No. _______

IN THE

Supreme Court of the United States

NAICOM CORPORATION; D&V IP HOLDINGS, LLC;
PAYLINK, LLC; and KIARAS, LLC,

Petitioners,

v.

DISH NETWORK CORPORATION; DISH NETWORK L.L.C.; NAGRASTAR LLC; UNITED STATES ATTORNEY FOR THE DISTRICT OF PUERTO RICO; ROSA EMILIA RODRÍGUEZ-VÉLEZ; JOSÉ CAPÓ-IRIARTE; NICHOLAS W. CANNON; FEDERAL BUREAU OF INVESTIGATION; DOUGLAS A. LEFF; BRADLEY REX; LANCE LANGE; CLAY REHRIG; JUAN GALARZA; JASON LOPEZ; KEVIN PEARSON; TOLTEC INVESTIGATIONS, L.L.C., et al.,

Respondents.

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

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PETITION FOR A WRIT OF CERTIORARI

EDWIN PRADO-GALARZA
Counsel of Record
PRADO, NÚÑEZ & ASSOCIATES, P.S.C.
403 Del Parque Street, 8th Floor
San Juan, Puerto Rico 00912
Telephone: (787) 977-1411
pradolaw10@gmail.com

QUESTIONS PRESENTED

1. Whether 18 U.S.C. § 1965(b) or § 1965(d) authorizes nationwide service of process and the exercise of personal jurisdiction over out-of-district defendants in a civil action under the Racketeer Influenced and Corrupt Organizations Act.

2. Whether absolute prosecutorial immunity bars civil damages claims against federal prosecutors for investigative and administrative conduct that is not intimately associated with the judicial phase of the criminal process.

3. Whether the law-enforcement safe harbors in the Computer Fraud and Abuse Act, 18 U.S.C. § 1030(f); the Stored Communications Act, 18 U.S.C. § 2707(e); the Digital Millennium Copyright Act, 17 U.S.C. § 1201(e); and the Defend Trade Secrets Act, 18 U.S.C. § 1833(a)(1), reach a warrantless re-entry into a private digital facility conducted after the authorizing warrant has been fully executed and returned.

4. Whether the courts below misapplied *Bell Atlantic Corp. v. Twombly* and *Ashcroft v. Iqbal* by treating a defendant's asserted lawful-investigation explanation as an "obvious alternative explanation" that defeats plausibility at the pleading stage, and by requiring a civil

RICO plaintiff to plead the defendants' motive to conspire.

5. Whether a court of appeals' unexplained, one-sentence summary affirmance dismissing multiple interlocking federal statutory and constitutional claims warrants this Court's review.

PARTIES TO THE PROCEEDING

Petitioners, who were Plaintiffs-Appellants below, are Naicom Corporation; D&V IP Holdings, LLC; Paylink, LLC; and Kiaras, LLC.

Respondents, who were Defendants-Appellees below, are: DISH Network Corporation; DISH Network L.L.C.; NagraStar LLC; Bert Eichhorn; Emily Rinkel; Jordan Smith; Kevin Gedeon; Michael Thomas Jaczewski a/k/a Brian Parson; United States Attorney for the District of Puerto Rico; Rosa Emilia Rodríguez-Vélez; José Capó-Iriarte; Nicholas W. Cannon; Federal Bureau of Investigation, San Juan Field Office; Douglas A. Leff; Bradley Rex; Lance Lange; Clay Rehrig; Juan Galarza; Jason Lopez; Kevin Pearson; United States Attorney's Office; and Toltec Investigations, L.L.C.

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

Pursuant to this Court's Rule 29.6, Petitioners state: Naicom Corporation has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

D&V IP Holdings, LLC has no parent corporation, and no publicly held corporation owns 10% or more of its membership interests.

Paylink, LLC has no parent corporation, and no publicly held corporation owns 10% or more of its membership interests.

Kiaras, LLC has no parent corporation, and no publicly held corporation owns 10% or more of its membership interests.

STATEMENT OF RELATED CASES

Pursuant to Supreme Court Rule 14.1(b)(iii), Petitioners state that the following proceedings are directly related to this Petition:

Naicom Corporation, et al. v. Dish Network Corporation, et al., No. 3:21-cv-01405-JAW (D.P.R.).

Naicom Corporation, et al. v. Dish Network Corporation, et al., No. 24-1416 (1st Cir.).

The United States Court of Appeals for the First Circuit entered judgment on December 2, 2025. Rehearing and rehearing en banc were denied on February 24, 2026.

Petitioners are unaware of any other related proceedings within the meaning of Supreme Court Rule 14.1(b)(iii).

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The judgment of the United States Court of Appeals for the First Circuit, entered December 2, 2025, is unreported and reproduced at Pet. App. 1a-2a. The First Circuit's one-paragraph summary affirmance states only that, "[a]fter de novo review of the briefs and record below, we affirm the dismissal of plaintiffs-appellants' claims for the reasons set forth in the district court's well-reasoned orders." Pet. App. 1a-3a (citing 1st Cir. R. 27.0).

The First Circuit's subsequent order of December 8, 2025, denying Petitioners' motion requesting that the Court issue an explanatory opinion, is unreported and reproduced at Pet. App. 4a-5a.

The First Circuit's order of February 24, 2026, denying Petitioners' petition for panel rehearing and rehearing en banc, is unreported and reproduced at Pet. App. 6a-8a.

The four orders of the United States District Court for the District of Puerto Rico dismissing the Second Amended Complaint, each entered March 29, 2024, are unreported. They are reproduced at Pet. App. 9a-102a (Order on DISH/NagraStar Defendants' Motion to Dismiss, ECF No. 202); 103a-197a (Order on DISH Network Corporation's Motion to

Dismiss, ECF No. 203); 198a-290a (Order on Toltec Defendants' Motion to Dismiss, ECF No. 204); and 291a-374a (Order on Federal Defendants' Motion to Dismiss, ECF No. 205).

JURISDICTION

The United States Court of Appeals for the First Circuit entered its judgment of affirmance on December 2, 2025. Pet. App. 1a-2a. Petitioners timely filed a motion requesting an explanatory opinion, which the panel denied on December 8, 2025. Pet. App. 4a-5a. Petitioners timely filed a petition for panel rehearing and rehearing en banc under Federal Rules of Appellate Procedure 35 and 40, which the First Circuit denied by order entered February 24, 2026. Pet. App. 6a-8a.

This petition is timely filed within ninety days of the February 26, 2026 denial of rehearing. *See* Sup. Ct. R. 13.3. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution; 18 U.S.C. § 1965; 18 U.S.C. § 3105; 18 U.S.C. § 1030(f); 18 U.S.C. § 2707(e); 17 U.S.C. § 1201(e); 18 U.S.C. § 1833(a)(1); 28 U.S.C. § 1254(1); and other relevant constitutional and statutory provisions are reproduced in pertinent part at Pet. App. 499a-503a.

INTRODUCTION

This case presents one of the most serious allegations of federal-law-enforcement misconduct of the digital era: that the United States Attorney's Office and the Federal Bureau of Investigation allowed themselves to be captured by two commercial competitors—DISH Network Corporation and NagraStar LLC—to stage a sham "piracy investigation" whose true purpose was to seize a rival firm's proprietary source code, shut down its operations, and destroy a $15 million investment deal. The Second Amended Complaint sets forth these allegations in 202 paragraphs of well-pleaded detail. No indictment ever issued. The United States did not oppose the return of the seized property. And yet the District Court dismissed every claim at the pleading stage, and the First Circuit affirmed in a one-paragraph summary disposition that offered no reasoning whatsoever.

