United States*, 464 U.S. 16, 27 (1983). The racketeering schemes Congress targeted in RICO were by their nature complex, combining multiple crimes and multiple victims. Most of the activity Congress targeted was already criminal at the state or federal level or both. But when criminal activity went beyond isolated incidents to patterns of criminal conduct undertaken by a criminal enterprise, Congress wanted to provide both federal prosecutors *and victims* with powerful remedies to address such coordinated and complicated activity. To that end, RICO provides enhanced criminal penalties for

racketeers, as well as a civil remedy for racketeering victims: "Any person injured in his business or property by reason of" racketeering activity "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." 18 U.S.C. §1964(c).

While one goal of RICO's private right of action is to deter and punish racketeers, another is to "remedy economic injury" caused by their schemes. *Agency Holding Corp v. Malley-Duff & Assocs., Inc.*, 483 U.S. 143, 151 (1987). Whatever one thinks about the remedial-purposes canon as a judge-made rule of interpretation, RICO itself provides in its enacted text that its terms "shall be liberally construed to effectuate its remedial purposes." Pub. L. No. 91-452, §904, 84 Stat. 922, 947 (1970). And "[t]he statute's 'remedial purposes' are nowhere more evident than in the provision of a private action for those injured by racketeering activity." *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 498 (1985).

To be sure, that does not mean that RICO provides a treble-damages remedy for any injury that can be traced in attenuated fashion to a RICO scheme. This Court has read RICO's "by reason of" language to incorporate not just but-for causation, but "common-law principles of proximate causation" as well—*i.e.*, "the judicial tools used to limit a person's responsibility for the consequences of that person's own acts." *Holmes v. Sec. Inv. Prot. Corp.*, 503 U.S. 258, 267-68 (1992). Applying those tools, this Court has been particularly skeptical of plaintiffs who claim to have suffered a competitive injury as a downstream

consequence of a competitor's corrupt scheme to unfairly benefit itself. In *Anza*, for example, a retailer alleged that a competitor failed to charge customers applicable sales taxes, thereby defrauding the state, which in turn allowed the defendant to offer lower prices and attract more customers, at the plaintiff's expense. The Court held that the plaintiff failed to allege proximate cause because its injuries were caused by "a set of actions (offering lower prices) entirely distinct from the alleged RICO violation (defrauding the State)." 547 U.S. at 458.

At the same time, however, the Court has made clear that proximate cause in the RICO context encompasses the long-standing common-law principle that "one who intentionally causes injury to another is subject to liability to the other for that injury," even if he uses an intervening actor to accomplish it—such as "where the defendant 'defrauds another for the purpose of causing pecuniary harm to a third person.'" *Bridge*, 553 U.S. at 657 (quoting Restatement (Second) of Torts §870 cmt. a (1979)). In *Bridge*, losing bidders at a county tax-lien auction alleged that the defendants made fraudulent misrepresentations to county tax authorities to win more bids. The Court held that the bidders plausibly alleged proximate cause because they were the "primary and intended victims of the scheme to defraud" and their alleged injury (the loss of valuable liens) was the "foreseeable and natural consequence of petitioners' scheme to obtain more liens for themselves." *Id.* at 650, 658.

The Court's most recent exploration of RICO proximate cause came in *Hemi Group, LLC v. City of New York*, 559 U.S. 1 (2010). There, New York City

alleged that an online cigarette seller committed fraud by failing to file required customer information with New York State. The city claimed that the seller's fraudulent failure to file with the state precluded the state from relaying information to the city that would have made it easier to track down purchasers who failed to pay *city* taxes. *Id.* at 4. A four-Justice plurality declined to "stretch[] the causal chain of a RICO violation so far" as to reach "situations where the defendant's fraud on the third party (the State) has made it easier for a fourth party (the [purchaser]) to cause harm to the plaintiff (the City)." *Id.* at 11. The three-Justice dissent, by contrast, argued that the city plausibly alleged proximate cause because the defendant "intended" and "*desired* the loss to occur." *Id.* at 23 (Breyer, J., dissenting). The brief controlling opinion, for its part, did not "subscrib[e] to the broader range of the [plurality's] proximate cause analysis." *Id.* at 19 (Ginsburg, J., concurring in judgment). The splintered opinions in *Hemi Group* thus did nothing to disturb the clear and unanimous holding of *Bridge*, but left lower courts with little additional guidance about the scope of proximate cause in the RICO context.

B. Factual Background

In 2008, the American automotive industry faced a crisis. The collapse of the housing industry triggered the country's worst recession since the Depression. At the same time, rising gas prices drove consumers away from trucks and SUVs, the industry's biggest revenue-drivers. Foreign automakers, which enjoy lower labor costs from non-unionized labor, provided fierce competition. Faced with those compounding

pressures, American automakers turned to the government for help. The Treasury injected emergency funds into both Chrysler and General Motors Corporation ("Old GM"). But the funds did not stem the bleeding. Chrysler filed for Chapter 11 bankruptcy in April 2009, and Old GM followed suit two months later.

Meanwhile, Italian automotive giant Fiat faced falling sales and a deepening economic crisis in Europe. Then-CEO Sergio Marchionne was desperate for a company-saving alliance. He told his executive council, "Fiat needs to radically change its alliance strategy. We've done everything we can on our own. If we're going to survive this one, we need a partner." Compl.¶¶21, 48. Marchionne saw in the Chrysler and Old GM bankruptcies a potential lifeline: a long-desired chance to partner with a U.S. automaker (or, better yet, two) and enter the American market. In Marchionne's view, the bankruptcies "were changing the game." Compl.¶49. As a first step, Fiat decided to pursue a strategic partnership with Chrysler.

