No. 24-1302

In the Supreme Court of the United States

MSP RECOVERY CLAIMS, SERIES LLC, A DELAWARE SERIES LIMITED LIABILITY COMPANY, ET AL., PETITIONERS

v.

LUNDBECK LLC, A DELAWARE CORPORATION, ET AL., RESPONDENTS.

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

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether, in a civil RICO action against a drug manufacturer seeking to recover third-party payors' overpayment for drugs, physicians' independent prescribing decisions, made without false or misleading information from the manufacturer, constitute an intervening cause that defeats proximate causation.

2. Whether plaintiffs can satisfy RICO's proximate cause requirement by alleging that their injuries were the natural and foreseeable consequence of defendants' allegedly unlawful conduct even when they fail to allege that those injuries were the "direct" consequence of defendants' conduct.

RULE 29.6 STATEMENT

Respondent Lundbeck LLC is owned in its entirety by Lundbeck USA Holding LLC. Lundbeck USA Holding LLC is owned in its entirety by H. Lundbeck A/S, a publicly-traded Danish corporation. The Lundbeck Foundation owns 69% of H. Lundbeck A/S shares.

Respondent TheraCom LLC is a wholly owned subsidiary of BioPharma Services, LLC, which is not publicly held. BioPharma Services, LLC is a wholly owned subsidiary of AmerisourceBergen Drug Corporation, which is not publicly held. AmerisourceBergen Drug Corporation is a wholly owned subsidiary of AmerisourceBergen Services Corporation, which is not publicly held. AmerisourceBergen Services Corporation is a wholly owned subsidiary of Cencora, Inc., which is publicly held.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases Page(s)

Cases—Continued Page(s)

Cases—Continued Page(s)

Cases—Continued Page(s)

Cases—Continued Page(s)

Statutes

Regulations

Other Authorities

INTRODUCTION

This case concerns a contrived Racketeer Influenced and Corrupt Organizations Act (RICO) claim that neither implicates a circuit split nor raises any issue worthy of this Court's review. The only circuit split petitioners identify involves cases that center on false or misleading marketing from drug manufacturers to doctors, a fact pattern that is entirely absent from this case. Further, the decision below presents multiple alternative grounds for affirmance, including based on petitioners' lack of standing. Petitioners also fail to identify any error in the court of appeals' decision. The petition does not satisfy the criteria for certiorari.

Petitioners are a group of serial litigants who suffered no injury but rather brought suit based on the purported injuries to non-party health insurance plans—their "Assignors." Petitioners claim that their Assignors reimbursed unidentified Medicare patients for one of Respondent Lundbeck LLC's (Lundbeck) medications (Xenazine) at some unidentified time, at an unidentified price, and in unidentified volumes. Petitioners also allege that Lundbeck's donations to Caring Voice Coalition (CVC)—a charity organization designed to help patients afford co-pays for prescription medications—unlawfully decreased patients' "price sensitivity" to Xenazine, resulting in Assignors reimbursing prescriptions at "supra-competitive" prices and in "inflated" volumes. Petitioners contend that Respondent TheraCom LLC (TheraCom) facilitated patient access to Xenazine, including by referring patients to charities like CVC.

Petitioners spun these vague allegations into an 88-page, 393-paragraph complaint, asserting federal claims under RICO, as well as a litany of state-law claims. The district court dismissed the complaint in full, and the court of appeals unanimously rejected all of petitioners'

arguments on appeal. Both courts held that petitioners failed to plead that respondents' actions proximately caused any of petitioners' supposed injuries.

Petitioners now seek to conjure two circuit splits from inapplicable precedent interpreting RICO's proximate cause element. But neither of petitioners' proposed questions presented implicates a split of authority that is relevant to this case, and nothing in the petition warrants this Court's review.

As for the first question presented, petitioners appear to have identified a circuit split (exaggerated though it may be) concerning whether physicians' independent prescribing decisions undermine proximate causation when those physicians receive false or misleading marketing materials from pharmaceutical manufacturers. But petitioners' supposed split has no relevance to this case. The authorities petitioners cite all involve allegations that pharmaceutical manufacturers fraudulently marketed their products, either by excluding from the label known risks of serious side effects or by promoting their products for uses not approved by the Food & Drug Administration (FDA). In this case, however, petitioners nowhere assert that Xenazine was unsafe or ineffective, and they allege no false advertising. In other words, even under petitioners' theory, the doctors who prescribed Xenazine for their patients did so based on their own independent medical judgment that those patients needed the drug, and not because of anything that respondents did. It is therefore unsurprising that the decision below cites *none* of the cases petitioners rely on for their purported "split."

As for the second question presented—whether "foreseeability" is sufficient to establish proximate cause—petitioners' "split" is a fiction. All nine courts of appeals to consider the question have concluded that foreseeability alone is insufficient to establish RICO

proximate cause. While that uniformity is rare, it is also uncontroversial here given this Court's precedent. To the extent there ever was any doubt about the role of "foreseeability" in RICO's proximate cause analysis, this Court dispelled that doubt just last term, underscoring that "foreseeability does not cut it" for RICO claims. *Med. Marijuana, Inc. v. Horn*, 604 U.S. 593, 612 (2025).

In any event, this case is an exceedingly poor vehicle for exploring the contours of RICO's proximate cause requirement. For one thing, petitioners failed to satisfy Rule 9(b)'s requirement that they plead their fraud allegations with particularity, and the court of appeals aptly described their allegations as "shaky at best." App. 19a. Petitioners' vague allegations provide a weak foundation for any proximate cause analysis. Moreover, the court of appeals acknowledged—but declined to resolve—multiple additional alternative bases for affirmance. In addition, petitioners' dubious assignment relationships raise serious questions about their Article III standing, which this Court would need to resolve before proceeding to the merits. Ultimately, while the court of appeals rejected petitioners' RICO claims for lack of proximate cause, that grounds for dismissal was just the low-hanging fruit. The most petitioners could hope for is a remand for consideration of the multiple independent fatal flaws with their complaint and theory of the case.

The petition reduces to a plea for error correction where there is no error to correct. The decision below properly applied this Court's RICO proximate cause precedents in concluding that petitioners' claimed injuries were far too indirect and removed from the alleged predicate conduct to state a claim.

This Court should deny the petition.

STATEMENT

A. Factual Background

1. Lundbeck markets and distributes specialty neuroscience medications including Xenazine, a medication used to treat chorea (involuntary muscle movement) associated with Huntington's Disease. App. 6a. Xenazine was the only drug specifically indicated for that treatment until 2015, when generic competitors entered the market. App. 57a.

Caring Voice Coalition (CVC)[1] was a non-profit charity created to help qualifying patients afford prescription co-pay obligations imposed by their third-party insurance companies, including for Xenazine prescriptions. App. 6a, 39a-40a.

TheraCom is a specialty pharmacy that ran the Xenazine Information Center. App. 40a. Among other things, the Xenazine Information Center facilitated patient access to Lundbeck's patient assistance programs (PAPs) and referred patients to independent charitable co-pay foundations like CVC. App. 40a.

