No. 23-365

In the Supreme Court of the United States

MEDICAL MARIJUANA, INC.; DIXIE HOLDINGS, LLC, AKA DIXIE ELIXIRS; RED DICE HOLDINGS, LLC,
PETITIONERS,

v.

DOUGLAS J. HORN,
RESPONDENT.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR PETITIONERS

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QUESTION PRESENTED

The Racketeer Influenced and Corrupt Organizations Act (RICO) permits "[a]ny person injured in his business or property by reason of" racketeering activity to bring a civil lawsuit "for threefold the damages he sustains." 18 U.S.C. § 1964(c).

The question presented is:

Whether economic harms resulting from personal injuries are injuries to "business or property by reason of" the defendant's acts for purposes of civil RICO.

CORPORATE DISCLOSURE STATEMENT

The corporate disclosure statement in the petition for a writ of certiorari remains current.

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OPINIONS BELOW

The court of appeals' opinion is reported at 80 F.4th 130. Pet.App.1a-22a. The district court's opinion dismissing the civil RICO claim is unreported but available at 2021 WL 4173195. Pet.App.36a-59a.

JURISDICTION

The court of appeals' amended judgment was entered on August 22, 2023. The petition for certiorari was filed on October 3, 2023, and granted on April 29, 2024. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

18 U.S.C. § 1964(c) provides in relevant part:

> Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee ….

STATEMENT

Congress limited civil actions under the Racketeer Influenced and Corrupt Organizations Act (RICO). Only those "injured in [their] business or property by reason of" racketeering activity may sue, but they may "recover threefold the damages" they suffered. 18 U.S.C. § 1964(c). By definition, injuries to business or property exclude personal injuries—as this Court has observed and as respondent does not dispute.

Thus, plaintiffs who claim that they were fraudulently induced to buy rash-provoking supplements, stroke-inducing medications, or foods with undisclosed allergens have no civil RICO claim. Rashes, strokes, and allergic reactions are personal injuries, not injuries to business or property. The same goes for plaintiffs cut by steak knives with inadequate warnings, plaintiffs poisoned by pest-control companies that misrepresented their fumigation practices, and plaintiffs who suffer broken bones from unsafe trampolines, Jet Skis, or golf carts. All of these injuries are serious, and all may be remediable through state tort law. But, for purposes of civil RICO, all of these injuries have the same disqualifying defect: RICO does not allow recovery for personal injuries.

The question here is whether the result changes if plaintiffs who suffer these personal injuries can point to the economic consequences from their injuries. Answer:

of course not. Those consequences are damages from the personal injuries, not independent business or property injuries. RICO's text expressly distinguishes between "injur[ies]"—which must be to "business or property"—and whatever ensuing "damages" result. The same rule governs the materially identical Clayton Act antitrust context that Congress used as the model for civil RICO.

That rule disposes of this case. Respondent Douglas Horn alleges that petitioners' supposed racketeering activity—fraud in advertising—misled him into consuming a wellness product that allegedly contained tetrahydrocannabinol (THC), the active ingredient in marijuana. Ingesting an unwanted substance is a classic invasion of bodily autonomy, *i.e.*, a personal injury. Horn's RICO claim arising from that injury should be a non-starter. He cannot change the answer by pointing to the ensuing economic consequences, including lost wages, after his employer fired him for failing a workplace drug test.

Were the law otherwise, everyday tort plaintiffs could turn artfully pleaded straw into RICO gold. Rashes and allergic reactions can cause missed work and lost wages. Strokes and other debilitating accidents may preclude future employment. Burns, broken limbs, concussions, and the like cause medical expenses. If plaintiffs could relabel those damages from personal injuries as injuries to "business or property"—as the Second Circuit held below and as Horn now urges—Congress' decision to bar plaintiffs from using civil RICO to recover for personal injuries would be a dead letter.

A. Statutory Background

In 1970, Congress enacted RICO to combat "organized crime and its economic roots." *Russello v. United States*, 464 U.S. 16, 26 (1983). As RICO's

statutory findings explained, "organized crime in the United States [was] a highly sophisticated, diversified, and widespread" problem. Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 922, 922. Organized crime "weaken[ed] the stability of the Nation's economic system" and "drain[ed] billions of dollars from America's economy." *Id.* at 922-23.

Congress' solution was to attach hefty civil and criminal penalties to "racketeering activity," which RICO defines to "encompass dozens of state and federal offenses," including mail and wire fraud. *See RJR Nabisco, Inc. v. Eur. Cmty.*, 579 U.S. 325, 329-30 (2016); 18 U.S.C. § 1961(1). RICO specifically prohibits racketeering-related offenses like "receiv[ing] any income … from a pattern of racketeering activity" or "participat[ing] … in the conduct of [an] enterprise's affairs through a pattern of racketeering activity." 18 U.S.C. § 1962(a)-(d). Those offenses are federal felonies punishable by up to 20 years in prison. *Id.* § 1963(a). And RICO empowers the Attorney General to seek injunctive relief to "prevent and restrain" those RICO violations. *Id.* § 1964(a)-(b).

RICO also creates a civil cause of action for private plaintiffs to "extirpat[e] the baneful influence of organized crime in our economic life." *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 488 (1985) (quoting 116 Cong. Rec. 25,190 (July 21, 1970)). Reflecting Congress' economic focus, Congress "modeled" civil RICO after the "civil-action provision of the federal antitrust laws." *Holmes v. Sec. Inv. Prot. Corp.*, 503 U.S. 258, 267 (1992); *compare* 18 U.S.C. § 1964(c), *with* 15 U.S.C. § 15(a).

Only plaintiffs "injured in [their] business or property by reason of a violation of section 1962" may sue under civil RICO. 18 U.S.C. § 1964(c). Such plaintiffs may "recover threefold the damages" they sustained, plus

costs and attorneys' fees. *Id.* Thus, RICO's civil remedy "is narrower in its application" than RICO's criminal provisions. *RJR Nabisco*, 579 U.S. at 350. As this Court has observed, the phrase "injured in his business or property" "cabin[s] RICO's private cause of action to particular kinds of injury—excluding, for example, personal injuries." *Id.*

B. Factual and Procedural Background

1. In recent years, cannabidiol (or CBD) products have become ubiquitous. Americans have turned to CBD in droves to address health concerns ranging from epilepsy, insomnia, and anxiety to chronic pain and inflammation.[1] To date, some 60% of U.S. adults—and 89% of Americans over 77—have used CBD products. Alena Hall & Robby Brumberg, *CBD Statistics, Data and Use*, Forbes (Apr. 29, 2024), https://tinyurl.com/3kzxju7f.

This case involves one such CBD product: a wellness supplement called Dixie X. Like many other CBD products, Dixie X comes from hemp. Although hemp and marijuana are derived from the same plant, cannabis sativa, they differ in important ways. Pet.App.81a-82a. Most significantly, hemp has been engineered to contain "low concentrations of THC," Pet.App.82a (citation omitted), and, therefore, "does not cause a high," Grinspoon, *supra*. Accordingly, Congress has long exempted portions of the cannabis plant with low levels of THC, like the stalk of a mature plant, from the federal definition of marijuana. Pub. L. No. 91-513, tit. II, § 102(15), 84 Stat. 1236, 1244 (1970). In 2018, Congress

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[1] *E.g.*, Peter Grinspoon, *Cannabidiol (CBD): What We Know and What We Don't*, Harv. Health Publ'g (Apr. 4, 2024), https://tinyurl.com/yujky9dc; Brent A. Bauer, *What Are the Benefits of CBD—and Is It Safe to Use?*, Mayo Clinic (Dec. 6, 2022), https://tinyurl.com/3pwhts3r.

removed hemp from the federal definition of marijuana altogether. Pub. L. No. 115-334, § 12619(a), 132 Stat. 4490, 5018 (2018). By contrast, marijuana remains a federally controlled substance, notwithstanding the Drug Enforcement Administration's recent proposal to downgrade marijuana from schedule I to schedule III under the Controlled Substances Act. *See Schedules for Controlled Substances: Rescheduling of Marijuana*, 89 Fed. Reg. 44,597 (May 21, 2024).