Marchionne recognized that forging an alliance with union leadership would be critical to Fiat's bid to buy part of Chrysler. He homed in on General Holiefield, the head of the UAW's Chrysler Department. Soon, Marchionne and Holiefield were strategic partners and "true friend[s]." Compl.¶50. In early 2009, Marchionne, Holiefield, and former UAW President Ron Gettelfinger met and laid the groundwork for a UAW-Fiat alliance. As negotiations between Fiat and Chrysler intensified, Marchionne insisted that the UAW commit to support a manufacturing system called World Class

Manufacturing ("WCM"). According to Marchionne, WCM "broke down the union's rigid job classification system with its strict hierarchy and boundaries about who could do what." Compl.¶53. Chrysler and the UAW agreed to implement WCM.

Chrysler emerged from bankruptcy in June 2009. Fiat emerged with 20% of Chrysler's equity. And although the UAW ended up as the majority owner of the new entity (with 55% equity), Marchionne took the helm as CEO.

Almost immediately, the Marchionne-led company began paying the UAW back for its support of his takeover and paving the way for its continuing support as Marchionne set his sights on GM—in the form of bribes. A mere month after Chrysler emerged from bankruptcy, its executives began funneling hundreds of thousands of dollars of Chrysler funds to Holiefield, including through a charity he controlled. These payments kicked off a years-long, multimillion-dollar scheme to bribe UAW officers and keep them, as one of the individual defendants put it, "fat, dumb, and happy." Compl.¶¶63-64. Defendants viewed these bribes as an "investment" designed to "grease the skids," so that FCA (the name Chrysler took on a few years later) could obtain "benefits, concessions, and advantages for FCA in its relationship with the UAW." Compl.¶¶63-64.

Benefits for itself is not all FCA bought with its bribes. It also used its corruption of UAW officials to intentionally and affirmatively harm GM. Compl.¶71. These efforts began with bribing UAW leadership to ensure that the UAW would deny to GM the benefits, concessions, and advantages that FCA had obtained

through its bribes. That was no mean feat with respect to a joint union that was supposed to deal with manufacturers even-handedly. Indeed, the practice of "pattern bargaining"—under which the respective collective bargaining agreements ("CBAs") between the UAW and each of the three Detroit-based automakers (Chrysler, GM, and Ford) expire simultaneously so that all three must negotiate a new CBA every four years—is designed to ensure rough parity among all three companies, as the UAW expects to be able to bargain for materially similar terms with each company. Compl.¶¶117-18. As part of the pattern-bargaining process, after months of simultaneous initial discussion with all three automakers, the UAW selects a "lead" or "target" automaker with which it will negotiate a CBA, with the goal of securing the best deal possible and then pressuring the other two (often with the threat of a strike) to treat the first CBA as a "pattern" for their own agreements. Compl.¶119. Concessions to one company thus typically inure to the benefit of the others. Yet through its bribery, FCA was able to corrupt the UAW to impose disproportionate harm on GM.

For example, after securing the UAW's commitments to support its own WCM system, FCA bribed UAW leaders to refuse to implement GM's comparable program, known as the Global Manufacturing System, and to rebuff GM's repeated attempts to collaborate with UAW leaders on improvements to that system. Compl.¶75. FCA also bribed the UAW not to enforce CBA restrictions on FCA's use of temporary workers, or to zealously pursue grievances raised by FCA's employees, while

rigorously enforcing comparable restrictions in GM's CBA and zealously pursuing employee grievances against GM. Compl.¶¶79-80. And FCA bribed the UAW to agree to a formulary that would significantly decrease FCA's healthcare costs and to deny GM's repeated requests for a comparable formulary. Compl.¶81. All told, by 2015, FCA had used its corruption of UAW officials to slash its labor costs to $47 per hour—nearly 15% below GM's costs and on par with those of non-unionized automakers in the United States—all while keeping GM's costs artificially high. Compl.¶83.

FCA had an especially good reason to prevent any benefit to GM and to increase GM's costs. Saddling GM with disproportionate costs served Marchionne's ultimate goal: forcing GM to merge with it. Marchionne had made a failed bid to take over GM in 2005, and in the wake of the 2009 bankruptcies he saw an opportunity to revive the dream. As he put it, if after taking over Chrysler he could "take General Motors and merge them together," he could "creat[e] an American giant that also allows a long-term future for Fiat." Compl.¶85. The problem was GM remained uninterested. Just as it had in 2005, GM turned his overtures down flat when he renewed them in 2012. Compl.¶86.

Undeterred, Marchionne unleashed a multifaceted strategy to force a takeover. He first used bought-and-paid-for UAW officials to help persuade the UAW to sell its remaining stake in Chrysler to Fiat, creating the combined FCA entity. Compl.¶90. Armed with complete control of FCA, and the ability to bribe UAW leadership to prevent the

UAW from exercising its right to veto a merger, Marchionne launched a takeover plan. Compl.¶100. He approached GM again in April 2015 and, after being rebuffed yet again, began using the media to make a public full-court press for a merger. Compl.¶¶102-03, 108. He also enlisted the UAW's president and vice president (both of whom were accepting bribes from FCA) to champion his merger strategy at a June 2015 meeting with GM's CEO and senior leadership, while he successfully lined up the financing for a $60 billion cash offer. Compl.¶¶106-08.

