

No. 26-85

IN THE
Supreme Court of the United States

❧

BHARGAV PATEL, MD, PATEL MEDICAL CARE, P.C.,
Petitioners,

v.

GOVERNMENT EMPLOYEES INSURANCE COMPANY,
GEICO INDEMNITY COMPANY, GEICO GENERAL INSURANCE
COMPANY, GEICO CASUALTY COMPANY,
Respondents.

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

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

September 17, 2026

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QUESTION PRESENTED

This Court should deny the petition. This case is a poor vehicle for revisiting the Anti-Injunction Act because the Second Circuit decision is a narrow, fact-bound application of settled law to an extraordinary case involving hundreds of No-Fault collection suits in state court, which were integral to the RICO enterprise and were all filed *after* GEICO's complaint here. Defendants identify no genuine circuit split, no conflict with this Court's Anti-Injunction Act precedent, and no disruption of New York's regulatory scheme. At most, they seek review of a self-limiting application of settled law to an unusual No-Fault insurance fraud enterprise, precisely the kind of case that does not warrant certiorari.

New York is one of only twelve states with No-Fault laws, and its regime permits providers to file large volumes of small collection suits arising from allegedly fraudulent bills. Defendants here filed 604 separate No-Fault collection actions *after* GEICO filed its civil RICO complaint. Those suits disguised the fraud in hundreds of isolated proceedings, increased GEICO's costs and fee exposure, and threatened to convert denied fraudulent bills into funds for continued racketeering. Defendants used these state collection suits as an ordinary, routine practice to monetize the fraud, making them a fundamental part of Defendants' business model and the cornerstone of the No-Fault insurance fraud racketeering enterprise. On these unusual facts, the Second Circuit correctly

held that RICO could not be given its intended scope unless the proceedings were stayed.

The Second Circuit instructed lower courts to apply *Tri-Borough* and *Patel* narrowly, and that is precisely what the lower courts have done. See *State Farm Mut. Auto. Ins. Co. v. Tri-Borough NY Med. Prac. P.C.*, 120 F.4th 59, 98–99 (2d Cir. 2024); *Gov't Emps. Ins. Co. v. Patel*, 166 F.4th 280, 299 (2d Cir. 2026). *Tri-Borough* and *Patel* thus focus on a narrow corner of the law and are unlikely to shape the law in any meaningful way.

None of Defendants' arguments change that fact. The asserted circuit split rests on the false premise that some Circuits hold that the state proceeding must itself violate the federal statute before the expressly authorized exception to the Anti-Injunction Act can apply, while others do not. In fact, courts of appeals have long recognized that federal statutes may authorize injunctions where state proceedings would prevent a federal right or remedy from receiving its intended scope, even when the state proceedings are not themselves statutory violations. Nor did the Second Circuit create a new rule by saying the state suits helped "further" a RICO violation. That language has appeared in Anti-Injunction Act cases for decades, and the Second Circuit's reliance on *Vendo* made the holding narrower still by requiring a pattern of baseless, repetitive claims or an equivalent showing of grave abuse of the state courts.

Defendants’ remaining arguments do not warrant review. Defendants assume RICO injunctions are limited to predicate acts. But that assumption narrows RICO injunctions to the predicate acts Congress used as a starting point, depriving the statute of the broader remedial force Congress gave it. RICO’s intended scope includes injunctions that stop the conduct through which an enterprise continues to operate, and without a stay of the state suits here RICO cannot have its intended scope.

Defendants’ reliance on *Mayzenberg* is equally misplaced because *Mayzenberg* did not hold that a state regulator must first determine a healthcare services provider is ineligible for reimbursement before an insurer like GEICO can deny a claim. *See Gov’t Emps. Ins. Co. v. Mayzenberg*, 45 N.Y.3d 397 (2025). The New York Court of Appeals made clear that insurers can continue to deny claims under its existing precedent. *Mayzenberg* thus has nothing to do with the Second Circuit’s decisions in *Tri-Borough* and *Patel*, as neither decision touches the “deliberate state allocation of regulatory authority.” *Cf.* Pet. for Cert. at 9.

RULE 29.6 STATEMENT

Government Employees Insurance Company, GEICO Indemnity Company, GEICO General Insurance Company, and GEICO Casualty Company hereby certify as follows: Government Employees Insurance Company, GEICO Indemnity Company, GEICO General Insurance Company, and GEICO Casualty Company (non-governmental corporate parties) are wholly owned subsidiaries of GEICO Corporation, which is an indirectly wholly owned subsidiary of Berkshire Hathaway, Inc.

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STATEMENT OF THE CASE

A. The Parties

Plaintiffs Government Employees Insurance Company, GEICO Indemnity Company, GEICO General Insurance Company, and GEICO Casualty Company (“GEICO” or “Plaintiffs”) are Nebraska corporations with their principal places of business in Bethesda, Maryland (A27).¹ Plaintiffs write automobile insurance policies in New York and are required by law to provide minimum coverage of \$50,000 in Personal Injury Protection Benefits (“No-Fault Benefits”) for each eligible injured person (A14).

Defendants, a physician and his professional corporation, perpetrated an insurance fraud scheme under the guise of operating a medical practice. The scheme exploits New York laws requiring the payment of No-Fault Benefits by the Comprehensive Motor Vehicle Insurance Reparations Act (N.Y. Ins. Law §§ 5101 et seq.) and the implementing regulations (11 N.Y.C.R.R. §§ 65 et seq.) (collectively, the “No-Fault Laws”).

Defendant Patel Medical Care, P.C. (“Patel Medical”) exists as a professional corporation on paper but is not a legitimate medical provider (A14, A19). Patel Medical exists solely to facilitate the submission

¹ Numbers preceded by the letter “A” refer to pages of the Appendix at Second Circuit. Numbers preceded by the letters “SA” refer to the Special Appendix at the Second Circuit.

of large volumes of fraudulent and unlawful charges to GEICO and other insurers for medically unnecessary, illusory, and otherwise non-reimbursable healthcare services (“Fraudulent Services”) (A14, A19). Patel Medical conducts its operations from various locations, including two where a chiropractor ran a similar insurance fraud scheme (A27). One of these two locations is a residential home in Queens, New York that has no indicia of a legitimate medical practice (A25) (photograph).

Defendant Bhargav Patel, M.D. (“Patel”) purports to own Patel Medical. But the professional corporation is, in fact, controlled by the John Doe Defendants, who operated the professional corporation, directed the Fraudulent Services, facilitated the illegal kickback arrangement, controlled access to patients through “transportation” companies, and spearheaded the fraudulent treatment and billing protocols (A14).