The disposition below implicates five questions of national importance:

First, a mature circuit split: the courts of appeals are intractably divided over which subsection of 18 U.S.C. § 1965 authorizes nationwide service of process over out-of-district civil RICO defendants. The Second, Seventh, Ninth, and Tenth Circuits hold that § 1965(b) controls and requires an "ends of justice" showing. The Fourth and Eleventh Circuits hold that § 1965(d) controls and requires only minimum contacts with the United States as a whole. The First Circuit has refused to take sides for nearly four decades. The District Court acknowledged the split, acknowledged it is outcome-determinative, and expressly declined to resolve it. Pet. App. 136a,146a, 155a, 157a, and 158a.

Second, the District Court held that the U.S. Attorney and AUSAs receive absolute prosecutorial immunity for investigative and administrative acts—including authorizing a warrantless post-execution re-entry, vouching for affidavits containing false statements, and coordinating with private commercial competitors for private financial gain. That holding squarely conflicts with *Buckley v. Fitzsimmons*, 509 U.S. 259 (1993), *Burns v. Reed*, 500 U.S. 478 (1991), and *Kalina v. Fletcher*, 522 U.S. 118 (1997). Pet. App. 237a-241a.

Third, the District Court held that the CFAA, SCA, DMCA, and DTSA "lawfully authorized investigative activity" safe harbors protected a warrantless re-entry into Petitioners' data center two days after the operative warrant had been executed and returned—a holding directly contrary to *Michigan v. Tyler*, 436 U.S. 499 (1978), and *Bilida v. McLeod*, 211 F.3d 166 (1st Cir. 2000). Petitioners' Rule 28(j) letter squarely preserved this statutory-construction issue; the First Circuit addressed it not at all.). Pet. App. 89a-90a, 275a-285a.

Fourth, the District Court dismissed the RICO claims as "consistent with" an "obvious alternative explanation"—a "legitimate law-enforcement investigation"—inverting *Twombly* and *Iqbal* by crediting defendants' inferences over 202 paragraphs of pleaded fact. The District Court further imposed a pleading-stage motive requirement that *Salinas v. United States*, 522 U.S. 52 (1997), and *Ocasio v. United States*, 578 U.S. 282 (2016), foreclose—demanding that Petitioners plead "why" federal officials would join the alleged enterprise and weighing competing inferences as "equally plausible," a credibility determination reserved for the jury.). Pet. App. 177a, 186a, 247a, 361a.

Fifth, the First Circuit disposed of every one of these questions in a single-sentence summary affirmance, twice declining to issue a reasoned opinion. Pet. App. 4a-5a; 6a-8a. Petitioners cannot identify the basis for rejection, and this Court cannot review what the court of appeals did not explain.

The petition should be granted.

STATEMENT OF THE CASE

Petitioners—Naicom Corporation, D&V IP Holdings, LLC, Paylink, LLC, and Kiaras, LLC—are four closely-related Puerto Rico technology companies founded and operated by Darwin Quinones-Pimentel and Victor Vega-Encarnacion. Second Am. Compl. ¶¶ 4-14 (Pet. App. 379a-382a). They developed the Dynamic Internet Semantic Multicast Environment ("DISME")—a proprietary IPTV streaming technology delivering high-quality programming using substantially less bandwidth than traditional platforms. *Id.* ¶¶ 4-12.

A. Petitioners' Business and DISME Technology

Naicom Corporation operated the IPTV services platform under legitimate content-distribution licenses, including NRTC membership (2017), Apple App Store approval (Feb. 16, 2017), and Sam's Club retail distribution of its set-top box (Dec. 15, 2017). Second Am. Compl. ¶¶ 11-12, 68, 70-71. D&V IP Holdings, LLC held the DISME intellectual property; Paylink, LLC was an unrelated payroll-processing company; Kiaras, LLC was an unrelated HR/time-and-attendance company. *Id.* ¶¶ 5-6, 13-14, 34-36, (Pet. App. 379a-380a., 383a-384a, 395a). All four entities' servers were collocated in a single secured data center in Carolina, Puerto Rico, and each maintained statutory-compliance programs (encryption, multi-factor authentication, monitoring, NDAs, audits) qualifying for the protections of the CFAA, SCA, DMCA, DTSA, and the Puerto Rico Industrial and Trade Secrets Protection Act. *Id.* ¶¶ 19, 33, 105, 160-76. (Pet. App. 388a, 395a, 437a, 472a-480a).

B. The Public-Private Racketeering Scheme

DISH Network Corporation ("DNC") is a Colorado-incorporated satellite-television provider with no Puerto Rico offices, employees, registered agent, or business presence. Pet. App. 96a. NagraStar LLC is a DNC–Kudelski Group joint venture that provides encryption and anti-piracy services for DISH's platform. Second Am. Compl. ¶¶ 39-44 (Pet. App. 396a-400a).

DISH/NagraStar and Naicom were direct competitors in the Puerto Rico pay-television market, and DISME was a disruptive threat to DISH's Sling TV business. Second Am. Compl. ¶¶ 91-95. (Pet. App. 427a-428a). Beginning in 2017, DISH/NagraStar investigated Naicom and confirmed: (i) Naicom's programming contained no DISH content; (ii) Naicom was authorized by multiple media companies to distribute their content; and (iii) DISME represented "future competition for subscribers in Puerto Rico and the United States." *Id.* ¶¶ 90-93. Having determined Naicom was a legitimate competitor whose technology DISH could not penetrate remotely, the DISH/NagraStar Defendants resolved to obtain physical access to Naicom's data center by filing a false complaint with the FBI alleging a "pirate operation." *Id.* ¶ 98 (Pet. App. 426a, 428a).

Private investigator Michael Thomas Jaczewski (Toltec Investigations, LLC), using the alias "Brian Parson," purchased two Naicom set-top boxes and maintained a monthly subscription for two years to manufacture a paper trail of "pirate" purchases while knowing Naicom's content was licensed. Second Am. Compl. ¶¶ 132-37. (Pet. App. 452a-453a). The scheme's alleged purpose was to: (a) eliminate Naicom as a competitor; (b) seize DISME source code, algorithms, and proprietary business information for DISH's use; (c) collapse Naicom's pending $15 million investment round and multi-million-dollar Claro distribution agreement; and (d) accomplish all of this under color of federal authority. *Id.* ¶¶ 95, 118-23. (Pet. App. 428a, 443a, 445a).

C. The August 27, 2019, Warrant Execution

On August 27, 2019, the FBI obtained two search warrants—one for Naicom's San Juan office and one for the Carolina data center. Second Am. Compl. ¶¶ 19, 33, 105. Petitioners allege the affidavits contained materially false statements: misrepresentations about Naicom's NCTC/NRTC membership, fabricated claims that Naicom lacked HBO and DirecTV licensing, and reliance on the "Brian Parson" purchases the investigators knew were not from a genuine pirate operation. *Id.* ¶¶ 20, 101-02. (Pet. App. 389a, 436a).