In 2012, petitioner Red Dice Holdings LLC—a joint venture of petitioners Medical Marijuana Inc. and Dixie Holdings LLC—began selling Dixie X. Pet.App.83a. Petitioners took medicinal hemp stalk and distilled it to remove impurities (including any remaining THC), leaving a pure CBD concentrate. Pet.App.83a. Petitioners then infused that concentrate into an extract that users typically dissolve under their tongues. *See* Pet.App.83a. Because petitioners manufactured Dixie X from mature hemp stalk, Dixie X has at all times been legally distributed under federal law. *See* Pet.App.73a-74a.

2. Respondent Douglas Horn and his wife are commercial truck drivers. J.A.23.[2] In February 2012, Horn crashed his truck into a ditch, injuring his hip and shoulder and exacerbating previous back injuries. J.A.3-4, 51-52, 58-59, 64-65. For pain relief, Horn took over-the-counter Tylenol and Motrin, as well as prescription prednisone (an anti-inflammatory) and hydrocodone (an opioid painkiller). J.A.60, 68. In May 2012, Horn returned to work.

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[2] The brief in opposition (at 5) states that Horn and his wife worked "to support themselves and their five daughters." Petitioners observe that Horn's five daughters (only one is his current wife's) are adults. J.A.91; Cindy Harp-Horn Dep. 9:6-9, D. Ct. Dkt. 61-6. In 2012, only Horn's youngest daughter, then around 23 and gainfully employed, lived at home. J.A.91; Horn Dep. 146:9-147:15, 311:22-312:1, D. Ct. Dkt. 61-5.

Horn Dep. 154:19-21. Because his pain persisted, Horn investigated natural alternatives. J.A.4.

In September 2012, while waiting to meet a friend for lunch at Chili's, Horn and his wife stopped in a bookstore coffee shop. J.A.93-94. According to the Horns, their table had a single magazine on it: *High Times*, the self-proclaimed "preeminent source for cannabis information." J.A.73-75, 96-97; High Times, *About High Times*, https://hightimes.com/about. Horn was familiar with *High Times* and testified to trying marijuana in his youth. J.A.74, 90; *contra* BIO 5-6 (stating that Horn has never used marijuana).

Horn flipped through the first 41 pages of *High Times*. J.A.75; *see High Times* Issue, D. Ct. Dkt. 61-7 (full issue). On page 42—in a segment titled "High and Healthy"—Horn encountered an article describing Dixie X as a hemp-based, "CBD-rich medicine" that contained "0% THC." J.A.20, 74-75; *High Times* Issue 38, 42.[3] Given the Horns' previous experience with such varied hemp-based products as hemp milk, hemp shakes, hemp seeds, and hemp shampoo, the article piqued their interest and prompted them to buy the *High Times* issue for future reference. J.A.72-73, 85-87; Horn Dep. 342:9-13.

As a commercial truck driver, Horn knew that he faced random drug tests mandated by his employer and the Department of Transportation. Pet.App.5a. The

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[3] Horn (BIO 6) and the Second Circuit (Pet.App.4a) call this article an "advertisement." In granting summary judgment to petitioners on most of Horn's state-law claims, the district court observed that "the article is not an advertisement but a writeup about Dixie X by a third party." Pet.App.104a. The court further noted that Horn's assertion that petitioners "had a role in publishing the article" rests on "nothing but speculation." Pet.App.105a.

Horns therefore allegedly supplemented *High Times*' coverage of Dixie X with their own research—watching YouTube videos, visiting the product's FAQ page, and calling a 1-800 number—to confirm that Dixie X was THC-free. Pet.App.85a-87a.[4] Horn never asked his doctor about Dixie X. J.A.63.

Horn alleges that he purchased and used Dixie X later in September 2012. Pet.App.87a. In October 2012, Horn was selected for a random drug test, which came back positive for THC. Pet.App.87a. Two follow-up tests came back negative. J.A.70. The lab informed Horn that, under Department of Transportation regulations, he would "not be able to drive unless [he] went through a substance abuse program"—an option that Horn declined at the time. J.A.66-67, 91-92; *see* 49 C.F.R. § 40.305(a)-(b) (2012). After learning of the failed drug test, Horn's employer fired him. J.A.5.

After his termination, Horn ordered a different, smaller bottle of Dixie X and sent it for third-party testing. Horn Dep. 348:4-22. That test came back positive for THC. J.A.5. Horn never tested the bottle he actually used. Horn Dep. 241:22-243:1. Horn eventually completed a substance abuse program and found work at other trucking companies, where he was employed as of filing this suit. J.A.92; Horn Dep. 26:11-27:21. By April 2016, Dixie X's website explicitly advised customers that

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[4] Below, Horn stated that he reviewed Dixie X's FAQ page "in September, 2012" before purchasing the product on September 17, 2012. J.A.34-36 (Horn Aff. ¶¶ 12-13, 20). As screenshots from Horn's online archive demonstrate, that FAQ page appeared only *after* Horn purchased the product. *Compare* Internet Archive, https://tinyurl.com/yza386h9 (Sept. 6, 2012 screenshot with no FAQ page in site menu); Internet Archive, https://tinyurl.com/bdhud8va (Sept. 28, 2012 screenshot still with no FAQ page in site menu), *with* J.A.40-44 (Horn's Oct. 19, 2012 screenshot with FAQ page).

"hemp foods and oils can cause confirmed positive results" on drug tests. J.A.47.

3. In August 2015, the Horns sued petitioners in the U.S. District Court for the Western District of New York, alleging nine causes of action. J.A.1-18 (Compl.). All claims centered on false-advertising allegations that petitioners misled Horn into ingesting Dixie X, thinking that Dixie X was THC-free. Horn alleged that he and his wife "investigated natural medicines" to treat his "bodily injuries" from his crash and saw coverage and advertisements for Dixie X. J.A.3-4 (Compl. ¶¶ 12-13). Horn alleged that he "purchased and consumed … Dixie X" in reliance on company representations that Dixie X was THC-free. J.A.5-6 (Compl. ¶ 19). Horn further alleged that the Dixie X he purchased, however, contained THC, causing him "physical harm in the ingestion" of "an illegal substance," which led to "economic harm" and "loss of employment." J.A.17 (Compl. ¶¶ 84, 86).

Eight claims arose under New York law: deceptive business practices, fraudulent inducement, strict products liability, breach of contract, breach of warranty, unjust enrichment, negligence, and negligent infliction of emotional distress. Pet.App.87a-88a. The lone federal cause of action was a civil RICO claim under 18 U.S.C. § 1964(c). Pet.App.88a. Horn initially sought unspecified damages for "lost employment … at a minimum salary of $100,000" plus "401 k contributions, life insurance, and other benefits." J.A.31 (RICO Case Statement). Later, Horn requested $10 million. Horn Dep. 335:17-336:2.

In April 2019, Horn withdrew three state-law claims, and the district court dismissed most remaining claims on summary judgment. Pet.App.95a, 113a. First, the court dismissed all of Horn's wife's claims because any damages she suffered were "too attenuated" from any wrongful

conduct. Pet.App.105a, 111a, 113a. As to Horn, the district court granted summary judgment to petitioners on four state-law claims, holding that Horn could not prove those claims as a matter of New York law. Pet.App.96a-100a, 113a. That left two claims: Horn's state-law fraudulent-inducement claim and his civil RICO claim. Pet.App.113a.

