

SUPREME COURT OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

ASHOT YEGIAZARYAN, AKA)
ASHOT EGI AZARYAN,)
 Petitioner,)
 v.) No. 22-381
VITALY IVANOVICH SMAGIN, ET AL.,)
 Respondents.)

CMB MONACO, FKA COMPAGNIE)
MONEGASQUE DE BANQUE,)
 Petitioner,)
 v.) No. 22-383
VITALY IVANOVICH SMAGIN, ET AL.,)
 Respondents.)

Pages: 1 through 70

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Washington, D.C.
Tuesday, April 25, 2023

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 10:03 a.m.

1 APPEARANCES:

2 VINCENT LEVY, ESQUIRE, New York, New York; on behalf
3 of the Petitioners.

4 NICHOLAS O. KENNEDY, ESQUIRE, Dallas, Texas; on behalf
5 of the Respondents.

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P R O C E E D I N G S

(10:03 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument this morning in Case 22-381, Yegiazaryan versus Smagin.

Mr. Levy.

ORAL ARGUMENT OF VINCENT LEVY
ON BEHALF OF THE PETITIONERS

MR. LEVY: Mr. Chief Justice, and may it please the Court:

In RJR Nabisco, the Court held that private plaintiffs may sue under civil RICO for treble damages if they suffer a domestic injury. Considering the plain text, the Court's precedents, and the common law, it is clear that a civil RICO plaintiff is injured at its domicile. This makes sense. Congress legislated to address domestic concerns and to protect U.S. persons, and this bright-line rule ensures that U.S.-domiciled plaintiffs will have a right to sue under RICO. And, as a matter of comity, it avoids interference with the remedial schemes of foreign states.

In response, Mr. Smagin appears to propose a variant on the Ninth Circuit's gestalt

1 test, which considered the conduct of one of the
2 12 defendants in this suit and the situs of the
3 plaintiff's property. But RJR already held that
4 the focus of RICO's private right of action is
5 the plaintiff's injury and not the defendant's
6 conduct, and that -- that -- perhaps that is why
7 Smagin here wishes to have the Court overrule
8 RJR Nabisco.

9 As far as the focus on the plaintiff's
10 property, the statute, again, focuses on an
11 injury to the person, not the property. And,
12 regardless, the common law instructs that the
13 nature of the property here being intangible,
14 it's a judgment and a debt, it follows the
15 person of the plaintiff creditor, and that is
16 where it is located. So the injury here was in
17 Russia and not the United States.

18 Following the common law makes sense
19 because it avoids the odd result of allowing a
20 foreign plaintiff to bring a foreign judgment or
21 award to the United States to create a domestic
22 injury.

23 Finally, it is clear that the decision
24 below will be unworkable. The Ninth Circuit
25 purported to apply the same test as the Third

1 Circuit, and yet those two circuits split on
2 nearly identical facts in Cevdet and the
3 decision below. And adopting the Ninth
4 Circuit's approach will only generate more
5 splits, considering the scores of conduct and
6 predicates that allow a claim under RICO and the
7 categories of intangible property.

8 This is not what RJR Nabisco intended.
9 The Court should reverse the decision below.

10 I welcome the Court's questions.

11 JUSTICE THOMAS: Mr. Levy, you seem
12 to, in your brief and in your opening statement,
13 argue that all property, injury involving all
14 property, the injury accrues at the domicile of
15 the party.

16 How would you deal with real property
17 using your approach?

18 MR. LEVY: Right. So our -- our first
19 argument depended -- based on the text of the
20 statute is that the -- the harm is injured -- is
21 felt at the domicile of the plaintiff in this.

22 JUSTICE THOMAS: No matter where the
23 real property is?

24 MR. LEVY: That's right. And our
25 secondary argument --

1 JUSTICE THOMAS: Isn't that kind of
2 odd?

3 MR. LEVY: Well, it's what Congress
4 intended, and it's rooted in the -- in the text
5 of the statute, which protect -- protects
6 injuries to the person of the plaintiff and
7 allows the person of the plaintiff to sue for
8 threefold his damages if injured, and -- and in
9 the case of Chattanooga Foundry, which was
10 decided soon after the enactment of the Sherman
11 Act -- the Sherman Act was enacted in 1890,
12 Chattanooga Foundry in the early 1900s --
13 Justice Holmes for the Court wrote that we do
14 not go behind the person of the plaintiff.

15 And that principle wasn't -- was -- is
16 -- is -- is probative not just because it is
17 close in time, and perhaps the words "in" versus
18 "to" seem foreign to us today, but it was
19 interpreted at the time --

20 JUSTICE THOMAS: So do we have to
21 decide that all property -- the injury accrues
22 at the -- the domicile, as opposed to just -- in
23 this case, we're dealing with intangible
24 property?

25 MR. LEVY: I think the Court could

1 decide -- could decide the case on narrow
2 grounds and to say that -- could leave open the
3 question of whether harm to tangible property is
4 felt -- is -- is -- is a sufficient basis to
5 proceed.

6 But I do think the Court should look
7 to the text of the statute, which directs it to
8 the person of the plaintiff. So -- and -- and
9 in the event the Court does look at property, of
10 course, we're dealing here with intangible
11 property. A judgment is a debt, as the Court
12 recognized recently in the context of the -- of
13 the -- of the Bankruptcy Act just this term.
14 And as the -- as the common law instructs, a
15 debt follows the person of the creditor.

16 CHIEF JUSTICE ROBERTS: Well, here --
17 here, we -- the plaintiff obtained a California
18 judgment to collect California property against
19 someone living in California based on conduct in
20 California. Right?

21 MR. LEVY: There's a California
22 judgment recognizing an award rendered abroad.

23 CHIEF JUSTICE ROBERTS: Why can't we
24 consider, with all those connections, that
25 that's a domestic -- a domestic injury?

1 MR. LEVY: Well, there's no law that
2 supports the notion that that judgment exists in
3 California or in the United States. The common
4 law has long looked at intangibles as following
5 the person of the creditor. Blodgett makes the
6 point in 1928, and the principle goes back to
7 Justice Story's Commentaries that -- that a
8 property right that is intangible, such as a
9 debt, follows the creditor. And it does not
10 matter that the debt can be enforced in
11 California, which is the case here.

12 I would add, of course, that the
13 judgment here is movable from California and can
14 be recognized not just across the United States
15 under the Full Faith and Credit Clause but
16 across the world. And, indeed, the judgment in
17 this case recognizes an award, and that was
18 recognized under the New York Convention, and
19 that was also recognized in Liechtenstein.

