No. 25___

In The

Supreme Court of the United States

DIMETRI ALEXANDER SMITH,
ALSO KNOWN AS METRI,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

In a prosecution for racketeering related offenses, does the enterprise structure need to be distinct from that inherent in the racketeering activity alleged?

RELATED PROCEEDINGS

District Court:
United States v. Najawun Marcus Quinn, Darion Daquan Gardner, Austin Zachary Ruiz, Diemtir Alexander Smith, and Olajuwan Hakeem Culbreath, 3:21-cr-00091

8th Circuit Court of Appeals:
United States v. Najawun Marcus Quinn, 23-2842
United States v. Dimetri Alexander Smith, 23-2885

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OPINIONS BELOW

The opinion of the 8th Circuit court of appeals, a published decision, is reported at 131 F.4th 846.

JURISDICTION

The opinion of the appeals court was entered on March 19, 2025. A petition for rehearing was denied on April 29, 2025. A petition for writ of certiorari is thus timely to this court filed on or before July 28, 2025. The Court's jurisdiction is invoked pursuant to 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

18 USC § 1959 defines enterprise as:

(2) "enterprise" includes any partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity, which is engaged in, or the activities of which affect, interstate or foreign commerce.

18 USC § 1961 defines enterprise as

"(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

STATEMENT OF THE CASE

Background

This case is one of many percolating throughout the federal courts that revolve around the Department of Justice's pointing of RICO statutes at "street gangs", which in many cases, and certainly this one, are devoid of much, if anything, in the way of structure. The street gang in question here was called, among other things, the Savage Life Boys (SLB) and it was largely men who grew up together in the same neighborhoods.

Like many similar cases, the sole real issue in this case was whether or not an enterprise existed. In fact, at trial, undersigned counsel repeatedly advised the jury that it was indeed his client engaged in the violent activities and shootings.

The evidence at trial included confirmation from alleged members that there was no initiation and no rules. One witness contrasted their experience in SLB with other gangs, such as the Gangsters Disciples, because they were part of both. The acknowledgement that the Gangsters Disciples had literature, rules, a code of conduct and other indicia of an organization was contrasted repeatedly with any sort of similar situation in SLB.

Multiple cooperating witnesses who had plead guilty to offenses relating to the SLB clarified that point. The evidence also showed that all of the activities were sporadic and unplanned; crimes of convenience.

The evidence was that a person who calls themselves savage life can do whatever they want. One SLB member indicated that in 27 years no one had ever ordered him to do anything, and he'd never ordered anyone else to do anything.

The racketeering acts themselves in this case where all simple violence; there was no complexity to any activity they engaged in.

The defendants requested an instruction that included the following element in the definition of the word enterprise "a structure distinct from that inherent in the racketeering activity alleged."

The request for that instruction was denied. Because of the simple and brutish nature of the racketeering activities and the complete lack of structure of the enterprise, a reasonable juror could have concluded that the structure of the enterprise was not distinct from that inherent in the activities engaged in.

Procedural History

The district court held jurisdiction pursuant to 28 USC 3231. The federal court of appeals of the Eighth Circuit had jurisdiction pursuant to 28 USC 1291.

REASONS FOR GRANTING THE PETITION

This Court should grant review to define the relationship between an enterprise and racketeering acts

Proving that there is an "enterprise" is an element of numerous statutes imposing criminal liability. In some cases, such as the case here, the underlying acts are not in any reasonable question and the only question the jury needs to deliberate upon is whether or not there was an enterprise. In case after case, the argument in the trial court and on appeal is whether there was an enterprise, or whether there were just criminal acts. With the recent emphasis the Department of Justice has placed on qualifying so-called "Street Gangs" as an enterprise for racketeering purposes, that debate becomes largely about the interaction between structure of the enterprise and the alleged racketeering acts.

While this Court has provided guidance, courts continue to struggle with the definition of the word. Not only are there circuit splits, there are splits within districts and, in at least one case where thirteen defendants were divided into multiple trials, splits on the definition within different trials on the same indictment.