The court later granted summary judgment to petitioners on the RICO claim, agreeing with petitioners that Horn sought recovery for a personal injury—unwitting consumption of THC—and thus did not allege an injury to "business or property" as required by 18 U.S.C. § 1964(c). Pet.App.39a-40a, 46a. The court defined Horn's injury as "the bodily invasion that [he] suffered when he unwittingly ingested THC" and noted that Horn's lost wages derived from that "personal injury." Pet.App.42a.

Following precedent from the Sixth, Seventh, and Eleventh Circuits, the court held that "lost earnings or wages are not recoverable" in a civil RICO suit "if they flow from a personal injury." Pet.App.41a-42a. Here, because the only "connect[ion]" between petitioners' alleged racketeering activity and Horn's financial harm was "a personal injury," his RICO claim failed as a matter of law. Pet.App.42a, 46a. At Horn's request, the court entered partial final judgment on the RICO claim to permit an immediate appeal. Pet.App.26a-27a.

4. The Second Circuit reversed. Horn did not contest the district court's holding that civil RICO excludes economic harms resulting from personal injury, but argued that his lost wages did not flow from a personal injury. Horn C.A. Br. 9-11. The Second Circuit declined to address that contention, instead deciding only the "logically antecedent legal question" of "whether § 1964(c)

bars a plaintiff from suing for injuries to business or property simply because they flow from, or are derivative of, a personal injury." Pet.App.8a n.2.

The court held that civil RICO permits recovery for such injuries, dismissing other circuits' contrary reasoning as "flawed." Pet.App.11a-13a & n.5. In the Second Circuit's view, "the phrase 'business or property' focuses on the *nature* of the harm, not the *source* of the harm." Pet.App.15a. The court therefore found "no basis" to bar recovery when "there is an antecedent personal injury." Pet.App.18a-19a. Because Horn purportedly suffered an economic injury when he "lost his job," the Second Circuit held, Horn could pursue a RICO claim even though his harm resulted solely from his personal injury. Pet.App.10a-11a.

SUMMARY OF ARGUMENT

I. By requiring that a plaintiff be "injured in his business or property," 18 U.S.C. § 1964(c), civil RICO precludes suits for personal injuries. Plaintiffs cannot circumvent that exclusion by rebranding *damages* arising from personal injuries, like lost wages, as injuries to business or property.

A. Plaintiffs undisputedly cannot bring civil RICO suits for personal injuries. For that exclusion to mean something, plaintiffs cannot bring civil RICO suits for personal injuries based on the ensuing damages. RICO's text expressly differentiates between the legal concepts of injury and damages. The injury—the invasion of the plaintiff's legal rights—must be to business or property. Plaintiffs cannot make up the lack of a qualifying injury by pointing to *damages* to business or property that result from a personal injury, even if those damages are economic in nature. Damages simply reflect what the plaintiffs seek to recover for their personal injuries.

B. Congress modeled civil RICO on the Clayton Act, which likewise authorizes antitrust plaintiffs to sue only for injuries to "business or property." 15 U.S.C. § 15(a). As this Court and others recognize, antitrust plaintiffs cannot sue for personal injuries. And antitrust plaintiffs cannot evade that restriction by pointing to economic harms from personal injuries. The same should go for civil RICO.

C. Horn's RICO claim rests on a personal injury: ingesting a product allegedly containing THC that petitioners purportedly fraudulently induced him to take. This is a classic personal-injury claim. Horn cannot reclassify his lost wages as a discrete injury to "business or property." Those lost wages flow from his ingestion of a THC-containing product, which prompted his employer to terminate him for failing a drug test. Those lost wages are thus damages from an alleged personal injury, not a freestanding injury to business or property.

D. The Second Circuit and Horn would instead allow plaintiffs to sue for the consequences of personal injuries, so long as those consequences harm plaintiffs' business or property. That approach would nullify RICO's "business or property" requirement. Personal injuries by definition result in damages and almost inevitably cause lost wages, medical expenses, and countless other types of economic damages—all of which plaintiffs could seize on to turn non-actionable personal injuries into actionable RICO injuries. Plaintiffs could transform virtually any false-advertising, mislabeling, or failure-to-warn claim into a treble-damages federal RICO action just by marrying those downstream economic consequences with RICO's fraud predicates. RICO's approximately 100 other predicates could support endless other claims that arise from personal injuries and inflict some ensuing economic loss.

That approach would effectively displace state tort law. If plaintiffs could turn ordinary state personal-injury tort claims into federal RICO claims, plaintiffs would always sue under RICO—with its treble damages—and sidestep States' limits on tort actions. Horn points to RICO's racketeering-activity and proximate-causation requirements as countervailing guardrails on the explosion of civil RICO suits. But those guardrails cannot excuse ignoring RICO's exclusion of personal injuries, and offer little comfort besides. If Horn believes his false-advertising claim constitutes mail and wire fraud and satisfies RICO proximate causation, it is hard to fathom what claims would fail.

Moreover, the Second Circuit and Horn's position would perversely remove one key limit on RICO suits—the four-year limitations period. That period runs from the plaintiff's injury. But under Horn's interpretation, plaintiffs could identify each new economic harm as a new "injur[y]," resetting the limitations clock continuously.

II. The Second Circuit and Horn's counterarguments attack strawmen. Petitioners' position does not exclude classic RICO predicate acts like extortion that may cause personal injuries. Plaintiffs who suffer both business or property injuries *and* personal injuries can sue for the former but not the latter. If a mobster assaults a businessman to extort valuable property, the extorted property is a property injury under civil RICO. But the assault is a personal injury outside civil RICO. That distinction is not arbitrary, as the Second Circuit stated, but an inevitable feature of Congress' decision to limit civil RICO claims to specific, economic injuries.

ARGUMENT

I. Civil RICO Does Not Allow Recovery for Personal-Injury Damages

Plaintiffs cannot use civil RICO to sue for personal injuries. Only someone "injured in his business or property by reason of" racketeering activity can sue to "recover threefold the damages he sustains." 18 U.S.C. § 1964(c). As that textual distinction between injury and damages makes clear, plaintiffs who suffer personal injuries cannot plead their way back into RICO suits just by pointing to the *damages* from their personal injuries simply because those damages are economic. The Clayton Act—the model for civil RICO's operative language—imposes that same rule, and precludes antitrust plaintiffs from repleading personal-injury suits as antitrust claims by pointing to ensuing economic damages.

That black-letter distinction dooms Horn's case. He suffered a personal injury (unwitting ingestion of THC). He cannot evade civil RICO's bar on personal-injury claims by shifting the focus to his damages (lost wages). If Horn could sue under RICO using such semantic legerdemain, innumerable plaintiffs could repackage innumerable state tort cases—including every false-advertising, mislabeling, and failure-to-warn claim—as treble-damages federal RICO actions. Congress did not possibly open those floodgates.

A. Civil RICO Excludes Personal Injuries and Thus Excludes Personal-Injury Damages

1. Start with settled ground: Plaintiffs cannot bring civil RICO suits for personal injuries. By limiting recovery to plaintiffs "injured in [their] business or property," Congress "cabin[ed] RICO's private cause of action to particular kinds of injury—excluding, for example, personal injuries." *RJR Nabisco*, 579 U.S. at 350.