B. The Racketeer Influenced And Corrupt Organizations Act

Congress passed the Racketeer Influenced and Corrupt Organizations Act (“RICO”) to eradicate organized crime “by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime.” Pub. L. 91-452, Statement of Findings and Purpose, 84 Stat. 923 (1970). To achieve this remedial purpose, Congress provided that the “provisions of [RICO] shall be liberally construed to effectuate its remedial

purposes.” Pub. L. 91-452, § 904(a), 84 Stat. 947 (1970); *see also Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 491 n. 10 (1985). “The object of civil RICO is thus not merely to compensate victims but to turn them into prosecutors, ‘private attorneys general’, dedicated to eliminating racketeering activity.” *Rotella v. Wood*, 528 U.S. 549, 557-58 (2000) (citing *Klehr v. A.O. Smith Corp.*, 521 U.S. 179, 187 (1997)).

To accomplish this purpose, Congress endowed the federal courts with broad injunctive powers commensurate with RICO’s purpose: eliminating racketeering activity. *Rotella*, 528 U.S. 549, 557-58. Section 1964 expressly authorizes district courts “to prevent and restrain” RICO violations. *See* 18 U.S.C. § 1964(a). Congress could have left the authorization there or limited the district court’s injunctive power to the predicate acts listed in section 1961.

But Congress went much further. Congress expressly authorizes district courts to “to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders[.]” 18 U.S.C. § 1964(a). Section 1962 prohibits a wide range of conduct that is separate, though related, to predicate acts. Subsection (a), for example, prohibits anyone who has received income derived from a pattern of racketeering from using that income in the operation of any enterprise engaged in interstate commerce. *See* 18 U.S.C. § 1962(a). Subsection (b) makes it unlawful for any person from using “a pattern of racketeering activity...to acquire or maintain, directly or indirectly,

any interest in or control of any enterprise engaged in interstate commerce.”

Subsection (c) is broader still, making it unlawful for any person “to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity[.]” 18 U.S.C. § 1962(c). Thus, conducting the enterprise’s affairs is itself a component of activity prohibited by section 1962(c). Indeed, without conducting or participating in the conduct of an enterprise’s affairs, there is no liability under section 1962(c). *See Reves v. Ernst & Young*, 507 U.S. 170, 185 (1993). Finally, RICO prohibits anyone from conspiring to violate subsections (a)-(c). *See* 18 U.S.C. § 1962(d).

To “prevent and restrain” this conduct, Congress gave the district courts wide discretion to issue the “appropriate” injunctions. 18 U.S.C. § 1964(a). Congress made clear that such injunctions are not limited to predicate acts or even acts that constitute all the elements of the section 1962 prohibitions by providing three illustrative, but not exhaustive, examples: divestiture, restrictions on future activities, and dissolution. 18 U.S.C. § 1964(a). The restriction on future activities that Congress authorized is especially broad, permitting district courts to prohibit “any person from engaging in the same type of endeavor as the enterprise engaged in.” 18 U.S.C. § 1964(a). These examples show that Congress intended for district courts to issue injunctions that stop the ongoing racketeering

enterprise, not just its predicate acts or activities that satisfy every element of section 1962.

If anything beyond this plain language were needed, the Senate Report made clear that in a civil RICO case, district courts have “equitable relief broad enough to do all that is necessary to free the channels of commerce from all illicit activity.” *See* S. Rep. No. 617, 91st Cong., 1st Sess. at 79 (1969); *see United States v. Loc. 30, United Slate, Tile & Composition Roofers, Damp & Waterproof Workers Ass’n*, 871 F.2d 401, 407 (3d Cir. 1989). This sentiment was echoed by the House Report: “Although certain remedies are set out, the list is not meant to be exhaustive, and *the only limit* on remedies is that they accomplish the aim set out of removing the corrupting influence and make due provision for the rights of innocent persons.” H.R. Rep. No. 1549, 91st Cong. 2nd Sess. 2, *reprinted in* 1970 U.S. Code Cong. & Ad. News 4007, 4034 (emphasis added). The legislative history thus confirms what is obvious from the text: Congress endowed the federal courts with broad injunctive powers commensurate with RICO’s purpose of stopping racketeering activity in its tracks.

This Court too has recognized “RICO is to be read broadly...to effectuate its remedial purposes” *Sedima v. Imrex Co. Inc.*, 473 U.S. 479, 497–98 (1985) (citations omitted). And the Courts of Appeals have done just that. Courts of Appeals broadly agree that Section 1964(a) “grants courts broad discretion and latitude in enjoining violators from activities that *might lead to future violations*” (*United States v. Priv.*

Sanitation Indus. Ass'n of Nassau/Suffolk, Inc., 995 F.2d 375, 377 (2d Cir. 1993)), so long as “the defendant exhibits a reasonable likelihood of committing future violations of the Act” (*United States v. Philip Morris USA Inc.*, 566 F.3d 1095, 1131 (D.C. Cir. 2009), *cert. denied*, 561 U.S. 1025 (2010)). *See, e.g., United States v. Loc. 560 of Int’l Bhd. of Teamsters, Chauffeurs, Warehousemen, & Helpers of Am.*, 780 F.2d 267, 272-73 (3d Cir. 1985), *cert. denied*, 476 U.S. 1140 (1986) (enjoining one of the defendants from any future dealings with Local 560 or any other labor organizing or employee benefit plan).

RICO’s broad injunctive remedies emanate from Congress’s understanding that racketeering activity may be ongoing at the time of suit. *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 241 (1989) (emphasis added) (citing S. Rep. No. 91-617, at 158). Indeed, this Court has emphasized that for multiple acts of racketeering to constitute a pattern, there must be continuity, which includes an “open-ended concept, referring...to *past conduct that by its nature projects into the future with a threat of repetition.*” *Id.* (emphasis added).

C. New York’s No-Fault Regime

New York is one of only twelve states with No-Fault laws that require automobile insurance policies to provide certain coverages regardless of fault. New York law requires automobile insurers such as GEICO to provide No-Fault Benefits to each covered individual who is injured in a motor vehicle accident (an “Insured” or “patient”). *See Walton v. Lumbermens*

Mut. Cas. Co., 88 N.Y.2d 211, 214 (1996). No-Fault Benefits include up to \$50,000 per Insured for necessary expenses. *See* N.Y. Insurance Law § 5102 (a).

Reimbursement rates for healthcare services covered by No-Fault Benefits is set by the fee schedule established by the New York State Workers' Compensation Board ("Fee Schedule"). *See* N.Y. Insurance Law § 5108. An Insured can assign his or her right to No-Fault Benefits to healthcare providers in exchange for performance of services. *See* 11 N.Y.C.R.R. §§ 65-3.11 (a)-(b). With an assignment of benefits, a healthcare provider can submit claims to an insurer and receive direct payment, using the required claim forms.