Meanwhile, as industry-wide labor negotiations were scheduled to kick off the next month, FCA launched a parallel effort to corrupt the pattern-bargaining process to impose maximum financial pressure on GM. Marchionne drew a connection between those negotiations and his merger hopes from the start, bringing up the possibility of an FCA/GM "consolidation" at the FCA-UAW negotiations kickoff ceremony with the UAW's (corrupted) president. Compl.¶110. Rather than use FCA's corrupt relationship with UAW officials to get the best deal for FCA (which typically would have benefited GM), Marchionne used it to impose the worst possible deal on GM, even if it meant raising FCA's own costs, to increase the pressure on GM to capitulate to a merger.

Typically, the dynamics of pattern bargaining incentivizes UAW to select the largest and best-performing automaker as the lead counterparty, as it is more difficult to secure favorable terms with a less profitable automaker. Compl.¶124. In 2015, the UAW flipped that script. At the time, FCA was the smallest

of the three Detroit-based automakers and had the lowest profit margins and highest percentage of lower-paid, entry-level workers seeking higher wages. So it came as quite a shock to industry experts when the UAW announced that it had selected FCA as the "target." Compl.¶¶124-26. Then, a mere two days later, FCA and the UAW announced that they had reached a "transformational deal." Compl.¶128. In Marchionne's words, the "economics of the deal [were] almost irrelevant" because the costs it imposed on FCA "pale[d] in comparison given the magnitude of the potential synergies and benefits" for which it paved the way. Compl.¶129. The UAW team, for its part, celebrated the sweetheart deal with a $7,000 dinner paid for by bribes from FCA. Compl.¶130.

A UAW workforce who distrusted its leadership rejected the deal, but it was quickly replaced with a new tentative deal that then-UAW president Dennis Williams (who later pleaded guilty to embezzlement) described as one of the "richest ever negotiated." Compl.¶¶131, 133. Indeed, as a pattern for a CBA with GM, the deal would impose on GM more than twice the costs of the nearly one-billion-dollar demand UAW had opened with in its negotiations with GM—a demand GM had successfully negotiated down by 20% in a deal it was close to striking with the UAW mere days before the unexpected announcement that FCA would lead pattern bargaining. Compl.¶¶113-15, 132. Unsurprisingly, UAW's members ratified the modified FCA agreement. Compl.¶133. GM tried to resist using the agreement as a pattern in its own negotiations, but the economic force of pattern bargaining and threat of a strike proved too great, just as FCA expected. Compl.¶135. GM ultimately

capitulated to a CBA that cost it approximately $1.9 billion over four years—more than $1 billion greater than the tentative deal GM had worked out with the UAW before FCA was chosen as the pattern-bargaining lead, and almost $1 billion more even than the UAW's opening demand. Compl.¶137.

On top of that, FCA's corruption of the UAW's leadership ensured that the relatively few concessions made by UAW would benefit FCA to a far greater extent than GM. For example, under the 2007 CBA, both FCA and GM were subject to a 25% cap on "Tier Two" workers, who have a lower wage structure and a different health plan and receive a 401(k) retirement plan instead of a defined pension. Compl.¶54. The cap was lifted in 2009, but both FCA and GM had publicly agreed to reinstate it in 2015. Anticipating that reinstatement, GM kept its proportion of less expensive Tier Two workers around 20%. Compl.¶77. Unbeknownst to GM, however, corrupt UAW officials had secretly promised FCA that they would not insist on reinstating the cap in 2015. Compl.¶78. Armed with that covert assurance, FCA began increasing its number of Tier Two workers; by 2015, Tier Two workers constituted 42% of its UAW workforce. Accordingly, when the UAW unexpectedly (at least to most in the industry) declined to insist on reinstating the Tier Two cap in 2015, that concession gave FCA a dramatic advantage over GM with respect to average labor costs—and did so as a direct result of FCA's bribery and racketeering activity. Compl.¶¶76-79.

In the end, GM was able to resist Marchionne's merger efforts. But FCA's illicit scheming succeeded in imposing on GM billions of dollars in corruptly

inflated labor costs and lost investment initiatives—precisely as FCA had intended. Compl.¶¶138-39.

C. Procedural Background

1. FCA took great pains to conceal its bribery scheme, funneling cash through Holiefield's personal charity, his wife's business, a fake hospice organization, myriad shell companies, and offshore accounts. Compl.¶¶66-67. Eventually, however, years of corruption caught up with the perpetrators. In July 2017, the federal government began unsealing indictments showing a years-long pattern of corruption and racketeering activity conducted by FCA, several of its executives and employees, and certain UAW leaders. Compl.¶145. FCA ultimately pleaded guilty to conspiring to violate federal labor laws by making more than $3.5 million in illegal payments to UAW officials. More than a dozen FCA and UAW officials pleaded guilty to various crimes. The UAW agreed to have a federal monitor oversee its operations for six years as part of a consent decree resolving civil and criminal charges against it.

As the sordid details of the scheme unfolded, it became increasingly clear that FCA's corruption had not only benefitted FCA but directly harmed GM, both by ensuring that GM would consistently be denied concessions the UAW gave to FCA, and by corrupting the pattern-bargaining process to force GM to shoulder more than $1 billion in labor costs above what it would have expended absent FCA's racketeering. It also became increasingly apparent that imposing these massive costs on GM was no accident or unintended byproduct, but rather was an intended goal of FCA's scheme to use bribery and

corruption to injure a rival and strong-arm GM into a merger. GM accordingly filed this lawsuit alleging five causes of action, including violations of the RICO Act and claims of unfair competition and civil conspiracy under Michigan law. Compl.¶¶156-98.