20 CHIEF JUSTICE ROBERTS: Well, but the
21 individual can also move around the world,
22 right?

23 MR. LEVY: Yes.

24 CHIEF JUSTICE ROBERTS: So how is that
25 different when you suggest that the judgment can

1 move around the world?

2 MR. LEVY: Well, that -- that's
3 exactly the point with -- with intangible
4 property rights. There's no one place where
5 they're located. I should add that the first --
6 we're basing our rule on not just the
7 Commentaries of Justice Story and the Court's
8 longstanding instructions as to how to site
9 property rights.

10 The injury here is a failure to pay.
11 That was felt at Mr. Smagin's wallet in -- in
12 Russia. And -- and a judgment, a debt, a bond,
13 that's an intangible right. It's sited at the
14 -- at the domicile of the -- of the creditor for
15 purposes of taxation, for purposes of
16 escheatment, and -- and for all purposes, for
17 enforcement purposes too. The -- the creditor
18 brings it with him to -- to the location where
19 the judgment can be enforced.

20 And, of course, the law does not
21 require that there be personal jurisdiction to
22 enforce a judgment of the United States. Some
23 courts in New York and California -- and we cite
24 them in our brief -- have allowed a plaintiff to
25 proceed with judgment enforcement in the absence

1 of any jurisdictional requirements.

2 And, of course, Shaffer -- Shaffer
3 itself, in Footnote 36, states that personal
4 jurisdiction doesn't apply in -- in the
5 enforcement proceedings.

6 JUSTICE JACKSON: Can I ask a question
7 about your statement that the judgment is
8 occurring or is the injury to pay? I guess I'm
9 -- or, excuse me, the injury is the failure to
10 pay, which is what I think you said. But what
11 about all of the activities that were allegedly
12 taken in this case here in the United States to
13 avoid enforcement of the judgment? Are you
14 saying that's not part of the injury?

15 MR. LEVY: Well, I -- I think that's
16 the defendant's conduct, and so our first
17 response is that it is not part of the injury.
18 The injury is what's felt by the -- by the
19 plaintiff. I -- I -- and so RJR focused -- the
20 focus of the statute under RJR is the injury.

21 JUSTICE JACKSON: But why isn't that
22 felt by the plaintiff here?

23 MR. LEVY: Well, it's felt by the
24 plaintiff where he's domiciled. That's what the
25 common law instructs. And -- and -- and that is

1 in Moscow.

2 JUSTICE JACKSON: And that's what
3 RJR -- you took RJR to carry forward that
4 principle that the injury is directed to the
5 person?

6 MR. LEVY: No. I -- RJR instructs
7 that the Court should look at whether there's a
8 domestic injury. And to identify where that
9 injury takes place, we look first at the text of
10 the statute, as the Court usually does, and we
11 look at the common law, including prior --
12 and -- and to the precedents of this Court
13 interpreting the text that was adopted by
14 Congress in 1970 when it enacted RICO.

15 JUSTICE JACKSON: And you said -- but
16 you -- you -- the common law that you're
17 focusing on is the Chat -- Chattanooga case?

18 MR. LEVY: No, Chattanooga we're
19 focusing on to interpret the words of the
20 statute. The common law, we -- we look at two
21 sources of the common law. One is common law
22 conflict rules as reflected in the First
23 Restatement, and the reason we look at those is
24 because the common law looked to the situs of an
25 injury to determine which law applied and -- and

1 -- and had a rule for determining where an
2 economic injury occurred, and for that reason,
3 we look to the First Restatement rule, which was
4 the majority rule at the time of RICO's
5 enactment.

6 We also look at the common law citing
7 intangible property rights. That's reflected in
8 Justice Story. That's reflected in some of the
9 enforcement cases that the Court looked at,
10 Chicago Rail versus Sturm, Harris versus Balk.

11 JUSTICE JACKSON: All right. So
12 Justice Thomas raises the point of what about
13 tangible property rights. So are -- are you
14 prepared to concede that you might have a
15 different outcome with respect to a foreign
16 plaintiff who has both property -- tangible
17 property interests and intangible property
18 interests that are put at risk through
19 racketeering activity?

20 MR. LEVY: Well, our primary argument
21 is -- is our first argument based on the text,
22 is that the result is the same for tangible or
23 intangible property. You look to the plaintiff
24 and where the plaintiff is because the statute
25 speaks of injury to the person of the plaintiff,

1 and he may recover threefold his damages that he
2 suffers.

3 JUSTICE JACKSON: So what about --
4 what about a U.S. plaintiff, a U.S. citizen
5 plaintiff who is residing overseas, but
6 everything related to the property interests,
7 the business interests, the activities all
8 happen in the United States? Your position is
9 still we have no domestic injury if that person
10 is residing in London, for example?

11 MR. LEVY: Yes. It depends on the
12 nature of the property right, but in the
13 conduct --

14 JUSTICE JACKSON: But I thought you
15 said it didn't. Your first-line injury wasn't
16 -- it didn't matter what the property right is.

17 MR. LEVY: Right. Yes. That's
18 correct.

19 JUSTICE JACKSON: Okay. So --

20 MR. LEVY: Our first argument is it
21 doesn't matter.

22 JUSTICE JACKSON: -- your first
23 argument is it doesn't matter. I'm talking
24 about a U.S. citizen who has business interests
25 here, real estate here, money interests here,

1 and for whatever reason is residing in London at
2 the time the racketeering activity happens which
3 is here in the United States.

4 Your answer is no domestic injury?

5 MR. LEVY: If his domicile is London,
6 unless he's undertaking substantial business
7 activities, we -- we allow that that may be a
8 possibility, yes. Our primary argument is that
9 there's no domestic injury.

10 JUSTICE KAVANAUGH: When you say
11 primary argument, are you making a first
12 argument and then saying, even if we lose on the
13 first argument, we have an alternative argument
14 just to make --

15 MR. LEVY: That's -- that's correct.
16 Our first argument is the injury is to the
17 person and not the property.

18 JUSTICE KAVANAUGH: Okay. And if you
19 --

20 MR. LEVY: That's our first argument.
21 If we lose on that --

22 JUSTICE KAVANAUGH: -- lose on that as
23 to tangible property, you're still arguing, as
24 to intangible property, that's the rule?

25 MR. LEVY: That's right.

1 JUSTICE KAVANAUGH: Okay.

2 MR. LEVY: And -- and --

3 JUSTICE SOTOMAYOR: Counsel, I -- I
4 have a basic problem, which is, as I was reading
5 your brief and thinking about this case, you
6 keep talking about domestic injury, and I was
7 trying to figure out where you got that from.
8 And I then went back to RJR, of which I wasn't a
9 party, I was recused, and as I see the word
10 "domestic injury" there, it was shorthand for
11 the second step of the extraterritoriality
12 analysis the Court adopted, don't you?