Once an insurer receives proof of a claim, it must pay No-Fault Benefits or deny the claim within 30 days. *See* N.Y. Insurance Law § 5106(a); 11 N.Y.C.R.R. § 65-3.8(a)(1). A claim for No-Fault benefits is "overdue" if an insurer does not pay it within the 30-day deadline. *See* N.Y. Insurance Law § 5106(a). Insurers can be responsible for 2% monthly interest and reasonable attorney's fees for overdue claims. *See id.*

The denial of a claim "entitles the claimant to seek immediate redress, and to recover both the amount of any overdue claim and reasonable attorney's fees in securing payment." *Roggio v. Nationwide Mut. Ins. Co.*, 66 N.Y.2d 260, 262 (1985). If an insurer denies a claim, the healthcare provider

has the choice of commencing either an arbitration (*see* N.Y. Insurance Law § 5106; 11 N.Y.C.R.R. § 65-4.) or a civil No-Fault collections suit in state court (*see, e.g., Presbyterian Hosp. in the City of New York v. Maryland Cas. Co.*, 90 N.Y.2d 274, 277 (1997)).

Because healthcare providers can choose whether to aggregate multiple denied claims in a single suit, they control the amount in controversy, giving them an additional choice about a lawsuit's forum. New York State Supreme Court is a court of general original jurisdiction with no monetary threshold. *See* N.Y. Const. Art. VI, § 7; *see also Kagen v. Kagen*, 21 N.Y.2d 532 (1968), while New York civil court is a court of limited jurisdiction with a monetary ceiling of \$50,000. *See* N.Y. Const. art. VI, § 15(b) and N.Y. City Civ. Ct. Act §§ 201 and 202.

In practice, healthcare providers often start a separate No-Fault collection proceeding for each date services were provided, rather than a single collection proceeding for each month, patient, or clinic. In a suit seeking reimbursement for services rendered to a single patient on a single day, a state court might conclude that treatment was medically necessary because the fraudulent treatment protocols become apparent only when viewing multiple cases in the aggregate. GEICO cannot aggregate the 604 state suits Defendants commenced because “[c]onsolidation is highly disfavored by courts in no-fault insurance cases and usually requires that the claims arise out of the same accident.” *State Farm Mut. Auto. Ins. Co. v. Parisien*, 352 F. Supp. 3d 215, 299 (E.D.N.Y. 2018)

(internal quotation marks omitted); *see also Radiology Res. Network, P.C. v. Fireman's Fund Ins. Co.*, 12 A.D.3d 185, 185 (1st Dep't 2004); *Poole v. Allstate Ins. Co.*, 20 A.D.3d 518, 519 (2d Dep't 2005); *Stephens v. Allstate Ins. Co.*, 185 A.D.2d 338, 339 (2d Dep't 1992).

D. Defendants' Insurance Fraud Enterprise

The facts in this section are taken from the complaint and the evidentiary support included with it. GEICO's complaint is pleaded in painstaking detail, including claim-specific examples outlining the scheme and demonstrating step by step how the services allegedly provided were fraudulent.

Patel Medical exists solely to submit bills to GEICO and other insurers for Fraudulent Services. Defendants bill New York automobile insurers for the Fraudulent Services, which were medically unnecessary, illusory, and otherwise non-reimbursable. The Fraudulent Services are claimed to have been provided from four locations ("the Clinics").

The Clinics received patients through illegal kickback arrangements with the John Doe Defendants, who controlled access to the patients and were responsible for brokering the patients sent to the Clinics. Once the patients were at the Clinics, they received unnecessary services according to a predetermined treatment protocol that was designed to enrich Defendants rather than treat the patient's symptoms.

Defendants' insurance fraud is practically impossible to detect when viewing the services provided on a single date. But it comes into focus when a court can compare the services provided to large numbers of insureds over time. For example, the treatment protocol involved subjecting patients to unnecessary electromyography studies ("EMG") (A61). Although a medical professional need not perform an EMG on more than two limbs to properly diagnose 90% of patients, Patel Medical subjected an overwhelming majority of its patients to EMGs on all four limbs, just to bill them on a per-limb basis (A61-A62). Patel Medical also tested exactly the same muscles in each patient regardless of the patient's individual symptoms, yet never incorporated the tests into the patient's treatment plan (A62).

Defendants then sent GEICO bills demanding payment for the Fraudulent Services (A74). In their submissions, Defendants misrepresented that they provided actual services that were medically necessary and concealed those misrepresentations from GEICO (A74). GEICO thus paid Defendants at least \$711,000 for Fraudulent Services. When GEICO filed this action, Defendants also had pending claims totaling more than \$2,253,000. Defendants used the state collection suits as an ordinary, routine practice to monetize the fraud, making them necessary to conduct the affairs of a No-Fault insurance fraud racketeering enterprise.

E. Procedural History

1. GEICO's Complaint

GEICO filed a detailed complaint in the Eastern District of New York, asserting claims for declaratory judgment; violations of the RICO statute, 18 U.S.C. §§ 1962(c) and (d); common-law fraud; and unjust enrichment. GEICO's complaint sought damages of \$711,000 and a judgment declaring that Patel Medical had no right to receive payment for more than \$2,253,000 in pending claims.

2. Defendants' Ongoing Insurance Fraud Scheme

Following this complaint, Defendants' No-Fault insurance fraud enterprise continued unabated. After GEICO laid bare Defendants' insurance fraud scheme in its publicly filed complaint, Defendants filed *en masse* 604 separate No-Fault collections actions in New York City Civil Courts. Defendants deliberately chose this forum instead of an arbitration (*see* N.Y. Insurance Law § 5106(a)), New York Supreme Court, or a counterclaim in this action.

The mass filing of the lawsuits in New York City Civil Courts, all of which are predicated on 604 individual predicate acts of mail fraud, served three strategic purposes. First, the 604 state collection suits concealed the insurance fraud, and the predetermined protocols Defendants used, by breaking down the claims into individual actions involving one patient

and often only one date of service. As one example, Defendants' predetermined protocol relating to EMG testing cannot be detected in a single case, but Defendants' No-Fault insurance fraud comes into focus when comparing multiple cases at once, which shows Patel Medical tested exactly the same muscles in each patient regardless of the patient's individual symptoms. Defendants could have filed these No-Fault collection actions as a compulsory counterclaim in this case or as one lawsuit in New York State Supreme Court, but they deliberately started 604 separate actions so that the insurance fraud scheme would remain undetected.

Second, filing 604 separate No-Fault collection suits drastically increases GEICO's costs and potential exposure because the No-Fault Laws entitle a plaintiff to attorney's fees up to \$1,400 for *each* No-Fault collection suit. *See* 11 N.Y.C.R.R. § 65-4.6. If one action is filed seeking one million dollars, the attorneys' fees would be \$1,400, but if 604 individual actions are filed seeking a total of one million dollars, the attorneys' fees would be close to \$850,000. The fragmented litigation strategy thus sustains the RICO enterprise by converting denied bills into recoveries that fund more racketeering while increasing GEICO's cost to resist the fraud.