Horn (BIO 16) does not dispute this personal-injury exclusion, for good reason. When Congress wants a statute to cover personal injuries, Congress says so. The Anti-Terrorism Act authorizes U.S. nationals "injured in [their] person, property, or business by reason of an act of international terrorism" to sue for "threefold the damages … sustain[ed]." 18 U.S.C. § 2333(a). Likewise, the Federal Tort Claims Act creates jurisdiction for "claims … for money damages … for injury or loss of property, or personal injury or death caused by" government negligence. 28 U.S.C. § 1346(b)(1). And the Federal Anti-Tampering Act separately prohibits tampering with consumer products that risks "bodily injury," versus tampering with intent to cause "injury to … business." 18 U.S.C. § 1365(a)-(b). By authorizing civil RICO suits only for "injur[y]" to "business or property," Congress deliberately barred recovery for personal injuries.

2. By ruling out civil RICO suits for personal injuries, Congress ruled out civil RICO suits for *damages* from personal injuries, even if they are economic in nature. A contrary reading would vitiate Congress' exclusion of personal injuries. RICO's text reinforces these principles by distinguishing between the legal concepts of injury and damages. A plaintiff who is "*injured* in his business or property" may "recover threefold the *damages* he sustains." *Id.* § 1964(c) (emphases added). Under RICO then, "injury" is "[t]he invasion of a legal right," whereas "damage[s]" are "the loss, hurt, or harm resulting from the 'injury.'" *Ballentine's Law Dictionary* 627 (3d ed. 1969); *see* 1 *Restatement (Second) of Torts* § 7(1) (1965). Damages are not themselves an injury. "Damages *flow* from an injury." 4 *Restatement (Second)*, *supra*, § 902 cmt. a (1979) (emphasis added). In short: Plaintiffs who suffer a personal *injury* cannot recast their damages as the basis for a RICO suit. Those economic consequences from a personal injury are *damages*, not the injury itself.

Other civil RICO cases illustrate this distinction. Civil RICO requires a domestic injury. *RJR Nabisco*, 579 U.S. at 346. What matters, therefore, is "where the injury arose," *Yegiazaryan v. Smagin*, 599 U.S. 533, 545 (2023), not where the damages occurred. Defendants cannot use the domestic-injury requirement to defeat RICO claims if the plaintiff suffered an actionable domestic injury, but suffered damages abroad. *See id.* at 540, 549 (citation omitted) (finding a domestic RICO injury even though the plaintiff "experience[d] the loss" abroad); *cf. WesternGeco LLC v. ION Geophysical Corp.*, 585 U.S. 407, 409 (2018) (holding same under the Patent Act). But conversely, plaintiffs presumably cannot replead overseas injuries as RICO claims just by pointing to domestic *damages*. Under civil RICO as elsewhere, "injury" and "damages" are "separate legal concept[s]." *WesternGeco*, 585 U.S. at 417. RICO's injury requirement is "a substantive element of the cause of action, not a remedial damages provision." *Id.* at 416.

This fundamental admonition against "wrongly conflat[ing] legal injury with the damages arising from that injury" recurs across legal contexts. *See id.* at 417. Take the Patent Act, which permits patent holders to sue over domestic *injuries* (*i.e.*, patent infringement). *Id.* at 414-15. Plaintiffs cannot evade that requirement by identifying overseas patent infringement that inflicts domestic *damages*. But defendants cannot defeat suits that do allege domestic infringement on the ground that the ensuing damages (like lost profits) occurred abroad. *Id.*

Or consider personal jurisdiction: Courts determine personal jurisdiction by looking to "where the actual injury or accident takes place," as distinct from "the site of the economic consequences of that injury" (*i.e.*, the damages). *Jobe v. ATR Mktg., Inc.*, 87 F.3d 751, 754 (5th Cir. 1996). Translation: Texas courts can exercise personal

jurisdiction over car accidents in Texas (the injury). But they cannot exercise personal jurisdiction over car accidents in Wyoming that cause medical expenses or lost wages in Texas (the damages).

Countless other statutes draw the same line between injuries and the resulting damages.[5] That familiar distinction forecloses the Second Circuit and Horn's position here. Civil RICO allows recovery only for injuries to business or property, not for personal injuries, regardless of whether the associated damages are economic in nature.

B. RICO's Antitrust Roots Confirm that Personal-Injury Damages Are Not Actionable

The antitrust laws—upon which "Congress modeled" civil RICO, *Holmes*, 503 U.S. at 267—embrace the same distinction between "injur[y]" to "business or property"

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[5] *E.g.*, 22 U.S.C. § 3772 (Panama Canal Act's requirement that the Panama Canal Commission "pay damages for injuries to vessels" passing through the Canal); 26 U.S.C. § 104 (Internal Revenue Code's exclusion from gross income of "damages … received … on account of personal physical injuries"); *id.* § 7402(c) (Internal Revenue Code's authorization for an official "receiving any injury to his person or property in the discharge of [his] duty … to maintain an action for damages therefor"); 28 U.S.C. § 1346(b)(1) (Federal Tort Claims Act's grant of jurisdiction when plaintiffs seek "money damages … for injury or loss of property, or personal injury" caused by government negligence); *id.* § 1357 (jurisdictional grant over actions "to recover damages for any injury to … person or property" caused by revenue collection); *id.* § 1605A (Foreign Sovereign Immunities Act's immunity exception for suits seeking "money damages … for personal injury or death" caused by terrorist activity); 42 U.S.C. § 300aa-11(a)(2)(A) (National Childhood Vaccine Injury Act's bar on "civil action[s] for damages in an amount greater than $1,000 … arising from a vaccine-related injury"); *id.* § 300aa-22 (similar); 45 U.S.C. § 51 (Federal Employers' Liability Act's imposition of liability for "damages to any person suffering injury" while employed by a railroad).

and ensuing damages. The Clayton Act provides a cause of action to anyone "injured in his business or property by reason of" antitrust violations, who may "recover threefold the damages" sustained. 15 U.S.C. § 15(a). Courts, including this one, have repeatedly noted that the Clayton Act excludes personal injuries, and thus excludes economic damages flowing therefrom. That same rule should naturally apply to civil RICO's identical text, which this Court routinely interprets in parallel.[6]

As in civil RICO, the phrase "business or property" in the Clayton Act carries "restrictive significance" and "exclude[s] personal injuries." *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979). Ergo, economic *damages* from personal injuries are not injuries to business or property. This Court has contrasted "business damages" with "damages resulting from a personal injury"—with the latter falling outside the Clayton Act. *J. Truett Payne Co. v. Chrysler Motors Corp.*, 451 U.S. 557, 566 (1981). And this Court approvingly cited a case rejecting antitrust claims where the injury was personal (the decedents were killed in workplace accidents), and the plaintiffs tried to point to ensuing damage to property (their state-law property right in consortium). *Reiter*, 442 U.S. at 339 (citing *Hamman v. United States*, 267 F. Supp. 420, 432 (D. Mont. 1967)). No dice: Because the claim was ultimately for "damages for personal injuries," the Clayton Act did not apply. 267 F. Supp. at 432.

That no-repackaging-personal-injuries rule makes sense. "Both RICO and the Clayton Act are designed to remedy economic injury." *Malley-Duff*, 483 U.S. at 151;

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[6] *E.g.*, *Rotella v. Wood*, 528 U.S. 549, 557-58 (2000); *Klehr v. A.O. Smith Corp.*, 521 U.S. 179, 188-90 (1997); *Holmes*, 503 U.S. at 267-68; *Agency Holding Corp. v. Malley-Duff & Assocs.*, 483 U.S. 143, 150-53 (1987); *contra* BIO 27.

accord Pet.App.13a. In both statutes, Congress sought to "prevent[] and rectify[] economic harm to individuals and companies," providing "businessm[e]n … access to a legal remedy." 116 Cong. Rec. 27,740 (Aug. 6, 1970) (statement of Rep. Steiger); 116 Cong. Rec. 35,227 (Oct. 6, 1970) (same). The antitrust laws were enacted to protect consumers and businesses from the evils of "excessive prices." *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 530 (1983). And civil RICO "protect[s] businesses against competitive injury from organized crime." *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 473 (2006) (Thomas, J., concurring in part and dissenting in part). Congress sought to redress economic injuries by extending causes of action to private plaintiffs for those economic injuries. Allowing personal-injury claims based on the damages sought by the plaintiff would blow the hinges off that limitation.