13 MR. LEVY: I think "domestic injury"
14 was shorthand for --

15 JUSTICE SOTOMAYOR: The second step of
16 the two-step inquiry.

17 MR. LEVY: -- for the holding at the
18 second step, that the focus of the statute is a
19 domestic injury.

20 JUSTICE SOTOMAYOR: All right.
21 Exactly. But the Court wasn't looking at the
22 plaintiff. It was look -- and, in fact, it said
23 and didn't say explicitly that foreigners
24 couldn't sue. What it said was that step two
25 determines -- and I'm quoting it -- "whether the

1 case involves a domestic application of the
2 statute by looking to the statute's focus."

3 And the word it's uses, "If the
4 conduct relevant to the statute's focus occurred
5 in the U.S., then the case involves a
6 permissible domestic application, even if other
7 conduct occurred abroad."

8 So you seem to be thinking that injury
9 is the conduct. I think of injury -- of injury
10 as the focus of the statute, of what conduct and
11 where was it done that would violate the act.

12 And so that's a big difference for me.
13 And that goes to the Chief's questions and
14 Justice Jackson's question that here, all of
15 the -- whether they can prove it or not, a
16 different question -- but the evasion of the
17 judgment was in California. The claims are that
18 all of the activities to evade the judgment were
19 directed from or took place from California and
20 that the judgment is at California.

21 So tell me why those aren't the acts
22 that constitute the RICO conspiracy at issue
23 here.

24 MR. LEVY: Right. So, first, at the
25 second step, the -- the -- the -- what matters

1 is the focus of the statute. It doesn't have to
2 be conduct. And I think the Court made that
3 clear in part four. And the injury is an
4 element of the claim which is known at common
5 law, and it's felt by the plaintiff.

6 JUSTICE SOTOMAYOR: But the -- the
7 problem is that we're not talking about whether
8 every element was committed in the United
9 States. If that were the case, then we would
10 have said, if any conduct occurred abroad, it
11 would be irrelevant. And we definitely said --
12 didn't say that.

13 We said some conduct can be abroad.
14 Some can be here. What you need is that there's
15 enough here to constitute conduct in the United
16 States. So I'm not sure where you get that
17 every element of the crime has to be done in the
18 United States.

19 MR. LEVY: If I misspoke, I apologize.

20 JUSTICE SOTOMAYOR: No, no, no.

21 MR. LEVY: I -- I --

22 JUSTICE SOTOMAYOR: But -- so even
23 assuming that there's economic loss felt
24 somewhere else and that has to be proven, why
25 can't the other elements of RICO occur in the

1 U.S.?

2 MR. LEVY: Some -- certainly, some of
3 the conduct can be here or abroad, and that's --
4 that's part three of Nabisco, which spoke of the
5 substantive reach of RICO. And in part four,
6 the Court said as a separate matter there needs
7 to be a domestic injury because that is the
8 focus of -- of the civil RICO provision, and the
9 presumption against extraterritoriality was not
10 overcome and foreign states --

11 JUSTICE SOTOMAYOR: So why -- why
12 isn't -- let me go to one last question. Why
13 isn't a judgment, a California judgment, held in
14 California?

15 MR. LEVY: Well, I -- I --

16 JUSTICE SOTOMAYOR: Wherever you live,
17 if the judgment is issued in a particular place,
18 why is -- don't -- why doesn't it belong -- like
19 real property, why doesn't it belong in the
20 U.S.?

21 MR. LEVY: Well, all the cases speak
22 of a judgment as a debt, and it's held at the --
23 at the domicile and by the plaintiff. And, in
24 fact, the First Restatement considered locating
25 the judgment at the -- at the court issuing it.

1 It's in the drafts. And that was never adopted.

2 And -- and Professor Simowitz goes
3 through the history of the First Restatement.
4 It was something that was considered. It was
5 not adopted in the First Restatement.

6 And we're aware of no case in which a
7 court has said -- and they cite none -- that the
8 judgment is -- is at the issuing court. That's
9 not the common law rule.

10 I did want to say, although our view
11 is that in RJR -- that RJR instructs that the
12 conduct is irrelevant and that it's the injury
13 that matters, we don't accept the premise that
14 everything occurred in the United States or even
15 that it was directed to the United States.

16 If the Court looks at paragraph 91 of
17 the Joint Appendix, it -- it will see that there
18 are a number of allegations that focus on
19 activities abroad: litigation in Nevis,
20 litigation in Liechtenstein, enforcement
21 activities related to the Liechtenstein
22 judgment, efforts to move assets from London to
23 Liechten -- to --

24 JUSTICE SOTOMAYOR: I -- I -- I -- I'm
25 going to stop you there because I don't disagree

1 that there's a lot of foreign conduct alleged,
2 and whether any of it is actionable or not in a
3 RICO claim here is not before us. I think
4 what's before us is whether the U -- alleged
5 U.S. conduct was enough under RICO. So thank
6 you.

7 JUSTICE BARRETT: Counsel, can I ask
8 you why you focus so much on the First
9 Restatement when the Second Restatement was
10 adopted before RICO was passed?

11 MR. LEVY: Yeah.

12 JUSTICE BARRETT: And the Second
13 Restatement marked kind of a sea change in the
14 way that we think about conflicts of laws, in
15 particular, a multifactor test that's more
16 similar to the one proposed by your friend on
17 the other side.

18 So why should we care about the First
19 Restatement?

20 MR. LEVY: So a few reasons. One, as
21 Beck instructs, the Court should look at the
22 common law at the time of RICO's enactment,
23 which here is 1970. The Second Restatement was
24 passed or -- or came into formal form in 1972, I
25 believe.

1 JUSTICE BARRETT: But it's --

2 MR. LEVY: And --

3 JUSTICE BARRETT: -- purporting,
4 right, that the whole point of the Restatement
5 is it's trying to describe what the law was,
6 which isn't, you know, a photo finish at the
7 moment it's published in 1972.

8 MR. LEVY: Right.

9 JUSTICE BARRETT: There's some lag
10 time, right? So it seems to me that the Second
11 Restatement would be a pretty accurate statement
12 of what the law was right around that time.