Critically, the August 27 execution was conducted jointly by FBI agents and DISH/NagraStar engineers, with the engineers "acting as federal agents." Second Am. Compl. ¶¶ 21, 104. (Pet. App. 389a, 437a). The private competitors—Jordan Smith, Kevin Gedeon, Bert Eichhorn, and Emily Rinkel—inspected, photographed, and handled Naicom's servers, hard drives, confidential documents, and DISME source code. *Id.* Mr. Vega later discovered via LinkedIn that the "FBI experts" who had interrogated them were in fact DISH and NagraStar employees. *Id.* ¶ 112. (Pet. App. 441a).

At the search's conclusion, the Federal Defendants "learned that Naicom TV counted with all the programming distribution contract and agreements" and instructed Mr. Quinones and Mr. Vega to bring their licensing contracts to the FBI offices. Pet. App. 433a (quoting Second Am. Compl. ¶ 103). During that interview, federal agents sat at one table while DISH/NagraStar agents sat at another, posing as FBI investigators. By the close of August 27, 2019, the operative warrant had been fully executed.

D. The August 29, 2019 Warrantless Re-Entry

On August 29, 2019—two days after the warrant's execution—U.S. Attorney Rodríguez-Vélez and AUSAs Capó-Iriarte and Cannon instructed FBI Agents Lange and Pearson to return to Naicom's data center with DISH/NagraStar Defendants Smith, Gedeon, and Eichhorn. Second Am. Compl. ¶ 105. No new warrant was sought or obtained. *Id.* (Pet. App. 437a).

Using keys seized on August 27, the federal agents and private engineers entered the data center, performed password resets, and installed "pen drives and other electronic instruments" to bypass Naicom's security measures and download confidential information. Second Am. Compl. ¶¶ 22, 106. (Pet. App. 388a, 437a). The re-entry was not confined to servers connected to any purported piracy investigation: the agents and private engineers accessed servers belonging to D&V

IP Holdings, Paylink, and Kiaras—entities that were not subjects of any investigation and whose servers contained proprietary payroll, HR, and intellectual-property data unrelated to television programming. *Id.* ¶¶ 105-08. (Pet. App. 437a-438a) Mr. Quinones observed Agents Lange and Pearson permitting the DISH/NagraStar engineers to access Naicom's computers, servers, and hardware. *Id.* ¶ 108.

During the re-entry, Agents Pearson and Lange pressured Mr. Quinones to sign a hold-harmless document falsely admitting that Naicom had run a "pirate operation in the past," threatening to shut down the data center if he refused. Second Am. Compl. ¶¶ 109-10. (Pet. App. 439a-440a) Mr. Quinones refused. When Mr. Vega asked whether the agents had a new warrant, Agent Lange falsely represented that "the search warrants gave him ten days to come in and out and search the Data Center." *Id.* ¶ 111. The agents and private investigators then shut down Naicom's business operation and left. *Id.* ¶ 114. The August 29 re-entry was not executed pursuant to any new warrant, judicial authorization, exigent circumstances, consent, or any other recognized exception to the Fourth Amendment's warrant requirement. (Pet. App. 441a-442a)

E. The Rule 41(g) Return of Property

On September 6, 2019, Petitioners filed a Rule 41(g) motion for the return of seized property. Second Am. Compl. ¶ 115. A Magistrate Judge issued a Report and Recommendation granting the motion. The United States filed no opposition. On November 5, 2019, the District Court granted the motion, noting that the Government had waived objection. *Id.* ¶¶ 116-17. (Pet. App. 442a-443a)

No indictment, criminal charge, grand-jury subpoena, target letter, or administrative inquiry has ever issued against Naicom, any Petitioner, Mr. Quinones, or Mr. Vega. Second Am. Compl. ¶¶ 118-22. Petitioners lost a $15 million investment round when investors withdrew after learning of the investigation, *id.* ¶¶ 120-21; lost a pending multi-million-dollar Claro distribution agreement, *id.* ¶ 122; lost subscribers, *id.* ¶ 123; and incurred over $500,000 in physical-hardware damage from the August 29 intrusion. (Pet. App. 443a-445a)

F. Proceedings Below

On August 27, 2021, Petitioners filed this civil action in the District of Puerto Rico. The Second Amended Complaint pleads seven counts: civil RICO (§ 1962(c)); RICO conspiracy (§ 1962(d)); CFAA (§ 1030); SCA (§ 2701 *et seq.*); DMCA (§ 1201); DTSA (§1836); and the Puerto Rico Industrial and Trade Secrets Protection Act.

Second Am. Compl. ¶¶ 124-202. (Pet. App. 446a-492a)

Four groups of defendants moved separately to dismiss. In four orders entered March 29, 2024 (ECF Nos. 202-205), the District Court granted every motion and dismissed the Second Amended Complaint with prejudice. The court held: (1) the USAO Defendants received absolute prosecutorial immunity on all counts, Pet. App. 9a-374a; (2) the RICO claims failed because the association-in-fact did not satisfy *United States v. Cianci*, 378 F.3d 71 (1st Cir. 2004), and because an "obvious alternative explanation"—a "legitimate law-enforcement investigation"—defeated plausibility,; (3) the CFAA, SCA, DMCA, and DTSA claims were barred by "authorized law enforcement activity" exceptions; and (4) the PTSA claim was subject to Westfall Act substitution. As to DISH Network Corporation, the court acknowledged the § 1965 circuit split and expressly declined to resolve it.

Petitioners appealed. On November 3, 2025, after oral argument, Petitioners filed a Rule 28(j) letter clarifying that Counts III-VI presented a pure statutory-construction question—whether the August 29 warrantless re-entry fell outside the "lawfully authorized investigative activity" safe harbors in 18 U.S.C. § 1030(f), 18 U.S.C. § 2707(e), 17 U.S.C. § 1201(e), and 18 U.S.C. § 1833(a)(1)—and not a

Franks v. Delawar, 438 U.S. 154 (1978) challenge. Pet. App. 293a-294a. Petitioners relied on *Michigan v. Tyler*, 436 U.S. 499, 511-12 (1978), and *Bilida v. McLeod*, 211 F.3d 166, 171-72 (1st Cir. 2000). (Pet. App. 496a-498a)

On December 2, 2025, the First Circuit entered a one-paragraph judgment affirming "for the reasons set forth in the district court's well-reasoned orders." Pet. App. 1a-2a. Petitioners moved the court to withdraw the judgment and issue an opinion identifying the basis for affirmance; the court denied that motion on December 8, 2025, without explanation. Pet. App. 4a-5a. Petitioners then timely filed a petition for panel rehearing and rehearing en banc, identifying multiple legal errors and requesting at minimum a written opinion. On February 24, 2026, the First Circuit denied rehearing and rehearing en banc, again without opinion. Pet. App. 6a-8a. This petition follows.

REASONS FOR GRANTING THE PETITION

Certiorari is warranted on five independent and intersecting grounds. The case presents a mature circuit split on 18 U.S.C. § 1965 (Rule 10(a)); deepens existing tension with this Court's precedents on the functional scope of absolute prosecutorial immunity, the Fourth Amendment's temporal limits on warrant authority, and the *Twombly/Iqbal/Salinas* pleading framework (Rule 10(c)); and raises an exceptionally important institutional question about summary dispositions that foreclose meaningful appellate review (Rule 10(c)).