2. Despite the clear evidence of a criminal enterprise in the form of guilty pleas, and a complaint that detailed how GM was the direct and intended victim of FCA's corrupt scheme, the district court dismissed GM's RICO claims in their entirety, with prejudice.[1] The court held that GM failed to plead sufficient facts to show that defendants' RICO violations were the proximate cause of GM's injuries, concluding that if there were any "direct victims of Defendants' alleged bribery scheme," they were "FCA's workers," not GM. App.56.[2] The court then denied GM's motion to alter or amend the judgment on the basis of newly discovered evidence that bolstered GM's claims. App.60-72.

3. The Sixth Circuit affirmed. The court started, and largely ended, its analysis with this Court's decision in *Anza*. It first posited that "[m]ost of GM's injuries are … assertions of an unfair competitive advantage," a theory it deemed "rejected in *Anza*." App.19. The court acknowledged that GM "argue[d] that this case is different because FCA intended to

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[1] The district court declined to exercise supplemental jurisdiction over GM's state-law claims.

[2] The same district court later held in a separate case that FCA's workers "were not directly and proximately harmed by" FCA's scheme either, and thus could not recover under the Mandatory Victims Restitution Act. Order 14, *United States v. FCA US LLC*, No. 21-cr-20031 (E.D. Mich. July 19, 2021), Dkt.19.

harm GM," App.20, and further acknowledged this Court's "statement in *Bridge* that 'one who intentionally causes injury to another is subject to liability to the other for that injury.'" App.21 (quoting 553 U.S. at 657). But it dismissed that language as not directly addressing proximate cause and as inconsistent with *Anza* and the plurality opinion in *Hemi Group*, which it read as "squarely reject[ing]" any role for intent in the RICO proximate-cause analysis. App.20-21. The court thus held that it is irrelevant to RICO proximate cause as a matter of law that the plaintiff was the direct and intended object of the defendant's scheme. App.20-21.

The court acknowledged that "[u]sing an intermediary in a RICO scheme does not alone preclude liability." App.22. But it saw a "critical distinction" between cases in which "RICO conspiracies[] use a middleman to accomplish their goals" and cases in which the scheme inflicts injury on "an intermediate *victim*" en route to injuring the intended target. App.22. According to the court, the intended target of a RICO conspiracy cannot satisfy proximate cause if there are "more immediate victims" of the scheme, regardless of the racketeer's intended victim. App.23 (alteration omitted). And because the court deemed FCA's workers to be "more immediate victims" of FCA's bribes than GM, it held that GM could not satisfy proximate cause. App.23.

The court then turned to GM's allegations "that FCA bribed union executives not only to give FCA certain concessions but also to 'deny similar labor advantages to GM.'" App.23. Although GM clearly alleged that the UAW denied GM concessions because

FCA bribed it to do so, *see, e.g.*, Compl.¶¶162, 178, the court claimed that GM failed to allege that it would have received those advantages absent FCA's bribes, and thus dismissed these allegations for a purported "lack of but-for causation." App.23.

With respect to GM's allegations regarding the 2015 CBA negotiations, the court acknowledged that GM plausibly alleged that FCA structured the 2015 deal to intentionally inflict injury on GM. App.24-25. And it did not deny that GM is the only victim of this aspect of the scheme, as the FCA and GM workforces *benefited* from FCA's willingness to accede to an exceedingly labor-friendly deal to harm GM. But it nonetheless concluded that GM is foreclosed from recovering for those injuries because "the chain of causation" on which FCA's scheme depended was "too attenuated." App.26. In the court's view, because "[t]he chain leading from FCA's bribe to GM's increased labor costs had to pass through the independent actions of at least two independent parties—the FCA and GM workforces," it is so difficult to assess and apportion fault that GM is legally foreclosed from even trying to do so. App.26.

REASONS FOR GRANTING THE PETITION

Congress made a judgment long ago that victims of complex racketeering enterprises should be able to recover treble damages for their injuries. There is no question that defendants here engaged in a classic pattern of racketeering; they have admitted in federal criminal plea agreements that they paid millions of dollars in bribes to officials of the union that FCA and GM share. In exchange, union officials agreed not only to decrease FCA's labor costs, but to intentionally

harm GM, including by corrupting the pattern-bargaining process to foist onto GM massive labor concessions that the UAW would not otherwise have demanded.

The Sixth Circuit held that GM cannot recover for its injuries, even though it was the direct and intended victim of this quintessential racketeering scheme. That conclusion defies statutory text, precedent, and common sense. The entire point of RICO is to provide enhanced remedies for patterns of criminal misconduct by criminal enterprises with multiple victims. And the entire point of civil RICO is to provide racketeering victims with a remedy. The text provides that any person injured in his business or property "by reason of" racketeering activity may sue to recover treble damages, and the enacted text itself instructs that its language should be interpreted broadly to effectuate its remedial purposes. Thus, while this Court has been rightly skeptical of efforts by parties far removed from the object of a racketeering scheme to recover treble damages for injuries that are connected to the scheme only in the most attenuated of ways, it has never disputed that RICO incorporates the longstanding common-law principle that "one who intentionally causes injury to another is subject to liability to the other for that injury," even if the defendant employs the aid—whether witting or unwitting—of third parties along the way. *Bridge,* 553 U.S. at 657 (alterations omitted). The question, then, is not whether a racketeering scheme had other victims or corrupted third parties, but whether injuring the plaintiff was the direct object of the scheme. If so, statutory text, context, common sense, and this Court's unanimous decision in *Bridge*

all make clear that there is no proximate-cause obstacle to a civil RICO action providing relief to the racketeering scheme's intended victim.