Third, the mass filing strategy was designed to bring the No-Fault collection proceedings to judgment to frustrate GEICO's claim for declaratory relief and evade GEICO's claim for monetary damages

by making the issue of Defendants' entitlement to reimbursement for No-Fault benefits *res judicata*.

3. GEICO Moves For An Injunction

To stop Defendants' ongoing No-Fault insurance fraud enterprise, GEICO moved for an injunction staying all pending collection proceedings and enjoining the filing of new collection proceedings until GEICO's RICO action was resolved. As to the stay of pending collection proceedings, GEICO argued that the in-aid-of-jurisdiction exception to the Anti-Injunction Act ("AIA") applied. Defendants opposed the motion. As to the AIA, Defendants argued that under *In re Baldwin-United Corp.*, 770 F.2d 328, 337 (1985), the in-aid-of-jurisdiction exception does not apply to an *in personam* action.

4. The District Court Order

The District Court granted GEICO's motion based on the in-aid-of-jurisdiction exception to the AIA and preliminarily enjoined the 604 No-Fault collection suits pending in state court pending the outcome of this RICO action. Neither the parties, nor the district court, took a position as to whether the pending state suits themselves violated RICO or whether RICO expressly authorized a stay because the parties focused on the in-aid-of-jurisdiction exception to the AIA. *See* App. Br. at 46-50. The District Court recognized a contrary result in *State Farm Mut. Auto. Ins. Co. v. Metro Pain Specialists P.C.*, 2022 WL 1606523 (E.D.N.Y. May 20, 2022), *aff'd in part, rev'd*

in part and remanded sub nom. State Farm Mut. Auto. Ins. Co. v. Tri-Borough NY Med. Prac. P.C., 120 F.4th 59 (2d Cir. 2024), which was pending before the U.S. Court of Appeals for the Second Circuit at the time but found the *Parisien* decision more persuasive. Defendants appealed.

5. The Appeal To The Second Circuit

Before the U.S. Court of Appeals for the Second Circuit, Defendants reiterated the arguments made before the District Court. Defendants did not argue that injunctive relief under RICO was available only to the government and not to private parties.² GEICO reiterated the arguments presented to the District Court that the in-aid-of-jurisdiction exception to the AIA applies and offered an alternative basis for affirmance, arguing that the RICO statute expressly authorizes the District Court's injunction. *See* Appellee Br. at 57-63.

After oral argument, the Second Circuit decided *Tri-Borough*. In *Tri-Borough*, the Second Circuit held that RICO creates a unique federal remedy that could not be given its full scope without staying these state court suits. *Tri-Borough*, 120 F.4th at 95 (citing *Mitchum v. Foster*, 407 U.S. 225, 237 (1972)). The court emphasized that the ruling was narrow, applying only

² Compare *Nat'l Org. For Women, Inc. v. Scheidler*, 267 F.3d 687, 700 (7th Cir. 2001), *rev'd on other grounds, sub. nom. Scheidler v. NOW, Inc.*, 537 U.S. 393 (2003); *with Religious Tech. Ctr. v. Wollersheim*, 796 F.2d 1076, 1088 (9th Cir. 1986), *cert. denied*, 479 U.S. 1103 (1987).

because the state proceedings were not ordinary collection suits, but hundreds of allegedly meritless actions used to advance the alleged RICO enterprise. *Id.* Because those proceedings were part of the enterprise's operation, RICO could be given its intended scope only if they were stayed. *Id.* at 97.

The Second Circuit held RICO satisfied *Mitchum*'s first prong because it creates a uniquely innovative federal remedy that did not exist at common law. *Id.* at 96. RICO was specifically designed to remedy injury caused by a pattern of racketeering, and that concepts such as RICO enterprise and pattern of racketeering activity were simply unknown to common law. *Id.* at 95. The Second Circuit drew support from RICO's legislative history, which reflects Congress's concern that state courts might be ineffective against racketeering enterprises and that Congress thus contemplated that state-court proceedings could be enjoined to prevent and restrain violations of RICO. *Id.* at 96.

State Farm satisfied the second prong because RICO could be given its intended scope only by a stay of the hundreds of pending state-court proceedings. *Id.* at 97. The Second Circuit concluded that the facts of *Tri-Borough* presented the kind of situation the *Vendo* majority had contemplated. *Id.* at 97 (citing *Vendo Co. v. Lektro-Vend Corp.*, 433 U.S. 623, 644 (1977)). The court identified two specific ways in which the state-court proceedings furthered the alleged RICO violation. First, the proceedings helped finance the

scheme, and second the piecemeal nature of those proceedings concealed the scheme. *Id.* at 98.

In *Patel*, the Second Circuit affirmed on the authority of *Tri-Borough*, holding that the expressly authorized exception to the AIA applied. *Patel*, 166 F.4th at 286. The Second Circuit did not resolve the parties' dispute about the in-aid-of-jurisdiction exception. *See Patel*, 166 F.4th at 299.

6. Current State of Litigation

After the Second Circuit affirmed, the parties continued to litigate. In March 2026, GEICO moved for summary judgment. GEICO's summary judgment motion has been fully briefed since May 2026 and remains pending as of the date of this opposition.

REASONS FOR DENYING THE PETITION

I. *Tri-Borough* and *Patel* Are Unlikely to Influence Cases Outside the Narrow Context of Civil RICO Cases Against No-Fault Insurance Fraud Enterprises

Tri-Borough and *Patel* will have little, if any, effect outside the context of civil RICO cases against No-Fault insurance fraud enterprises for two reasons. First, the Second Circuit made clear that *Tri-Borough* and *Patel* should be applied narrowly. Second, the result in *Tri-Borough* and *Patel* depends on a highly unusual set of facts where a RICO claim is brought

against a defendant in one of the twelve states with No-Fault laws that allow health care providers to fragment a fraudulent claim into hundreds of individual collection suits to conceal the scheme, turn fraudulent bills into money, and sustain the racketeering enterprise's operations.

Taken together, these factors show that *Tri-Borough* and *Patel* focus on a narrow corner of the law and are unlikely to shape the law in any meaningful way.