I. The Circuits Are Intractably Divided Over Which Subsection of 18 U.S.C. § 1965 Controls Personal Jurisdiction

Personal jurisdiction in federal court depends on whether the defendant is amenable to service of process under "a federal statute or rule." *Omni Capital Int'l, Ltd. v. Rudolf Wolff & Co.*, 484 U.S. 97, 104 (1987); *see also* Fed. R. Civ. P. 4(k)(1). Civil RICO litigation invokes 18 U.S.C. § 1965 as its service-of-process authority. The courts of appeals are intractably divided over which subsection of that statute authorizes nationwide service of process and personal jurisdiction over out-of-district civil RICO defendants. The District Court here expressly acknowledged the split, declined to resolve it, and dismissed on alternative grounds. Pet. App. 185a-189a. The First Circuit summarily affirmed. Pet. App. 1a-2a.

A. The First Circuit Has Repeatedly Refused to Choose

As the District Court observed, "The First Circuit has not decided whether § 1965(b) or § 1965(d) controls." Pet. App. 123a. The District Court also noted that at least three district courts in the First Circuit have followed the majority (§ 1965(b)) view, while "at least one district court in the First Circuit has adopted the approach of the Fourth and Eleventh Circuits." *Id.* That intra-circuit division is itself a manifestation of the broader, unresolved national conflict.

This Court has identified conflict resolution as a "principal purpose" of certiorari. *Braxton v. United States*, 500 U.S. 344, 347 (1991). That rationale applies with particular force to jurisdictional questions, where inconsistent rules create systemic inefficiency, force parties to litigate threshold issues repeatedly, and enable forum-dependent outcomes on otherwise-identical facts.

B. The Majority and Minority Approaches

The Second, Seventh, Ninth, and Tenth Circuits hold that § 1965(b) supplies the nationwide-service authority for civil RICO actions. Under this approach, a federal court may exercise personal jurisdiction over an out-of-district civil RICO defendant only if (i) personal jurisdiction over at least one co-defendant is otherwise proper in the forum (an "anchor defendant" under § 1965(a) and Rule 4(k)(1)(A)), and (ii) the plaintiff demonstrates that "the ends of justice require" bringing the non-resident defendants before the court. *See Butcher's Union Local No. 498 v. SDC Inv., Inc.*, 788 F.2d 535, 538-39 (9th Cir. 1986); *Lisak v. Mercantile Bancorp, Inc.*, 834 F.2d 668, 671-72 (7th Cir. 1987); *PT United Can Co. v. Crown Cork & Seal Co.*, 138 F.3d 65, 70-72 (2d Cir. 1998); *Cory v. Aztec Steel Bldg., Inc.*, 468 F.3d 1226, 1229-33 (10th Cir. 2006). That approach reads § 1965's subsections as operating together: subsection (a) identifies where a civil RICO action may be instituted; subsection (b) authorizes summoning additional parties from other districts when "the ends of justice require" their presence. The structure gives independent work to both provisions and honors Congress's explicit "ends of justice" limitation.

The Fourth and Eleventh Circuits reject that approach. In their view, § 1965(d)—"All other process. . . may be served on any person in any judicial district in which such person resides, is found, has an agent, or transacts his affairs"—supplies the nationwide-service authority and requires only minimum contacts with the United States as a whole under the Fifth Amendment. *See Republic of Panama v. BCCI Holdings (Lux.) S.A.*, 119 F.3d 935, 942 (11th Cir. 1997); *ESAB Group, Inc. v. Centricut, Inc.*, 126 F.3d 617, 626 (4th Cir. 1997). Even among courts adopting the § 1965(b) view, there is a further conflict on what the "ends of justice" means. *Compare Butcher's Union*, 788 F.2d at 539 (no other district has personal jurisdiction over all alleged co-conspirators), *with Cory*, 468 F.3d at 1232 ("a flexible concept uniquely tailored to the facts of each case"). That subsidiary conflict compounds the uncertainty.

C. This Case Presents the § 1965 Question in Its Purest Form

This case is an ideal vehicle for four reasons.

First, DISH Network Corporation is a Colorado entity with no Puerto Rico contacts—no offices, employees, property, agents, or bank accounts. Petitioners' asserted basis for personal jurisdiction over DNC is exclusively 18 U.S.C. § 1965; the case therefore presents no alternative jurisdictional hooks that could render the § 1965 question advisory.

Second, the interpretive choice is outcome-determinative. If § 1965(b) controls, Petitioners must show that "the ends of justice" require DNC's presence; if § 1965(d) controls, only minimum contacts with the United States are required a showing easily satisfied. The District Court explicitly recognized that the question is outcome-determinative. Pet. App. 136a,146a, 155a, 157a, and 158a.

Third, the procedural posture demonstrates that ordinary appellate processes cannot resolve the conflict. The District Court acknowledged the split, declined to decide it, and dismissed on alternative grounds; the First Circuit summarily affirmed. Summary dispositions cannot settle a contested legal question. *See Mandel v. Bradley*, 432 U.S. 173, 176 (1977) (per curiam).

Fourth, civil RICO is ubiquitous; § 1965 is invoked in virtually every multi-defendant civil RICO case. The unresolved split drives forum-shopping and depletes judicial resources through repeat litigation of threshold questions. This Court's intervention is the only mechanism that can restore uniformity. The Decision Below Conflicts with Buckley, Burns, and Kalina on the Functional Scope of Absolute Prosecutorial Immunity.

II. The Decision Below Conflicts with Buckley, Burns, And Kalina on the Functional Scope of Absolute Prosecutorial Immunity.

The First Circuit summarily affirmed. That holding directly conflicts with this Court's functional-approach decisions in *Buckley v. Fitzsimmons*, 509 U.S. 259 (1993), *Burns v. Reed*, 500 U.S. 478 (1991), and *Kalina v. Fletcher*, 522 U.S. 118 (1997), each of which limits absolute immunity to advocacy "intimately associated with the judicial phase of the criminal process." *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976).

A. The Functional Approach to Absolute Immunity

This Court has repeatedly emphasized that absolute prosecutorial immunity is conferred—if at all—only by the function performed, not by status or title. *Imbler* established the baseline: a prosecutor is absolutely immune for "initiating a prosecution and .. . presenting the State's case." 424 U.S. at 431. But for "those aspects of the prosecutor's responsibility that cast him in the role of an administrator or investigative officer rather than that of advocate," immunity may only be qualified. *Id.* at 431 n.33. *Burns* held that a prosecutor is absolutely immune for appearing before a judge to present evidence in support of a motion for a search warrant but only qualifiedly immune for giving legal advice to police during an investigation. 500 U.S. at 491-96. "[A]dvising the police in the investigative phase" is not "so 'intimately associated with the judicial phase of the criminal process'" that it qualifies for absolute immunity. *Id.* at 493 (quoting *Imbler*, 424 U.S. at 430). *Buckley* extended the functional analysis to pre-indictment investigative conduct, holding that prosecutors are not absolutely immune for "fabricat[ing] evidence concerning an unsolved crime" during a preliminary investigation. 509 U.S. at 272-76. "When the functions of prosecutors and detectives are the same, . . . the immunity that protects them is also the same." *Id.* at 276. *Kalina* completed the framework: a prosecutor who personally attests to the truth of facts in a certification supporting a warrant application act as a witness, not an advocate, and receives only qualified immunity. 522 U.S. at 129-31.