The Sixth Circuit's contrary conclusion not only departs from this Court's precedents, but also deepens a circuit split over how to reconcile them. Four circuits faithfully and straightforwardly apply this Court's teaching that "one who intentionally causes injury to another is subject to liability to the other for that injury." *Id.* Consistent with *Bridge*, the First, Third, Seventh, and Ninth Circuits have all held that the direct and intended victims of a racketeering scheme can establish proximate cause under RICO even when the scheme depends on corrupting and/or injuring third parties. By contrast, the Sixth Circuit joined the Second and Fourth Circuits in reading *Anza* and the plurality opinion in *Hemi Group* as somehow compelling the conclusion that whether the racketeer set out to injure the plaintiff is irrelevant to the proximate-cause analysis.

Review is all the more important because that confusion turns not on the facts of individual cases, but on core disagreement about how to read and reconcile this Court's decisions. Some courts (like the Sixth Circuit) read *Anza* as squarely rejecting the notion that intent matters in the proximate cause analysis, notwithstanding the Court's clear teaching in *Bridge*. Other courts rely on *Bridge* and distinguish *Anza*. The Court's last attempt to bring clarity to this area of law in *Hemi Group* resulted in a fractured decision and no majority opinion. Since then, the confusion has gotten worse. Only this Court can

provide clarity. This case presents an excellent opportunity to do so.

I. The Decision Below Entrenches A Circuit Split.

The decision below forecloses the direct and intended victim of a classic and admitted racketeering scheme from obtaining redress, even though GM's injuries are distinct from any injuries anyone else may have suffered and were the whole point of the scheme. That makes no sense. Civil RICO exists to provide a remedy for victims of complicated racketeering schemes engineered by criminal enterprises. Those schemes often corrupt legitimate enterprises to defraud intended victims like creditors. The notion that those creditors could not seek recompense because the scheme corrupted a third-party enterprise, harmed the employees of that legitimate business, or required a corrupted CEO to dupe the board of directors, makes no sense. Yet the Sixth Circuit's decision would leave such quintessential RICO violations entirely unremedied. That result cannot be reconciled with this Court's explicit instruction that RICO incorporates the "general principle" at common law that "one who intentionally causes injury to another is subject to liability to the other for that injury." *Bridge*, 553 U.S. at 657 (alterations omitted). Nothing in any decision before or after this Court' unanimous decision in *Bridge* purports to alter that commonsense rule.

Nevertheless, the Sixth Circuit is not alone in concluding that *Anza* and *Hemi Group* somehow foreclose any consideration of whether the plaintiff was the intended target of the defendant's

racketeering scheme. In fact, the courts of appeals are broadly divided over the role that a racketeer's intent to harm the plaintiff plays in the causation analysis.

Like the Sixth Circuit, the Second and Fourth Circuits have held that it does not matter if a racketeer set out to harm the plaintiff. In *Empire Merchants v. Reliable Churchill*, 902 F.3d 132 (2d Cir. 2018), the plaintiff argued that proximate cause was satisfied because it was the "foreseeable and intended target of the defendants' racketeering." *Id.* at 145. The Second Circuit rejected that argument, concluding that, under *Anza* and *Hemi Group*, "foreseeability and intention have little to no import for RICO's proximate cause test." *Id.* The Fourth Circuit has likewise held, invoking *Anza* and *Hemi Group*, that "a court facing a RICO claim should not focus on whether the harm to the RICO plaintiff was a foreseeable result of the defendant's conduct or even whether it was the intended consequence of that behavior." *Slay's Restoration, LLC v. Wright Nat'l Flood Ins.*, 884 F.3d 489, 493 (4th Cir. 2018) (alterations and emphasis omitted). Like the Sixth Circuit, these courts focus myopically on how many steps it took the defendant to reach the plaintiff.

By contrast, the First, Third, Seventh, and Ninth Circuits have all held that the proximate-cause analysis should focus on what the racketeer set out to accomplish, not how many steps it took to do so or whether there were other victims who may sue. For example, in *Harmoni International Spice, Inc. v. Hume*, 914 F.3d 648 (9th Cir. 2019), the defendants allegedly submitted to the Department of Commerce sham reports of antidumping violations by the

plaintiff "with the specific intent of harming Harmoni's business reputation in the eyes of its customers." *Id.* at 651-53. Harmoni claimed it lost sales by reason of the scheme because "customers learned of the defendants' false accusations and, in reliance on that false information, canceled purchases they were otherwise planning to make." *Id.* at 654. Though the chain from the sham requests to Harmoni's lost sales had to pass through customers (who needed to be duped for the scheme to succeed), the court, relying on *Bridge*, held that Harmoni adequately alleged proximate cause because the "defendants knew their public filings would be reviewed by Harmoni's customers" and "made the false statements with the specific intent of harming Harmoni's business reputation in the eyes of its customers." *Id.* at 652-53; *see also Painters & Allied Trades Dist. Council 82 v. Takeda Pharm.*, 943 F.3d 1243, 1258-59 (9th Cir. 2019).