13 MR. LEVY: So I think, with respect in
14 particular to that Restatement, it was
15 aspirational. And I would direct -- I -- I
16 would cite Justice Scalia's separate opinion in
17 Kansas versus Nebraska, 574 U.S. at 475, and --
18 and he notes that Restatements moved from --
19 restatements of the law, as the First
20 Restatement was, to becoming more aspirational.

21 I think it's undisputed that the First
22 Restatement rule was still followed by a
23 majority of states through 1979, which is after
24 RICO was enacted.

25 And -- and -- and the more substantive

1 point, of course, is we're not actually
2 conducting a choice-of-law analysis. Our
3 position is that the court should look to the
4 Restatement rules to determine where the injury
5 was found and where it occurred. The Second
6 Restatement did not adopt a different rule to do
7 that. What it did is, as -- Justice Barrett, as
8 you said, add other elements and looked at the
9 center of gravity.

10 JUSTICE BARRETT: And so the ALI was
11 doing something more aspirational, is kind of
12 your -- your argument? It was pushing for a
13 change, not existing?

14 MR. LEVY: Well, it's two points.
15 One, it is pushing for a change. And the other
16 point is we're looking to the Restatement rules
17 to identify the location of the injury, and the
18 Second Restatement, although it was
19 aspirational, did not change the rule for
20 determining where the injury occurred.

21 JUSTICE GORSUCH: Is it true, though,
22 that even before the Second Restatement was
23 adopted, that a number of states had abandoned
24 the First Restatement and had adopted something
25 more like the Second, including, incidentally,

1 California?

2 MR. LEVY: I -- I think there were --
3 some states had transitioned. The majority of
4 states at the time, as I said, 1979 is
5 undisputed --

6 JUSTICE GORSUCH: Right.

7 MR. LEVY: -- still adopted the rule.

8 JUSTICE GORSUCH: And then, when we
9 think about extraterritoriality, really, we're
10 -- we're thinking about comity and ensuring that
11 our laws don't interfere with other countries'
12 laws and -- and that theirs, as a result, we
13 hope won't interfere with ours.

14 And I -- I certainly understand the
15 argument that, you know, RICO has potential
16 comity impacts, especially when you're thinking
17 about conduct abroad and suing defendants
18 abroad.

19 But, here, the question is whether
20 foreign plaintiffs can have the same
21 opportunities as domestic plaintiffs, which
22 would seem to be not a comity problem and, in
23 fact, if there were a comity issue, it might be
24 by denying access to our courts for things that
25 happen here to foreign individuals on equal

1 terms with domestic persons. So what do you say
2 to that?

3 And related to that, it's notable that
4 the U.S. Government, which has grave interests
5 in comity and extraterritorial application of
6 our laws for just these reasons, chose not to
7 participate in this case.

8 So there you go. Two balls in your --
9 in the air for you.

10 MR. LEVY: Okay. I'll try to remember
11 them. Number one, the -- the Court has made
12 clear that the presumption is a different canon
13 of interpretation than the note -- than -- than
14 the canon against considering prescriptive
15 comity. Justice Scalia made that very clear in
16 his dissent in Hartford Fire. And -- and the
17 Court has made that clear for the Court as a
18 whole, including in RJR, where -- that it --
19 that it was applying the presumption as a matter
20 of interpreting the statute wholly apart from
21 comity.

22 The second point, which is we do rely
23 on comity --

24 JUSTICE GORSUCH: Before we leave that
25 one, why isn't our extraterritoriality rule

1 essentially a crystallization and a shorthand
2 for comity considerations?

3 MR. LEVY: I -- I think the Court
4 hasn't thought about it that way and has -- has
5 considered the presumption to be a longstanding
6 canon of construction. It certainly reflects
7 some principles coming from comity concerns and
8 international law.

9 But I think the Court has also
10 considered that the canon of -- or the
11 prescriptive comity concept will apply
12 independently. So they're both independent.

13 As far as the application of comity to
14 this case, I think that laying was made by the
15 Court in RJR, which looked at the comity
16 concerns and said that there are independent
17 concerns arising not just from applying our laws
18 to conduct occurring overseas but also to
19 allowing foreign plaintiffs to sue.

20 JUSTICE GORSUCH: And there's that
21 footnote reserving the very question in this
22 case, though, right? So, I mean, you talk about
23 overruling RJR, but I -- I don't know about that
24 given that footnote, which seems to reserve this
25 very question, which is why we have a circuit

1 split on it, which is why we're here.

2 MR. LEVY: Right. I think there are
3 aspects that are sought to be overruled here,
4 including what -- the Court's ruling on the
5 focus. If -- Justice Gorsuch, if you were
6 referring to the footnote --

7 JUSTICE GORSUCH: No, I understand
8 that. But the person, the plaintiff issue is --
9 is open, right?

10 MR. LEVY: The -- the question of what
11 -- where the injury is -- is open. That was --
12 that was -- that was not briefed or addressed
13 and -- and left open. And -- and it was
14 conceded there that -- that the injury was
15 foreign, even though it was -- it consisted of
16 lost revenues and much of the activity occurred
17 here. The dissent noted that the case had the
18 United States written all over it. That didn't
19 change anything.

20 JUSTICE KAGAN: What happens in your
21 view if the plaintiff is domiciled in the United
22 States, but all the relevant conduct is abroad?

23 MR. LEVY: If the plaintiff is
24 domiciled in the United States, then he or she
25 passes the 1964(c) requirement of having a

1 domestic injury. And as far as the -- whether
2 the conduct is within the scope of RICO, that
3 turns on whether the substantive provisions
4 apply extraterritorially under the --

5 JUSTICE KAGAN: Right. So it's
6 assuming that they do so that the -- the
7 substantive provisions would apply.

8 MR. LEVY: Right.

9 JUSTICE KAGAN: But then you're saying
10 that the -- that the right of action can also
11 kick in, even though everything was done abroad
12 and the only connection with the United States
13 is that the plaintiff is domiciled here?

14 MR. LEVY: Right. That's because
15 Congress made a judgment call that the
16 substantive scope of RICO would apply
17 extraterritorially. I think the Court was
18 unanimous on that point in RJR.

19 And the issue of where there's a
20 domestic injury comes in as a separate matter
21 because the Court ruled that the presumption
22 applies separately to Section 1964(c) and
23 required domestic injury. So it's a separate
24 check that a plaintiff has to go through under
25 civil RICO in light of the Court's instructions

1 in RJR Nabisco, again, recognizing that
2 providing a remedy raises wholly distinct
3 issues, also recognizing that the right of
4 action could be and was narrower than the
5 substantive scope of RICO, and the Court did
6 this analysis in RJR.