2. Petitioners are a group of Delaware entities that have never interacted—or done any business of any kind—with any respondent in this case. App. 58a. Petitioners assert none of their own injuries. Instead, they brought suit based on the purported injuries of a vague group of "Assignors," some of which are allegedly third-party payors (*i.e.*, health insurance companies) that provide prescription drug benefits to patients. App. 58a. Petitioners alleged that their Assignors had Medicare contracts with the federal government and that their Assignors' obligations to reimburse for Xenazine

[1] CVC is now defunct. App. 6a. MSP alleged that "Adira Foundation" was a replica and successor to CVC; Adira, however, has since dissolved, and neither CVC nor Adira Foundation appeared or submitted briefs in the appeal below. App. 2a & n.1.

prescriptions were "triggered" when insured patients received that medication from a pharmacy. App. 58a.

Petitioners did not name their Assignors in their complaint (or the Petition), but the complaint attached an appendix identifying five "representative" assignors: SummaCare, Inc.; Interamerican Medical Center Group, LLC; Health First Health Plans, Inc.; Centro de Pediatria y Medicina de Familia de Villalba, C.S.P.; and Sal Health Group, LLC. App. 16a, 58a. Petitioners provided no details about who these Assignors are, where they reside, what services they provide, or when or where they reimbursed for Xenazine. C.A. App. 104-09.

Eventually, petitioners filed heavily redacted assignment contracts. The contracts purported to provide petitioners access to Assignors' data for the sole purpose of identifying "Claims" and bringing lawsuits against unidentified third parties. *E.g.*, Dist. Ct. Dkt. 53-6. For example, the SummaCare assignment contract (which petitioners filed in unredacted form in a prior suit) states that SummaCare's compensation is entirely contingent on petitioners recovering money in an unidentified future lawsuit. Compl., Ex. B, *MSP Recovery Claims, Series LLC v. Huahai US Inc.*, No. 1:18-cv-25260-CMA (S.D. Fla. Dec. 14, 2018), Dkt. 1-2. It states: "[petitioners] will pay to Client, out of the proceeds of any recovery made on the Claims, a contingent deferred purchase price" of "50% of the Net Proceeds of any Assigned Claims." *Id.* at 3.

3. Medications to treat rare diseases are often expensive, so PAPs are particularly important for ensuring patient access. Companies like Lundbeck have thus supported PAPs "to help patients afford necessary medications like Xenazine." App. 59a. The federal government, through the Department of Health and Human Services Office of the Inspector General (OIG), has explained that PAPs "have long provided important safety net assistance to patients of limited means who do

not have insurance coverage for drugs, typically serving patients with chronic illnesses and high drug costs." App. 60a; 70 Fed. Reg. 70623, 70623-24 (Nov. 22, 2005). OIG provides guidance to co-pay charities regarding their compliance with applicable laws and regulations, including the Anti-Kickback Statute (AKS) and False Claims Act (FCA). App. 60a; *see, e.g.*, 79 Fed. Reg. 31120, 31121 (May 30, 2014). With this federal imprimatur, pharmaceutical companies like Lundbeck have helped qualifying patients bridge the gaps in their insurance coverage by making donations to charitable co-pay foundations like CVC.

In the early 2010s, public commentary on co-pay charity programs increased, with top medical journals opining that "[PAPs] may lead to higher drug prices." App. 61a (quoting David H. Howard, Ph.D., *Drug Companies' Patient-Assistant Programs—Helping Patients or Profits?*, New Eng. J. Med. (July 10, 2014)).

4. In 2014, OIG issued updated guidance regarding co-pay charities. App. 5a; 79 Fed. Reg. at 31120. Then, in early 2016, DOJ opened investigations into various pharmaceutical companies and charities, including Lundbeck and CVC. App. 6a. Lundbeck eventually settled with DOJ for $52.6 million. App. 7a.

In the settlement agreement, DOJ alleged that Lundbeck made donations to CVC's Huntington's Disease Fund knowing that the funds would be used for patients that did not have Huntington's Disease. App. 6a, 63a. DOJ further alleged that, after OIG amended its guidance in 2014, Lundbeck and CVC dissolved the Huntington's Disease Fund but agreed that CVC would continue to cover Xenazine patient co-pays from a "general fund." App. 63a. "As a result of this conduct," the United States contended that "Lundbeck caused false claims to be submitted to Medicare." App. 64a (cleaned up). While Lundbeck agreed not to contest DOJ's claims,

it did not admit to any of the facts alleged in the settlement, nor did it admit any wrongdoing. App. 7a, 64a.

DOJ's investigation was part of a wave of similar enforcement actions targeting alleged PAP kickback schemes, several of which resulted in settlements. App. 7a. "This in turn prompted a wave of civil RICO suits alleging essentially the same conduct described in the DOJ settlements." App. 7a. Most of these suits were filed by the same plaintiffs who brought the present suit (MSP Recovery Claims, Series LLC and related entities), and they "have been nearly unanimously dismissed, albeit on varying grounds." App. 7a & n.4 (collecting cases).

B. Proceedings Below

1. In June 2022, petitioners filed a class-action complaint alleging violations of RICO and various state laws. *See* App. 9a. Seeking to piggyback on the DOJ settlement, petitioners asserted the following "scheme": Lundbeck donated money to CVC, which CVC used to pay patient co-pays; in return, CVC improperly provided Lundbeck with information about how its donations were being used. App. 64a. Meanwhile, TheraCom allegedly acted as an intermediary to facilitate the information exchange and refer financially needy patients to CVC. App. 64a.

Petitioners alleged that this supposed "scheme" injured Assignors by "[1] artificially inflat[ing] the quantity of dispensed Xenazine and [2] allow[ing] Lundbeck to raise the prices of Xenazine to supra-competitive levels." App. 64a-65a. Through their briefing (but not in their complaint), petitioners also asserted a third theory of injury: that all Xenazine claims were "tainted" by "false certifications" of compliance with the AKS and therefore were categorically "unpayable." App. 25a.

Despite basing their alleged injury on the "supra-competitive" price of Xenazine, petitioners never identified the "competitive" price of Xenazine or the time-period during which the price was "inflated"; they alleged only that Xenazine's price during some unidentified period of time beginning in 2011 was "supra-competitive." App. 27a, 55a, 65a. As for petitioners' allegations concerning the increased "volume" of Xenazine prescriptions, the complaint provided virtually no supporting facts. Petitioners acknowledged that Xenazine may be dispensed only with a doctor's prescription, App. 65a, but the complaint lacked any substantive discussion of the doctors who prescribed Xenazine, *see* App. 32a.

Critically, petitioners did not allege that Lundbeck improperly communicated with doctors, or that doctors received false information that misled them into prescribing Xenazine. App. 25a. The closest they came to alleging *any* influence on doctors is a citation to OIG's 2017 letter to CVC, which stated that a failure to comply with OIG guidance can increase the risk that "patients may be urged to seek, and physicians may be more likely to prescribe, a more expensive drug if co-pay assistance is available for that drug but not for less expensive but therapeutically equivalent alternatives." App. 66a.