A. The Second Circuit Made Clear that *Tri-Borough* and *Patel* Involve Unusual Circumstances

The Second Circuit made clear that its decision in *Tri-Borough* “is narrow and limited to the unusual circumstances alleged here, which involve a massive scheme including hundreds of purportedly meritless state-court proceedings that help further a RICO violation, such that RICO can only be given its intended scope if those proceedings are enjoined.” *Tri-Borough*, 120 F.4th 59, 98–99. The Second Circuit described the facts in *Tri-Borough* as unusual seven times. *Tri-Borough*, 120 F.4th at 91, 92, 95, 98, 99. And the concurrence in *Patel* reiterated that *Tri-Borough* “should be read narrowly.” *Patel*, 166 F.4th at 304. For this reason, the only cases to apply the *Tri-Borough*/*Patel* holdings on the Anti-Injunction Act are factually similar cases involving civil RICO cases

against No-Fault insurance fraud enterprises.³ See *Allstate Ins. Co. v. Landow*, No. 24-CV-2010 (DLI) (JRC), 2026 WL 866199, at *2, n.3 (E.D.N.Y. Mar. 30, 2026); *Gov't Emps. Ins. Co. v. Akiva Imaging Inc.*, No. 1:24-CV-6549 (FB) (JAM), 2025 WL 1434297, at *2 (E.D.N.Y. May 19, 2025), *reconsideration denied*, No. 1:24-CV-6549 (FB) (JAM), 2025 WL 2163384 (E.D.N.Y. July 30, 2025); *Liberty Ins. Corp. v. Advanced Recovery Equip. & Supplies LLC*, No. 24-CV-02518 (DG) (JRC), 2024 WL 5146081, at *7, n.10 (E.D.N.Y. Dec. 17, 2024). Indeed, all the cases identified by Defendants involve civil RICO claims against No-Fault insurance fraud enterprises. See Pet. for Cert. at 29.

The only court outside the Second Circuit to consider the issue has rebuffed efforts to invoke *Tri-Borough* beyond the context of a No-Fault insurance fraud enterprise. See *Duve v. Forrest*, No. 3:26-CV-158, 2026 WL 1747781, at *1 (S.D. Tex. June 17, 2026) (denying motion for preliminary injunction and holding that the case was not one of *those extraordinary circumstances* because the plaintiff has not established a racketeering enterprise”).⁴

³ Citations to *Tri-Borough* are common for its holding on irreparable harm.

⁴ Commentors have shrugged at the Second Circuit's interpretation of the Anti-Injunction act. In the 18 months since *Tri-Borough*, not a single scholarly article has been written on the topic.

B. The Interplay Between RICO and No-Fault Insurance Fraud

The result in *Tri-Borough* and *Patel* comes from the unusual interplay between civil RICO and No-Fault insurance fraud. Congress expressly authorized district courts to enjoin activity that is reasonably likely to violate section 1962, which prohibits anyone from participating “directly or indirectly, in the conduct” of an enterprise’s affairs (*see* 18 U.S.C. § 1962(c)), by prohibiting “any person from engaging in the same type of endeavor as the enterprise engaged in.” 18 U.S.C. § 1964(a). In most traditional racketeering enterprises, this broad authority has nothing to do with state suits because traditional racketeering enterprises do not need state suits to monetize their criminal activity. *See United States v. Turkette*, 452 U.S. 576, 588 (1981) (noting that racketeering often involves syndicated gambling, loan sharking, the theft and fencing of property, the importation and distribution of narcotics and other dangerous drugs, and other forms of social exploitation, which do not require state lawsuits to monetize their crimes) (quoting the statement of findings that prefaces the Organized Crime Control Act of 1970 84 Stat. 922–923).

But No-Fault insurance fraud racketeering is different. The state suits serve as an integral part of conducting the enterprise’s affairs. Each state suit is based on a predicate act of mail fraud, but if the insurer denies the claim, the predicate act generates no money. In that case, the racketeering enterprise

strategically breaks the claim into tiny pieces, often filing a single suit for services rendered to one patient on a single day, which conceals the predetermined treatment protocols, experimental treatment, and unnecessary services. Because consolidation is disfavored, *see supra*, at 12, the state courts are “powerless to stop’ the alleged RICO violations which the state-court proceedings help monetize and sustain.” *See Tri-Borough*, 120 F.4th at 98 (quoting *Mitchum*, 407 U.S. at 240).

But the state suits are not the end of the scheme. Once the Defendants collect proceeds, they begin the process anew, using the proceeds to fund more fraudulent billing, more predicate acts of mail fraud, and yet more state suits. The state collection suits are thus an ordinary, routine practice to monetize the fraud, making them essential to conduct the affairs of a No-Fault insurance fraud racketeering enterprise. *See* 18 U.S.C. § 1962(c).

Defendants’ conduct here illustrates the mechanics of this fraud. Each of the 604 state suits in this case is based on a separate predicate act of mail fraud, and Defendants did not file them until *after* GEICO filed its civil RICO claim in federal court. No Anti-Injunction Act case decided by this Court involved such a large volume of state suits. Given Defendants’ past racketeering, there could be no doubt Defendants would use the proceeds from the state suits to operate the No-Fault insurance fraud enterprise in violation of section 1962(c).

The Second Circuit's decisions in *Tri-Borough* and *Patel* are exceedingly narrow because they depend on a feature most RICO cases do not have: state collection suits that are part of the alleged enterprise itself. These features exist here only because New York is one of only twelve states with No-Fault laws that permit providers to file large numbers of small collection suits arising from alleged fraudulent bills. As a result, *Tri-Borough* and *Patel* do not create a rule for ordinary RICO cases or ordinary Anti-Injunction Act cases. They address only the rare case in which a pattern of baseless state-court proceedings are themselves the mechanism that keeps the racketeering enterprise alive.

Moreover, under *Tri-Borough* only a pattern of baseless state-court proceedings, not a single state suit, would warrant an exception to the AIA. *Tri-Borough*, 120 F.4th at 95 (citing *Vendo*, 433 U.S. 623). Thus, the Second Circuit's reliance on *Vendo* narrows the holding even further. This Court should not grant certiorari to review a rule that is confined to such an exceptional and self-limiting set of facts.

II. The Second Circuit's Decisions are Consistent with the Precedent of this Court and With New York's Regulatory Scheme

This Court should deny Defendants' petition solely because the Second Circuit directed a narrow holding to a remote corner of the law, making it unlikely to influence other areas of the law. If that fact

were not enough, the Second Circuit's decision is also consistent with existing Supreme Court precedent.

A. State Suits Need Not Violate Federal Law To Be An Expressly Authorized Exception To The AIA

The touchstone for determining whether a federal law expressly authorizes an exception to the Anti-Injunction Act's prohibition on enjoining state suits is whether a federal right or remedy could be given its intended scope only by the stay of a state court proceeding. *See Mitchum*, 407 U.S. 225, 238. Whether the state suit itself violates the federal law is relevant to this inquiry, but it is not necessary or sufficient to meet the *Mitchum* standard.

