ORIGINAL

No. 22-965

In The Supreme Court of the United States

Heewon Lee – Pro Se,

Petitioner,

v.

BAC Home Loans Servicing, LP,
Bank of America, NA, and Others,

Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

PETITION FOR A WRIT OF CERTIORARI

Heewon Lee
Petitioner-Pro Se
60 Rantoul St
Beverly, MA 01915
(617) 717-8000
Hwlhome@Yahoo.com

Pro Se for Petitioner

QUESTION PRESENTED

Legal validity of Res Judicata application to RICO claim is questioned in this petition. There has been inherent conflicts between nature of RICO claim and purpose of Res Judicata in the history of legal precedents. This petition asks this court to look into definition and purpose of Res Judicata in relation to its application to RICO claim for legal validity.

The lower court's reasons for dismissing RICO claim for reason of Res Judicata as well as for lack of RICO claim requirements are not in line with the decisions by the Supreme Court and the subsequent opinions by the appeals courts where continuous pattern of related predicates with minimum 2 year period is considered to be essential requirements for the RICO claim.

These decisions might come from errors in facts and laws by the district and appeals courts with omitting evidential documents. In this regard, the validity of the decisions by the two courts is questioned.

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INTRODUCTION

Congress passed RICO in 1970 as part of a comprehensive legislative package aimed at combating the influence of organized crime on interstate commerce.[1] RICO outlaws four types of activities in 18 U.S.C.: (1) Section 1962(a) prohibits a person from investing in an enterprise any income derived from a pattern of racketeering activity;(2) Section 1962(b) prohibits a person from using a pattern of racketeering activity to acquire or maintain control over an enterprise;(3) Section 1962(c) prohibits a person from conducting the affairs of an enterprise through a pattern of racketeering; and (4) Section 1962(d) prohibits a person from conspiring to violate §§ 1962(a), (b), or (c).

"Racketeering activity" is an element common to all of RICO's prohibitions. Congress defined "racketeering activity" to include a variety of state and federal predicate crimes in 18 U.S.C. § 1961(1). RICO is not violated by a single, short-term episode of "racketeering." Rather, there must be a "pattern" of racketeering activity—meaning long-term, organized conduct.

Meanwhile, the doctrine of Res Judicata prevents the re-litigation of issues. The doctrine is also known as the rule of preclusion, and is comprised of two separate types of preclusions: claim preclusion and issued preclusion.

Claim preclusion bars the re-litigation of issues that could have been litigated

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[1] S. Rep. No. 91-617, at 76 (1969) (stating that RICO's purpose was "the elimination of the infiltration of organized crime and racketeering into legitimate organizations operating in interstate commerce").

but were not.[2] In addition, the US Supreme Court has stated that any issues actually litigated may not be relitigated if the determination of the issue was essential to the judgment.[3] Issue preclusion prevents the parties from relitigating an issue actually adjudicated and necessary to the resolution of prior claims.[4] The relevancy of the issue is not determinative since it must have actually been litigated and essential to the judgment in order to be barred from any subsequent litigation.[5]

The issues and claims of RICO had never been litigated in the previous cases. But the conflicting questions are "Could the RICO claim have been litigated in the previous state and federal cases?; or contrarily could or should the RICO claim not have been litigated in the previous cases? This becomes a conflicting issue between RICO and Res Judicata because RICO requires a "pattern" of racketeering activity—meaning long-term, organized conduct; meanwhile Res Judicata requires a litigation at some point in the midst of long-term pattern of organized conducts.

This petition pleads this court to look into legally acceptable timing of Res Judicata applicability to RICO claims for long-term continuous pattern of organized conducts. The question is "When is Res Judicata applicable to RICO?; after 2 pattern of RICO activities or 10 pattern? Does a long term mean 1 year or 10 years?"

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[2] Kaspar Wire Works, Inc. v. Leco Engineering & Machine,Inc., 575 F.2d 530 (1978); Lee v. City Peoria, 685 F.2d 196 (1982)
[3] Cooper v. Federal Reserve Bank of Richmond, 467 U.S. 867, 875, 104 S.Ct. 2794, 2799, 81 L.Ed.2d 718 (1984)
[4] Kaspar, 575 F.2d at 535
[5] See id

OPINIONS BELOW

The U.S. District Court order is included in Appendix 5a to 13a; the Appeals Court decision in Appendix 3a to 4a; and the opinion for En Banc and Rehearing in Appendix 1a to 2a.

JURISDICTION

The U.S. Court of Appeals for the First Circuit issued its opinion on June 14,2022. Petitioner timely filed a petition for rehearing, which the court denied on September 1, 2022.