Lower courts thus consider it self-evident that, because the Clayton Act does not authorize suits for personal injuries, the Clayton Act does not authorize suits for personal-injury damages, regardless of whether the damages are economic in nature. For instance, courts have refused to allow baseball pitchers to use antitrust law to sue Major League Baseball for overworked arms—notwithstanding the inevitable economic costs of missed games and medical bills. *See Tepler v. Frick*, 112 F. Supp. 245 (S.D.N.Y. 1952), *aff'd*, 204 F.2d 506 (2d Cir. 1953). Likewise, plaintiffs harmed by defective cosmetics cannot fashion antitrust claims by pointing to ensuing economic harms from a months-long sickness and dermatology visit. *Chadda v. Burcke*, 2004 WL 2850048, at *1 (E.D. Pa. Dec. 9, 2004), *aff'd*, 180 F. App'x 370, 371-72 (3d Cir. 2006). And plaintiffs harmed by smoking cannot plead their way into antitrust suits by pointing to ensuing medical expenses. *Or. Laborers-Emps. Health & Welfare Tr. Fund v. Philip Morris Inc.*, 185 F.3d 957, 964 (9th Cir. 1999).

Nor can such plaintiffs point to "economical injuries due to smoking related disease," including "compensation for loss of employment." *Gause v. Philip Morris*, 2000 WL 34016343, at *1, *5 (E.D.N.Y. Aug. 8, 2000), *aff'd*, 29 F. App'x 761 (2d Cir. 2002).

The same rules apply to state unfair-trade-practice laws with analogous "business or property" limitations. A plaintiff who suffered a botched medical procedure could not sue under the Washington Consumer Protection Act by pointing to ensuing "medical expenses, wage loss, loss of earning capacity, and out-of-pocket expenses." *Ambach v. French*, 216 P.3d 405, 406, 409 (Wash. 2009) (citation omitted). Those were "personal injury damages," not injuries to "business or property." *Id.* at 409. And a plaintiff whose lawn-mower accident allegedly caused "permanent impairment of earning capacity" still brought a "personal injury suit[]," not a claim for injury to "business or property" under Hawaii law. *Beerman v. Toro Mfg. Corp.*, 615 P.2d 749, 752-54 (Haw. Ct. App. 1980). The same rule should apply here.

C. Horn Pled an Impermissible Personal-Injury Claim

1. Horn suffered a quintessential personal injury: ingesting an unwanted substance (THC). The Second Circuit was wrong to let him transform that personal injury into an "injury to business or property" by pointing to his ensuing damages.

Start with Horn's injury. Civil RICO "focus[es] … on the injury, not in isolation, but as the product of racketeering activity." *Yegiazaryan*, 599 U.S. at 545. To identify the relevant injury, courts "look to the circumstances surrounding the alleged injury," including "the racketeering activity that directly caused it." *Id.* at 543-44. Here, the supposed "racketeering activity" was fraudulently misrepresenting that Dixie X was THC-free. The

ensuing injury—the alleged invasion of Horn's legal rights—was that he took Dixie X and thus ingested THC.

Ingesting an unwanted product is plainly an injury. And it is plainly a personal injury, not an injury to business or property. *See, e.g.*, *Commonwealth v. Stratton*, 114 Mass. 303, 304-05 (1873); *Gupta v. Asha Enters.*, 27 A.3d 953, 956, 963 (N.J. Super. Ct. App. Div. 2011). As the name suggests, a personal injury is an injury "done to a man's *person*, such as a cut or bruise, a broken limb, or the like, as distinguished from an injury to his property or his reputation." *Black's Law Dictionary* 925 (rev. 4th ed. 1968); *see Ballentine's*, *supra*, at 941 ("an invasion of a personal right"). Inducing someone to consume an unwanted substance invades their bodily autonomy and thereby injures their person. Thus, both the decision below and question presented assume that Horn suffered a personal injury for which he seeks to recover economic damages. Pet.App.8a n.2; Pet. I.

The brief in opposition (at 17) deems it "far from clear that Mr. Horn suffered a personal injury." But Horn's pleadings below were pellucid: His complaint alleged that petitioners "caused Plaintiff[] physical harm in the ingestion of [a] caustic, toxic, and/or an illegal substance." J.A.17 (Compl. ¶ 84). He alleged that his job loss was "a direct and proximate result of consuming" Dixie X. J.A.6 (Compl. ¶ 20). His RICO case statement asserted that he lost his "livelihood from the use of the product." J.A.30. And Horn's affidavit attested: "I lost my career and income for 5 years, because I took this product." J.A.38. In the court of appeals, Horn did "not dispute that his injury arose from his consuming a product that contained THC." Horn C.A. Br. 10. And the brief in opposition (at 28) elsewhere accuses petitioners of "drugging … Mr. Horn."

Horn (BIO 17-18) resists the idea that ingesting a product is a personal injury by citing a tentative draft of

the *Restatement (Third) of Torts*. Horn portrays that draft restatement as saying that the "mere existence of subcellular changes to, or the presence of toxins in, the plaintiff's body traditionally do not qualify as injuries" for purposes of medical-monitoring claims. *Restatement (Third) of Torts: Miscellaneous Provisions* §__. Medical Monitoring Reporters' Note cmt. b n.1 (Tentative Draft No. 2, 2023). Whatever weight a modern draft restatement should receive is diminished by Horn's misquotation of it. The draft says only that toxins "traditionally do not qualify as *compensable* injuries." *Id.* (emphasis added). The draft does not refute the rule that unwittingly ingesting an unwanted substance is a personal injury.

Horn (BIO 18) incorrectly characterizes petitioners as arguing in district court that "Horn's consumption of Dixie X could *not*, as a matter of law, constitute a personal injury." In fact, petitioner Dixie Holdings argued that Horn "failed to plead a *cognizable* physical injury" under New York products-liability law, which does not permit recovery when the plaintiff seeks economic damages alone. Dixie Mot. for Summ. J. 19, Dkt. 62-1 (emphasis added). The district court agreed, determining that Horn had not alleged "cognizable injuries" under New York law. Pet.App.111a. The statements that Horn cites where Dixie Holdings and the district court remarked that Horn had not offered evidence of "bodily" or "personal injury" all go to this New York-law question as well. BIO 18 (quoting Pet.App.111a; Dixie Mot. for Summ. J. 19). Regardless of whether New York law permits recovery for unwittingly consuming THC, Horn's claim is, at bottom, that he lost his job because he used petitioners' product. That is a plain-as-day products-liability claim for a personal injury.

2. Switching gears, the Second Circuit (Pet.App.9a-10a) and Horn (BIO 23) reclassify the *consequences* of

Horn's personal injury—namely, his lost wages—as the operative RICO injury. They reason that because the word "business" in section 1964(c) includes "employment," a loss of "current and future wages … tied to employment" is a RICO "injur[y] in [Horn's] business." Pet.App.10a; *see* BIO 23.

That reasoning confuses the operative *injury* with the ensuing *damages*. Again, the hallmark of a RICO injury is the invasion of a plaintiff's legal interests that directly follows from the alleged racketeering activity. *Yegiazaryan*, 599 U.S. at 544-45. In other contexts, this Court has "zeroed in on the core of the[] suit" to determine what conduct "actually injured" the plaintiff. *OBB Personenverkehr AG v. Sachs*, 577 U.S. 27, 35 (2015) (Foreign Sovereign Immunities Act).