That uncertainty harms all sides of the equation. Prosecutors, rightly wary of overcharging, may not proceed on all the cases that they should because they err on the side of caution. Defense attorneys may advise defendants to go to trial and lose critical deductions for acceptance of responsibility to argue

about the issue. When cases do go to trial, trial courts and their staff must expend weeks or months of trial time on prosecutors plodding through sprawling indictments, for the entire case to turn on a word or two in instructions defining enterprise that, in any conviction, is argued on appeal for years.

If this court provides a full definition of the word all of those harms cease; prosecutors can pursue—or not pursue—cases based on a concrete definition, defense counsel can properly advise their clients about the definition they face, and trial courts will have a definition they can deploy without appellate attorneys and courts second guessing definitions of enterprise, instead all but leaving those issues to future *Anders* briefs instead of oral arguments and published opinions.

In this case, the defendants asked for instructions based on 8th Circuit precedent in *Crenshaw*, an 8th Circuit case that has not been overturned. In line with that, defendant asked for a three-element definition: 1) a common purpose shared by the individual associates 2) continuity of structure and personnel; and 3) a structure distinct from that inherent in the racketeering activity alleged. That definition is the definition from the 8th Circuit in *Crenshaw*. *United States v. Crenshaw*, 359 F.3d 977, 991 (8th Cir. 2004). The trial court declined to give the third element, and the 8th Circuit affirmed. *United States v. Quinn*, 131 F.4th 846, 856 (8th Cir. 2025)(citing *Boyle v. United States*, 556 U.S. 938, 947 (2009))

While not carrying the force of law, the model jury instructions across the federal courts demonstrate the inconsistency in crafting an instruction on this definition.

In the Third Circuit, an enterprise has four elements 1) purpose and longevity sufficient for the members of the group to pursue its purpose, 2) an ongoing organization, formal or informal, with some sort of framework for carrying our its objectives, 3) a relationship among the members of the group and that the members of the group functioned as a continuing unit to achieve a common purpose, and 4)the enterprise existed separate and apart from the alleged pattern of racketeering activity. *Third Circuit Model Jury Instructions* (*Criminal)* 6.18.1962C-2 (2024)

In the Seventh Circuit, the instructions provide no elements at all and, instead, merely suggest that the jury "may consider whether it has an ongoing organization or structure, either formal or informal, and whether the various members of the group functioned as a continuing unit." *The William J. Bauer Pattern Criminal Jury Instructions of the Seventh Circuit* p. 827 (2023)

In the Eighth Circuit, where this case arose, instructions indicate that persons must have joined for the purpose of engaging in a common course of conduct, having a common purpose, and function as a continuing unit, and that the association had a structure distinct from that necessary to conduct the

pattern of racketeering activity. *Manual of Model Criminal Jury Instructions for the District Courts of the Eighth Circuit* 6.18.1962D (2023)

The Ninth Circuit has three elements: 1) associated for a common purpose of engaging in a course of conduct, 2) that the association of these people was an ongoing formal or informal organization and 3) the group was engaged in or had an effect upon interstate or foreign commerce. *Manual of Model Criminal Jury Instructions for the District Couts of the Ninth Circuit* 18.9 (2022)

The Tenth Circuit model instructions indicate that the group of people must have 1) a common purpose; and 2) an ongoing organization, either formal or informal; and 3) personnel who function as a continuing unit. *10th Circuit Criminal Pattern Jury Instructions* 2.74.3 (2025).

The Eleventh Circuit copies the language of the statute, and indicates that the enterprise must be separate and apart from the pattern of racketeering activity in which the defendant allegedly engaged. The enterprise must be proven to have been an ongoing organization, formal or informal, that functioned as a continuing unit. *Eleventh Circuit Pattern Jury Instructions, Criminal Cases* O75.1 (2024) The instructions are similar in the Fifth Circuit. *5th Circuit Pattern Jury Instructions (Criminal Cases)* 2.79 (2024).

The model jury instructions are split; the 3rd Circuit has a four-element test that requires the enterprise be separate and apart from the racketeering; the 11th

Circuit also contains 'separate and apart' language. The 7th Circuit provides no elements and requires no separation. The 8th Circuit requires a structure distinct from the racketeering activity. In the 9th Circuit and 10th Circuit there is a three-element test, with no mention of separation.