2. In the district court, Lundbeck and TheraCom each filed motions to dismiss. During oral argument at the motions hearing, petitioners admitted that they "could not identify any specific Xenazine claim allegedly paid to any pharmacy by any named Assignor." App. 10a.

The district court dismissed petitioners' complaint with prejudice, based primarily on petitioners' failure to

allege proximate cause. App. 84a-86a, 103a.[2] The district court explained that doctors "may have increased their prescription rates for other easily inferable reasons: an uptick in [patients with the disease] or a lack of competing generic drugs on the market due to [another manufacturer's] patent enforceability rights." App. 87a (citation omitted).[3]

3. Petitioners then moved to alter or amend the district court's judgment under Federal Rule of Civil Procedure 59(e) or for relief from judgment under Rule 60(b). App. 41a. In the alternative, petitioners sought leave to amend their complaint. App. 13a.

The district court denied petitioners' motion in full. App. 38a-39a. Moreover, in light of cases decided after its initial dismissal opinion, the district court also adopted an alternative basis for dismissal, holding that "Plaintiffs were indirect purchasers of Xenazine and reimbursed patients who purchased the drug," meaning they "fit[] the description of a 'third-party payor' who is barred from recovery in a RICO action by the indirect-purchaser rule." App. 50a (quoting *Humana, Inc. v. Indivior, Inc.*, Nos. 21-2573 & 21-2574, 2022 WL 17718342, at *2 (3d Cir. Dec. 15, 2022)).

4. A Fourth Circuit panel unanimously affirmed,[4] agreeing that petitioners failed to allege proximate cause. App. 1a-37a. Applying this Court's precedents, the court of appeals rejected petitioners' three theories of harm,

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[2] The district court concluded that petitioners had Article III standing to bring claims on behalf of named Assignors and unnamed, "similarly situated" assignors. App. 74a.

[3] The district court also dismissed petitioners' various state-law claims for failure to allege proximate cause. App. 92a-96a.

[4] The Fourth Circuit reversed in part, clarifying that petitioners did not have Article III standing to bring claims on behalf of unnamed and unidentified entities. App. 14a-17a.

reasoning that (1) petitioners' "inflated-prices theory has more direct victims," (2) their "inflated-volumes theory is derailed by intervening factors," and (3) their "tainted claims theory depends on RICO predicates that are too distinct from Plaintiffs' injuries." App. 28a. The court of appeals concluded that, by "attempt[ing] to leverage the Medicare fraud alleged by DOJ into a private cause of action," petitioners had "stretch[ed] civil RICO liability beyond its limits." App. 28a.[5]

Although the court of appeals affirmed on proximate-cause grounds, it recognized—but declined to rule on—multiple independent bases for affirmance. For instance, the court noted that petitioners' allegations of wire fraud as a RICO predicate were "shaky at best," particularly under the applicable Rule 9(b) standard. App. 18a-20a. The court further noted that petitioners' "allegation that CVC accepted money from Lundbeck in exchange for referring patients to Xenazine likely fails to make out a Travel Act predicate." App. 19a-21a. The court also recognized that RICO claims may not be assignable as a matter of law. App. 15a n.7. Finally, the court recognized that the "indirect purchaser rule" presented a potential alternative grounds for affirmance." App. 28a n.11. The Fourth Circuit nonetheless declined to reach any of those issues, finding that petitioners' "allegations fail for the reason identified by the district court: Plaintiffs do not plausibly allege that Defendants' conduct proximately caused Assignors' injuries." App. 21a.

The Fourth Circuit denied a timely petition for rehearing en banc. App. 107a-108a.

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[5] The Fourth Circuit affirmed the dismissal of petitioners' tag-along state law claims, holding that the same remoteness defects defeated proximate cause under those theories as well. App. 30a-33a.

REASONS TO DENY THE PETITION

The petition fails to meet the high standard required for this Court's certiorari jurisdiction. S. Ct. R. 10. Petitioners invoke (1) an inapplicable circuit split and (2) "confusion" that they claim warrants review. Neither question merits this Court's attention. The first question involves a split, but that split is related to allegations that drug manufacturers' fraudulently marketed their products to doctors—a fact pattern that is undisputedly absent here. And the "circuit confusion" petitioners describe surrounding "foreseeability" is in fact circuit unanimity: all nine circuits to have reviewed the question have concluded that foreseeability alone is insufficient to satisfy RICO's proximate cause requirement.

More broadly, while petitioners attempt to contort the civil RICO statute to fit their allegations, their vague complaint ultimately failed to allege a single element of a RICO claim. The courts below could have rejected petitioners' allegations on numerous independent grounds, there are jurisdictional defects in petitioners' case, and any changes to the proximate-cause legal standard would not alter the outcome in this litigation. Dismissal is inevitable and certiorari should be denied.

I. The Petition Does Not Implicate Any Circuit Split

Petitioners recite two circuit splits: (1) whether physicians' prescribing decisions defeat proximate cause; and (2) whether foreseeability "factors into" RICO's proximate cause requirement. The first split is not implicated by this case. The second "split" is non-existent. Neither question warrants this Court's review.

A. The Decision Below Does Not Implicate The Purported Circuit Split Concerning Fraudulent Marketing To Physicians

Petitioners invoke (at 18-23) a circuit split that the court of appeals did not acknowledge, based on cases the

court of appeals did not cite, involving factual circumstances that petitioners have not even alleged. Specifically, petitioners assert that the circuits are split over whether physicians' decisions constitute an intervening cause that breaks the chain of causation necessary to establish proximate cause. That question is not implicated in this case, both because the split is limited to the context of fraudulent marketing to physicians—which petitioners have never alleged here—and because the decision below did not turn on physicians' independent decision-making. Moreover, this Court recently denied certiorari in a case that actually recognized (and took a side in) that exact split.

1. The five cases petitioners point to all involve the same issue: whether "Payors can recover under RICO for wrongs committed *while marketing pharmaceuticals*." *See Sidney Hillman Health Ctr. of Rochester v. Abbott Lab'ys*, 873 F.3d 574, 578 (7th Cir. 2017) (emphasis added); *see also In re Avandia Mktg., Sales Pracs. & Prod. Liab. Litig.*, 804 F.3d 633, 639 (3d Cir. 2015) (describing plaintiffs' injury as "overpayment due to illegal or deceptive marketing practices"); *In re Neurontin Mktg. & Sales Pracs. Litig.* (*Neurontin I*), 712 F.3d 21, 26 (1st Cir. 2013) (plaintiffs "assert[ed] injury from the fraudulent marketing of Neurontin"); *UFCW Loc. 1776 v. Eli Lilly & Co.*, 620 F.3d 121, 131 (2d Cir. 2010) (plaintiffs claimed that defendant manufacturer "deliberately misrepresent[ed] the drug's safety and efficacy" while "promoting" the drug); *Painters & Allied Trades Dist. Council 82 Health Care Fund v. Takeda Pharms. Co. Ltd.*, 943 F.3d 1243, 1246 (9th Cir. 2019) (plaintiffs alleged that despite learning that Actos "increased a patient's risk of developing bladder cancer, Defendants refused to change Actos's warning label or otherwise inform the public of such risk"). In the context of fraudulent-marketing allegations, plaintiffs can at least

allege that drug manufacturers' conduct improperly *caused* doctors to prescribe a drug when they would not have otherwise done so. In that scenario, questions of proximate cause are highly fact-specific, and they can be complicated.