The Seventh Circuit similarly has faithfully applied *Bridge* and rejected arguments that the involvement of third parties precludes recovery by the intended victims of a complex racketeering scheme. First, on remand from *Bridge*, the Seventh Circuit rejected arguments that either the details of the bidding process or claimed difficulties in apportioning damages created a proximate-cause obstacle for the scheme's intended victims. What mattered in the end was not the precise mechanism for allocating tax liens, but that by fraudulently increasing the number of bids, "[t]he defendants stole a business opportunity from the plaintiffs." *BCS Servs. v. Heartwood 88, LLC*, 637 F.3d 750, 756-57 (7th Cir. 2011). Subsequently, the Seventh Circuit allowed casino

operators to sue horse track operators who bribed state legislators to impose a tax on the casinos. The court rejected efforts to rely on *Anza* or dismiss the effect on the casinos as attenuated because the casinos "sat in the center of the target of the conspiracy." *Empress Casino Joliet Corp. v. Johnston*, 763 F.3d 723, 733 (7th Cir. 2014).[3]

The First Circuit likewise faithfully applied *Bridge* in *In re Neurontin Marketing & Sales Practice Litigation*, 712 F.3d 21 (1st Cir. 2013). There, an insurance company brought RICO claims alleging that a drug manufacturer fraudulently marketed a drug as effective for an off-label use to drive up prescriptions that insurance companies would cover. The manufacturer argued that the causal chain was too attenuated because it involved multiple steps and "intervening causes," such as the "independent medical judgment" of the doctors who prescribe drugs. *Id.* at 38-39. The First Circuit rejected that argument. Relying on *Bridge*, the court held that the insurer established proximate cause because it was "both the

[3] The Sixth Circuit attempted to distinguish *Empress* on the ground that there was no more direct victim there, whereas here UAW workers also suffered. That is wrong as a matter of law and fact. In *Empress*, the scheme corrupted the state legislature and, in the process, deprived constituents of the honest services of their representatives. But that was not "the target of the conspiracy," which was to raise the casinos' costs. The intended effect on GM is indistinguishable, and UAW workers only benefitted from FCA's scheme to artificially raise GM's labor costs in the 2015 bargaining round. Similarly, while the scheme here may have required the assent of FCA and GM workers (who were duped rather than corrupted), the same is true of the uncorrupted legislators who needed to vote in favor of the casino tax increase.

natural and foreseeable victim of the fraud *and the intended victim of the fraud*." *Id.* at 37 (emphasis added). As the court explained, the objective of the scheme was to profit off of fraudulent sales, which the manufacturer could do only by getting insurers to cover them. *Id.* at 39. That the "scheme relied on the expectation that physicians would base their prescribing decisions in part on [the] fraudulent marketing" was therefore beside the point, as the insurer was "in the best position to enforce the law because [it wa]s the party that directly suffered economic injury from [the] scheme." *Id.* at 38-39. To preclude the company from recovering thus "would undercut the core proximate causation principle of allowing compensation for those … who were the intended victims of a defendant's wrongful conduct." *Id.* at 38; *see also In re Celexa & Lexapro Mktg. & Sales Pracs. Litig.*, 915 F.3d 1, 14 (1st Cir. 2019).

In re Avandia Marketing, Sales Practices & Product Liability Litigation, 804 F.3d 633 (3d Cir. 2015) is much the same. There, third-party payors brought RICO claims against a drug manufacturer for misrepresenting safety risks associated with its drugs and sought as damages the money they paid for the drugs. The manufacturer argued that "the presence of intermediaries, doctors and patients, destroys proximate causation," but the court held that "*Bridge* precludes that argument." *Id.* at 645. Just like the plaintiffs in *Bridge*, the third-party payors were the "primary and intended victims of the scheme," so their injuries were "sufficiently direct to satisfy the RICO proximate cause requirement." *Id.* (quoting *Bridge*, 553 U.S. at 650, 658).

As these decisions illustrate, courts are squarely divided over the role that a racketeer's intent to harm the plaintiff plays in the proximate-cause analysis. The Sixth Circuit joined the Second and Fourth Circuits in holding that, under *Anza* and *Hemi Group*, what matters is not whether the plaintiff was the direct *object* of the racketeer's scheme, but whether the scheme reached the plaintiff directly. By contrast, the First, Third, Seventh, and Ninth Circuits faithfully abide by *Bridge* and the common-law principle that "one who intentionally causes injury to another is subject to liability to the other for that injury." 553 U.S. at 657. This Court should grant certiorari to resolve the conflict that its own precedent has generated.

II. The Decision Below Is Wrong.

The decision below not only deepens a circuit split, but distorts RICO and this Court's cases. While this Court has rightfully been skeptical of claims in which a plaintiff far downstream from the direct object of a racketeering scheme seeks to recover treble damages, it has never embraced the notion that a racketeer can escape liability for the very injuries it set out to inflict simply because it could not inflict them without corrupting or duping an intermediary. By disregarding the role of intent and embracing that puzzling result, the Sixth Circuit effectively carved out a universe of racketeers who are immune from liability for the injuries they intentionally inflict. That result cannot be reconciled with the RICO statute, this Court's precedent, or Congress' evident intent.

RICO is designed to target complex schemes with multiple victims. Indeed, providing remedies for a

pattern of criminal activities (as opposed to a single crime with a single victim) that involve an ongoing enterprise is the whole reason Congress complemented existing criminal prohibitions with RICO. Among the important remedies for those complicated, multi-victim schemes are the civil remedies RICO gives victims of racketeering schemes. Denying those remedies to the intended victims of racketeering enterprises just because the scheme is complicated or includes multiple victims thus ignores the *raison d'être* of RICO.

