

No. 17-6961

IN THE
Supreme Court of the United States

FRANK DIPPOLITO,
Petitioner,

v.

UNITED STATES OF AMERICA, ET AL.,
Respondents.

*ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT*

**OPPOSITION TO PETITION FOR A
WRIT OF CERTIORARI**

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and James A. Gondles, Jr.*

December 29, 2017

QUESTION PRESENTED
(REPHRASED)

Did the District Court and Court of Appeals correctly conclude that Petitioner lacked a business or property interest sufficient to confer standing to assert a claim under the Racketeer Influenced and Corrupt Organizations Act?

CORPORATE DISCLOSURE STATEMENT

Pursuant to United State Supreme Court Rule 29.6, American Correctional Association makes the following corporate disclosures: American Correctional Association is a nonprofit, non-stock corporation and, as such it has no parent corporation, there is no parent or publicly held company that owns 10% or more of this corporate entity's stock, and to American Correctional Association's knowledge, there is no publicly held corporation not a party to this proceeding which has a financial interest in the outcome of the proceeding.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI
COUNTERSTATEMENT OF THE CASE

The relevant background is explained in the decisions of the lower courts below. (Pet. Appx. A-3, B-1, C-1, D-1).

Respondent American Correctional Association (“ACA”) is a non-profit organization exempt from U.S. federal income taxation under Section 501(c)(3) of the Internal Revenue Code. Respondent James A. Gondles, Jr. is ACA’s Executive Director.

Dippolito’s sole claim against ACA and Gondles is brought under the Racketeer Influenced Corrupt Organizations Act (“RICO”) (Pet. Appx. D-1). Dippolito asserts ACA’s accreditation of the Federal Correctional Institution, Fort Dix violates the RICO statute because ACA and Gondles are “trad[ing] in a commodity [they] identify as inmates, and use[] that commodity to reap profits and rewards.” (Pet. Appx. D-1). The District Court dismissed Petitioner’s RICO claims based on its finding that he lacked standing to bring such a claim. (Pet. Appx. D-1). In so holding, the Court noted that Petitioner failed to allege any specific loss to any of his business or property as required under the statute and rejected the Petitioner’s argument that his job as part of the “AM yard crew” sufficed to confer standing. (Pet. Appx. D-1). On appeal, Petitioner argued that he had “a vested property interest in the conditions at the institution itself.” (Pet. Appx. A-3). The Appellate Court held that such an argument was beyond RICO’s narrowly focused

injury requirement which requires proof of concrete financial loss as opposed to mere injury to a valuable intangible property interest. (Pet. Appx. A-3).

REASONS FOR DENYING THE PETITION

The petition should be denied. The decision below is a straightforward application of settled law on the application of the RICO statute, resulting in a narrow decision applying solely to the Petitioner's situation. Petitioner has identified no decision from any court, much less this Court or a court of appeals, that is in conflict with the decision below.

I. Petitioner's Questions Presented are Based in Part on a Misstatement of Fact

Number 8 on Petitioner's list of Questions Presented asks whether the ACA can legally give accreditations to institutions for a fee "[w]hen no effort or inspections are made to see the prison conditions equal their written standards." This question is premised on a misstatement of fact. The record reflects that FCI Fort Dix was accredited subsequent to its inspection.

II. Petitioner Has Not Articulated Any Basis for Review

In his Petition, Petitioner notes that the ACA has accredited FCI Fort Dix and questions how that is possible. Pet. 3. He then asks whether the ACA's standards are "just a smoke screen." *Id.* Defendant Gondles is not referenced in the

Petition, and the only other mention of the ACA is Petitioner’s characterization of the ACA and the Bureau of Prisons as “RICO organizations.”¹ Pet. 6.

Petitioner’s reasons for granting the petition consist of generalized complaints about the conditions at FCI Fort Dix and what he views as the District and Appellate Court’s overly harsh treatment of him in light of his pro se status. Pet. 6 – 8. His central argument urges the Supreme Court to review the case based on “BASIC HUMAN RIGHTS.” Pet. 8.

III. Review is Not Supported by Supreme Court Rule 10

Though neither controlling nor fully measuring the Court’s discretion, Rule 10 enumerates several bases for the grant of review. These include: conflict between appellate circuits, conflicts between state courts of last resort, and the existence of unsettled or conflicting issues of federal law in federal appellate or state courts. Petitioner has not cited any of the Rule 10 bases for review in support of his Petition.

IV. The Decision Below Correctly Applies Settled Doctrine

The District Court dismissed Petitioner’s RICO claims based on its finding that he had not alleged any specific loss to any business or property. (Pet. Appx. C-

¹ Neither the District Court nor the Appellate Court addressed the application of the RICO statute to either the Bureau of Prisons or the ACA. They instead focused on Petitioner’s lack of standing to pursue a RICO claim. Though Petitioner does not elaborate on what he means by characterizing the ACA as a “RICO Organization,” this appears to be a misstatement of fact or law bearing on what issues would be properly before the Court if certiorari were granted.

12). In response to Petitioner’s argument that his job on the “AM yard crew” afforded him an interest that could be redressed under the RICO Statute, the District Court found that such an interest did not demonstrate a “concrete financial loss” in the form of an “ascertainable out-of-pocket” deprivation. *See Magnum v. Archdiocese of Phila.*, 253 F.App’x 224, 226 (3d Cir. 2007); *Sarpolis v. Tereshko*, 26 F. Supp. 3d 497, 424 (E.D. Pa. 2014). In his Petition, Petitioner has not identified any conflicts between appellate circuits or the existence of unsettled or conflicting issues on the question of sufficient RICO standing. As a result, there is no benefit to the Court’s granting of certiorari in this case.

CONCLUSION

For all of the above reasons, the petition for a writ of certiorari should be denied as to Respondents ACA and Gondles.

Dated: December 29, 2017

Respectfully submitted,

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