2. This case, however, has nothing to do with pharmaceutical marketing, let alone fraudulent marketing intended to influence physicians' prescribing decisions. Petitioners have never claimed—in their complaint or elsewhere—that Lundbeck misrepresented Xenazine's effectiveness or concealed any risks or side effects of the drug from patients or physicians. Nor have petitioners alleged that Lundbeck fraudulently marketed Xenazine to patients or physicians.[6] App. 25a ("Plaintiffs do not allege that Defendants caused Xenazine to be improperly or fraudulently prescribed."). Rather, petitioners allege that Lundbeck's donations to co-pay charities are what "allowed" (not "caused") it to sell more Xenazine at higher prices. C.A. App. 24, 50. On petitioners' own telling, therefore, physicians were independent actors in the pharmaceutical supply chain.

Given the absence of any allegations or evidence of fraudulent marketing to physicians, petitioners' purported split is immaterial here, and this case would be resolved the same way in any of the circuits. In the cases petitioners cite, the plaintiffs' theory was that manufacturers were able to sell more of their drugs—and at higher prices—by misleading physicians, who relied on the manufacturers' representations in prescribing their

[6] In petitioners' proposed amended complaint—rejected by both the district court and court of appeals—petitioners alleged for the first time that Lundbeck informed "patients and prescribing physicians[] they could obtain Xenazine for 'free.'" C.A. App. 318. But petitioners did not (and could not) allege that that was fraudulent marketing; it was true, and pharmaceutical manufacturers routinely inform patients about free-drug programs.

products. *See, e.g.*, *UFCW Loc. 1776*, 620 F.3d at 134 ("[P]laintiffs draw a chain of causation in which Lilly distributes misinformation about Zyprexa, physicians rely upon that misinformation and prescribe Zyprexa for their patients, and then the [insurers] overpay."). In that context, it makes sense that the circuit courts focused on physicians' prescribing decisions because physicians were, by and large, the intended target of the alleged fraudulent and misleading marketing campaigns. *See, e.g.*, *Sidney Hillman*, 873 F.3d at 577 (reasoning that some physicians "may not have changed their prescribing practices at all" even after learning of the concealed side effects). That the courts of appeals may disagree about the role of physicians' independent decision-making in cases *with* fraudulent marketing, however, only illustrates that there is no controversy over the premise that a well-informed physician can act as an intervening factor that disrupts proximate cause in the *absence* of any fraudulent marketing allegations.

3. Unlike each of the cases petitioners cite, the decision below barely discussed physicians' decisions in rejecting each of petitioners' three theories. When deciding petitioners "inflated price" and "tainted claims" theories, the court of appeals did not reference physicians at all. App. 24a-26a. Moreover, when addressing petitioners' "inflated volume" theory, the court noted only in passing the role of physicians' decisions in disrupting the causal chain. App. 25a. The court began by explaining that petitioners could not "plausibly allege that Defendants' actions directly increased the volume of Xenazine prescriptions" because "Xenazine prescriptions may have risen for any number of other easily inferable reasons, including an uptick in Huntington's disease patients or a lack of competing generic drugs on the market due to Lundbeck's exclusive patent enforceability rights." App. 24a-25a (cleaned up). Alternatively, the

court explained that "*[e]ven if* Defendants' conduct exerted upward pressure on Xenazine demand," that pressure was irrelevant because prescription volumes "depend on the intervening decisions of doctors, who owe an independent duty of care to their patients." App. 25a (emphasis added). In other words, because petitioners alleged no undue influence on those physicians, the court concluded there was no factual basis to support petitioners' claim that respondents' conduct (and not those physicians' independent judgment) caused the increase in Xenazine prescriptions.

In short, the decision below did not even touch upon the split on which petitioners rely. The court of appeals devoted a total of three sentences to the relevance of the intervening decisions of physicians. *See* App. 25a. And unlike the other decisions petitioners cite, *e.g.*, *Painters*, 943 F.3d at 1253; *Sidney Hillman*, 873 F.3d at 578, the decision below did not reference the split, nor did it cite *any* of the five cases petitioners say are directly relevant.

4. Even if petitioners' supposed circuit split were implicated by this case, this Court has already found that split to be unworthy of certiorari. Just five years ago, this Court declined to grant certiorari on petitioners' proposed "question presented" in a case where that question was *actually* presented. *See Takeda Pharm. Co. Ltd. v. Painters & Allied Trades Dist. Council 82 Health Care Fund*, 141 S. Ct. 86 (2020). In *Painters*, plaintiffs alleged a failure to disclose material risks of a drug, and the Ninth Circuit described the "central dispute" among the circuits as "whether the decisions of prescribing physicians and pharmacy benefit managers constitute intervening causes that sever the chain of proximate cause between the drug manufacturer and [health plans]." 943 F.3d at 1257. The court ultimately reversed the dismissal of plaintiffs' claim on proximate-cause grounds. *Id.* at 1260. Nothing in the legal landscape has changed

since this Court denied review. The split has not deepened, and no court of appeals has cited *Painters* for any proposition related to the relevant issues here.

B. Courts Have Uniformly Held That Alleging Foreseeability Is Insufficient To Satisfy RICO's Proximate-Cause Standard

Petitioners contend (at 24) that the circuits "are divided" over how foreseeability "factors into" RICO's proximate-cause standard. Not so.

To start, as petitioners acknowledge (at 10 n.2) this Court clarified just last term that "foreseeability does not cut it" for RICO claims. *Horn*, 604 U.S. at 612. Even more, the nine circuits that have directly considered this issue *all* agree that foreseeability alone cannot satisfy RICO's directness requirement. The remaining circuits' caselaw suggests that they would follow the majority view.

1. *Every* court of appeals to consider the question has concluded that foreseeability alone is insufficient to establish RICO's proximate-cause standard:

- **First Circuit**: "[F]oreseeability is needed for, *but does not end the inquiry as to*, [RICO] proximate causation." *Neurontin I* at 34 (emphasis added).
- **Second Circuit**: "[F]oreseeability and intention have little to no import for RICO's proximate cause test." *Empire Merchants, LLC v. Reliable Churchill LLLP*, 902 F.3d 132, 145 (2d Cir. 2018).
- **Third Circuit**: "But unlike its more generic definition at common law, '[o]ur precedents make clear that in the RICO context, the focus [of proximate causation] is on the directness of the relationship between the conduct and the harm' rather than 'the concept of foreseeability.'" *St. Luke's Health Network, Inc. v. Lancaster Gen. Hosp.*, 967 F.3d 295, 300 (3d Cir. 2020) (quoting

Hemi Grp., LLC v. City of New York, 559 U.S. 1, 12 (2010)).