For instance, this Court described seamen injured by their employers' negligence as experiencing "a single wrongful invasion of [their] primary right of bodily autonomy." *See Pac. S.S. Co. v. Peterson*, 278 U.S. 130, 138 (1928); *accord Balt. S.S. Co. v. Phillips*, 274 U.S. 316, 321 (1927). That was so even though the seamen sought various economic damages—"maintenance" (room and board), "cure" (medical expenses), and "wages." *Pac. S.S.*, 278 U.S. at 137-38; *Balt. S.S.*, 274 U.S. at 318. The only injury was the initial harm caused by the defendants' wrongdoing—not the subsequent economic consequences.

Horn (BIO 26) suggests that this Court implicitly endorsed the notion that downstream economic consequences can supply freestanding civil RICO injuries in *National Organization for Women, Inc. v. Scheidler* (*Scheidler I*), 510 U.S. 249 (1994). Horn characterizes that case as permitting a RICO claim "alleging that racketeering activity inflicted mental distress on an employee, which caused her to leave her job." But the cited portion

of *Scheidler I* involves Article III standing, not the "business or property" requirement. *Id.* at 256. This Court later rejected the RICO claim in *Scheidler* because the defendants had not obtained property (and thus did not commit Hobbs Act extortion). *Scheidler v. Nat'l Org. for Women* (*Scheidler II*), 537 U.S. 393, 397 (2003). Regardless, the *Scheidler* complaint alleged a classic business injury—an extortionate conspiracy aimed at shutting down the plaintiff's business, accomplished by means of threats to an employee. *Scheidler I*, 510 U.S. at 253. *Scheidler I* never suggested that economic aspects of any personal injury to the employee—say, therapy bills and lost wages—could support a RICO claim.

Here, the actually injurious event was ingesting petitioners' allegedly THC-containing product—a personal injury. Petitioners' only allegedly wrongful conduct was purported fraud inducing Horn to ingest their product. Horn's employer, not petitioners, then fired him and caused him to lose his wages. And Horn's lost wages are prototypical damages from his personal injury. The "typical recovery in a personal injury case" includes "(a) medical expenses, (b) lost wages, and (c) pain, suffering, and emotional distress." *Comm'r v. Schleier*, 515 U.S. 323, 329 (1995); *accord United States v. Burke*, 504 U.S. 229, 235-37 (1992). Horn's ingestion of THC (the personal injury) allegedly caused those damages, making them "part and parcel of the underlying non-compensable personal injury," not distinct business or property injuries. *See Diaz v. Gates*, 420 F.3d 897, 914 (9th Cir. 2005) (en banc) (Gould, J., dissenting).

Horn's own complaint confirms that his injury was ingesting Dixie X and that the ensuing consequences are simply damages. He alleges that he suffered "monetary and property damages" as a result of using Dixie X. J.A.12 (Compl. ¶ 47). Those alleged damages include "lost

employment … at a minimum salary of $100,000" plus "401 k contributions, life insurance, and other benefits." J.A.31 (RICO Case Statement). Just like any other plaintiff who cannot work as the result of a personal injury, Horn is seeking *damages* for a personal injury. But just like any other RICO plaintiff, Horn can sue only for *injuries* to business or property—a requirement he cannot satisfy just by pointing to his *damages*.

D. A Contrary Approach Would Upend Civil RICO

1. The Second Circuit and Horn would end-run Congress' exclusion of personal injuries from civil RICO by counting the economic damages from personal injuries as standalone business or property injuries. That approach would leave the "business or property" requirement without "restrictive significance." *Jackson v. Sedgwick Claims Mgmt. Servs.*, 731 F.3d 556, 565 (6th Cir. 2013) (en banc). "[P]ersonal injuries often lead to monetary damages." *Id.* And "[m]oney, of course, is a form of property." *Reiter*, 442 U.S. at 338. Lost wages, employment benefits, medical expenses, and seemingly *any* monetary loss from a personal injury could all amount to injuries to "business or property" under the decision below. Congress did not exclude personal injuries only to leave the door wide open to boundless personal-injury suits based on the inevitable damages.

Countless plaintiffs allege that they were falsely led to believe that innumerable products were safe, only for the products to inflict personal injuries. And any of those plaintiffs likely suffered lost wages or incurred medical expenses because personal injuries arising from unwanted or falsely advertised products can give rise to an inability to work, expensive medical bills, and ongoing illness. Further, "loss of consortium, loss of guidance, mental anguish, and pain and suffering" all "entail some pecuniary consequences" that could be refashioned into

supposed injuries to business or property. *See Doe v. Roe*, 958 F.2d 763, 770 (7th Cir. 1992).

This case illustrates the danger. Horn asserts a garden-variety false-advertising claim, typical of innumerable products-liability cases: He was allegedly deceived into using a product, and now wants civil RICO to remedy the downstream economic consequences. Horn sought not just lost wages, but "401 k contributions, life insurance, and other benefits," to the tune of $10 million. J.A.31 (RICO Case Statement); Horn Dep. 335:17-336:2.

If Horn's claim is a civil RICO claim, so is any other false-advertising or fraudulent-deception claim. Thousands of plaintiffs per year claim to have been harmed by inadequate drug warning labels. *E.g.*, *Wyeth v. Levine*, 555 U.S. 555, 559-60 (2009); *Mutual Pharm. Co. v. Bartlett*, 570 U.S. 472, 478 (2013). So long as those plaintiffs can point to lost livelihood or other economic or monetary harms, they too could leverage civil RICO. Some plaintiffs have already tried this rebranding, citing a "loss of earnings" from drug side effects as a supposed RICO injury. *Aston v. Johnson & Johnson*, 248 F. Supp. 3d 43, 49-50 (D.D.C. 2017) (rejecting such claims as repackaging personal injuries).

Needless to say, false-advertising and inadequate-warning cases run the gamut of products, from children's toys to cars, planes, and boats; from food and beverages to insomnia aids, health supplements, hair regrowth devices, and do-it-yourself cosmetic procedures; and from household appliances to toxic cleaning chemicals, pesticides, and lead paint. In 2022, non-MDL plaintiffs litigated over 5,500 products-liability claims in federal court. Lex Machina, *Lex Machina Releases Its 2023 Products Liability Litigation Report* (Sept. 14, 2023), https://tinyurl.com/mr2hev24. State courts hear thousands of additional products-liability suits per year. *E.g.*,

Tex. Jud. Branch, *Annual Statistical Report for the Texas Judiciary* 120 (2022), https://tinyurl.com/2dx82wyc (1,736 active cases); Jud. Council of Ga., *State Court Case Data* (2022), https://tinyurl.com/bdf3s8tu (5,914 filed cases).

Of course, injuries from product-liability claims are serious. But they are also the stuff of state tort law, not civil RICO actions. Hence, courts that refuse to allow plaintiffs to reclassify economic damages from personal injuries as freestanding RICO claims have dismissed wide-ranging allegations, all of which would be fair game under the decision below. Medical-malpractice patients could sue hospitals for wages lost while recovering from unnecessary procedures. *But see Aaron v. Durrani*, 2014 WL 996471, at *5 (S.D. Ohio Mar. 13, 2014). Professional mixed-martial-arts fighters could wield RICO over fraudulent concealment of a competitor's doping, leading to broken bones and missed lucrative fights. *But see Hunt v. Zuffa, LLC*, 361 F. Supp. 3d 992, 997, 1000-01 (D. Nev. 2019). Sexual-abuse victims could sue cheerleading organizations or the Catholic Church for concealing abuse that caused emotional trauma and lost income. *But see Doe v. Varsity Brands, LLC*, 2023 WL 4931929, at *10-11 (N.D. Ohio Aug. 2023); *Magnum v. Archdiocese of Phila.*, 2006 WL 3359642, at *3-4 (E.D. Pa. Nov. 17, 2006), *aff'd*, 253 F. App'x 224 (3d Cir. 2007). A woman coerced into sex by her divorce lawyer could sue for lost earnings stemming from emotional distress. *But see Doe*, 958 F.2d at 765-66, 770. And home buyers could sue a developer for failing to disclose a toxic dump near their new homes, leading the buyers to pay "medical expenses … for treatment of illnesses caused by the dump." *But see Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 903, 918 (3d Cir. 1991).