This court allowed Petitioner the time to file a petition for a writ of certiorari from November 30, 2022 to January 29, 2023 (including January 30,2023). Petitioner submitted the petition for a writ of certiorari on January 30, 2023.

On February 2, 2023, the clerk asked Petitioner to resubmit the petition with correction in format within 60 days from February 2 which is April 3, 2023.

STATEMENT OF CASE

The orders by the U.S. District Court and the First Circuit had the following errors in facts and laws:

1. The lower court decision stated,

"His later state court action was dismissed on res judicata grounds, relying on this earlier federal dismissal. D. 14-8 (granting motion to dismiss Lee's claims against BANA for violations of Mass. Gen. L. c. 244 § 35, Mass. Gen. L. c. 183C, §

4 and Mass. Gen. L. c. 93A and various federal statutes). Accordingly, the earlier federal judgment serves as a final judgment for the purposes of res judicata and satisfies the first element of claim preclusion."

Judgements of federal case (10-CV-12226-GAO: Defendant's 2009-2010 activities) and state case (1777CV00271: Defendant's 2016-2017 activities) are not the same.

Federal judgment was about defendant's violation of HAMP Guidelines between 2009 to 2010. The mortgage modification inquiry was initiated by Petitioner. Meanwhile, State court judgment was about Respondents' violation of federal and state laws for mortgage modification between 2016 and 2017. Defendants had to inquire Petitioner for mortgage modification and had to follow the modification process in conformance with state and federal law.

These two different conditions avoid preclusion of issues which may have been litigated, but were not required to be litigated for resolution of the claim covered in the judgment. See Templeton v. Apex Homes, Inc., 164 N.C. App. 373, 378, 595 S.E.2d 769, 772 (2004) (in dictum, stating that, because plaintiffs won on one of their breach of contract issues and were awarded the only remedy plaintiffs sought, trial court's ancillary determinations that plaintiffs lost on two other breach of contract issues were not "necessary" to the judgment).

In Midway Motor Lodge v. Innkeepers' Tele management & Equip. Corp., 54 F.3d 406, 409 (7th Cir. 1995), "In the law of preclusion...the court rendering the first judgment does not get to determine that judgment's effect; the second court

is entitled to make its own decision..."

2. The lower court decision stated,

"Turning to the second element, the Court determines if the claims in Lee's current and prior suits are sufficiently identical by examining whether "the causes of action arise out of a common nucleus of operative facts. Lee filed a new suit in Superior Court, litigating prior claims but also adding new allegations stemming from subsequent attempts to obtain loan modifications in 2016 and 2017"

Petitioner did not add new allegations stemming from subsequent attempt to obtain loan modifications. MGL Chapter 244 Section 35(B) was effective after the federal court case which was about only HAMP regulations[6]; but along with specific regulations of procedures, 35(B) governs (i) the Home Affordable Modification Program; (ii) the Federal Deposit Insurance Corporation's Loan Modification Program; (iii) any modification program that a lender uses which is based on accepted principles and the safety and soundness of the institution and authorized by the National Credit Union Administration, the division of banks or any other instrumentality of the commonwealth; (iv) the Federal Housing Administration; or (v) a similar federal loan modification plan. The claims were not identical; and there are more than a common nucleus of operative facts.

[6] The Home Affordable Modification Program (HAMP) was a loan modification program introduced by the federal government in 2009 to help struggling homeowners avoid foreclosure. The program's focus was to help homeowners who paid more than 31% of their gross income toward mortgage payments.

In Burgess v. First Union Nat'l Bank, 150 N.C.App. 67, 75, 563 S.E.2d 14, 20 (2002). the party asserting Res Judicata has to provide any proof of satisfying burden of persuasion that an issue was litigated in the prior action, and may "drill down" into the case to carry its burden. [7] But Respondents did not prove any of them; thus the court's decision was an error in law and fact.

3. The lower court decision stated,

"Here, Lee again brings claims regarding the handling of his loan modification application. Generally, parties are not permitted to bring new actions based upon claims that could have been asserted in an earlier action"

As Pro Se, Petitioner did not know what RICO (18 U.S.C. § 1961, 1962, and 1964) was about before this RICO litigation was filed. Petitioner discovered the defendents were engaged in organized crimes after the state lower court decision so that RICO claims were not raised and could not have been raised in prior actions.