- **Fourth Circuit**: "RICO's proximate causation element 'turns on the directness of the resultant harm, not the foreseeability of that harm.'" App. 12a (cleaned up).
- **Fifth Circuit**: "The proximate causation standard in [the RICO] context is not one of foreseeability; instead, the plaintiff must demonstrate that the alleged violation 'led directly' to the injuries." *Molina-Aranda v. Black Magic Enters., L.L.C.*, 983 F.3d 779, 784 (5th Cir. 2020) (quoting *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 461 (2006)).
- **Sixth Circuit**: "RICO's directness requirement … requir[es] more than a showing of mere foreseeability." *Grow Michigan, LLC v. LT Lender, LLC*, 50 F.4th 587, 594 (6th Cir. 2022).
- **Seventh Circuit**: "The key word is 'direct'; foreseeability does not cut it." *Ratfield v. United States Drug Testing Lab'ys, Inc.*, 140 F.4th 849, 852 (7th Cir. 2025) (quoting *Horn*, 604 U.S. at 612).
- **Eleventh Circuit**: "Notably, the fact that an injury is reasonably foreseeable is not sufficient to establish proximate cause in a RICO action—the injury must be direct." *Ray v. Spirit Airlines, Inc.*, 836 F.3d 1340, 1349 (11th Cir. 2016).
- **D.C. Circuit**: "[F]oreseeability and direct injury (or remoteness) are distinct concepts, both of which must generally be established by a plaintiff [to establish RICO proximate cause]." *Serv. Emps. Int'l Union Health & Welfare Fund v. Philip Morris Inc.*, 249 F.3d 1068, 1076 (D.C. Cir. 2001).

The Ninth Circuit has also noted that "*Anza*[] reject[ed] foreseeability in favor of [a] focus 'on the directness of the relationship between the conduct and the

harm,'" *Fields v. Twitter, Inc.*, 881 F.3d 739, 748 (9th Cir. 2018) (quoting *Hemi Grp.*, 559 U.S. at 12), aligning with an earlier unpublished decision in which the Ninth Circuit confirmed that this Court's precedent "definitively foreclosed RICO liability for consequences that are only foreseeable without some direct relationship," *Couch v. Cate*, 379 F. App'x 560, 566 (9th Cir. 2010).

The Eighth and Tenth Circuits have not yet explicitly rejected the idea that foreseeability can establish RICO proximate cause, but their precedents confirm that the relevant inquiry is about *direct* harm, without ever so much as mentioning foreseeability. *See Custom Hair Designs by Sandy v. Cent. Payment Co., LLC*, 984 F.3d 595, 602 (8th Cir. 2020) ("When a court evaluates a RICO claim for proximate causation, the central question it must ask is whether the alleged violation led directly to the plaintiff's injuries." (citation omitted)); *Gaddy v. Corp. of the President of the Church of Jesus Christ of Latter-Day Saints*, 148 F.4th 1202, 1218 (10th Cir. 2025) ("When a court evaluates a RICO claim for proximate causation, the central question it must ask is whether the alleged violation led directly to the plaintiff's injuries." (quoting *Anza*, 547 U.S. at 461)).

2. Contrary to petitioners' claim (at 24), *no* court of appeals has held that "RICO proximate cause is satisfied when the injury is a foreseeable [and] natural consequence of a RICO scheme."

Petitioners' apparent reliance (at 25-27) on Sixth and Eleventh Circuit authority for a foreseeability-only test is particularly perplexing. As petitioners acknowledge (at 27), the Eleventh Circuit has squarely held *the exact opposite*, explaining that "the fact that an injury is reasonably foreseeable *is not sufficient* to establish proximate cause in a RICO action—the injury must be direct." *Ray*, 836 F.3d at 1349 (emphasis added).

The same goes for the Sixth Circuit. Petitioners' own cited cases (at 26) confirm that the Sixth Circuit has joined all other circuits in concluding that "RICO's directness requirement … requir[es] more than a showing of mere foreseeability." *Grow Michigan, LLC*, 50 F.4th at 594. While petitioners contend (at 25) that an earlier Sixth Circuit decision says otherwise, *see Wallace v. Midwest Fin. & Mortg. Servs., Inc.*, 714 F.3d 414 (6th Cir. 2013), the Sixth Circuit has expressly rejected petitioners' reading: "Nothing in *Wallace* … suggests that an injury that is foreseeable could satisfy RICO proximate cause even if the injury were indirect. … [F]oreseeability may be necessary, but it is not sufficient." *Gen. Motors, LLC v. FCA US, LLC*, 44 F.4th 548, 561 n.7 (6th Cir. 2022).[7]

The Ninth Circuit has been nearly as explicit in rejecting foreseeability alone as sufficient to satisfy RICO proximate cause. *See supra* pp. 17-18. The only decision petitioners cite as supporting their position—*Painters*—did not hold that foreseeability alone can establish RICO proximate cause. That court explained that the proximate-cause requirement "demand[s] … some direct relation between the injury asserted and the injurious conduct alleged," *Painters*, 943 F.3d at 1249 (quoting *Holmes*, 503 U.S. at 268 (cleaned up)); it did not even mention foreseeability in concluding that the plaintiffs' had satisfied this Court's directness requirement, *see id.*

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[7] In *In re ClassicStar Mare Lease Litig.*, 727 F.3d 473 (6th Cir. 2013), the Sixth Circuit concluded that, to establish RICO proximate cause, "Plaintiffs need only show that the defendants' wrongful conduct was 'a substantial and foreseeable cause' of the injury and the relationship between the wrongful conduct and the injury is 'logical and not speculative.'" *Id.* at 487. That decision still requires a "substantial" and "logical" connection between the injury and alleged wrong. But in all events, the Sixth Circuit's more recent precedents confirm that foreseeability is insufficient to establish RICO proximate cause.

at 1251-52 (discussing *Bridge* and then applying the three *Holmes* factors). Even the plaintiffs in *Painters* acknowledged that the Ninth Circuit "did not … 'equat[e] the directness requirement with a foreseeability test.'" Br. in Opp'n at 16 n.2, *Takeda Pharm. Co. v. Painters & Allied Trades Dist. Council 82 Health Care Fund*, No. 19-1069 (Apr. 30, 2020) (cleaned up).

Contrary to petitioners' suggestion (at 27), Tenth Circuit caselaw is not to the contrary. Its precedents instead confirm that the "central question" for RICO proximate cause "is whether the alleged violation led directly to the plaintiff's injuries." *Gaddy*, 148 F.4th at 1218 (quoting *Anza*, 547 U.S. at 461). In *CGC Holding Co., LLC v. Broad & Cassel*, 773 F.3d 1076 (10th Cir. 2014), the court confirmed that *directness* is the relevant standard. *Id.* at 1088. The court discussed foreseeability only in the context of determining whether the plaintiffs had sufficiently pleaded proximate cause "to survive a threshold standing inquiry"—not the merits. *Id.* at 1099.