7 JUSTICE JACKSON: In the RJR case,
8 didn't the Court also say that we had a
9 context-specific kind of dynamic working here?

10 I think the thing that is confusing me
11 a little bit about your argument is that it
12 seems as though you are advocating a bright-line
13 rule when, in RJR, the Court suggested that
14 application of the domestic injury rule will not
15 always be self-evident, that it depends on the
16 context.

17 So how do you square that suggestion
18 with your test?

19 MR. LEVY: So I -- I think there --
20 two points. One, I -- I read that part of RJR
21 to leave open the question of where the domestic
22 injury is. It doesn't open or shut the door to
23 a bright-line rule. The Court has said,
24 including in RJR, that it prefers bright-line
25 rules in this context, that Congress is, of

1 course, free to over -- to overrule the Court by
2 -- by statute, as, for example, it did in
3 Aramco, following Aramco.

4 But, if -- if -- Justice Jackson, if
5 you look at the discussion of -- in RJR of the
6 comity concerns -- and, of course, the
7 plaintiffs there were foreign states and -- and
8 -- and the European community, and they were
9 saying that they know better whether their
10 sovereign interests were at play.

11 And the Court said, well, we have to
12 apply a rule and find a rule that governs in all
13 cases and rejected the notion that there ought
14 to be case-by-case adjudication of whether the
15 presumption is overcome. So -- so that --
16 that's where we're finding a home for the
17 bright-line rule.

18 JUSTICE ALITO: What specifically was
19 the intangible asset that was the basis for the
20 Ninth Circuit's decision here?

21 MR. LEVY: The Ninth Circuit said that
22 the key was the judgment.

23 JUSTICE ALITO: Has any other court
24 addressed that issue?

25 MR. LEVY: Of -- of whether -- well,

1 in Cevdet, the Third Circuit looked at basically
2 the same facts. There was a judgment that was
3 unpaid. It was here. And it came out the other
4 way.

5 But I think the other -- the other
6 point is adopting a more open-ended approach
7 here will, as I said, lead to a number of
8 circuit splits, considering not just the nature
9 of the conduct and the nature of the injury that
10 may result if it's accepted that a -- a property
11 interest can be injured in some other way but
12 also the -- whether a -- a property right is
13 tangible or intangible, which is a question of
14 law.

15 In Bascuñán, the Second Circuit, for
16 example, held that a -- funds in a New York
17 account -- this is the Second Circuit -- were a
18 tangible form of property and therefore were
19 there. And this directly contravenes what the
20 Court -- this Court said in Blodgett, that funds
21 in a bank account create a claim against the
22 bank, which is a chosen action and an
23 intangible. So -- and this is just one example.

24 CHIEF JUSTICE ROBERTS: Thank you,
25 counsel.

1 Justice Thomas?

2 JUSTICE THOMAS: So, in your argument
3 then, the debt is the intangible property?

4 MR. LEVY: The -- the right to payment
5 is the intangible property, which is the debt,
6 yes.

7 JUSTICE THOMAS: Okay. So why not the
8 judgment?

9 MR. LEVY: Well, the judgment is a
10 debt. So the -- but the judgment --

11 JUSTICE THOMAS: The judgment is a
12 debt? I thought the debt was not being paid, so
13 you sought a judgment in the Central District of
14 California?

15 MR. LEVY: Right. It's hard to
16 distinguish them, of course, because there's a
17 judgment in Liechtenstein which reflects the
18 same award. So I think the judgment -- there's
19 -- there are a number of debts that are one and
20 the same. But the judgment creates a debt.

21 JUSTICE THOMAS: What was the initial
22 judgment for the debt? Was it in the Central
23 District of California?

24 MR. LEVY: No, it was initially an
25 arbitral award rendered in London --

1 JUSTICE THOMAS: That's what I --

2 MR. LEVY: -- that was brought to the
3 United States.

4 JUSTICE THOMAS: So that is the debt?

5 MR. LEVY: That is the initial debt.
6 But the judgment, of course, recognizes it and
7 exists independently and can be brought.

8 JUSTICE THOMAS: So, if you have one
9 debt in Liechtenstein and one in the Central
10 District of California, how many debts do you
11 have?

12 MR. LEVY: Well, you can only collect
13 on those once.

14 JUSTICE THOMAS: Well, so then both
15 can't be debts.

16 MR. LEVY: Well, I think the law looks
17 at all of them as debts, but you can only
18 collect on them once.

19 JUSTICE THOMAS: Well --

20 MR. LEVY: And the initial -- the
21 initial debt is the award in this case, the
22 arbitral award.

23 JUSTICE THOMAS: That's what --
24 that's -- that's my point, that the debt is
25 actually the award. And it seems as though the

1 -- what you're talking about, we keep referring
2 to as a judgment is a way to -- to collect on a
3 debt in the United States. So I don't know how
4 that could be a debt.

5 MR. LEVY: Right. I -- I -- the Court
6 has -- the common law and the Court do say that
7 a judgment itself is -- is a debt.

8 JUSTICE THOMAS: A judgment or the
9 judgment?

10 MR. LEVY: Well, a judgment, yeah.

11 CHIEF JUSTICE ROBERTS: Justice Alito?
12 Justice Sotomayor?

13 JUSTICE SOTOMAYOR: I just am a bit
14 confused about the issue that we're addressing.
15 I think the question presented was, does -- has
16 plaintiff stated a valid RICO claim?

17 Now, assuming -- don't panic, but just
18 assuming we believe that they might have with
19 respect to Yegiazaryan, in my mind, there's a
20 question about the other defendants, like CMB
21 Monaco that's not alleged to have done anything
22 directly in the United States.

23 What do we do with that? Is that the
24 subject of a different motion that the
25 Respondents have to make in the court below?

1 MR. LEVY: I think our -- our first --
2 our argument is that you don't look at conduct
3 at all. But, if the Court looks at conduct, and
4 there is certainly different conduct alleged as
5 to different defendants, here, I think, for all
6 the defendants, including Mr. Yegiazaryan, the
7 primary conduct was outside the United States --

8 JUSTICE SOTOMAYOR: I know what your
9 argument is.

10 MR. LEVY: Right. And then, in terms
11 of disposition --

12 JUSTICE SOTOMAYOR: Do we have to do
13 -- in -- in terms of our disposition, do we just
14 say what we say and let the court sort it out on
15 which defendants belong in this action and which
16 don't?

17 MR. LEVY: Well, I think -- I think,
18 if the Court announces a rule that is similar to
19 the Ninth Circuit, then it ought to apply to
20 give guidance and to say that there isn't enough
21 conduct here, but, alternatively, you would have
22 to remand, I suppose, because there was no
23 defendant-by-defendant analysis.