Together, *Buckley*, *Burns*, and *Kalina* establish that (1) immunity is determined by function, not status; (2) advocacy is protected; and (3) investigative and administrative conduct—including giving legal advice to police, fabricating or evaluating evidence, personally attesting to factual statements, and directing pre-indictment investigations—receives only qualified immunity. *See also Van de Kamp v. Goldstein*, 555 U.S. 335, 343-44 (2009). The First Circuit itself applies this framework. *Penate v. Kaczmarek*, 928 F.3d 128, 136 (1st Cir. 2019); *Filler v. Kellett*, 859 F.3d 148 (1st Cir. 2017); *Knowlton v. Shaw*, 704 F.3d 1 (1st Cir. 2013).

B. The Allegations Describe Investigative and Administrative Conduct Outside the Scope of Absolute Immunity

The Second Amended Complaint alleges that U.S. Attorney Rodríguez-Vélez and AUSAs Capó-Iriarte and Cannon personally engaged in conduct that no permissible reading of *Buckley*, *Burns*, or *Kalina* shields.

Authorizing a warrantless post-execution re-entry. On August 29, 2019, Rodríguez-Vélez, Capó-Iriarte, and Cannon "instructed FBI Agents Lange and Pearson to return to Naicom's data center with DISH/NagraStar Defendants Smith, Gedeon, and Eichhorn." Second Am. Compl. ¶ 105. (Pet. App. 437a-438a) Authorizing a warrantless search is textbook investigative conduct—indistinguishable from the police-advice function in *Burns* and the pre-indictment investigation in *Buckley*.

Personally, vouching for or participating in preparation of affidavits containing materially false statements. Petitioners allege that the federal defendants "provided affidavits they knew to contain false and perjured information," Second Am. Compl. ¶ 20, including false statements about Naicom's NCTC/NRTC membership and fabricated claims about HBO and DirecTV licensing. *Id.* ¶¶ 101-02. (Pet. App. 388a, 436a). *Kalina* is directly on point: where a prosecutor "personally attested to the truth of the averments" in a warrant affidavit, "[t]estifying about facts is the function of the witness, not of the lawyer." 522 U.S. at 129-30. Only qualified immunity attaches.

Directing investigative steps and

coordinating with private competitors. Petitioners allege prosecutors personally directed federal agents and private corporate employees in the conduct of searches, interviews, and information extraction. Second Am. Compl. ¶¶ 105-14. (Pet. App. 437a-441a). Coordination with private parties for private financial advantage is not "intimately associated with the judicial phase of the criminal process" under any reading of *Imbler*. It has no connection to the initiation or presentation of criminal charges.

None of this conduct involves courtroom advocacy, in-court presentation, plea negotiations, witness preparation for trial, or any other function traditionally entitled to absolute immunity. No indictment ever issued. No grand-jury proceeding took place. No charges were filed. The entire alleged course of conduct was pre-indictment, investigative, and administrative.

C. The District Court's Reliance on Quinones-Pimentel v. Cannon Was Misplaced

The District Court leaned heavily on *Quinones-Pimentel v. Cannon*, 85 F.4th 63 (1st Cir. 2023)—a *Bivens*-extension case—for the proposition that prosecutors receive categorical absolute immunity at the Rule 12(b)(6) stage.

Pet. App. 115a-230a, 231a, 350a, 453a. That reliance is threefold error. *First*, *Quinones-Pimentel* resolved the claim on *Bivens*-extension grounds; the court's reference to prosecutors as a "new category" was dicta in support of the *Bivens* analysis—not a holding on the scope of immunity. *See Hornof v. United States*, 107 F.4th 46, 55 (1st Cir. 2024) (distinguishing *Quinones-Pimentel*). *Second*, *Quinones-Pimentel* did not conduct the functional analysis *Buckley*, *Burns*, and *Kalina* require. *Third*, at the Rule 12(b)(6) stage, this Court's precedent requires courts to accept well-pleaded allegations of investigative or administrative conduct as true and to apply the functional analysis on the face of the pleadings. *Justiniano v. Walker*, 986 F.3d 11, 16-19 (1st Cir. 2021). The District Court inverted this methodology: it drew every inference against Petitioners, recharacterized investigative conduct as prosecutorial, and applied a categorical immunity rule that *Buckley*, *Burns*, and *Kalina* foreclose.

III. The Decision Below Conflicts with Michigan v. Tyler and Bilida on Post-Warrant Re-Entry and the Scope of the Statutory Safe Harbors

The District Court dismissed Counts III-VI (CFAA, SCA, DMCA, DTSA) on the ground that the August 29, 2019, warrantless re-entry fell within each statute's "authorized law enforcement activity" safe harbor. (Pet. App. 89a-93a., 186a-190a) The First Circuit summarily affirmed. That holding squarely conflicts with *Michigan v. Tyler*, 436 U.S. 499 (1978), and *Bilida v. McLeod*, 211 F.3d 166 (1st Cir. 2000).

A. The August 29 Re-Entry Was a New Search Requiring a New Warrant

A warrant's authority is finite. Once officers' complete execution and depart, any subsequent re-entry to search or seize evidence constitutes a new search requiring a new warrant. *Tyler* held that "the constitutionality of an entry to search . . . depend[s] on whether it was a continuation of an earlier entry or a fresh one. . .. A warrantless search . . . is illegal unless it comes within one of the 'few specifically established and well-delineated exceptions.'" 436 U.S. at 511 (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)). The First Circuit applied *Tyler* in *Bilida*: "Where officials have left the scene after an initial lawful entry, . . . we see no basis . . . for any general rule that officials can then re-enter without a warrant." 211 F.3d at 171-72.

The pleaded facts establish that the August 29 re-entry was not a continuation of the August 27 search but a separate, warrantless intrusion. The August 27 search was fully executed and concluded that same day. Second Am. Compl. ¶¶ 21, 103-04. (Pet. App. 389a-436a-437a.) Two days later, federal agents and private DISH/NagraStar engineers returned using keys taken during the August 27 search, performed password resets, installed pen drives, and downloaded data—including from servers belonging to D&V IP Holdings, Paylink, and Kiaras, entities unrelated to any piracy investigation. *Id.* ¶¶ 22, 105-08. (Pet. App. 388a-437a-438a.) Agent Lange's in-scene representation that "the search warrants gave him ten days to come in and out" was simply false. *Id.* ¶ 111. The August 29 re-entry was therefore a "new search" within the meaning of *Tyler* and *Bilida*, requiring a new warrant that did not exist.

B. Statutory Safe Harbors Cannot Exceed Constitutional Authority

Each of the four federal statutes invoked by the defense expressly conditions its law-enforcement safe harbor on "lawfully authorized investigative activity." 18 U.S.C. § 1030(f) (CFAA); 18 U.S.C. § 2707(e) (SCA); 17 U.S.C. § 1201(e) (DMCA); 18 U.S.C. § 1833(a)(1) (DTSA). Lawful authorization is the *sine qua non* of each safe harbor. And lawful authorization cannot exceed what the Fourth Amendment permits. If the

Fourth Amendment requires a new warrant for a new search—as *Tyler* and *Bilida* hold—then the August 29 re-entry was not "lawfully authorized investigative activity." The safe harbors therefore do not apply and Counts III-VI were adequately pleaded.

The District Court's contrary construction expands "lawfully authorized investigative activity" into blanket immunity for any federal-agent-involved conduct, regardless of whether the conduct comports with the Fourth Amendment. That construction converts narrow statutory exceptions into *de facto* law-enforcement immunity—a holding this Court has never endorsed and that Congress did not author. Petitioners' Rule 28(j) letter, filed November 3, 2025, explicitly preserved this statutory-construction issue. (Pet. App. 293a-294a.) The First Circuit addressed none of it.