Nor has the First Circuit held that "directness of a RICO injury is established when it is a foreseeable and natural consequence of a RICO scheme." *Contra* Pet. 24. Petitioners bold and underline (at 24) a single clause from *Neurontin I* stating that "foreseeability is needed" for proximate cause, but they ignore the next clause in the opinion. In full, the two clauses read: "[F]oreseeability is needed for, *but does not end the inquiry as to*, proximate causation." 712 F.3d at 34 (emphasis added). Thus, petitioners' quoted sentence confirms that the First Circuit, like all the rest, has held that foreseeability alone is insufficient to establish RICO proximate cause. The court accordingly discussed foreseeability primarily to show that "none of the three functional problems that the *Holmes* test is meant to avoid are present in this case." *Id.* at 37; *see id.* (explaining that because the plaintiff "was both the natural and foreseeable victim of the fraud and

the intended victim of the fraud, there [was] no risk of duplicative recovery"). Throughout the *Neurontin I* opinion, the court focused on the *directness* of the harm, concluding that the plaintiff "met both the direct relationship and functional tests articulated in *Holmes* and its progeny." *Id.* at 38. It never held that foreseeability alone could establish a direct injury.

The First Circuit's more recent decisions confirm that commonsense reading of *Neurontin I*. It has repeatedly clarified that "the 'central question' in evaluating proximate causation in the RICO context 'is whether the alleged violation led directly to the plaintiff's injuries.'" *Sterling Suffolk Racecourse, LLC v. Wynn Resorts, Ltd.*, 990 F.3d 31, 35 (1st Cir. 2021) (quoting *Anza*, 547 U.S. at 461); *see Roe v. Healey*, 78 F.4th 11, 27 (1st Cir. 2023) ("Indirect or downstream harm does not establish statutory standing to pursue a RICO claim."). The word "foreseeability" does not appear anywhere in *Roe* or *Sterling Suffolk Racecourse*, which would be surprising if, as petitioners claim, foreseeability alone could establish the directness of harm necessary for proximate cause.[8]

3. To the extent any circuit confusion existed over the relevance of "foreseeability" to the proximate cause inquiry—and petitioners have identified none—this Court

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[8] Petitioners cite (at 25) three other First Circuit cases in claiming that the First Circuit has "consistently reaffirmed" the view that foreseeability alone can establish proximate cause. But two of those cases—*In re Neurontin Mktg. & Sales Pracs. Litig.*, 712 F.3d 51 (1st Cir. 2013), and *In re Neurontin Mktg. & Sales Pracs. Litig.*, 712 F.3d 60 (1st Cir. 2013)—were decided the same day as, and in conjunction with, *Neurontin I*, and thus must be read in conjunction with that decision's clarification that foreseeability "does not end the inquiry as to[] proximate caus[e]." 712 F.3d at 34. The third decision—*In re Celexa & Lexapro Mktg. & Sales Pracs. Litig.*, 915 F.3d 1 (1st Cir. 2019)—devotes just three sentences to proximate cause and likewise relies on *Neurontin I*; it did not hold that foreseeability alone is sufficient. *Id.* at 14.

cleared it up last term in *Horn*: "Time and again, we have reiterated that § 1964(c)'s 'by reason of' language demands 'some direct relation between the injury asserted and the injurious conduct alleged.' The key word is 'direct'; *foreseeability does not cut it*." *Horn*, 604 U.S. at 612 (emphasis added) (first quoting *Holmes*, 503 U.S. at 268, and then quoting *Hemi Group*, 559 U.S. at 12). Post-*Horn*, it is difficult to imagine how any court could conclude that foreseeability alone could satisfy RICO's proximate cause requirement. *See Ratfield*, 140 F.4th at 852 (applying *Horn*'s foreseeability-does-not-cut-it language).

II. This Case Is A Poor Vehicle To Resolve The Questions Presented

This case is an unsuitable vehicle for resolving the questions presented. RICO's proximate cause requires (1) identifying the alleged wrongful conduct, (2) articulating plaintiffs' alleged injury, and (3) drawing a direct causal chain between the wrongful act and the injury. *See Anza*, 547 U.S. at 461. Petitioners' conclusory complaint and shifting theories of injury would make it nearly impossible for the Court to clarify either question presented through the application of law to the facts of this case. Moreover, this case is jurisdictionally defective and there are several alternative grounds for affirmance, meaning that any ruling in petitioners' favor is unlikely to change the outcome of this case.

1. Petitioners have not alleged any plausible "racketeering activity," obscuring the foundational question of what acts *caused* their alleged injury.

RICO provides a cause of action to "[a]ny person injured in his business or property by reason of a violation of [18 U.S.C.] section 1962." 18 U.S.C. § 1964(c). Section 1962(c) prohibits the conduct of a "pattern of racketeering activity" affecting interstate commerce; Section 1962(d) prohibits conspiracy to engage in such conduct. The

statute defines "racketeering activity" to include violations of 18 U.S.C. §§ 1341 (a mail fraud statute), 1343 (a wire fraud statute), and 1952 (the Travel Act). *Id.* § 1961(1). To survive a motion to dismiss, plaintiffs therefore must plead four elements (in addition to proximate cause) to state a claim: "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity." *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 (1985); *see* 18 U.S.C. § 1962(c).

Because petitioners' RICO theory rests on allegations of mail and wire fraud as the "racketeering activity" (or "predicate acts"),[9] they were required to meet Rule 9(b)'s heightened pleading standard to state a claim. *See Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 319 (2007) ("Rule 9(b) applies to all averments of fraud or mistake.") (quotation marks omitted); *Humana, Inc. v. Biogen*, 126 F.4th 94, 103 (1st Cir. 2025) (affirming dismissal of similar RICO complaint alleging mail and wire fraud as predicate acts for failure to satisfy Rule 9(b)).

Petitioners' vague pleading did not come close to meeting that standard. Petitioners alleged that respondents violated the federal Anti-Kickback Statute at some unidentified point in time and then falsely certified that they were in compliance with federal law. App. 19a. As the court of appeals noted, "Plaintiffs' complaint offers scant detail about the misrepresentations underlying their fraud allegations, Defendants' specific intent regarding those communications (even if alleged generally), or the kickbacks Defendants are alleged to

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[9] Petitioners also argue that respondents engaged in "bribery," a Travel Act predicate, which, in turn amounts to a RICO predicate. App. 20a-21a. Those factual allegations are wholly conclusory. And in any event, respondents do not begin to explain how Lundbeck paying alleged "bribes" to CVC (by donating money for co-pay assistance) actually *caused* them injury.

have paid and received." App. 20a. Thus, instead of "stat[ing] with particularity the circumstances constituting fraud or mistake," Fed. R. Civ. P. 9(b), petitioners rely on buzzwords such as "scheme," "fraud," and "bribery," without actually alleging any factual *actions* that respondents took to injure them. Thus, not only is petitioners' failure to satisfy Rule 9(b) an independent basis for affirmance, App. 21a; *see Biogen*, 126 F.4th at 98, 103-08, it also demonstrates that any causation analysis in this case would be largely advisory, unmoored from any well-pleaded real-world facts.

2. Petitioners' failure to allege a legally cognizable injury presents multiple additional independent bases for affirmance. Indeed, as the Fourth Circuit noted, petitioners' various copycat cases against other manufacturers "have been nearly unanimously dismissed, albeit on varying grounds." App. 28a, 7a & n.4 (collecting cases). The independent bases for dismissal here not only demonstrate that review would not change the ultimate outcome in this case; those legal flaws also illustrate the disjointed nature of petitioners' entire theory of recovery.