Defendents like Danny K Briones, Elizabeth Ortiz got involved into RICO activities after the state complaint was filed. Additional members of Heidi Ulinz and Susan Magaddino got involved into RICO activities to fabricate affidavits for

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[7] - Cromwell v. County of Sac, 94 U.S. 353, 24 L.Ed. at 198 (1876), only those issues litigated and determined in the prior judgment are precluded in res judicata or collateral estoppel; "the inquiry must always be as to the point or question actually litigated and determined in the original action, not what might have been thus litigated and determined. Only upon such matters is the judgment conclusive in another action."
- Miller Building Corp. v. NBBJ North Carolina, Inc., 129 N.C. App. 97, 100, 497 S.E.2d 433, 435 (1998) Courts are permitted to look beyond the judgment itself to determine if an issue was actually litigated. (In determining what issues were actually litigated or decided by the earlier judgment, the court in the second proceeding is "'free to go beyond the judgment roll, and may examine the pleadings and the evidence [if any] in the prior action.'").

the defendants, whose identities are unknown with possible fake names or pseudo-employees for RICO activities[8].

In *Topps v. State*, 865 So.2d 1253, 1255 (Fla. 2004), Res Judicata can be applied when the following four identities are present: "(1) identity of the thing sued for; (2) identity of the cause of action; (3) identity of persons and parties to the action; and (4) identity of the quality of the persons for or against whom the claim is made."

In the federal and state cases, identities of the thing sued for and the cause of action were not the same; also, persons to the actions, and the quality of the defendants were not the same; also identities of persons and their qualities were not the same.

In J. M. Hanner Construction Company,, Inc. v. Thomas Brothers Construction Company, Inc., E2011-01641-COA-R9-CV, 2012 WL 3012639 (Tenn. Ct. App. July 24, 2012), the two of four requirements for Res Judicata are: the same parties or their privies were involved in both proceedings, and both proceedings involved the same cause of action.[9] In the previous cases, the same parties were not

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[8] Heinz and Maggaddino were used exclusively for the litigations related to foreclosure with fabrication of affidavits.

[9] - Thomas M. McInnis & Assoc., Inc. v. Hall, 318 N.C. 421, 427, 349 S.E.2d 552, 556 (1986) (McInnis), the requirements for Res Judicata are: (1). A final judgment on the merits; (2). Identity of parties; (3). Identity of claim.

- Youse v. Duke Energy Corp., 171 N.C.App. 187,_, 614 S.E.2d 396, 401 (2005), the elements of res judicata and collateral estoppel are: (1). A final judgment on the merits; (2). Identity of issue; (3). The issue was necessary to the judgment; (4). The issue was actually litigated in the prior action; (5). The issue was determined; and (6) The party against whom the estoppel is sought, or his privy, had full and fair opportunity to litigate the issue.

involved in both proceedings; and also the cause of action was not the same.

The determining factor in deciding whether the cause of action is the same is whether the facts or evidence necessary to maintain the suit are the same in both actions." as stated in *Bowen v. Fla. Dep't of Envtl. Regulation*, 448 So.2d 566 (Fla. 2d DCA 1984). Secondly, the parties are not identical in the two cases. In previous cases, the facts or evidences were not the same.

4. The lower court decision stated,

"Lee fails to allege any new facts or evidence since his prior suits"

A. Home Retention Services was discovered to be not a department in BANA; It is Third-Party Debt Collector as per what BANA sent to Plaintiff.

B. The proof of financial gain by the defendants was discovered with intentionally delaying application process and increasing applicant's principal amount with interest and fees to damage enough applicant's mortgage with application denial to result in bankruptcy which will give big financial compensation to the defendants by mortgage insurance company – Genworth financial report

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- In Microsoft Corp. Antitrust Litig., 355 F.3d 322, 326 (4th Cir. 2004), " To apply collateral estoppel or issue preclusion to an issue or fact, the proponent must demonstrate that (1) the issue or fact is identical to the one previously litigated; (2) the issue or fact was actually resolved in the prior proceeding; (3) the issue or fact was critical and necessary to the judgment in the prior proceeding; (4) the judgment in the prior proceeding is final and valid; and (5) the party to be foreclosed by the prior resolution of the issue or fact had a full and fair opportunity to litigate the issue or fact in the prior proceeding."

- Ragsdale v. Rubbermaid, Inc., 193 F.3rd 1235 (11th Cir. 1999), the elements of red judicata are: (1) there must have been a final judgment on the merits; (2) the decision was rendered by a court of competent jurisdiction; (3) the prior action must have involved the same parties or their privies; and (4) the prior action must have involved the same claim.

showing the payout to BANA).[10]

C. Susan Magaddino, Danny K Briones, and Elizabeth Ortiz got involved in RICO activities after the state complaint was filed.

D. Susan Magaddino were discovered to be hired gun for affidavits, whose identity was unknown with possible fake name or pseudo-employee for RICO activities[11].