This Court in *Mitchum* said nothing about state suits themselves violating the federal law as a prerequisite. And the courts of appeals have widely accepted the premise that a federal law can expressly authorize an injunction of a state suit under *Mitchum*, even if the state suit itself does not violate that federal law. *See, e.g., Trs. of Carpenters' Health & Welfare Tr. Fund of St. Louis v. Darr*, 694 F.3d 803, 807 (7th Cir. 2012); *In re BankAmerica Corp. Sec. Litig.*, 263 F.3d 795, 803 (8th Cir. 2001), *as amended* (Oct. 3, 2001), *cert. denied* 535 U.S. 970 (2002); *Emps. Res. Mgmt. Co. v. Shannon*, 65 F.3d 1126, 1132 (4th Cir. 1995), *cert. denied* 516 U.S. 1094 (1996); *1975 Salaried Ret. Plan for Eligible Emps. of Crucible, Inc. v. Nobers*, 968 F.2d 401, 410 (3d Cir. 1992), *cert. denied* 506 U.S. 1086 (1993); *see also U.S. Steel Corp. Plan for Emp. Ins.*

Benefits v. Musisko, 885 F.2d 1170, 1178 (3d Cir. 1989), *cert. denied* 493 U.S. 1074 (1990); *Stockslager v. Carroll Elec. Co-op. Corp.*, 528 F.2d 949, 952–53 (8th Cir. 1976).

In any event, the state suits themselves likely violated RICO, and enjoining them was also necessary to prevent reasonably likely future RICO violations. Defendants misstate that “all parties conceded” that the state suits are not themselves RICO violations. *See* Pet. for Cert. at i. The parties did not address this issue at all because Defendants did not raise it before the District Court or in the briefing to the Second Circuit. Defendants invented this argument for purposes of this petition and their motion for rehearing en banc at the Second Circuit.

The Second Circuit had every reason to conclude, under the unusual facts of this case, that the state suits themselves violate RICO due to their timing, pattern, and volume. Section 1962 makes it unlawful “to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity[.]” 18 U.S.C. § 1962(c). Without conducting or participating in the conduct of an enterprise’s affairs, there is no liability under section 1962(c). *See Reves*, 507 U.S. at 185 (holding “that to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs, § 1962(c), one must participate in the operation or management of the enterprise itself”). One thus violates section 1962 by conducting the affairs of an enterprise that is engaged in a pattern of racketeering.

The 604 No-Fault collection suits violated section 1962(c) because they were part of Defendants' pattern for conducting the affairs of the enterprise. After all, No-Fault collection proceedings form the cornerstone of Defendants' business model and are a necessary component of Defendants' No-Fault insurance fraud scheme, as shown by the undisputed fact that Defendants filed 604 state suits *en mass* days after GEICO's complaint here. *See* Appellee Br. at 3. The Second Circuit showed it understood this point by emphasizing that RICO makes it unlawful "for any person employed by or associated with any enterprise...to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt" or to conspire to do so. *See Tri-Borough*, 120 F.4th 59, 95 (quoting 18 U.S.C. § 1962(c)–(d)).

The state suits would have also inevitably led to future RICO violations. The Second Circuit emphasized in *Tri-Borough* that "the hundreds of frivolous state-court proceedings *themselves* help to further the RICO violation because Defendants use the fraudulently obtained No-Fault benefits from those proceedings to continue financing their scheme." *Tri-Borough*, 120 F.4th 59, 98. RICO expressly prohibits using funds obtained through racketeering to operate an enterprise (*see* 18 U.S.C. § 1962(a)) and authorizes injunctions to "prevent and restrain" violation of section 1962.

The Circuit Courts broadly agree that to prevent a future violation means that there must be a “likelihood of future violations.” *See, e.g., Philip Morris USA Inc.*, 566 F.3d 1095, 1109; *Loc. 30, United Slate, Tile & Composition Roofers, Damp & Waterproof Workers Ass’n*, 871 F.2d 401, 408-09; *United States v. Carson*, 52 F.3d 1173, 1184 (2d Cir. 1995). Thus, preventing future RICO violations that are reasonably likely gives RICO and section 1964 the full scope Congress intended. *See* 18 U.S.C. § 1964; *Mitchum*, 407 U.S. 225, 238.

The Second Circuit had every reason to believe that Defendants would prevail in the No-Fault collection suits and use the funds in the operation of an enterprise engaged in interstate commerce, making the injunctions *necessary* to prevent and restrain future RICO violations. 18 U.S.C. §§ 1962, 1964; *Mitchum*, 407 U.S. 225, 238. For this reason, the Second Circuit emphasized that the piecemeal nature of the state suits conceals the fraud and that the No-Fault collection suits would monetize the fraud. *See Tri-Borough*, 120 F.4th at 98.

B. The Second Circuit Did Not Misread *Vendo*

According to Defendants, the “pattern of baseless, repetitive claims” standard from Justice Blackmun’s concurrence in *Vendo* was “a term of art drawn from *California Motor Trans. Co. v. Trucking Unlimited*, 404 U.S. 508, 513 (1972),” which Justice Blackmun invoked to identify “a category of

proceedings that in and of themselves violated federal antitrust law.” Pet. for Cert. at 20.

But *California Motor* applied this Court’s decisions in *E. Railroad Presidents Conference v. Noerr Motor Freight Inc.*, 365 U.S. 127 (1961) and *United Mine Workers v. Pennington*, 381 U.S. 657 (1965), which form the Noerr-Pennington doctrine. See *California Motor*, 404 U.S. at 509-10. The Noerr-Pennington doctrine originated in the antitrust field, but the First Amendment concerns that animate the Noerr-Pennington doctrine apply beyond antitrust cases. See *BE&K Const. Co. v. NLRB*, 536 U.S. 516 (2002) (applying Noerr-Pennington doctrine in the labor law context). So when the Second Circuit applied the “pattern of baseless, repetitive claims” standard here, it gave proper regard to Defendants’ First Amendment rights. It did not create a new standard that will upend Anti-Injunction Act jurisprudence.

C. GEICO’s Arguments Were Not the Same as Those Rejected in *Amalgamated Clothing*

Defendants argue the Second Circuit’s decision contravenes *Amalgamated Clothing Workers v. Richman Bros.*, 348 U.S. 511 (1955). See Pet. for Cert. at 17-19. According to Defendants, GEICO’s argument here mirrors the union’s argument in *Amalgamated Clothing* that the state suit would dislocate the federal scheme and that the state courts would reach the wrong decision. See Pet. for Cert. at 18.

Defendants misstate the record. GEICO argued that the No-Fault collection proceedings were “an extension of the fraudulent scheme[.]” Appellee Br. at 3. GEICO also argued that without an injunction RICO would not be given its intended scope because Defendants could manipulate the state court system to secure the benefits of its racketeering activity without detection. *Id.* at 59.

In a footnote, Defendants argue that this case presents the question in an “unusually clean form” because GEICO did not argue the collection proceedings are themselves RICO predicate acts or otherwise violate federal law. This argument is doubly flawed.