First, petitioners undisputedly suffered no injury themselves, meaning their standing to sue depends on ill-defined (and legally dubious) relationships with Assignors. Petitioners therefore run headlong into the legal rule that RICO claims are not assignable as a matter of law. *See MSP Recovery Claims, Series LLC v. Actelion Pharmas. US, Inc.*, No. 3:22-cv-07604, 2024 WL 3408221, at *13-16 (N.D. Cal. July 12, 2024); *see also MSP Recovery Claims, Series LLC v. Jazz Pharms., PLC*, No. 5:23-CV-01591-EJD, 2024 WL 3511635, at *6 (N.D. Cal. July 22, 2024) ("find[ing] the analysis from *Actelion* persuasive"). In enacting the civil RICO statute, Congress specified that only a person "injured in his business or property by reason of a violation of" the RICO statute may sue for damages. 18 U.S.C. § 1964. Mere *assignees* (like

petitioners) have not been injured in *their* business or property by reason of the complained of conduct, so they cannot bring suit. *See Actelion*, 2024 WL 3408221, at *13-16. This Court has not yet answered the question of whether RICO claims can be assigned, and it remains unsettled among the lower courts. *See* App. 15a n.7. This court should not announce a proximate cause rule based on claims from uninjured "assignees" that Congress did not contemplate as RICO plaintiffs at all.

Second, even if RICO claims were legally assignable, petitioners' failure to establish a valid assignment contract may deprive this Court of jurisdiction over the case. "[I]f an assignment is champertous under state law, and therefore 'legally ineffective,' the assignee lacks standing to sue." *See PDVSA US Litig. Trust v. Lukoil Pan Ams., LLC*, 991 F.3d 1187, 1190 (11th Cir. 2021) (citation omitted); *Accrued Fin. Servs., Inc. v. Prime Retail, Inc.*, 298 F.3d 291, 294 (4th Cir. 2002) (holding contingency assignment contracts invalid as "champertous"). Here, petitioners' assignment contracts are contingent in nature, and at least one court has held that "Ohio's champerty law voids the [same] SummaCare agreement" at issue in this case because petitioners "agreed to pursue SummaCare's interest in a suit in exchange for part of the claim, if successful." *MSP Recovery Claims, Series LLC v. Amgen Inc.*, 787 F. Supp. 3d 1046, 1065 (C.D. Cal. 2025); *see Rancman v. Interim Settlement Funding Corp.*, 789 N.E.2d 217, 219 (Ohio 2003) (defining champerty as "maintenance in which a nonparty undertakes to further another's interest in a suit in exchange for a part of the litigated matter if a favorable result ensues"). Although respondents challenged the validity of petitioners' assignment contracts in the district court, *e.g.*, Dist. Ct. Dkt. 58 at 4-5, neither the district court nor the court of appeals addressed the legality of petitioners' assignment contracts. To assure itself of

Article III jurisdiction, this Court would need to do so. *See PDVSA US Litig. Trust*, 991 F.3d at 1195-96.

Third, even if petitioners could properly stand in Assignors' shoes, they do not articulate their Assignors' injuries. Petitioners allege that Assignors paid money for Lundbeck's medications. C.A. App. 2. But as in their copycat complaints, petitioners "oscillate[] between theories of recovery, characterizing [Assignors' payments] as simultaneously representing reimbursement for the 'supra-competitive price,' the 'artificially inflated quantities' of the Subject Drugs, and the 'tainted' claims." *Jazz Pharms.*, 2024 WL 3511635, at *5. Just like in petitioners' parallel cases, it is not apparent whether petitioners in this case seek to recover some, all, or none of Assignors' payments for Xenazine, and it is therefore unclear what precise injury they attribute to respondents' alleged acts in this case. *See id.*

Finally, the indirect purchaser rule (sometimes called "statutory standing") bars petitioners' claims. The indirect purchaser rule, first acknowledged in *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977), provides that only direct purchasers may bring suit to recover for alleged anticompetitive activity, *id.* at 729; *see also Apple, Inc. v. Pepper*, 587 U.S. 273, 280 (2019) ("For example, if manufacturer A sells to retailer B, and retailer B sells to consumer C, then C may not sue A."). While this rule originated under the antitrust laws, "[e]very circuit to have considered the issue has held that the rule also applies to civil RICO actions, and that indirect purchasers therefore do not have standing to assert RICO claims." *Humana, Inc. v. Biogen, Inc.*, 666 F. Supp. 3d 135, 141 (D. Mass. 2023); *see, e.g.*, *McCarthy v. Recordex Serv., Inc.*, 80 F.3d 842, 855 (3d Cir. 1996); *Trollinger v. Tyson Foods, Inc.*, 370 F.3d 602, 616 (6th Cir. 2004); *Carter v. Berger*, 777 F.2d 1173, 1177 (7th Cir. 1985). The district court below held that the indirect purchaser rule independently

bars this suit, App. 74a, so, on this record, petitioners' complaint would face dismissal even if this Court ruled in their favor on the issue of proximate cause.

III. The Decision Below Is Correct

Denial is also warranted because the court of appeals' decision was correct, firmly rooted in this Court's established precedent, and consistent with the purposes of the federal RICO statute.

1. This Court has explored RICO's proximate cause requirement in three cases. In *Holmes v. Securities Investor Protection Corp.*, this Court addressed RICO's proximate-case requirement, explaining that a civil RICO claim demands "a showing that the defendant's violation not only was a 'but for' cause of the injury, but was the proximate cause as well." 503 U.S. 258, 268 (1992). To satisfy that proximate-cause standard, this Court explained there must be "some direct relation between the injury asserted and the injurious conduct alleged." *Id.* at 268-69. This Court reaffirmed RICO's "direct relation" requirement in *Anza*, explaining that "[w]hen a court evaluates a RICO claim for proximate causation, the central question it must ask is whether the alleged violation led directly to the plaintiff's injuries." 547 U.S. at 461. And in *Hemi Group, LLC v. City of New York*, this Court recognized that that, under RICO's proximate cause test, the "causal chain" linking the predicate acts to the complained-of damages cannot extend "beyond the first step." 559 U.S. 1, 10-11 (2010) (plurality opinion).

Taken together, these cases establish that "RICO proximate causation is lacking when (1) there is a 'more direct victim' from whom (or intervening factor from which) the plaintiff's injuries derive, or (2) the alleged RICO predicate violation is 'too distinct' or logically unrelated from the cause of the plaintiff's injury." App. 21a-22a (quoting *Albert v. Global Tel*Link*, 68 F.4th 906, 911 (4th Cir. 2023)).

As petitioners note (at 6), three policy reasons support this "direct relation" rule: (1) the difficulty of ascertaining damages "attributable to the violation, as distinct from other, independent factors"; (2) the difficulty of "adopt[ing] complicated rules apportioning damages among plaintiffs removed at different levels of injury from the violative acts"; and (3) the idea that "directly injured victims can generally be counted on to vindicate the law as private attorneys general, without any of the problems attendant upon suits by plaintiffs injured more remotely." *Holmes*, 503 U.S. at 269-70.