24 JUSTICE SOTOMAYOR: All right. Thank
25 you, counsel.

1 CHIEF JUSTICE ROBERTS: Justice Kagan?
2 Justice Kavanaugh?
3 Justice Jackson?
4 I'm sorry.

5 JUSTICE BARRETT: You did it yesterday
6 too. No, I don't have questions.

7 (Laughter.)

8 CHIEF JUSTICE ROBERTS: Justice
9 Barrett. I'm jumping ahead.
10 Justice Jackson? No.
11 Thank you, counsel.

12 Mr. Kennedy.

13 ORAL ARGUMENT OF NICHOLAS O. KENNEDY
14 ON BEHALF OF THE RESPONDENTS

15 MR. KENNEDY: Mr. Chief Justice, and
16 may it please the Court:

17 Mr. Smagin states a RICO claim because
18 he alleged injury to his California property
19 from California action that violates RICO. RJR
20 Nabisco teaches us that a domestic injury is one
21 that arises in the United States.

22 This looks at the location of the
23 injurious conduct and the location of the
24 injured property. This case is deeply domestic
25 on both fronts. First, the conduct. The RICO

1 violations occurred in California. The scheme
2 was orchestrated by an international fugitive
3 living in Beverly Hills.

4 Second, the property. This RICO
5 enterprise targets a California judgment against
6 California debtors that confers rights only in
7 California.

8 Petitioners' attempt to escape RICO
9 liability simply because their victim lives
10 abroad should fail for two reasons. First, the
11 text. Section 1964(c) allows any person injured
12 in their business or property to bring a civil
13 RICO claim.

14 Petitioners ask you to rewrite the
15 statute to apply only to domestic persons.
16 Congress knows how to limit those who can bring
17 a statutory claim to domestic persons, but
18 Congress chose not to do so here.

19 Second, the context. Petitioners'
20 singular focus on the domicile of the plaintiff
21 ignores the genesis of the domestic injury rule.
22 For a civil RICO claim, domestic injury is step
23 two of the extraterritoriality analysis. This
24 is conduct-focused.

25 A conduct focus allows the U.S. court

1 to address U.S. conduct by U.S. defendants
2 targeting U.S. property. Petitioners' rule, on
3 the other hand, would allow a U.S. court to
4 regulate purely foreign conduct just because the
5 plaintiff happened to live in the U.S.

6 This regulation of purely foreign
7 conduct is exactly what the presumption against
8 extraterritoriality seeks to prevent. Congress
9 did not bar the courtroom to foreign RICO
10 plaintiffs, and this Court should not do so
11 either.

12 The opinion below should be affirmed,
13 and I welcome the Court's questions.

14 JUSTICE THOMAS: Mr. -- what is the
15 property here? You heard my question to your
16 friend on the other side. The -- is it the
17 judgment in the Central District of California,
18 or is it the arbitral award? And if it is the
19 judgment in California, why isn't it also the
20 \$90 million judgment in Liechtenstein?

21 MR. KENNEDY: Thank you, Judge --
22 thank you, Your Honor.

23 The property here is the California
24 judgment issued by the U.S. District Court for
25 the Central District of California. The -- the

1 reason it is not the additional London award or
2 an additional judgment in a different country is
3 twofold.

4 One, the California judgment confers
5 rights only in California issued by a California
6 court. Two, the California judgment was issued
7 after the original act. The RICO claim is based
8 entirely on acts that occurred after the
9 arbitration award was issued, completely
10 different actions, completely different
11 liability we're seeking here.

12 We're not going back to anything that
13 happened before the award, and we're not doing
14 anything that led to the original award.

15 JUSTICE KAGAN: It is a little bit
16 odd, though, isn't it, Mr. Kennedy, that this
17 whole -- yes, there's a California judgment and
18 acts, alleged acts, taken to avoid that
19 judgment.

20 But all of that is derivative on a
21 dispute that was fundamentally foreign in nature
22 between foreign parties involving foreign
23 conduct have -- initially adjudicated in another
24 foreign country. So the fact that this has
25 migrated, if you will, to the United States, you

1 know, comes about only with respect to enforcing
2 the first judgment.

3 MR. KENNEDY: You're correct, Your
4 Honor, that the original arbitration award was
5 the genesis of a -- came from a foreign dispute.
6 But that -- that's not dispositive here for two
7 reasons.

8 First, Mr. Yegiazaryan moved to
9 California and has lived in California, enjoying
10 the benefits and the protections of U.S. law for
11 over a decade.

12 Second, the arbitration award was
13 confirmed into a U.S. judgment under the New
14 York Convention, which teaches us that a
15 judgment confirming an arbitration award must be
16 treated the same as any other judgment.

17 When that judgment is issued, the
18 arbitration award, at least for purposes of the
19 U.S., seeks to exist -- ceases to exist in a new
20 U.S. judgment --

21 JUSTICE KAGAN: And so suppose there
22 was no other conduct in the United States of the
23 kind that you have alleged, that the only U.S.
24 connection is the, let's say, California
25 judgment itself. You know, whatever steps taken

1 to avoid that judgment, suppose they were all
2 overseas as well. Would you still have a claim?

3 MR. KENNEDY: I don't believe we
4 would, Your Honor, because RJR Nabisco teaches
5 us that it must be conduct-focused. The conduct
6 that is the focus of the statute must occur in
7 the U.S.

8 Here, it did. We have a California
9 debtor who orchestrated this scheme from
10 California, intimidated witnesses in California,
11 signed false documents from California,
12 transferred money from California --

13 JUSTICE KAGAN: So your theory is not
14 based on the judgment alone but based on the
15 judgment plus the conduct intended to avoid it?

16 MR. KENNEDY: I would actually flip
17 it, Your Honor. I would say it's based on the
18 conduct primarily informed by the location and
19 nature of the property, which in this case is
20 the California judgment.

21 JUSTICE KAGAN: And then doesn't that
22 run into some of what we said in RJR, that it
23 really was a property-focused test rather than a
24 conduct-focused one?

25 And I'm -- I'm not suggesting that RJR

1 precludes looking at conduct at all, but doesn't
2 RJR indicate that the primary focus is on
3 property rather than conduct?

4 MR. KENNEDY: I -- I believe RJR
5 focuses on both, as does the text. RJR focus --
6 applied the presumption against
7 extraterritoriality, just as Morrison did, just
8 as Kiobel did. That's always been
9 conduct-focused.