First, whether the state suits constitute predicate acts is irrelevant because RICO prohibits much more than predicate acts. RICO prohibits certain activities related to predicate acts, but RICO does not prohibit the predicate acts listed in section 1961, which are already unlawful. *See United States v. Elliott*, 571 F.2d 880, 899 n.23 (5th Cir.), *cert. denied*, 439 U.S. 953 (1978) (“We note also that the Act does not criminalize either associating with an enterprise or engaging in a pattern of racketeering activity standing alone.”). Congress never intended to limit RICO injunctions to predicate acts or to acts that would satisfy all the elements of a section 1962 violation. Congress embedded this intention in the statute’s text, by expressly authorizing district courts to restrict a defendant’s future activities, which could be so broad as to prohibit “a person from engaging in the same type

of endeavor as the enterprise engaged in.” 18 U.S.C. § 1964(a).

RICO’s intended scope includes injunctions necessary to stop the enterprise from continuing to operate. That is especially true here, where the state collection suits were not separate from the alleged racketeering scheme but were the mechanism for turning fraudulent bills into money and keeping the enterprise alive. That’s why GEICO argued that without an injunction RICO would not be given its intended scope and Defendants could manipulate the state court system to secure the benefits of its racketeering activity without detection. *See Appellee Br.* at 59. A rule limiting RICO injunctions to predicate acts would leave courts unable to stop a fundamental part of Defendants’ No-Fault insurance fraud. Such a rule would allow Defendants to continue their racketeering and deny RICO the full scope Congress intended.

Second, GEICO had no need to address whether the state suits themselves violated RICO because Defendants raised that issue for the first time in their petition for rehearing *en banc*. Thus, what Defendants describe as an “unusually clean” question is, in fact, an undeveloped one that the Second Circuit did not even address.

**D. The Second Circuit’s Decisions Do Not
Disrupt New York’s Regulatory Scheme**

According to Defendants, *GEICO v. Mayzenberg* “confirms that New York has made a deliberate allocation of authority: whether a provider’s alleged misconduct, including fraud, disqualifies him from collecting automobile insurance benefits is committed in the first instance to state licensing regulators and state courts that review them, not to insurers acting unilaterally.” Pet. for Cert. at 15-16 (citing *Gov’t Emps. Ins. Co. v. Mayzenberg*, 45 N.Y.3d 397 (2025)). Defendants mischaracterize the holding in *Mayzenberg*.

The New York Court of Appeals decision in *Mayzenberg* had nothing to do with the Anti-Injunction Act, RICO, an insurer’s right to deny fraudulent claims, or the availability of damages for payments made on fraudulent claims. In *Mayzenberg*, the certified question focused on a regulation (11 N.Y.C.R.R. § 65-3.16(a)(12)) that defined when a medical service provider became ineligible for No-Fault benefits. The agency interpreted the regulation to apply only to pre-licensing requirements, not standards to maintain licensure, and the Court of Appeals deferred to that interpretation. *Id.* at 404. It was in the context of standards to maintain a license that the Court discussed the role of a state regulator. See Pet. for Cert. at 15.

But *Mayzenberg* did not hold that a state regulator must first determine a healthcare services

provider is ineligible before an insurer like GEICO can deny a claim. The Court made clear that insurers can continue to deny claims under its existing precedent. *Id.* at 409-10. Thus, *Mayzenberg* has nothing to do with the Second Circuit's decision in *Tri-Borough*, and *Tri-Borough* does not touch the "deliberate state allocation of regulatory authority." *Cf.* Pet. for Cert. at 9. For this reason, the Second Circuit did not mention *Mayzenberg* in its decision even though Defendants brought it to the court's attention in a Federal Rule of Appellate Procedure 28(j) letter.

III. The Second Circuit Did Not Create A Circuit Split Or Announce A New Rule

A. The Fictitious Circuit Split

Defendants urge this Court to grant their petition because the Second Circuit announced a new rule that authorizes "an injunction of a state proceeding that the statute does not itself prohibit." Pet. for Cert. at 23. Defendants argue that because the state suits are not themselves predicate acts, the Second Circuit has contravened this Court's precedent and deepened an existing split among the Circuits.

The Second Circuit did no such thing. The touchstone for determining whether a federal law expressly authorizes an exception to the Anti-Injunction Act's prohibition on enjoining state suits is whether a federal right or remedy could be given its intended scope only by the stay of a state court proceeding. *See Mitchum*, 407 U.S. 225, 238. Whether

the state suit itself violates the federal law is relevant to this inquiry, but it is not necessary or sufficient to meet the *Mitchum* standard.

This Court in *Mitchum* said nothing about state suits themselves violating the federal law as a prerequisite. And the courts of appeals have widely accepted the premise that under *Mitchum* a federal law can expressly authorize an injunction of a state suit, even if the state suit itself does not violate that federal law.

For example, the Eighth Circuit held that the Private Securities Litigation Reform Act of 1995 (PSLRA) expressly authorizes an injunction of a state suit that makes PSLRA's lead-plaintiff provision "meaningless" without a stay. *In re BankAmerica Corp. Sec. Litig.*, 263 F.3d at 803, *cert. denied* 535 U.S. 970 (2002). The Eighth Circuit reached the same conclusion when interpreting the National Environmental Policy Act (NEPA). The court held that NEPA expressly authorized the stay of state suits that "are in derogation of the requirements placed on the federal government by Congress to carry out the national environmental policy, we would not be according the statutory language its full sweep if we did not find authority to enjoin the offending state proceedings." *Stockslager*, 528 F.2d 949, 952–53. The state suits did not, in and of themselves, violate PSLRA or NEPA, but they did prevent an act of Congress from receiving its full, intended scope. In a different context, the Sixth Circuit held in *Gen. Motors Corp. v. Buha* that ERISA expressly authorizes an

injunction of a state suit if the state suit would make it impossible for the plan fiduciary to carry out its responsibilities under ERISA. *See* 623 F.2d 455, 459 (6th Cir. 1980).

Even the Circuits that are on the opposite side of Defendants' supposed Circuit split have accepted the premise that a state suit need not itself violate a federal law to fall within the AIA's exception by applying the *Buha* standard. The Third Circuit, for example, has twice accepted and applied the *Buha* standard, though it reached the opposite conclusion of *Buha*. In *Nobers*, for example, the Third Circuit left little doubt that a situation similar to that in *Buha* would warrant an injunction: "Whereas in *Buha* the Sixth Circuit concluded that the state writ would have made it impossible for the plan fiduciary there to carry out its duties under ERISA, we see no reason why the appellees' success in *Nobers II* will make it impossible for these plans to comply with ERISA." *See Nobers*, 968 F.2d 401, 410; *see also Musisko*, 885 F.2d 1170, 1178 (holding *Buha* was distinguishable), *cert. denied* 493 U.S. 1074 (1990).