C. The Digital-Era Re-Entry Problem Is Nationally Important

Modern investigations involve cloud storage, remote access, seized credentials, password resets, and persistent private-actor involvement. The traditional rule of *Tyler*—that a warrant's authority expires upon execution—takes on new dimensions when federal agents retain keys or credentials after completing an initial search. The District

Court's approach would permit federal agents to hold seized credentials indefinitely and return at will to private data facilities without further judicial authorization, so long as they could point to a prior warrant for some related subject matter. That holding collapses the Fourth Amendment's structural protection of private digital property.

The problem is compounded by the private-actor component. Under 18 U.S.C. § 3105, civilian assistance is permitted only (i) "in aid of the officer," (ii) "on his requiring it," and (iii) while the officer is "present and acting in [the warrant's] execution." *See also Wilson v. Layne*, 526 U.S. 603, 614 (1999) ("[P]olice action in execution of a warrant must be related to the objectives of the authorized intrusion."). Embedding commercial competitors of the search target inside the warrant execution—and permitting those competitors to access proprietary source code two days later without a new warrant—exceeds § 3105's authorization and warrants this Court's clarification, especially as federal investigations increasingly rely on private technical assistance from incumbent industry participants.

IV. The Decision Below Misapplied Twombly, Iqbal, and Salinas at the Pleading Stage.

The District Court dismissed the RICO and statutory claims because, in its view, the Second Amended Complaint's 202 paragraphs of allegations were merely "consistent with" an "obvious alternative explanation"—a "legitimate law enforcement investigation." Pet. App. 260a–261a. That reasoning inverts *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), by treating plausibility as a probability test and crediting the defendants' preferred inference over the pleaded facts. The court compounded that error in two independent respects: it transplanted into federal RICO conspiracy a state-law "motive" requirement this Court has never imposed, and it weighed competing inferences as "equally plausible"—a credibility determination foreclosed by *Salinas v. United States*, 522 U.S. 52 (1997), and reserved for the factfinder.

A. The "Obvious Alternative Explanation" Was Not Obvious on the Pleaded Facts

Twombly and *Iqbal* require pleadings to contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face. *Iqbal*, 556 U.S. at 678. Plausibility is "context-specific" and informed by "judicial experience and common sense." *Id.* at 679. But plausibility is not probability. *Id.* at 678. *Iqbal* acknowledged that allegations giving rise to an "obvious alternative explanation" may fail plausibility, 556 U.S. at 682, but that concept is not a license to dismiss whenever a defendant articulates a competing inference. Dismissal depends on "the strength and obviousness of the alternative explanation in light of the pleaded facts." *Hughes v. Northwestern Univ.*, 63 F.4th 615, 629 (7th Cir. 2023). Where pleaded facts "support a reasonable inference of misconduct," competing inferences "do not defeat plausibility unless at least one is an 'obvious alternative explanation.'" *N.J. Carpenters Health Fund v. Royal Bank of Scotland Grp., PLC*, 709 F.3d 109, 121 (2d Cir. 2013).

The doctrine has force only where the pleaded conduct is, on its face, as consistent with lawful behavior as with wrongdoing—and where the complaint supplies no further fact tilting toward illegality. In *Twombly*, parallel pricing by competing carriers was "more likely explained by[] lawful, unchoreographed free-market behavior." 550 U.S. at 567. In *Iqbal*, the post-September 11 detention of Arab Muslim men had an obvious explanation in the Government's legitimate, nondiscriminatory interest in investigating the attacks. 556 U.S. at 682. In each case the innocent explanation was obvious because nothing in the complaint affirmatively impugned the lawfulness of the conduct. This case is the opposite. The Second Amended Complaint does not rest on conduct equally consistent with legality; it pleads affirmative indicia of *il*legality—false and perjured warrant affidavits, a warrantless re-entry, and the embedding of the target's competitor in the search. Those allegations do not merely fail to exclude an innocent explanation; they supply the "factual content" that makes the culpable inference the reasonable one. *Iqbal*, 556 U.S. at 678.

B. The Pleaded Facts Refute the Innocent Narrative

The District Court treated the asserted "legitimate law enforcement investigation" narrative as automatically "obvious" on the pleadings. Pet. App. 260a. It was not. Three pleaded facts—taken as true, as Rule 12(b)(6) commands—render the innocent explanation not obvious but implausible.

First, DISH/NagraStar engineers were embedded with federal agents during both the August 27 execution and the August 29 re-entry, acting "as federal agents." Second Am. Compl. ¶¶ 21, 104, 112. A legitimate criminal investigation does not deputize the target's direct competitor to conduct the search. (Pet. App. 389a-437a-441a.)

Second, the federal agents verified on

August 27 that Naicom held valid distribution contracts, *id.* ¶ 103, yet authorized the warrantless August 29 re-entry two days later, *id.* ¶ 105. (Pet. App. 436-437a). The innocent explanation cannot account for why agents who had confirmed Naicom's legitimacy returned without a new warrant to harvest additional data, including from unrelated entities. And because the August 29 re-entry proceeded with no warrant at all, the presumption of regularity that attaches to a warrant's good-faith execution, see *United States v. Leon*, 468 U.S. 897, 922 (1984), supplies no innocent explanation here: there was no warrant to which good faith could attach.

Third, no indictment, criminal charge, grand-jury subpoena, or administrative proceeding has ever issued. Second Am. Compl. ¶¶ 118–22. Compounding the implausibility, the United States did not oppose Petitioners' Rule 41(g) motion and agreed to return all seized property. *Id.* ¶¶ 115–17. A legitimate investigation does not ordinarily waive opposition to the return of the very evidence it just seized. (Pet. App. 442a-443a.). These facts supply precisely the "factual content" that differentiates a culpable inference from an innocent one. *Iqbal*, 556 U.S. at 678. The "legitimate investigation" narrative cannot be treated as an "obvious alternative explanation" defeating plausibility on the face of a 202-paragraph pleading.

C. The Inference of a Corrupt Federal Agent Is Not Fanciful—It Is an Adjudicated Reality in This Circuit—and Its Truth Is a Question for the Factfinder

The dismissal rests on an unstated premise: that a federal agent's participation in the challenged conduct is itself a badge of legitimacy, rendering the inference of a corrupt public-private enterprise too implausible to credit. This Circuit's precedent forecloses that premise. In *United States v. Connolly*, 341 F.3d 16 (1st Cir. 2003), the court sustained a RICO conviction of an FBI agent who served as the "information officer" of an association-in-fact enterprise—an "intelligence conduit from law enforcement" who corrupted official process to advance the criminal interests of private actors. *Id.* at 27–28. The enterprise was "separate and apart" from the legitimate institution within which the agent operated. *Id.* at 24 (citing *United States v. Turkette*, 452 U.S. 576, 583 (1981)). *Connolly* thus establishes that federal law-enforcement participation is not antithetical to a RICO enterprise; it is among the settings in which such enterprises have been proven to function.