E. The counsel in state case got involved in RICO with wire fraud during the state case.

5. The lower court decision stated,

"While the Court acknowledges Lee's argument that his claims under the Racketeer Influenced Corrupt Organizations Act ("RICO") were not raised in his prior litigations, D. 33 at 2-3, the Court's assessment for claim preclusion purposes "does not turn on the labels the plaintiff attaches to [his] various claims, but rather 'boils down to whether the causes of action arise out of a common nucleus of operative facts... noting that "the necessary identity" exists where both sets of claims are derived from a common nucleus of operative facts, "no matter how diverse or prolific the claims themselves may be"

In this litigation, RICO is about mail fraud, wire fraud, and financial institution fraud; meanwhile, the previous litigation was about mortgage

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[10] In previous cases, Plaintiff was not able to prove why defendants delayed intentionally the application process for financial gain with increased arrears and fees with possibility of resulting in plaintiff's bankruptcy.

[11] Maggaddino were used exclusively for the litigations related to numerous foreclosures against Bank of America in HAMP-related mortgage modifications.

modification not conforming to regulations of the state and federal laws.[12]

In Ragsdale v. Rubbermaid, Inc., 193 F.3rd 1235 (11th Cir. 1999) (Tab 2) (citing Citibank, N.A. v. Data Lease Financial Corp., 904 F. 2d 1498, 1503 (11th Cir. 1990) , in determining whether causes of action are the same, a court must compare the substance of the actions, not their form. The lower court compared only the forms of the previous case, but not the substance of the actions.

6. The lower court decision stated,

"Lee fails to allege that BANA and its employees are not closely related. Moreover, the current claims against the individual Defendants were or could have been brought in Lee's prior suits, given the absence of any new facts or evidence to support his claims and his assertion that the individual Defendants' allegedly unlawful acts were committed on behalf of BANA during the same 2010-2011 timeframe."

Home Retention Services was a Third-Party Debt Collector as submitted as part of exhibits in the lower court; and it is not closely related to BANA and its employees. Thus RICO claim should be applied to this case.

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[12] In *Lucky Brand Dungarees, Inc. v. Marcel Fashions Group, Inc.*, No. 18-1086 (May 14, 2020), a trademark infringement dispute, the U.S. Supreme Court held that a defense raised by the petitioner was not barred by the doctrine of claim preclusion based on a defense raised in a previous litigation between the same parties, even though the defense in both cases related to the same settlement agreement. The Court held that a common transaction or common nucleus of operative facts must be established to show that the claim in the previous litigation is the same as the claim in the current litigation for purposes of claim preclusion.

7. The lower court decision stated,

"Lee fails to allege one or more predicate acts that would support a RICO claim or assert facts showing that any of the individual Defendants engaged in any of the criminal actions prohibited under RICO."

RICO activities include mail fraud (18 U.S. Code §1341) and wire fraud (18 U.S. Code §1343) in addition to financial institution fraud (18 U.S. Code §1344) of various mortgage modifications including HAMP.

The defendants' activities contained exhaustive list of acts of 'racketeering', commonly referred to as 'predicate acts' (citing Beck v. Prupis, 529 U.S. 494, 497 n.2 (2000)) in Sterling Suffolk Racecourse, LLC v. Wynn Resorts, Ltd, 419 F. Supp. 3d 176, 189 (D. Mass. 2019). The defendants engaged in RICO activities with a series of predicate acts in handling of mortgage modification programs as well as HAMP required by the state and federal laws while conducting the affairs of the BOA-Home Retention enterprise.[13]

BOA, Home Retention Services, and others fraudulently used the mail and wires to further this scheme by making false statements and promises to borrowers about (1) the status of their HAMP and other applications, (2) the receipt of requested documents and (3) their ultimate eligibility for HAMP and other loan modifications.

BOA, Home Retention Services, and others' alleged role in overall scheme to

[13] Jenifer Porter in federal case and counsels in state case committed wire fraud; Darian Jones and Jeremey Roberts committed financial institution fraud with documentation manipulation. These evidential documents were

defraud borrowers and of its involvement in the alleged predicate acts of mail and wire fraud. *See Williams v. Duke Energy Int'l, Inc.*, 681 F.3d 788, 803 (6th Cir. 2012) ("Rule 9(b) does not require omniscience; rather the Rule requires the circumstances of the fraud be pled with enough specificity to put defendants on notice as to nature of the claim." (quoting *Michaels Bldg.Co. v. Ameritrust Co., N.A.*, 848 F.2d 674, 680 (6th Cir. 1988)).

The first circuit appeals court in this case affirmed the lower court's decision stating "Regarding defendant-appellees' request that certain portions of the appendix be stricken, the court has considered only those documents properly a part of the record on appeal." But all the contents of the appendix was submitted to the lower court and should have been a part of the record on appeal.