By its terms, RICO provides a civil remedy for "[a]ny person injured in his business or property by reason of" racketeering activity. 18 U.S.C. §1964(c). While this Court has not read that text so literally as to provide a treble-damages remedy for any injury that can be connected to RICO activity in any way, no matter how remote, it has found the statute broad enough to "incorporate common-law principles of proximate causation." *Holmes*, 503 U.S. at 267-68. Among the principles this Court has expressly and unanimously incorporated into RICO is the long-standing common-law rule "that one who intentionally causes injury to another is subject to liability to the other for that injury," even if he must enlist or "'defraud[] another" to accomplish his "purpose of causing pecuniary harm to" the intended victim. *Bridge*, 553 U.S. at 657. In short, what matters is whether the plaintiff is the direct object of the defendant's scheme, not whether the defendant's corrupt scheme reaches the plaintiff via the most direct route.

Applying that principle, this should have been an easy case. GM alleged that FCA bribed the UAW to inflict various injuries directly on GM, including corrupting the 2015 collective-bargaining process for the specific purpose of injuring GM. FCA bought its way into the lead role for the CBA negotiations and struck a deal with the union's corrupted leadership that was intentionally designed to foist onto GM massive labor costs that the UAW would not otherwise have demanded. Indeed, FCA's corruption of the process imposed on GM approximately *$1.9 billion* in labor charges over four years—an amount more than $1 billion greater than the tentative deal GM had worked out with the UAW before FCA was chosen as the pattern-bargaining lead, and almost $1 billion more even than the UAW's opening demand in its negotiations with GM. Compl.¶137. Although the deal increased FCA's own labor costs as well, FCA was willing to endure that short-term injury in service of inflicting an injury on GM that FCA believed would serve its long-term interests by forcing GM into a merger with FCA. Simply put, FCA bribed a shared union not to decrease its own costs, but to increase GM's costs, in an effort to force a merger. If FCA had bribed NHTSA officials not to go easy on FCA but to go hard on GM for the express purpose of raising GM's costs, it would seem obvious that FCA's bribes proximately caused GM's increased costs. The result should be no different if FCA corrupts a shared union, rather than a shared regulator. When a racketeer bribes someone to inflict injury on a competitor, the injury to the competitor is as direct as it gets, and the intended victim is plainly entitled to sue.

The Sixth Circuit seemed to think that *Anza* and *Hemi Group* somehow "rejected" that commonsense proposition. App.19-20. Setting aside the problems that *Anza* pre-dated *Bridge* and *Hemi Group* was a plurality opinion, neither did anything of the sort. Neither case involved a plaintiff who was the direct object of the alleged RICO scheme. Instead, both involved downstream plaintiffs who claimed that a scheme designed principally to harm *someone else* had the foreseeable consequence of injuring them too. *See Anza*, 547 U.S. at 454 (alleging that failure to charge state-mandated sales taxes had foreseeable downstream effect of injuring competitors who dutifully complied with state law because it enabled defendant to lower its prices); *Hemi Grp.*, 559 U.S. at 4 (plurality op.) (alleging that failure to file required customer information with New York *State* had foreseeable consequence of making it harder for New York *City* to track down customers who failed to pay certain city taxes). In other words, in each case, the plaintiff claimed only to be foreseeable collateral damage in a scheme to injure someone else.

That is not and has not ever been GM's theory. GM has not alleged that FCA injured GM as a byproduct of injuring someone else, or even as a byproduct of a scheme to simply benefit FCA. GM has alleged that FCA's racketeering scheme was intentionally designed *to inflict injury on GM*. Harm to GM thus was not some vaguely foreseeable consequence of a scheme to accomplish some other illicit end. Harming GM was the point. To be sure, some aspects of the scheme depended on the corruption and/or cooperation, sometimes witting and sometimes unwitting, of other parties. But that alone

hardly suffices to defeat proximate cause. After all, it would make little sense to let a racketeer off the hook just because it employs accomplices, and it would make even less sense to let a racketeer off the hook just because it had to "defraud[] another" to accomplish its goal of "causing pecuniary harm to" the plaintiff. *Bridge*, 553 U.S. at 657. Whether a racketeer bribes a regulator to give a competitor a failing grade or tricks a regulator into doing so, the result remains the same: The competitor may recover.

The Sixth Circuit expressed concern that the presence of intermediaries like the workers who had to ratify the 2015 CBA created further attenuation and would make it too difficult to assign and apportion damages. App.26. But that reflects yet another misunderstanding of this Court's precedent (and opens yet another circuit split). As to attenuation, many corrupt schemes require the unwitting consent or outright duping of third parties. A racketeer generally does not bribe every member of the legislature; it instead sticks to a few members who propose the corrupt bargain and obtain the assent of others. Similarly, when the mob takes over a legitimate business by blackmailing the CEO, the scheme to defraud creditors may depend on the CEO to obtain the assent of a duped but uncorrupted board of directors. In neither case does the need for the assent or duping of third parties preclude recovery by the intended victims.

The Sixth Circuit's concerns about complicated damages calculations was equally misplaced. The concern this Court has articulated in cases involving downstream plaintiffs is not merely that damages may

be difficult to assess. Courts and juries routinely answer difficult factual questions like which competing cause was the actual one, or what portion of injury is attributable to the defendant's wrongful conduct. *See* Restatement (Second) of Torts §912 (1979). The concern this Court has identified with claims by downstream plaintiffs is much more pointed: When the plaintiff was not the direct object of the scheme, a risk arises of "multiple recoveries," *Holmes*, 503 U.S. at 269, as the direct object may want to "vindicate the laws by pursuing [its] own claims," *Anza*, 547 U.S. at 460. *That* is why this Court has interpreted RICO to incorporate "[t]he general tendency of the law, in regard to damages at least, … not to go beyond the first step." *Holmes*, 503 U.S. at 271-72. But that concern is not implicated when, as here, the plaintiff *did* suffer the "first step" injuries.