The allegations here track *Connolly*'s paradigm. The Second Amended Complaint alleges that named federal agents embedded Naicom's direct competitor in the warrant execution to act "as federal agents," Second Am. Compl. ¶¶ 21, 104, 112; (Pet. App. 389a-437a-441a.) conducted a warrantless re-entry justified by an agent's false representation that the warrant authorized "ten days" of unrestricted access, *id.* ¶ 111; and pressured Naicom's principal to sign a document falsely admitting a "pirate operation," *id.* ¶¶ 109–10. (Pet. App. 439a-440a.)If conduct of this character, once proven, can constitute a RICO enterprise under *Connolly*, then the well-pleaded allegation of that same conduct states a claim. The inference Petitioners ask a court to draw is not the speculative leap the District Court supposed; it is the very inference this Circuit has sustained on a full record.

That distinction—between what must ultimately be *proven* and what need only be *pleaded*—exposes the core error. In *Connolly*, the existence of the corrupt-agent enterprise turned on the credibility of cooperating witnesses and was resolved by the jury, with the reviewing court deferring to that assessment and reversing only if the verdict were "irrational." 341 F.3d at 22. Whether the federal defendants here conducted a lawful investigation or corrupted it to serve a private competitor is the identical species of factual, credibility-laden question. At the Rule 12(b)(6) stage, that question is not the court's to answer: the court must accept the pleaded facts as true and draw competing reasonable inferences in the pleader's favor, leaving the ultimate choice among them to summary judgment and trial. *Ocasio-Hernández v. Fortuño-Burset*, 640 F.3d 1, 10–13 (1st Cir. 2011). The Government's rejoinder—that *Connolly* rested on trial evidence absent here—proves the point: it demands at the threshold the very proof that *Twombly* says a plaintiff need not muster, conflating the burden of proof with the burden of pleading. *Twombly*, 550 U.S. at 556.

D. The District Court Imposed a Motive-Pleading Requirement Foreclosed by *Salinas* and Weighed Competing Inferences in a Manner Reserved to the Jury.

Beyond the "obvious alternative explanation" error, the District Court committed a separate and independently reversible mistake: it demanded that Petitioners plead a court-recognizable motive for the federal defendants to conspire with private competitors and then weighed competing inferences as a matter of comparative likelihood. That analysis cannot be reconciled with *Salinas v. United States*, 522 U.S. 52 (1997), the elements of RICO conspiracy under 18 U.S.C. § 1962(d), or the pleading-stage allocation of inferences this Court has reaffirmed since *Twombly*.

1. The District Court Required Pleading of Federal Motive.

The order dismissing the United States and federal-official defendants states, in terms admitting no ambiguity, that the allegations "offer little detail and no motive for the Federal Defendants to conspire with one private company against another." (Pet. App. 91a-92a, 239a, 262a, 278a, 279a)(emphasis added). The companion ruling on the USAO Defendants reinforces the point: "There is no suggestion of why the USAO Defendants would agree to lead a criminal conspiracy to defraud Plaintiffs or how they came together with the numerous other defendants to organize the conspiracy." Pet. App. 239a (emphasis added). The court treated the absence of a pleaded motive as fatal, concluding that "it would be equally plausible that the USAO Defendants were relying in good faith on bad information.")(Pet. App. 239a) (emphasis added). That framework imposes a pleading element this Court has never required.

2. Salinas and Ocasio Foreclose a Motive-Pleading Requirement.

A civil RICO conspiracy claim under 18 U.S.C. § 1962(d) requires only that the defendant "knowingly agreed to facilitate a scheme which, if completed, would constitute a RICO violation." *Salinas*, 522 U.S. at 63–65. *Salinas* held that, although a conspirator must intend to further an endeavor that would satisfy the elements of the substantive offense, "it suffices that he adopts the goal of furthering or facilitating the criminal endeavor." *Id.* at 65 (emphasis added). The Court expressly rejected the contention that each conspirator must personally commit, agree to commit, or even be capable of committing a predicate offense. *Id.* at 63–64. *Ocasio v. United States*, 578 U.S. 282, 287–88 (2016), reaffirmed that principle. The agreement to facilitate is the gravamen of RICO conspiracy; motive is not an element.

The First Circuit has applied this rule in the precise context implicated here—alleged collusion between public officials and private commercial actors. *United States v. Cianci*, 378 F.3d 71, 90 (1st Cir. 2004) ("the existence of such an agreement need not be express but may be inferred from the defendants' words and actions and the interdependence of activities and persons involved"). By demanding that Petitioners plead a court-recognizable explanation for why federal prosecutors and agents would assist

DISH/NagraStar's misappropriation of Naicom's DISME source code, the District Court engrafted onto § 1962(d) a pleading element neither Congress nor this Court has authorized. The ruling, if left to stand, would functionally immunize the very type of hybrid public-private enterprise this Court contemplated in *Boyle v. United States*, 556 U.S. 938, 946 (2009).

3. The Court's "Equally Plausible" Analysis Applied a Forbidden Probability Test.

The District Court did not merely find Petitioners' inferences thin; it compared two narratives—collusion versus good-faith reliance on bad information—and pronounced them "equally plausible" before adopting the defense narrative as more "obvious." Pet. App. 291a. That is the analysis this Court has prohibited. "The plausibility standard is not akin to a 'probability requirement.'" *Iqbal*, 556 U.S. at 678. A complaint need not show that the plaintiff's theory is more likely than the defendant's; it need only allege "enough fact to raise a reasonable expectation that discovery will reveal evidence" of the wrong alleged. *Twombly*, 550 U.S. at 556. Where competing inferences are equally plausible on the pleadings, the plaintiff's inference governs. *Sepúlveda-Villarini v. Dep't of Educ.*, 628 F.3d

25, 30 (1st Cir. 2010) (Souter, J., sitting by designation). A holding that the defense narrative was "equally plausible" was therefore not a ground for dismissal but a reason to deny it; the court's contrary course usurped the factfinder's function. See supra-Part IV.C.

4. The Error Has Sweeping Consequences.

The decision below establishes—and the First Circuit's summary affirmance entrenches—a rule that no public-private RICO conspiracy claim can survive Rule 12(b)(6) absent a smoking-gun allegation explaining why a federal official would join a criminal enterprise. That rule cannot be squared with *Salinas*'s holding that a conspirator need only "adopt the goal of furthering or facilitating the criminal endeavor," 522 U.S. at 65; with *Ocasio*, 578 U.S. at 287–88; or with this Court's repeated admonition that *Twombly* and *Iqbal* impose a plausibility—not a probability—threshold. The consequence is a de facto heightened pleading standard for the class of cases in which discovery is most necessary, because the wrongful agreement will rarely be admitted on the face of a complaint and must be inferred from the "words and actions and . . . interdependence of activities" of the alleged conspirators. *Cianci*, 378 F.3d at 90. Civil RICO is an important federal cause of action; while the First Circuit has cautioned that it is an "unusually potent weapon" warranting careful scrutiny at the pleading stage, *Miranda v. Ponce Fed. Bank*, 948 F.2d 41, 44 (1st Cir. 1991), that caution cannot justify abandonment of the *Twombly/Iqbal/Salinas* framework. Pleading caution is not pleading capitulation. This Court should grant certiorari to restore the pleading-stage allocation of inferences that *Twombly*, *Iqbal*, and *Salinas* require.