REASONS FOR GRANTING THE PETITION

The Court should grant this petition for three reasons. First, application of Res Judicata to RICO claim was not properly evaluated according to the Supreme Court decisions on the precedent cases of Sedima, S.P.R.L. v. Imrex Co., Inc and H.J. Inc. v. Northwestern Bell Telephone Co. ; second, denial on RICO claim came from errors in facts and laws; third, the appeals court did not review a part of record on appeal.

First, the Supreme Court's decisions on the cases of Sedima and H.J. Inc. emphasized on continuous pattern of racketeering activity and its multi-factor analysis for RICO claim. However, application of Res Judicata to RICO claim by the

district and federal court was from error in understanding of definition and purpose of RICO claim.

In order of RICO claim to be valid, the defendants' activities had to be continuous in pattern of racketeering activities with multi-factored analysis. It is an error in law by denying RICO claim with Res Judicata simply because Petitioner should have claimed RICO in state case (1777CV00271: Defendant's 2016-2017 activities) after federal case (10-CV-12226-GAO: Defendant's 2009-2010 activities) in terms of RICO requirements for long-term continuity by the opinions of the US Supreme Court and other circuit courts in many RICO cases.

The two cases happened in different times by different group of people. The federal case was for violation of HAMP guidelines and Petitioner initiated the process for the mortgage modification. Meanwhile the state case was about violation of the state and federal laws for various mortgage modification including HAMP; and the defendants had to initiate the process required by the state and federal laws.

As Pro Se without any law background, Petitioner found the continuity of racketeering activities with realizing multi-factored wrong-doings by the defendants after the federal and state cases in 2 years. This was recognized as 'closed-end continuity' in the Supreme Court's decision of H.J. Inc.

Section 1961(5) of the RICO statute defines "pattern of racketeering activity" as requiring "at least two acts of racketeering activity . . . the last of which occurred within ten years after the commission of a prior act of racketeering activity." Notably, this definition does not positively define the term, "pattern of racketeering activity."

The Supreme Court has twice attempted to clarify what is meant by a "pattern of racketeering activity." The first attempt came in 1985, when the Supreme Court decided Sedima, S.P.R.L. v. Imrex Co., Inc.[14] The second decision was rendered in 1989, when the Supreme Court again addressed the "pattern" element in H.J. Inc. v. Northwestern Bell Telephone Co.[15] In these two decisions, the Supreme Court "ruled out interpretations of civil RICO's breadth at either extreme" and "ensured that the outcome of each particular case would rest on a fact-intensive analysis."[16]

Before Sedima, some courts had construed the statutory language literally by requiring only that a plaintiff plead and prove the minimum number of predicate acts required by the statutory definition.[17] The Supreme Court rejected this broad reading, noting that "while two acts are necessary, they may not be sufficient," and further noting that the legislative history suggested "that two isolated acts of racketeering activity do not constitute a pattern."[18] The Supreme Court referenced the Senate Report for the RICO bill, which stated:

> "The target of RICO is thus not sporadic activity. The infiltration of legitimate business normally requires more than one "racketeering activity" and the threat

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[14] Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479 (1985).
[15] H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229 (1989).
[16] Uniroyal Goodrich Tire Co. v. Mutual Trading Co., 63 F.3d 516, 522, 523 (7th Cir. 1995).
[17] See, e.g., United States v. Bascaro, 742 F.2d 1335, 1360-62 (11th Cir. 1984), abrogated on other grounds recognized by United States v. Lewis, 492 F.3d 1219 (11th Cir. 2007); United States v. Weisman, 624 F.2d 1118, 1124 (2d Cir. 1980), abrogated on other grounds recognized by Ianniello v. United States, 10 F.3d 59 (2d Cir. 1993).
[18] Sedima, 473 U.S. at 496 n.14.

of continuing activity to be effective. It is this factor of continuity plus relationship which combines to produce a pattern.[19]"

In H.J. Inc. v. Northwestern Bell Telephone Co.,[20] the Supreme Court attempted to eliminate some of the confusion generated in the wake of Sedima by directly addressing the pattern requirement. But the H.J. Inc. decision, which endorsed a "flexible" approach to the pattern issue,[21] and most circuits tend to apply a multi-factor test to determine whether there is a sufficient pattern of racketeering activity.