Model Jury Instructions don't care the force of law, but these discrepancies play out and exist in jury instructions given in district courts in cases wholly within the Southern District of Iowa, as well. In this case, the "distinct" instruction wasn't given. However, in another RICO case undersigned was counsel for, the element "an ascertainable structure distinct from that inherent in the pattern of racketeering activity" was given over the governments objection. *United States v. White et al.,* 3:23-cr-00043, Final Jury Instructions as to Don Christopher White, Jr, Raheem Jacques Houston, Deaguise Ramont Hall, Devell Carl Lewis, and Simmeon Terrell Hall., R.Doc 615 (S.D. Ia.)(2024), 49a. After giving the instruction, the court corrected itself post-trial and indicated that it *shouldn't* have given that instruction and, in two later trials under the same indictment, did not give that part of the instruction to other defendants on the same indictment. *United States v. White et al.*, 3:23-cr-00043, Final Jury Instructions as to Kylea Dapri Cartwright Jr., R.Doc 1141 (S.D. Ia.)(2025) 51a . That is to say, the confusion caused by the definition of enterprise does not just lead to a split where defendants in different circuits get different definitions—but defendants defending against the same indictment get different instructions on different days in the same court.

More recently, in a well-covered trial in the Southern District of New York where the jury seemingly did not find the existence of an enterprise based upon the not guilty verdict, the enterprise instruction was wholly different from all of the above suggestions, and different than any of the holdings discussed below. That court required that the "enterprise must be formally or practically separate from the defendant himself." *United States v. Sean Combs*, 1:24-cr-00542, Jury Charge, R. Doc 424 (S.D. NY)(2025) 55a.

The courts of appeal themselves also have differences in how the *Boyle* decision has affected their defining of enterprise.

The 1st Circuit explicitly denies the need for decision making, despite citing to the quote in *Boyle* that makes it clear that decisions are needed, but they need not be made in a hierarchical way. *United States v. Rodriguez-Torres*, 939 F.3d 16, 24 (1st Cir. 2019)("The group need not have some decision making framework or mechanism for controlling the members. *See Boyle v. United States*, 556 U.S. 938, 948 (holding that a RICO enterprise 'need not have a hierarchical structure or a 'chain of command'; decisions may be made on an ad hoc basis and by any number of methods — by majority vote, consensus, a show of strength, *etc.*'). Instead the group must have '[1] a purpose, [2] relationships among those associated with the enterprise, and [3] longevity sufficient to permit these associates to pursue the enterprise's purpose.'")

The 10th Circuit has also decided that there is no longer a need for a means of decision making post-

Boyle. *United States v. Hutchinson*, 573 F.3d 1011, 1021 (10th Cir. 2009) ("Simply put, after *Boyle,* an association-in-fact enterprise need have no formal hierarchy or means for decision-making, and no purpose or economic significance beyond or independent of the group's pattern of racketeering activity.") That contradicts *Boyle*, which does not say that there is no need for means for decision making, it actually implies that decisions must be made, but they can be made in a number of less than sophisticated ways. *Boyle* at 948 ("decisions may be made on an ad hoc basis and by any number of methods—by majority vote, consensus, a show of strength, etc.") One presumes this Court would not have defined how decisions might be made were decision making not a necessary part of the enterprise.

The 11th Circuit has concluded that enterprise requires only three elements. *Al-Rayes v. Willingham*, 914 F.3d 1302, 1307 (11th Cir. 2019)("In keeping with that general definition, an association-in-fact enterprise may be "formal or informal," and requires only "three 'structural features': (1) a 'purpose,' (2) 'relationships among those associated with the enterprise,' and (3) 'longevity sufficient to permit these associates to pursue the enterprise's purpose.' ") That court interpreted *Boyle* to make an enterprise out of a married couple.

The 3rd Circuit takes the same position as the 10th and 11th Circuits. *United States v. Bergrin*, 650 F.3d 257, 269 (3d Cir. 2011), *as amended* (Apr. 20, 2011)("The indictment also alleges facts that satisfy the *Boyle* requirements: purpose, relationships

among the members (though, again, relatively loose and informal), and longevity sufficient to enable the BLE to pursue its goals of, *inter alia,* making money and protecting its own members and criminal schemes.")