Moreover, RICO has 100 other predicate acts, beyond mail and wire fraud (the hook for false-advertising or deception claims). Plaintiffs could equally wield those other predicates to convert personal-injury claims into civil RICO suits just by pinpointing commonplace economic damages. A motorcycle courier hit by a stolen car (*i.e.*, transporting a stolen vehicle, 18 U.S.C. § 2312) might lose deliveries while recovering in the hospital. Or a crime victim who has her jaw broken by a criminal defendant (*i.e.*, witness intimidation, *id.* § 1512(a)(2)) might miss work to recuperate.

Indeed, the Ninth Circuit has approved civil RICO claims against police officers when plaintiffs' allegedly wrongful arrests prevented them from "pursu[ing] gainful employment … while unjustly incarcerated." *Diaz*, 420 F.3d at 898 (citation omitted); *Guerrero v. Gates*, 442 F.3d 697, 707-08 (9th Cir. 2006) (citation omitted). And a district court in that circuit has found RICO's "business or property" requirement met where the social-media website X's alleged participation in a conspiracy to kidnap and torture a Saudi dissident caused the dissident to miss work while he was imprisoned and tortured. *Al-Sadhan v. Twitter Inc.*, 2024 WL 536311, at *5, *15-16 (N.D. Cal. Feb. 9, 2024).

The Second Circuit and Horn offer no viable limit on repackaging personal-injury claims into business- or property-injury claims. The Second Circuit disclaimed allowing a civil RICO suit for "a person physically injured in a fire whose origin was arson … to recover for his personal injuries." Pet.App.13a (citation omitted). But the arson victim suffers monetary loss from his injuries if he misses work or needs medical treatment—with "lost wages" and "medical expenses" being "typical" damages in personal-injury cases. *Schleier*, 515 U.S. at 329. The

Second Circuit did not explain how its rule would exclude such classic personal-injury damages.

Likewise, the Second Circuit thought it "obvious[]" that civil RICO excludes "non-pecuniary injuries" like loss of consortium, pain and suffering, or mental anguish. Pet.App.21a; *accord* Pet.App.18a-19a. Horn (BIO 16) seemingly agrees. But it is far from obvious why those damages—which translate into real dollars-and-cents losses for plaintiffs—would fall outside their rule when any other monetary consequences can seemingly give rise to civil RICO claims. Indeed, Horn claimed "emotional pain and anguish, humiliation, and degradation" as part of his RICO injury. J.A.24 (RICO Case Statement).

Moreover, Horn's view (BIO 16) "that 'property' under Section 1964(c) is defined according to state law" vitiates any exclusion for "non-pecuniary" damages. Multiple States treat "general damages for pain and suffering and emotional distress" as "property." *Evans v. Twin Falls County*, 796 P.2d 87, 93 (Idaho 1990) (citation omitted); *accord Brown v. Brown*, 675 P.2d 1207, 1212 (Wash. 1984) (collecting cases). Others recognize a "property right" in spousal consortium. *E.g.*, *Huber v. Hovey*, 501 N.W.2d 53, 57 (Iowa 1993); *see Nelson v. Jacobsen*, 669 P.2d 1207, 1226-27 (Utah 1983) (Durham, J., concurring in judgment) (collecting cases). Regardless, Congress did not plausibly exclude suits for personal injuries, then atextually permit recovery for the lion's share of personal-injury damages—lost wages, pensions, medical expenses, life insurance, and the like—just not damages akin to pain and suffering.

2. Allowing plaintiffs to transform countless state-law personal-injury claims involving RICO predicates into federal treble-damages actions would crowd out States' "traditional authority to provide tort remedies to their citizens as they see fit." *See Wos v. E.M.A. ex rel. Johnson*,

568 U.S. 627, 639-40 (2013) (citation omitted). States do not universally welcome personal-injury lawsuits. *See generally* F. Patrick Hubbard, *The Nature and Impact of the 'Tort Reform' Movement*, 35 Hofstra L. Rev. 437 (2006). Some States have enacted statutes of repose in products-liability cases, cutting off claims a fixed period after a product's manufacture. Richard E. Kaye, *American Law of Products Liability* § 47:70 (3d ed. May 2024 update). Most States have restricted joint and several liability. Jacob A. Stein, *Stein on Personal Injury Damages* § 19:18 (3d ed. Apr. 2024 update). Many States reduce a plaintiff's recovery when he can recover from another source, like insurance. *Id.* § 19:34. And a few States cap *all* damages in personal-injury cases. *Id.* § 19:13.

Plaintiffs could bypass these state-law limitations by repleading almost every false-advertising, mislabeling, or failure-to-warn case as a federal RICO suit, just by pointing to some ensuing economic losses from personal injuries. "[T]he prospect of treble damages and attorney's fees" offers plaintiffs a "strong incentive" to replead state-law claims under RICO. *Sedima*, 473 U.S. at 504 (Marshall, J., dissenting).

Horn (BIO 24-25) contends that RICO's "additional barriers" prevent the federalization of "garden-variety tort claims." Those other restrictions cannot justify ignoring the separate injury to "business or property" requirement that Congress enshrined in RICO's text. And those guardrails inadequately guard against expansive RICO claims, as shown by Horn's own case. Horn (BIO 24) points to the racketeering-activity requirement. But Horn invokes RICO's fraud predicates to bring a ubiquitous products-liability claim, suggesting that any garden-variety misrepresentation over the mail or wires would be the stuff of civil RICO. Moreover, RICO has approximately 100 other predicate acts, and guardrails

there appear few and far between. Plaintiffs have used RICO's obscenity predicates to sue pornographic websites for radicalizing school shooters. *James v. Meow Media, Inc.*, 90 F. Supp. 2d 798, 812 (W.D. Ky. 2000). And plaintiffs have used RICO's obstruction-of-justice predicates to sue police officers for false imprisonment. *Evans v. City of Chicago*, 2001 WL 1028401, at *3 (N.D. Ill. Sept. 6, 2001). Under Horn's theory, it would be the rare personal-injury claim that would not implicate civil RICO.

Horn (BIO 24-25) and the court below (Pet.App.21a-22a) also portray RICO's proximate-causation requirement as limiting civil RICO claims. Horn (BIO 25) correctly describes "that requirement [a]s more stringent than the common-law doctrine of the same name," since RICO requires "some direct relation between the injury asserted and the injurious conduct alleged." *Holmes*, 503 U.S. at 268.

But RICO proximate causation offers little comfort if Horn's claim passes muster. "[T]he conduct directly responsible for [Horn's] harm" was his *employer's* decision to fire him, not petitioners' alleged mislabeling of a CBD supplement. *See Hemi Grp., LLC v. City of New York*, 559 U.S. 1, 11 (2010). Horn's employer drug-tested him pursuant to Department of Transportation regulations, J.A.4, which do not require automatically firing anyone who tests positive for THC. Employers have "discretion" to reinstate employees who "successfully compl[y] with prescribed education and/or treatment" and pass "a return-to-duty test." 49 C.F.R. § 40.305(a)-(b) (2012). The drug-testing lab offered Horn that program but he declined. J.A.66-67, 91-92. Unless Horn is willing to concede away his own claim, it is hard to take proximate causation seriously as a guardrail in this case.