Petitioners make much (at 8-11, 19, 24-27, 29-32, 36) of a snippet from this Court's decision in *Bridge v. Phoenix Bond & Indemnity Co.*, remarking that the injury in that case "was a foreseeable and natural consequence" of the defendants' scheme. 553 U.S. 639, 658 (2008). But since *Bridge*, this Court has reaffirmed that a "direct relationship"—and not foreseeability or intent—is the essence of RICO's "proximate cause requirement." *Hemi Grp.*, 559 U.S. at 12. Indeed, the *Hemi Group* plurality expressly rejected the dissent's argument that "RICO's proximate cause requirement turn[s] on foreseeability, rather than on the existence of a sufficiently 'direct relationship' between the fraud and the harm." *Id.*; *cf. id.* at 22-26, 28 (Breyer, J., dissenting). And if any doubt remained after *Hemi Group*, this Court cleared it up last term when it clarified that "[t]he key word is 'direct'; *foreseeability does not cut it*." *Horn*, 604 U.S. at 612 (emphasis added) (first quoting *Holmes*, 503 U.S. at 268, and then quoting *Hemi Grp.*, 559 U.S. at 12).

Following those precedents, the Fourth Circuit has correctly recognized that RICO's proximate cause test "turns on the *directness* of the resultant harm, not the *foreseeability* of that harm." *Slay's Restoration, LLC v. Wright Nat'l Flood Ins. Co.*, 884 F.3d 489, 493 (4th Cir. 2018).

2. The Fourth Circuit faithfully applied this Court's RICO precedents in rejecting each of petitioners' three theories of harm. App. 24a-30a.

First, the Fourth Circuit correctly rejected petitioners' "inflated-prices theory" because "the alleged scheme ha[d] more direct victims." App. 24a.

As the Fourth Circuit explained, petitioners "d[id] not allege that Assignors bought anything from Lundbeck; rather, Lundbeck 'sold [Xenazine] to distributors, who sold to pharmacies, who sold to doctors and patients, who triggered the named assignors' payments back to the pharmacies.'" App. 24a (quoting *MSP Recovery Claims, Series LLC v. Pfizer, Inc.*, 728 F. Supp. 3d 89 (D.D.C. Mar. 30, 2024)). Even if the alleged scheme permitted Lundbeck to artificially inflate the price of Xenazine, "distributors and wholesalers paid those prices first," thus "break[ing] the chain of causation between Lundbeck's alleged statutory violations and Assignors' injuries." App. 24a.

On their own terms, petitioners' allegations therefore defeat proximate causation because they acknowledge that drug prices are not directly affected by charitable donations, instead vaguely asserting that the program "allowed" higher prices to be charged. CA4. Doc. 27 at 12, 25; App. 9a. At most, petitioners contend that co-pay charities had some indirect causal role in increased drug prices; but that argument is nothing more than a policy attack on co-pay charities as a whole, the likes of which courts have rejected in civil RICO suits for more than a decade. *See Am. Fed'n of State, Cnty. & Mun. Emps. Dist. Council 37 Health & Sec. Plan v. Bristol-Myers Squibb Co.*, 948 F. Supp. 2d 338, 341-42 & n.2 (S.D.N.Y. 2013).

Second, the Fourth Circuit correctly determined that petitioners' "inflated-volumes theory is derailed by intervening factors[.]" App. 28a.

Petitioners fixate (at 18-24) on the Fourth Circuit's discussion of the "intervening [prescribing] decisions of doctors," App. 25a, but those prescribing decisions were but one of many intervening causes identified by the Fourth Circuit. As the court explained, petitioners could not plausibly allege that the alleged scheme "directly increased the volume of Xenazine prescriptions that Assignors were ultimately obligated to reimburse," because "Xenazine prescriptions may have risen for any number of other easily inferable reasons, including an uptick in [Huntington's disease] patients or a lack of competing generic drugs on the market due to [Lundbeck's exclusive] patent enforceability rights." App. 24a-25a (quotation marks and citation omitted).

Moreover, unlike in the cases petitioners rely upon (such as *Painters*), petitioners did not allege that respondents caused Xenazine to be improperly or fraudulently prescribed or that any prescription for Xenazine covered by any Assignor was medically unnecessary. *Compare Painters*, 943 F.3d at 1247 (finding proximate causation satisfied based on allegation that defendants "intentionally misle[d] physicians, consumers, and [third-party payors] to believe that Actos did not increase a person's risk of developing bladder cancer").

The court thus concluded that there is no practical way to "determine what portion of [Xenazine prescriptions are] attributable to [Lundbeck's donations to CVC], as opposed to other, independent factors." App. 25a (quoting *Slay's Restoration*, 884 F.3d at 494). Even if petitioners were correct that Assignors were the "intended victim" of the alleged scheme, the sheer number of intervening steps between the alleged misconduct and the alleged harm precludes recovery under RICO. *Hemi Grp.*, 559 U.S. at 12. "The causal chain … is longer than the one *Hemi Group* deemed too long." *Sidney Hillman*, 873 F.3d at 578.

Finally, the Fourth Circuit correctly rejected petitioners' "tainted claims" theory because it depended on "predicate violations that are too distinct from Plaintiffs' injuries to support RICO liability." App. 25a-26a. As this Court explained in *Hemi Group*, under RICO's proximate cause test, the "causal chain" linking the predicate acts to the complained-of damages cannot extend "beyond the first step." 559 U.S. at 10-11.

Petitioners' claims flunked this test: "[m]ultiple steps ... separate the alleged [acts of racketeering] from the asserted injury." *Id.* at 15. Petitioners did not allege that any of the purported misrepresentations misled Assignors; instead, petitioners "allege[d] that Defendants 'caused pharmacies' to submit claims for reimbursement that contained implied certifications of compliance with federal law, which they further allege—in a conclusory fashion—to be false." App. 26a. At no point did petitioners explain "what [Defendants] certified, when, where, or to whom, ... how any alleged misrepresentations reached [Assignors], or what role these misrepresentations played in [Assignors'] decision-making." App. 26a (citation omitted). Since petitioners "never connect[ed] any particular misrepresentation to any particular economic injury," the Fourth Circuit concluded that petitioners "fail[ed] to establish the necessary 'direct relation between the injury asserted and the injurious conduct alleged." App. 26a (quoting *Slay's Restoration*, 884 F.3d at 493).

In sum, all three of *Holmes*'s rationales weigh against permitting Assignors to recover under any of petitioners' theories of harm: (1) it would be impossible to ascertain the amount of damages attributable to the alleged misconduct (as opposed to market forces, Lundbeck's exclusive marketing rights, or patients' legitimate need for treatment); (2) there is a "more direct victim" (the government), and the potential for double recovery would

require the adoption of impossibly complex rules to apportion damages; and (3) the risk of federal criminal liability, FDA regulatory sanctions, and state law consumer class actions already powerfully deter the sort of wrongful conduct alleged in this case and others like it.

CONCLUSION

The petition for a writ of certiorari should be denied.

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