V. The First Circuit's Unexplained Summary Affirmance Forecloses Meaningful Review.

The First Circuit affirmed the dismissal of seven federal statutory and constitutional claims, asserted against twenty-two defendants and developed across a 202-paragraph Second Amended Complaint, in a single declarative sentence. Pet. App. 1a-3a. The panel stated only that, "[a]fter de novo review of the briefs and record below, we affirm the dismissal of plaintiffs-appellants' claims for the reasons set forth in the district court's well-reasoned orders," citing 1st Cir. R. 27.0. *Id.* It did not identify which of the four district-court orders—comprising approximately 296 pages of conflicting and overlapping reasoning—it adopted as to which claim or which defendant. It did not address the § 1965 circuit split that the district court itself had acknowledged but expressly declined to resolve. (Pet. App. 185a-188a.) It did not address the functional-immunity question, the *Tyler*/*Bilida* post-warrant statutory-construction issue that Petitioners' Rule 28(j) letter squarely preserved, or the *Twombly*/*Iqbal* allocation of inferences. When Petitioners moved the panel to withdraw its judgment and issue an opinion identifying the basis for affirmance, the panel denied the motion without explanation. Pet. App. 4a-5a. When Petitioners then sought panel rehearing and rehearing en banc, the First Circuit denied that too—again without a word of reasoning. Pet. App. 6a-8a.

The consequence is a judgment that affirms without disclosing what was affirmed. That posture is incompatible with this Court's review function, and it is especially intolerable in a multi-statute, multi-defendant case in which each claim presents distinct elements and each defense a distinct doctrinal framework.

A. An Unexplained Summary Affirmance Deprives This Court of the Basis It Needs to Exercise Its Review Function

This Court has long recognized that the absence of any articulated rationale can itself frustrate meaningful higher review. In *Taylor v. McKeithen*, 407 U.S. 191 (1972) (per curiam), the court of appeals reversed a district court "without opinion." *Id.* at 191. This Court vacated and remanded for the express reason that the record did "not fully inform" it of "the precise nature of the litigation" and because it had not been afforded "the benefit of the insight of the Court of Appeals." *Id.* at 194 & n.4. The Court declined to guess at the panel's reasoning, holding that the proper course—where a summary disposition leaves the basis for judgment opaque in a case presenting important federal questions—is to return the matter for an explication of reasons. *Id.*

To be sure, footnote 4 of *Taylor* observes that "the courts of appeals should have wide latitude in their decisions of whether or how to write opinions." *Id.* at 194 n.4. But that observation, by its terms, addresses a court of appeals' ordinary discretion to manage its docket in the run of cases. It does not license an unexplained disposition in a case that, like this one, presents an acknowledged and unresolved circuit split, multiple asserted conflicts with this Court's precedents, and a preserved statutory-construction question of national consequence. *Taylor* itself drew that line: notwithstanding the latitude language, the Court vacated *because* the unexplained disposition obscured important federal questions. The latitude to decline to write in the ordinary case is not a license to leave consequential federal questions silently entrenched.

The same concern animates this Court's treatment of the *precedential* uncertainty that summary dispositions generate. In *Mandel v. Bradley*, 432 U.S. 173 (1977) (per curiam), the Court explained that a summary disposition endorses "only the result," not the reasoning, of the judgment it leaves undisturbed, and that such a disposition reaches no further than "the precise issues presented and necessarily decided." *Id.* at 176. Justice White, concurring, observed that summary dispositions "vividly expose[] the ambiguity inherent in" such actions and underscore "the nature of the detailed analysis that is essential" before any reasoned conclusion about their effect can be drawn. *Id.* at 180 (White, J., concurring). This Court reaffirmed the point in *Anderson v. Celebrezze*, 460 U.S. 780 (1983), explaining that "the precedential effect of a summary affirmance extends no further than 'the precise issues presented and necessarily decided by those actions,'" and that "no more may be read into" such a disposition "than was essential to sustain that judgment." *Id.* at 784 n.5 (citing *Illinois State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 182-183 (1979); *Mandel*, 432 U.S. at 176; and *Fusari v. Steinberg*, 419 U.S. 379, 391-392 (1975) (Burger, C.J., concurring)).

Taken together, these authorities establish a principle directly applicable here: when a court of appeals affirms in a single sentence and twice refuses to explain itself, this Court cannot determine what the court below actually held. It cannot determine whether the panel applied the majority or the minority construction of § 1965; whether it extended absolute immunity on functional grounds or on the circuit-specific *Quinones-Pimentel* rationale; whether it treated the August 29 re-entry as lawfully authorized under the statutory safe harbors, as protected by a good-faith *Franks* framework that Petitioners expressly disclaimed, or as a *Tyler/Bilida* problem it never reached; or whether it dismissed for implausibility under *Twombly* and *Iqbal* or on some altogether different ground. Each candidate rationale carries materially different certiorari worthy implications, and the panel' silence make it impossible to know which—if any—was applied.

B. The Defect Is Not Curable Below and Independently Confirms the Need for This Court's Review

The unexplained affirmance is not merely an additional grievance layered atop the four preceding Questions. It is the reason those Questions cannot be cleaned up in the courts below and require this Court's intervention now.

The district court's four orders do not speak with one voice. As to DISH Network Corporation, the court acknowledged the § 1965 circuit split and *declined to resolve it*. Pet. App. 186a. The First Circuit's adoption of "the reasons set forth in the district court's well-reasoned orders," Pet. App. 1a, therefore adopts, as to that defendant, a non-resolution of the very question on which the circuits are intractably divided. A litigant cannot seek further review of a holding that does not exist, and this Court cannot evaluate a split-deepening (or split-resolving) rationale that the court of appeals never articulated. The summary affirmance thus does not merely withhold reasoning; as to the lead jurisdictional question, it ratifies the absence of reasoning. That structural defect compounds the institutional concern. Petitioners pressed each of the foregoing questions through full briefing, oral argument, a Rule 28(j) letter, a motion for an explanatory opinion, and a petition for rehearing en banc. At every stage, the First Circuit declined to articulate a single ground of decision. The result is that seven federal claims against twenty-two defendants—including the United States itself—were extinguished without one sentence of appellate analysis, and without any record from which a reviewing court could test the soundness of the disposition. Where, as here, recurring federal questions of exceptional importance are at stake, an unreasoned disposition does not narrow the controversy; it conceals it. This Court's supervisory authority over the federal courts of appeals warrants intervention to ensure that questions of this magnitude are resolved on stated grounds, not silently entrenched through summary disposition.

CONCLUSION

The petition for a writ of certiorari should be granted. The questions presented are of exceptional national importance. The circuits are intractably divided on the operation of 18 U.S.C. § 1965. The decision below conflicts with this Court's controlling precedents on functional prosecutorial immunity (*Buckley*, *Burns*, *Kalina*); on the temporal scope of warrant authority (*Tyler*, *Bilida*); and on the pleading-stage allocation of inferences and the elements of RICO conspiracy (*Twombly*, *Iqbal*, *Salinas*, *Ocasio*). The First Circuit's unexplained summary affirmance has deprived this Court of any reasoned appellate ruling to review. The matter is fully presented, the record is complete, and the case is a clean vehicle for resolving each of the questions presented.

Respectfully submitted.

/s/EDWIN PRADO-GALARZA
EDWIN PRADO-GALARZA
Counsel of Record
PRADO, NÚÑEZ & ASSOCIATES, P.S.C.403 Del
Parque Street, 8th Floor
San Juan, Puerto Rico 00912
Telephone: (787) 977-1411
pradolaw10@gmail.com

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