3. Not only would the Second Circuit and Horn's approach cannibalize state tort law, that interpretation

would also remove important limits on civil RICO itself. Civil RICO claims have a four-year limitations period, which starts running either when the plaintiff's injury occurs or the plaintiff discovers the injury. *See Rotella*, 528 U.S. at 554-55 & n.2.

So, in the ordinary course, a plaintiff who suffers an actionable injury to business or property must sue when that injury happens (or is discovered). Plaintiffs cannot "recharacteriz[e] … damages" as new injuries to "extend the statute of limitations for a RICO action." *Pilkington v. United Airlines*, 112 F.3d 1532, 1537 (11th Cir. 1997). Limitations periods generally run from unlawful "acts," even if the "*effects* … did not occur until later." *See Del. State Coll. v. Ricks*, 449 U.S. 250, 258 (1980).

Treating economic harms from personal injuries as the relevant RICO injury would upend that rule. If plaintiffs could redefine each new economic damage from a personal injury as a new injury to business or property, the statute of limitations could extend to infinity whenever plaintiffs suffer new economic damages. Someone who ingests a defective prescription drug and suffers short-term symptoms that cause lost wages could bring a civil RICO suit then. If the drug later caused cancer, the Second Circuit and Horn would apparently count the corresponding medical bills as a new civil RICO injury. So too for any ensuing fatality and corresponding loss-of-consortium claim. Opening the door to claims based on conduct so "remote from time of trial" would be "at odds with the basic policies of all limitations provisions." *Rotella*, 528 U.S. at 555.

II. Counterarguments Lack Merit

The Second Circuit and Horn cast petitioners' rule as an "atextual" limitation derived from RICO's "implicit" exclusion of personal injuries. Pet.App.3a, 11a-13a, 15a,

17a-18a, 22a; BIO 1, 9, 14, 23-24, 26. But RICO's "injured in his business or property" requirement is right there in the text and "exclud[es] … personal injuries." *RJR Nabisco*, 579 U.S. at 350. Likewise, RICO's text distinguishes injuries from damages, underscoring that suits for economic damages from personal injuries are equally impermissible. *Supra* pp. 15-17.

The Second Circuit contended that petitioners' rule would "coopt" RICO's proximate-causation requirement by "imposing a more restrictive attenuation principle whenever there is a necessary antecedent personal injury." Pet.App.14a. But the "injured in his business or property" requirement is not an "attenuation principle"; it is an injury requirement. Congress delimited what types of injuries can give rise to private lawsuits, and ruled out personal injuries. That means Horn cannot seek damages exclusively from an alleged personal injury.

Relatedly, the Second Circuit thought that "the phrase 'business or property' focuses on the *nature* of the harm, not the *source* of the harm." Pet.App.15a. But the Second Circuit confused the nature of the injury (the operative inquiry) with the nature of the damages (irrelevant). And again, civil RICO "focus[es] … on the injury, not in isolation, but as the product of racketeering activity." *Yegiazaryan*, 599 U.S. at 545. The alleged racketeering activity that invaded Horn's legal rights was petitioners' alleged fraud in inducing him to consume Dixie X. That is a personal-injury claim, not a business- or property-injury claim.

Conversely, the Second Circuit (Pet.App.16a-17a) and Horn (BIO 25) worry that petitioners' position would exclude "the core of RICO's substantive prohibitions" like murder, kidnapping, extortion, and collection of unlawful

debts.[7] Not so. Those substantive prohibitions often *do* cause injuries to business or property. And petitioners agree that RICO covers all injuries to business or property, even if the plaintiff also suffered a personal injury in the course of the defendant's racketeering activity.

Take extortion, a classic RICO predicate. *See* S. Rep. No. 91-617, at 77 (1969) (identifying extortion as "most often" how organized crime gains "[c]ontrol of business concerns"). Extortion involves obtaining *property*. The Hobbs Act defines extortion as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of an official right." 18 U.S.C. § 1951(b)(2); *see Scheidler II*, 537 U.S. at 400-05. If a mobster assaults a carwash owner to force the owner to do business with the mob, as the court below hypothesized, Pet.App.17a, that is extortion. Forcing someone to do business with the mob instead of a cheaper, legitimate competitor is a prototypical business or property injury for which RICO provides treble damages. The owner just cannot recover for the assault itself—a personal injury outside civil RICO—including medical expenses or lost wages from a hospital stay.

Likewise, the loan shark who induces a client to repay an unlawful debt through violence, Pet.App.17a, has injured the client in his property—the money used to pay the debt. The kidnapper who extorts ransom money from the victim's family has injured the family's property—the ransom payment. And if Tony Soprano drains a bank account using a computer password obtained by violence,

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[7] Horn (BIO 28) also mentions assault and battery, which are not RICO predicates. *See* 18 U.S.C. § 1961(1). Assault and battery come within RICO only when used to commit other crimes, like robbery. *E.g.*, *United States v. To*, 144 F.3d 737, 741-42 (11th Cir. 1998).

BIO 28-29, Mr. Soprano has injured the account holder's property by taking his money. Petitioners' rule excludes none of those hypotheticals because the defendant invaded the plaintiff's business or property rights.

Even if some RICO predicate acts never cause injuries to business or property that could support civil RICO claims, that would not "read[] out" those predicates from the statute, as Horn (BIO 25) fears. The same predicates apply to all RICO actions, criminal or civil. Criminal RICO has no "business or property" requirement and subjects violators to up to 20 years' imprisonment. 18 U.S.C. § 1963(a). And the Attorney General can seek injunctive relief against RICO violations, also without any "business or property" requirement. *Id.* § 1964(a)-(b). Civil RICO is thus "narrower in its application" and "not coextensive" with the underlying predicate acts. *RJR Nabisco*, 579 U.S. at 350. Every RICO predicate need not apply to *civil* RICO to avoid superfluity.

The Second Circuit decried as "arbitrary and inconsistent" the fact that a bombed business has a RICO injury but a person struck by a bomb does not. Pet.App.20a-21a. The court likewise critiqued the Sixth Circuit's distinction between the loss of welfare benefits (possibly a property injury) and workers' compensation (which that court classified as part of a personal-injury claim). Pet.App.20a-21a; *see Jackson*, 731 F.3d at 569-70. But the distinction between different kinds of injuries inheres in RICO's text, which permits private plaintiffs to recover for injuries to business or property, not personal injuries, consistent with Congress' focus on organized crime's infiltration of legitimate businesses. *See supra* pp. 18-19. As the Second Circuit recognized, arson victims can recover for damage to their buildings, but not their persons. Pet.App.13a. The answer to line-drawing concerns is not to redraw Congress' lines.

Ultimately, the Second Circuit thought that RICO should be "liberally construed" and "read broadly" and "expansive[ly]," based on this Court's 1985 decision in *Sedima*. Pet.App.10a, 20a (quoting 473 U.S. at 497-98); *see* BIO 2-3, 26. But this Court has since cautioned against such "expansive reading[s]" of civil RICO, because there is "nothing illiberal" about enforcing RICO's textual limitations. *Holmes*, 503 U.S. at 266, 274. If anything, an overly expansive reading of RICO would "hobble[]" the statute's "remedial purposes," "open[ing] the door to massive and complex damages litigation, which would not only burden the courts, but would also undermine the effectiveness of treble-damages suits." *Id.* at 274 (cleaned up).

Congress rationally chose to limit civil RICO claims to injuries to "business or property," not personal injuries. That remedial limitation would be obliterated if plaintiffs could replead virtually every personal-injury claim involving fraud or 100 other predicate acts into treble-damages civil RICO claims just by pointing to the inevitable economic consequences of those injuries.

CONCLUSION

The court of appeals' judgment should be reversed.

Respectfully submitted,

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