Indeed, as the Seventh Circuit recognized on remand from *Bridge*, when the plaintiff is the direct object of a racketeering scheme, any difficulties in ascertaining the precise amount of damage inflicted on the intended victim should not inure to the racketeer's benefit. The tax lien scheme in *Bridge* created difficulties in determining how many liens the plaintiffs would have obtained in the absence of the fraud. But that uncertainty did not translate into immunity for the racketeer. "Once the plaintiff proves injury, broad latitude is allowed in quantifying damages, especially when the defendant's own conduct impedes quantification." *BCS*, 637 F.3d at 759.

In all events, as to some of GM's allegations there is not even any other party that *could* claim to have

been harmed and bring its own civil RICO suit. Take, for instance, GM's allegations regarding FCA's corruption of the 2015 collective-bargaining process. To be sure, to succeed, that scheme required the unwitting cooperation of the FCA and GM workforces, which had to ratify the sweetheart deal. App.26. But the workforces were not victims; to the contrary, they *benefited* from FCA's willingness to accede to an exceedingly labor-friendly deal to harm GM. Thus, if GM cannot hold FCA accountable for the billion-plus-dollars of injury that its scheme inflicted, then no one can. Neither *Anza* nor *Hemi Group*—nor any other case, for that matter—supports such a highly inequitable result.

The Sixth Circuit's decision is especially inexplicable because the court *acknowledged* that the common law generally embraced the notion that one who commits a tort against another for the purpose of causing harm is liable for that harm. App.20-21. And as this Court has recognized, RICO "incorporate[s] common-law principles of proximate causation." *Holmes*, 503 U.S. at 267-68. It is one thing to decline to read into RICO debatable or hotly contested common law rules, such as the concept that defendants should be responsible for all foreseeable consequence of their actions, "no matter how far removed in time or space." *Consol. Rail Corp. v. Gottshall*, 512 U.S. 532, 552-53 (1994). It is an entirely different thing to refuse to incorporate common-law rules that were widely accepted when the statute was enacted. *See Univ. of Texas Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 347 (2013). After all, "Congress legislates against a background of common-law adjudicatory principles, and it expects those

principles to apply except when a statutory purpose to the contrary is evident." *Minerva Surgical v. Hologic*, 141 S.Ct. 2298, 2307 (2021) (alterations omitted). And nothing in RICO suggests that Congress intended to depart from that general and well-settled common-law rule.

In short, this is not a RICO case in search of racketeering. *Cf. Hemi Group*, 559 U.S. at 17-18 (plurality op.). This case involves quintessential organized-criminal activity that Congress indisputably intended civil RICO to be available to remedy. And as even the Sixth Circuit acknowledged, GM has plausibly alleged that it was the direct object of that racketeering scheme. The notion that GM is precluded from recovering *at all* merely because FCA may have corrupted or duped some other parties en route to accomplishing its goal of inflicting injury on GM finds no support in the RICO statute, in this Court's cases, or in any sensible notion of the equitable principles that proximate cause embodies.

III. The Question Presented Is Important, And This Case Presents It Cleanly.

Whether the direct object of a classic racketeering scheme can establish proximate cause under RICO is an extremely important question. The entire point of civil RICO is to provide victims of complicated racketeering schemes with a remedy. *Sedima*, 473 U.S. at 498. The Sixth Circuit's decision, however, and decisions from other circuits embracing the same reasoning, threaten to foreclose the intended victims of obvious racketeering schemes from recovering, and to reward admitted racketeers for mulcting multiple victims or concocting schemes that depend on the

corruption or cooperation of third parties. That result runs directly contrary to Congress' intent to provide a civil remedy for victims of multi-victim patterns of criminal conduct at the hands of racketeering enterprises.

Review is all the more important because the confusion in the courts turns not on the facts of individual cases, but on disagreement about how to read and reconcile this Court's precedents. Some courts have read *Anza* as compelling the conclusion that proximate cause turns solely on how many steps it takes to reach the victim, without regard to whether reaching the victim was the racketeer's intended objective. Other courts have taken *Bridge* at its word and held that the primary and intended victims of racketeering can of course recover for the injuries that racketeers set out to inflict. Making matters even more confusing, this Court's most recent attempt to bring clarity resulted in a fractured decision with no majority opinion. *See Hemi Grp.*, 559 U.S. at 1. While some courts (like the Sixth Circuit) have relied on the plurality opinion in *Hemi Group* as somehow overruling or cabining the unanimous holding of *Bridge*, other courts correctly recognize that its discussion of proximate-cause principles was not even the controlling opinion in that case. *See City & Cty. of San Francisco v. Purdue Pharma.*, 491 F.Supp.3d 610, 655 (N.D. Cal. 2020) ("Justice Ginsburg's concurring opinion represents the narrowest grounds of agreement between the Justices who concurred in the judgment, and thus, constitutes the controlling opinion in *Hemi*."); *Garrett v. Cassity*, 2010 WL 5392767, at *11 (E.D. Mo. Dec. 21, 2010) (same). Twelve years have passed since that decision, and the

confusion has not dissipated. Only this Court can provide much needed clarity.

CONCLUSION

For the foregoing reasons, this Court should grant the petition.

Respectfully submitted,

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