The 7th Circuit has also determined that there are but three elements of an enterprise. *United States v. Hosseini*, 679 F.3d 544, 557 (7th Cir. 2012)("In *Boyle* the Court held that an 'association-in-fact enterprise' has just three elements: 'a purpose,' 'relationships among those associated with the enterprise,' and 'longevity sufficient to permit these associates to pursue the enterprise's purpose.'")

The 9th Circuit as well has reduced *Boyle* to a three element test. *United States v. Christensen*, 828 F.3d 763, 780 (9th Cir. 2015)("An associated-in-fact enterprise is "a group of persons associated together for a common purpose of engaging in a course of conduct." Such an enterprise has three elements: (1) a common purpose, (2) an ongoing organization, and (3) a continuing unit.)(citations omitted)

The 5th Circuit takes the three-element view of the structural features, but is silent on what other features may be necessary. *United States v. Jones*, 873 F.3d 482, 490 (5th Cir. 2017) ("[T]he very concept of an association in fact is expansive, but it must have at least three structural features: a purpose, relationships among those associated with the enterprise, and longevity sufficient to permit these associates to pursue the enterprise's purpose.")

The 2nd Circuit has made it clear that because of the expansiveness of *Boyle*, it makes more sense to say what isn't needed than what is needed to constitute an enterprise. *United States v. Gershman*, 31 F.4th 80, 96 (2d Cir. 2022)("Because of the expansive nature of an association-in-fact enterprise, it may help to think of the concept by what qualities are unnecessary. The group need not have a name. Nor must it 'have a hierarchical structure or a 'chain of command.' Its members 'need not have fixed roles.' And the group need not continually commit crimes—its associates may 'engage in spurts of activity punctuated by periods of quiescence.' ")(citing *Boyle*).

The 4th Circuit, however, still requires four elements, includes an identifiable structure, and suggests those things that *Boyle* says are not necessary may never the less provide further proof. *United States v. Devine*, 40 F.4th 139, 149 (4th Cir. 2022)("The 'hallmark concepts' that identify RICO enterprises are continuity, unity, shared purpose and identifiable structure. And while an enterprise need not have a "hierarchical structure or a chain of command,' *Boyle v. United States*, 556 U.S. 938, 948, 129 S.Ct. 2237, 173 L.Ed.2d 1265 (2009), the presence of those characteristics 'provides additional evidence of a functioning enterprise,' *United States v. Mathis*, 932 F.3d 242, 259 (4th Cir. 2019).")

In the cited cases the 1st and 10th Circuits have read *Boyle* to mean there is no need for decision making. The 3rd, 5th, 7th, 9th and 11th all require only the three elements, and don't necessarily discuss the relationship between the structure and the other activities. The 4th Circuit, requires an identifiable

structure, which seems directly afoul of the suggestion in *Boyle* that the word "ascertainable" will be superfluous, redundant, and misleading. The 2nd Circuit defines instead what *isn't* an enterprise, knocking out possible verbiage in instructions rather than affirmatively supplying it.

Boyle only defined the structure of the enterprise itself—giving it three characteristics that it must have, as noted and now adopted by the circuit courts in various measure, with splits between them on other aspects. But the three elements that the circuits have pulled from *Boyle* do not define what the structure must be vis-à-vis the racketeering activity.

Prior to *Boyle*, the 8th Circuit held in *Crenshaw*, that it must be a structure distinct from that inherent in the racketeering activity. That case has not been overturned, and there is nothing in *Boyle* that contradicts that holding—and, the 3rd, 8th and 11th circuit Model instructions still require some version of that concept, even if the courts themselves don't always do so. On that issue, citing *Turkette*, the *Boyle* court reminds that proof of the racketeering activity does not necessarily establish an enterprise, but in particular cases the *evidence* used to show a pattern of racketeering activity and the *evidence* used to show an enterprise may coalesce—not the actual elements themselves, but the evidence used to prove them. *Boyle* at 947.

Defendants below did not ask that the structure be defined in a way that contradicts B*oyle*—instead, the simple ask was that the structure of the enterprise be distinct from that inherent in the racketeering

activity. The evidence itself could still coalesce, as *Turkette* and *Boyle* suggest, but requiring the structure be distinct—not beyond, but merely distinct—prevents the *elements* from coalescing.