The Fourth Circuit did the same in *Shannon*. Although the plaintiff there urged a broad reading of *Buha* holding that a federal court can enjoin a state suit that touches any discrepancy with ERISA, the Fourth Circuit recognized that "*Buha's* holding may be read in a far more limited fashion" to permit an injunction when a state suit makes it impossible for a pension plan fiduciary to carry out its responsibilities. *See Shannon*, 65 F.3d at 1132. The Fourth Circuit

accepted this standard but found that “affirming the district court’s decision” would not “run counter to the dictates of *Buha*.” *Id.*

The Seventh Circuit, too, accepted the *Buha* standard but found that the facts did not satisfy it. *Darr*, 694 F.3d at 807. There the Seventh Circuit “agree[d] with the Fourth Circuit” in adopting the *Buha* standard but found the facts did not satisfy that standard. *Id.* The Seventh Circuit made no mistake about the standard it adopted, holding that ERISA “does not expressly authorize injunctions against state courts unless the state court suit ‘will have the effect of *making it impossible for a fiduciary of a pension plan to carry out its responsibilities.*’” *Darr*, 694 F.3d at 807-08 (quoting *Shannon*, 65 F.3d 1126 and *Buha*, 623 F.2d at 459). The Courts of Appeals thus broadly agree that ERISA could expressly authorize the injunction of a state suit, even if that state suit does not violate ERISA in and of itself.

Nor is it sufficient that a state suit itself violate a federal law. The Blackmun concurrence in *Vendo* recognized that a single state suit that itself violates a federal law was *not* expressly authorized by the Sherman Act but held that a “pattern of baseless, repetitive claims” could be expressly authorized. *Vendo*, 433 U.S. at 644-45. The *Vendo* dissent criticized the “pattern of baseless, repetitive claims” standard because under it federal courts would be unable to enjoin a state suit that, in and of itself, violated antitrust laws. *Id.* at 652-554. The *Vendo* dissent identified several examples of such single suits

that violate antitrust laws, such as a state suit to enforce a patent obtained by fraud or known to be invalid for other reasons, the prosecution of frivolous claims and objections before regulatory bodies, and the enforcement of restrictive provisions in a license to use a patent or trademark. *See id.* Justice Blackmun responded to the critique in a footnote but maintained that “[s]ince...federal courts should be hesitant indeed to enjoin ongoing state-court proceedings, I am of the opinion that a pattern of baseless, repetitive claims or some equivalent showing of grave abuse of the state courts must exist before an injunction would be proper.” *Id.* at 644, n.*

The Courts of Appeals have faithfully applied this principle, holding that the Anti-Injunction Act prohibits federal courts from enjoining a single state suit that, in and of itself, violates federal law. *See, e.g., Vill. of Bolingbrook v. Citizens Utils. Co. of Illinois*, 864 F.2d 481, 483 (7th Cir. 1988) (holding that the Sherman Act did not expressly authorize a stay of a single state suit to enforce a consent decree that restrained trade in violation of the Sherman Act); *Los Angeles Mem'l Coliseum Comm'n v. City of Oakland*, 717 F.2d 470, 472 (9th Cir. 1983) (holding the Sherman Act did not expressly authorize a stay of a single state eminent domain suit that violated the Clayton Act).

In sum, whether a suit itself violates the federal law is not necessary (*see Mitchum*) or sufficient (*see Vendo*) to trigger the expressly authorized exception. The test is whether the federal law creating a federal right or remedy can be given its intended scope only by

the stay of state court proceedings. *See Mitchum*, 407 U.S. at 238.

B. The Single Word “Further” Does Not Signal a New Rule

Defendants place great weight on the Second Circuit’s use of the word “further,” claiming the court adopted a new standard that departs from this Court’s precedent. Pet. for Cert. at p. i, 5, 8, 14, 18, 23, 26. This one word cannot bear the weight Defendants place on it.

The Second Circuit has used the phrase “further a violation” in AIA cases for over fifty years. *See Vernitron Corp. v. Benjamin*, 440 F.2d 105, 108 (2d Cir. 1971) (holding “*Studebaker Corporation v. Gittlin*, 360 F.2d 692 (2d Cir. 1966), relied upon by *Vernitron* is inapposite in that the prosecution of the state action there relevant would itself have furthered the violation of the Securities Exchange Act”). The Second Circuit is not alone. The very courts Defendants claim are on the opposite side of a circuit split with the Second and Sixth Circuits have used the same or similar phrasing. *See, e.g., Jennings v. Boenning & Co.*, 482 F.2d 1128, 1131 (3d Cir.), *cert. denied*, 414 U.S. 1025 (1973) (“The continuance of a proceeding concerned solely with that relationship did not constitute a furtherance of an ongoing violation of the Securities Exchange Act so as to necessitate operation of § 21(e)”).

The public is also unlikely to read *Tri-Borough* and *Patel* as expansively as Defendants. The Second

Circuit also use the phrase “further a violation” to describe the situation in the *Vendo* concurrence, noting that “six Justices, therefore, agreed that an injunction of state-court proceedings under Section 16 of the Clayton Act would fall within the ‘expressly-authorized’ exception where multiple frivolous proceedings further a violation of the antitrust laws.” *Tri-Borough* 120 F.4th at 94. The Second Circuit thus concluded that the suits described in *Vendo* and the suits in *Tri-Borough* both violated federal law, and that is likely how *Tri-Borough* and *Patel* will be read by the bench and the bar.

The Second Circuit may have used the word “further” to signal that the state suits would inevitably lead to additional RICO violations. But this is not a new rule. The Courts of Appeals broadly agree that Section 1964(a) “grants courts broad discretion and latitude in enjoining violators from activities that *might lead to future violations*” (*United States v. Priv. Sanitation Indus. Ass'n of Nassau/Suffolk, Inc.*, 995 F.2d 375, 377), so long as “the defendant exhibits a reasonable likelihood of committing future violations of the Act” (*Philip Morris USA Inc.*, 566 F.3d 1095, 1131). See, e.g., *Loc. 560 of Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen, & Helpers of Am.*, 780 F.2d 267, 272-73 (enjoining one of the defendants from any future dealings with Local 560 or any other labor organizing or employee benefit plan).

Although it is too soon to tell whether “*Tri-Borough* and *Patel* will have any effect outside their narrow corner of the law, all the cases cited by

Defendants show that courts have not applied *Tri-Borough* outside the context of No-Fault insurance fraud. *See* Pet. for Cert. at 29. And this comes as no surprise because the Second Circuit announced that the *Tri-Borough* decision was “narrow and limited to the unusual circumstances alleged here, which involve a massive scheme including hundreds of purportedly meritless state-court proceedings that help further a RICO violation, such that RICO can only be given its intended scope if those proceedings are enjoined.” *Tri-Borough*, 120 F.4th 59, 98–99.

CONCLUSION

This Court should deny Defendants' petition for a writ of certiorari.

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Respectfully submitted,

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