10 But RJR recognized that Section
11 1964(c) is different. That's where the domestic
12 injury piece, that's where the property gloss,
13 if you will, on it came in, and that's to be
14 faithful to the statutory text. The text says
15 injury in business or property. It doesn't say,
16 as my friend on the other side said, injuries to
17 the person. It says in -- injuries in business
18 or property.

19 That's why we take -- that -- that's
20 why the emphasis on property is appropriate when
21 doing an extraterritorial -- extraterritoriality
22 analysis under 1964(c).

23 CHIEF JUSTICE ROBERTS: Well, it -- it
24 doesn't say injury in or injury to. It says a
25 person injured in his business or property.

1 MR. KENNEDY: That's correct, Your
2 Honor. We believe each of those words should
3 have meaning. It says "any person." That
4 defines, as I believe Petitioners pointed out in
5 their reply, the beginning category, any person,
6 not any domestic person. It then qualifies that
7 by saying injuries in business or property.

8 What that tells us, and if we look at
9 the legislative history, that tells us RICO is
10 not focused on personal injuries. It's not
11 focused on assaults or murders. It's focused on
12 economic injury. That's why we use the terms
13 injury in "business" or "property" in the
14 statute.

15 And, again, ignoring those terms and
16 looking only -- you know, at a level of
17 abstraction, only to the plaintiff and where
18 they -- where they diminish their overall wealth
19 writes those two terms, "business" or
20 "property," out of the statute.

21 JUSTICE ALITO: The -- the Petitioner
22 draws a distinction between injury to property
23 and injury in property. What do you say to
24 that?

25 MR. KENNEDY: Yes, Your Honor. That

1 distinction came from the Chattanooga case.

2 JUSTICE ALITO: Right. Do you agree
3 -- do you want us to read "in property" to mean
4 "to property"?

5 MR. KENNEDY: I don't, Your Honor. I
6 don't think that -- there may be a distinction.
7 Chattanooga found a distinction in the context
8 of the specific Tennessee state statute of
9 limitations, which used the phrase "injury to
10 property," along with conversion and
11 distinction. Essentially, it found in that case
12 that statute -- that statute of limitations was
13 looking at a narrower type of injury.

14 That distinction, if it is one,
15 doesn't matter here. We're talking about injury
16 suffered in property, injury to property,
17 however you want to phrase it. Again, the
18 Chattanooga case didn't look at where injuries
19 were felt. It didn't look at the nature of
20 injury. It only looked at a statute, a state
21 statute.

22 JUSTICE ALITO: Could you -- could you
23 say succinctly what legal test you would like us
24 to adopt?

25 MR. KENNEDY: Absolutely. A domestic

1 injury is one that arises in the United States,
2 one that focuses primarily on the location of
3 the conduct that is the statute's focus. It is
4 informed by the location of the property
5 injured.

6 That is the exact same test that was
7 set forth in RJR Nabisco when looking at
8 extraterritoriality, and it's the test this
9 Court has used consistently, Kiobel, Nestle,
10 going back to Morrison, looking at the statute
11 that is the --

12 JUSTICE ALITO: So conduct is the main
13 thing?

14 MR. KENNEDY: Conduct is the main
15 thing, just as it's always been in presumption
16 against extraterritoriality cases, conduct that
17 is the focus of the statute. Some relevant
18 conduct in the U.S. is enough, even if there is
19 additional foreign conduct.

20 JUSTICE ALITO: So, if there was
21 conduct without the judgment, would you still
22 win?

23 MR. KENNEDY: In our case, we believe
24 there is sufficient domestic conduct that would
25 allow the presumption -- that would establish

1 domestic injury and allow the presumption
2 against extraterritoriality to be overturned --
3 to be overcome for this claim.

4 JUSTICE KAVANAUGH: Where would the
5 domestic injury be in that scenario?

6 MR. KENNEDY: Well, it would depend on
7 what the property is, Your Honor. You can't
8 divorce injury --

9 JUSTICE KAVANAUGH: If there's no
10 California judgment was Justice Alito's
11 question, so where would the domestic injury be
12 there?

13 MR. KENNEDY: The injury would be
14 primarily where the injurious acts occur. You
15 can't divorce the injury -- the acts causing
16 injury from injury itself. And, again, that's
17 what the presumption against extraterritoriality
18 has always done. It's looked at the location of
19 the relevant conduct. That's the statute's
20 focus. So, in that scenario, without taking
21 into account what the property was, the injury
22 would occur in California, where the -- where --
23 where the -- where the conduct happened.

24 CHIEF JUSTICE ROBERTS: Your -- your
25 -- your friend says -- has emphasized that

1 there's conduct all over the world, conduct in
2 London, conduct in Liechtenstein. What is it
3 about in your presentation that makes the
4 conduct in California any stronger than the
5 conduct in -- in London, Liechtenstein, other
6 places?

7 MR. KENNEDY: At least two things,
8 Your Honor. First and primarily, the -- the
9 architect, the centerpiece, the organizer of
10 this RICO scheme is in California.

11 Second, while there is some foreign
12 conduct RJR Nabisco recognizes can be
13 appropriate, the -- the -- the heart of it, the
14 core, the -- the nerve center, the key acts of
15 the RICO enterprise are in California, again,
16 intimidating California witnesses, signing false
17 documents, submitting them to a California
18 court. Mr. Yegiazaryan is in contempt of the
19 California court today and for the last two
20 years for some of these same actions that are
21 part of the RICO scheme. These are centered in
22 California.

23 In today's world, often conduct has,
24 you know, effects overseas or has a full circle,
25 but each one of these actions began in

1 California, may or may not have had a secondary
2 component abroad, but came back full circle to
3 California because that -- any foreign conduct
4 was then used again by Mr. Yegiazaryan in
5 California to submit false documents to the U.S.
6 court and otherwise avoid his --

7 JUSTICE KAGAN: Would -- would you
8 agree that your test is harder to apply than
9 your friend's? It might make more sense, but it
10 sounds a lot harder to apply.

11 MR. KENNEDY: I -- I do agree that a
12 test that looks -- that is context-specific, as
13 RJR recognized, is slightly harder to apply than
14 a bright-line test.

15 But -- but our cases tell us that --
16 and history tells us that while bright-line
17 rules may be desirable, they -- they're not
18 desirable when they violate precedent or the
19 statute's text. And the bright line here does
20 that. It also leads to absurd results, as -- as
21 was discussed with my friend, where a U.S.
22 citizen living abroad may not be able to sue for
23 a purely U.S. action.