In the wake of the Supreme Court's decisions in Sedima and H.J. Inc., most cases addressing a "pattern" of racketeering have focused more on whether the racketeering conduct is sufficiently "continuous" than whether the acts are sufficiently "related." The Sixth Circuit, for instance, emphasized that "beyond setting forth the minimum number of predicate acts required to establish a pattern, the statute assumes that there is something to a RICO pattern beyond simply the number of predicate acts involved."[22] The court held that to establish a pattern, a

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[19] Id., quoting S. Rep. No. 91-617, at 158 (1969) [alteration and emphasis in original].
[20] H.J. Inc. v. Northwestern Bell Telephone Co., 492 U.S. 229 (1989).
[21] Id. at 238
[22] Kalitta Air, LLC v. GSBD & Assocs., 591 F. App'x 338, 343 (6th Cir. 2014) (emphasis in the original) (internal quotations omitted) (citations omitted); see also Liang v. Home Reno Concepts, LLC, 803 F. App'x 444, 447 (2d Cir. 2020) (stating that to allege a pattern of racketeering under RICO, a plaintiff "must plead at least two predicate acts and must show that the predicate acts are related and that they amount to, or pose a threat of, continuing criminal activity) (internal quotations omitted); Bachi-Reffitt v. Reffitt, 802 F. App'x 913, 918 (6th Cir. 2020) (to satisfy the "pattern" requirement, a plaintiff must plead a relationship between the predicates and the threat of continuing activity).

plaintiff must prove two elements: (1) that the racketeering predicates are related; and (2) that they amount to, or pose a threat of continued criminal activity.[23]

A key contribution of the Supreme Court's decision in H.J. Inc. was its recognition that "continuity" is "both a closed and open-ended concept, referring either to a closed period of repeated conduct, or to past conduct that by its nature projects into the future with a threat of repetition."[24] The Court emphasized that the concept of continuity, in either its closed or open-ended forms, is "centrally a temporal concept."[25]

When predicate acts that do not threaten to repeat in the future are alleged, series of related predicates has to be extended over a substantial period of time."[26] The Court did not define "substantial period of time" other than its statement that conduct occurring over "a few weeks or months and threatening no future criminal conduct" was not long enough.[27]

In Grace Int'l Assembly of God v. Festa, Gennaro, et al., No. 20-33, 2020 WL 5883302 (U.S. Oct. 5, 2020), the Second Circuit stated "since the Supreme Court decided H.J. Inc., we have never found predicate acts spanning less than two years to be sufficient to constitute close-ended continuity," and explaining that while two years is the minimum duration necessary for finding close-ended continuity, the mere

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[23] Kalitta Air, 591 F. App'x at 344.
[24] H.J. Inc. v. Northwestern Bell Telephone Co., 492 U.S. 229, 241 (1989)
[25] Id. at 241-42.
[26] H.J. Inc. v. Northwestern Bell Telephone Co., 492 U.S. 229, 242 (1989)
[27] Id. In his concurring opinion, Justice Scalia stated his fear that an undue focus on temporal continuity could unwittingly create a "safe harbor for racketeering activity that does not last too long, no matter how many different crimes and different schemes are involved, so long as it does not otherwise 'establish a threat of continued racketeering activity.'"

fact that predicate acts span two years is insufficient, without more, to support a finding of a close-ended pattern.

In Halvorssen v. Simpson, 807 F. App'x 26, 31 (2d Cir. 2020), the Second Circuit found that an eleven month period between predicate acts was an insufficient time period to establish close-ended continuity. Even the Circuit has come closest to suggesting any scheme that lasts less than two years does not sufficiently allege a closed-ended, continuous criminal scheme.[28] The Circuit also has recognized that, aside from temporal concerns, "other factors such as the number and variety of predicate acts, the number of both participants and victims, and the presence of separate schemes are also relevant in determining whether closed-ended continuity exists."[29]

The lower court's reasons for dismissing RICO claim for the reason of Res Judicata are not in line with the decisions by the Supreme Court and the subsequent

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[28] - Spool v. World Child Int'l Adoption Agency, 520 F.3d 178, 184-85 (2d Cir. 2008) (stating that "although we have not viewed two years as a bright-line requirement, it will be rare that conduct persisting for a shorter period of time establishes closed-ended continuity," which suggests that in exceptional cases, the two-year requirement could be waived);
- First Capital Asset Mgmt., Inc. v. Satinwood, Inc., 385 F.3d 159, 181 (2d Cir. 2004) ("Notably, this Court has never found a closed-ended pattern where the predicate acts spanned fewer than two years," while distinguishing Cosmos Forms Ltd. v. Guardian Life Insurance Co. of America, 113 F.3d 308, 310 (2d Cir. 1997), which found that approximately seven acts spread over 15 months constituted an open-ended pattern);
- Cofacredit, S.A. v. Windsor Plumbing Supply Co., 187 F.3d 229, 242 (2d Cir. 1999) (holding that "[s]ince the Supreme Court decided H.J. Inc., [the Second Circuit] has never held a period of less than two years to constitute a" pattern of racketeering);
- GICC Capital Corp. v. Tech. Fin. Group, Inc., 67 F.3d 463, 467-68 (2d Cir. 1995) (holding that though an approach that gives conclusive weight to a two-year duration is "undoubtedly somewhat mechanistic, we believe it is required to effectuate Congress's intent to target 'long-term criminal conduct'").