Boyle suggests in dicta that "a group that does nothing but engage in extortion through old-fashioned, unsophisticated, and brutal means may fall squarely within the [definition]". *Boyle* at 948**.** But even such an old fashioned protection racket has distinction—there is the group, the extortion itself and, as *Boyle* notes, the means of doing so. Notably, *Boyle* says may, indicating that it may also *not* fall within the definition depending on the circumstances.

Crenshaw, while pre-dating *Boyle,* nevertheless adroitly defines the difference between when the brutal extortion described in *Boyle's dicta* meets the definition of enterprise and when it does not. That is because *Boyle* does not collapse the enterprise and the racketeering activity in the way the Circuits have since interpreted it—in fact, it does quite the opposite. It notes that the concept of "beyond that inherent" can be interpreted in *at least* two ways, one of which is correct and one which isn't. *Boyle* at 947. While *Boyle* states it is incorrect to say that enterprise may *never* be inferred from the evidence showing the pattern of racketeering activity, it does not say that the enterprises structure itself need not be distinct from the activities; instead, it states that the evidence used to prove them may coalesce, not that the two elements may coalesce.

In *Boyle*, the defendant requested that the relationship between the enterprise structure and the

activities be something "beyond" and "hierarchical." This Court declined that expansion. The defendants below in this case ask for something different—we ask merely that it be distinct from that inherent in the activity. Where the word "beyond" would imply that it is greater, or more complex or even hierarchical, the modifier "distinct" does not. In fact, the enterprise could be far *less* sophisticated than the actual racketeering activities themselves.

For example, "Theft of Trade Secrets" is a potential racketeering activity. 18 USC 1961(1), and 18 USC 1832. That racketeering activity itself under section (a)(2) may require an incredibly complex computer hacking scheme in order to download the relevant information; but that does not constitute racketeering. However, if the final piece of the puzzle is the need to have a security guard allow the hacker into the facility to plug a USB drive into a computer? That need—the access that security guard provides—creates a structure *distinct* from the racketeering activity, but not *beyond* the racketeering activity.

That is, the security guard's action and role allowing the hacker access is a structural relationship between the two that is not inherent in the racketeering activity of theft of trade secrets, because there are potentially ways to do it remotely or the hacker could have tried to gain access without the guard's assistance. Once the guard helps the hacker —a very simple task, uncomplex, with no hierarchy of any kind—they have created a structure between them. That structure is distinct from theft of trade secrets, and so they have opened themselves up to RICO liability that comports both with the definitions

provided by *Boyle* and the definition provided by *Crenshaw*, assuming the other *Boyle* elements also exist in this scenario. The guard could also allow access to someone for good old fashioned vanilla and non-RICO criminal activity, in which case the structure still exists, but without the racketeering activity there would be no RICO-type criminal exposure.

Requiring the structure be distinct from the racketeering activity is what makes for a separate crime. Stealing trade secrets is a crime, distinct in and of itself. Stealing trade secrets on two occasions with a security guard who lets you into the facility? That creates a structure for committing the crime of theft of trade secrets that is distinct from the crime of theft of trade secrets—it is not more complex, it is not more hierarchical, it is not *beyond* the structure inherent in the activities themselves. Rather, it is a structure that is merely *distinct* from the racketeering activity.

Ultimately, *Boyle* only defined what the structure must have—it made no mention of how the structure must be related to the racketeering activities, just that the same evidence may be used to show both elements. The 8th Circuit, in *Crenshaw*, indicates that the structure must be distinct from the activities. That in no way violates the rule laid out in *Boyle*, it compliments it. Further, the *Crenshaw* holding, and thus the requested instruction, is merely another way to say that an enterprise "is an entity separate and apart from the pattern of activity in which it engages." *United States v. Turkette,* 452 U.S. 576, 583 (1981).

This court should grant certiorari to synthesize its holdings in *Boyle* and *Turkette* with the rule laid out in *Crenshaw*. The instruction requested in the trial court ensures that the holding in *Boyle* is not taken beyond its intent, and prevents collapsing elements of the events while still allowing the evidence to show them to coalesce—again, accomplishing the directive in *Turkette* that "[t]he existence of an enterprise at all times remain[] a separate element which must be proved by the Government." *Id.* at 583.

CONCLUSION

The writ of certiorari should be granted.

Respectfully submitted,

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