[29] - DeFalco v. Bernas, 244 F.3d 286, 321 (2d Cir. 2001)
- Berman, Tr. For Estate of Michael S. Golberg, LLC v. LaBonte, 622 B.R. 503, 536-37 (D. Conn. 2020)
- GICC Capital Corp. v. Technology Finance Group, Inc., 67 F.3d 463, 467-68 (2d Cir. 1995).

opinions by the appeals courts where continuous pattern of related predicates with minimum 2 year period is considered to be essential requirements for the RICO claim.

The fraudulent actions by defendants in each case lasted about 1 year and after the combined period of both cases lasted a little more than 2 years to meet the requirement of closed-ended continuity. Just after 2 years, Petitioner found out the future-threatening pattern of fraudulent actions by the defendants after the federal case in 2010 to 2011 and the state case in 2016 to 2017.

Petitioner filed RICO claim in the federal court for this case with at least two acts of racketeering predicates in closed-end continuity within 10 years after future-threatening racketeering activities by the defendants which lasted about 2 years.

Second, the district and appeals courts denied the RICO claim even if Res Judicata could not apply to the RICO for the following 2 reasons:

1. *There is not more than one predicate act in Petitioner's RICO claim.*
2. *BANA and its employees are closely related.*

These decisions are from omitting facts of evidential documents submitted in the district courts and transferred to the appeals court.

Individual defendants were unknown identities. None of named defendants were proven to be closely related to BANA either by the defendant counsel. Especially, one of the defendants - Home Retention Services was proven to be Third-Party Debt Collector; and it is not closely related to BANA and its employees. This evidential document was submitted in the district and appeals courts, but it was

omitted in error of decision.

RICO broadly defines "enterprise" as "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(4). BOA, Home Retention Services (Debt Collector), and others formed an association-in-fact enterprise. *See Boyle v. United States*, 556 U.S. 938, 946 (2009) (explaining that an association-in-fact enterprise has "a purpose, relationships among those associated with the enterprise, and longevity sufficient to permit these associates to pursue the enterprise's purpose").

BOA is sufficiently distinct from that association-in-fact enterprise. BOA, its subsidiary BAC Home Loans, and its organizational members formed a RICO enterprise.[30]

Additionally, the relationship between BOA, Home Retention Services, and others enhanced the enterprise's ability to thrive and avoid detection. BOA publicly represented its compliance with HAMP guidelines while simultaneously implementing and enforcing procedures among its organizations to delay and deny HAMP applications. Meanwhile, BOA enlisted Home Retention Services (a third-party vendor) to (1) "serve as a 'black- hole' for the documents that borrowers sent in the course of trying to obtain permanent loan modifications,"; (2) create internal

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[30] 18 U.S.C. § 1962(c) requires that the "person" conducting the enterprise's affairs be distinct from the "enterprise." *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158, 160 (2001); *see Bd. of Cty. Comm'rs of San Juan Cty. v. Liberty Grp.*, 965 F.2d 879, 885 & n.4 (10th Cir. 1992) (collecting cases and noting predominant view that § 1962(c) "require[s] that the 'person' and the 'enterprise' engaged in racketeering activities be different entities").

databases for scattering documents so it would appear that borrowers failed to provide requested documents; and (3) make it easier to conceal the enterprise's activities[31].

Home Retention Service's role in the enterprise exceeded that of simply performing tasks as directed by BOA. Its role in the enterprise was that of a lower-rung participant knowingly carrying out BOA's orders. The claim was supported in *Reves*, 507 U.S. 170, *United States v. Hutchinson*, 573 F.3d 1011 (10th Cir. 2009), *Resolution Trust Corp. v. Stone*, 998 F.2d 1534 (10th Cir. 1993), and two cases from other circuits—*Ouwinga v. Benistar 419 Plan Services, Inc.*, 694 F.3d 783 (6th Cir. 2012), and *MCM Partners, Inc. v. Andrews-Bartlett & Associates, Inc.*, 62 F.3d 967 (7th Cir. 1995)[32].

Regarding predicate requirements, Petitioner proved that there were more than two predicate acts by the defendants. They were mail fraud, wire fraud, and financial institution fraud. Defendants used the mail and wires to make fraudulent

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[31]*See In re ClassicStar Mare Lease Litig.*, 727 F.3d at 492 (2013) (recognizing that "corporate defendants are distinct from RICO enterprises when they are functionally separate, as when they perform different roles within the enterprise or use their separate legal incorporation to facilitate racketeering activity"). *See also Securitron Magnalock Corp. v.Schnabolk*, 65 F.3d 256, 262-64 (2d Cir. 1995) (concluding that individual defendants and his two corporations in distinct lines of business were necessarily distinct from each other as well as from the alleged association-in-fact enterprise).

[32]*Reves* clarified that even "lower rung participants in the enterprise who are under the direction of upper management" may be held liable under RICO if they have "some part" in operating or managing the enterprise's affairs. 507 U.S. at 179, 184. Applying this principle in *Hutchinson*, three individuals who collectively engaged in dealing narcotics out of the same motel were members of an association-in-fact enterprise and that one of those dealers conducted the enterprise's affairs when he acted under the direction of other dealers but also exercised discretion and disciplined his own underlings. 573 F.3d at 1033-35.

actions about the status of mortgage modifications and their eligibility.

In *Tal v. Hogan,* 453 F.3d 1244, 1263 (10th Cir. 2006) (quoting *Bacchus Indus., Inc. v. Arvin Indus., Inc.*, 939 F.2d 887, 892 (10th Cir. 1991)), according to Fed. R. Civ. P. 9(b) requirement of pleading mail and wire fraud with particularity, the appellant proved with evidential documents "set forth the time, place, and contents of false representation, the identity of the party making false statements and the consequences thereof." *Koch v. Koch Indus.*, 203 F.3d 1202, 1236 (10th Cir. 2000) (quoting *In re Edmonds*, 924 F.2d 176, 180 (10th Cir. 1991)).

Third, the Appeals Court made the error not to consider all the records from the lower court including exhibits and addendums. All the exhibits and addendums were submitted with all the motions and memorandums filed in the lower court. Even De Novo review and decision without fair review of all the records should have been void. The errors could come from the following:

1. Clerical Error from lower court – all the records were not ascended to the appeals court.
2. Clerical error from appeals court – all the records from lower court were missing or mishandled.
3. Misunderstanding of Rule 59(e) – all the documents from 59(e) motions and memorandums should be part of appeals court.

On 6-23-2022 (Lower Court Docket 58), Plaintiff-Appellant, Heewon Lee gave Notice of Appeal for all the orders and decisions of this court's denials up to June 2, 2021. That means all the documents from 59(e) motions and memorandums should

have been ascended to the appeals court by the lower court; and the appeals court should have all the documents from the lower court.

According to Appeals court decision, the appeals stated: "Regarding defendant-appellee' request that certain portions of the appendix be stricken, the court has considered only those documents properly a part of the record on appeal".

However, 62 Exhibits submitted with the Appeal Brief were already submitted with 'Reply to Defendant's Opposition with the same 62 Exhibits (District Docket 49 and 50). They should be part of Appeal Record. Also the same 61 Exhibits were submitted with 'Supplemental Brief to Rule 59(e)' (District Docket 48 and 49).

Addendum with the Appeal Brief were part of Reply to Defendant's Opposition as well as Supplemental Brief to Rule 59(e). In addition, all the addendums are from 61 Exhibits submitted with memorandums of 'Reply' and 'Supplemental'. Thus all the addendums should be part of the Appeal record.

In *Kwock Jan Fat v. White*, 253 U.S. 454, 1920, US Supreme Court held that decisions made based on a record that omitted relevant evidence was not a fair hearing; and in *re Murchinson*, 349 U.S. 133, 1955, US Supreme Court held that a fair trial in a fair tribunal is a basic requirement of due process. Also in *Duncan v. Louisiana*, 391 U.S. 145, 1968, US Supreme Court Justice John Harlan in a dissenting opinion described due process as fundamental fairness.

In Hays v. Louisiana Dock Co., 452 n.e.2D 1383 (III. App. 5 Dist. 1983), void judgment under federal law is one in which rendering court...acted in manner inconsistent with due process of law or otherwise acted unconstitutionally in entering

judgment. In Klugh v. U.S., 620 F.Supp. 892 (D.S.C. 1985), judgment is void judgment if court that rendered judgment...acted in a manner inconsistent with due process, Fed. Rules Civ. Proc., Rule 60(b)(4). Also in Triad Energy Corp. v. NcNell 110 F.R.D. 382 (S.D.N.Y. 1986), void judgment is one where court lacked personal or subject matter jurisdiction or entry of order violated due process.

CONCLUSION

For the foregoing reasons, Petitioner-Pro se respectfully requests that this Court issue a writ of certiorari to review the judgment of the First Court of Appeals.

Respectfully submitted,

/s/ Heewon Lee
Pro Se - Petitioner

HEEWON LEE
60 Rantoul Street
Beverly,MA 01915
E-Mail:hwlhome@yahoo.com

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