24 So, while bright-line rules are
25 easier, this Court has been doing extraterri- --

1 and other lower courts have been doing
2 extraterritoriality analysis with a similar test
3 that looks at conduct for -- for decades now.
4 And we have confidence that the courts can do
5 it.

6 JUSTICE ALITO: You -- your argument
7 is in part that the California judgment
8 constitutes a property interest that is separate
9 from the debt that was incurred as a result of
10 the original fraud?

11 MR. KENNEDY: That's correct, Your
12 Honor.

13 JUSTICE ALITO: Well, then -- and
14 would you agree with Mr. Levy that you couldn't
15 collect on the judgment in Liechtenstein and
16 then turn around and try to collect on the
17 judgment in California?

18 MR. KENNEDY: I do agree that we
19 cannot recover the same sums twice. Because of
20 this RICO scheme, we haven't recovered any of
21 these sums. The whole reason this judgment,
22 this debt, if you will, if you want to call it
23 that, remains intangible is because of this very
24 RICO scheme. And, yes, there are separate
25 property rights that have -- came from the same

1 debt in Liechten- --

2 JUSTICE ALITO: Wouldn't it -- doesn't
3 it seem strange that your collecting on the debt
4 in Liechtenstein extinguishes the -- the -- your
5 -- the property interest in California that
6 you're relying on if he can only collect on this
7 once?

8 MR. KENNEDY: Your Honor, because of
9 this scheme, we haven't been able to collect on
10 it at all.

11 JUSTICE ALITO: No, I understand. But
12 I -- I -- I -- I interpret your -- maybe I'm not
13 -- I don't -- I don't understand this aspect of
14 your argument, to say, as I -- as I said at the
15 beginning, that the California judgment is a
16 separate property interest, and that's a
17 property interest in California.

18 But, if that would be extinguished by
19 collecting on the debt in Liechtenstein, doesn't
20 that seem odd?

21 MR. KENNEDY: I -- I don't believe so,
22 Your Honor. Property interests can come and go.
23 More importantly, the fact that parallel
24 collection efforts can be undertaken --
25 undertaken, that was Congress's decision when

1 adopting the -- the New York Convention. And
2 not just Congress, of course, countries all over
3 the world have adopted that. And that envisions
4 parallel enforcement proceedings in -- for
5 example, in Liechtenstein and the U.S.

6 JUSTICE ALITO: What if you were
7 chasing the Petitioner around the world, trying
8 to collect in various places, and you got
9 judgments all over the place? Those are all
10 separate property interests?

11 MR. KENNEDY: They are, Your Honor.
12 And in that situation, that's kind of what we're
13 doing here. We've been trying to chase this
14 money anywhere we can find it. This RICO scheme
15 has prevented it. That's why it's so important
16 to look at the conduct. And this conduct here
17 occurred in California. That gives us more
18 certainty.

19 JUSTICE KAVANAUGH: What do you do
20 about the common law rule and the difference
21 between the First Restatement and the Second
22 Restatement, which your colleague on the other
23 side discussed?

24 MR. KENNEDY: Sure. First of all, we
25 don't think that conflict-of-law principles are,

1 you know, really applicable to where you site or
2 how you analyze domestic injury given the -- the
3 long history of the -- the presumption against
4 extraterritoriality.

5 Second, this issue of the timing of
6 the First versus the Second Restatement, that
7 was addressed at page 14 of our amicus brief.
8 And the First Restatement -- excuse me, the
9 Second Restatement was actually approved in
10 1969. It didn't come into effect until 1971.

11 JUSTICE KAVANAUGH: Well, what about
12 the idea -- and this, we've seen this with other
13 Restatements, as Justice Scalia pointed out, and
14 you read some of them, they're not describing
15 the law as it is but the law as some people
16 think it should be.

17 MR. KENNEDY: Sure. We think that the
18 Restatement was describing the law as it is, you
19 know, as -- as was recognized when talking to
20 Petitioners. These things don't happen
21 overnight. Again, there were multiple drafts
22 circulated before the final draft was adopted in
23 1969, one year before RICO.

24 So, if we are looking at the -- the
25 trend of the law or the state of the law,

1 whatever we want to call it, to the extent the
2 background law is relevant, it is look at the
3 conduct, look at this multifactor test. It is
4 not domicile only.

5 JUSTICE BARRETT: Counsel, I want to
6 follow up on the questions that Justices Kagan
7 and Alito were asking you just to make sure I
8 understand your position.

9 So, as Justice Alito was positing,
10 you're chasing this guy around the world trying
11 to collect the money that's owed you in this
12 London award. Let's say that all of his -- all
13 of the conduct that you're charging as
14 conspiracy, as the RICO conspiracy now, let's
15 say that that happens abroad. It happens in
16 Europe. And then he moves to California. You
17 get the California judgment, but all he's doing
18 now is just refusing to pay. He's not doing
19 anything. But you do have a California
20 judgment.

21 Do you concede then that you would not
22 be able to sue him, that -- that the property
23 injury wouldn't be here, or is purely the
24 California judgment enough, even though the
25 conspiracy and all of the bad conduct happened

1 abroad?

2 MR. KENNEDY: California conduct is
3 necessary to overcome the presumption against
4 extraterritoriality. California conduct is
5 present here. In the scenario you posed where
6 the only California link is the California
7 judgment, of course, that's not this case --

8 JUSTICE BARRETT: Right, right.

9 MR. KENNEDY: -- we don't believe --

10 JUSTICE BARRETT: But answer the hypo.
11 So the judgment itself is not enough. Then it
12 would be odd, right? You could just go
13 anywhere, get a judgment and say now I can sue.
14 But you're -- you're agreeing with me? You're
15 conceding the judgment would not be enough if
16 all the conduct happened abroad?

17 MR. KENNEDY: We do -- I do agree,
18 Your Honor, that the conduct's primary, the
19 location of the judgment is secondary. So, in
20 your hypothetical, the judgment would not be
21 enough.

22 JUSTICE BARRETT: Thank you.

23 JUSTICE KAVANAUGH: And you connect
24 that up to the text of the statute how again?

25 MR. KENNEDY: I -- I connect it

1 twofold. One, to the text of the statute, which
2 refers to business or property. That's why we
3 have to look at the property.

4 But, two, to the presumption against
5 extraterritoriality. That's a long line of
6 cases, again, going back to, you know, Morrison
7 through RJR Nabisco that tells us conduct is the
8 primary focus.

9 So it's -- it's -- it's our precedent
10 versus -- plus our statute that tells us to look
11 at conduct first, but in this specific
12 circumstance --

13 JUSTICE KAGAN: Well, it sounds like
14 you have a better argument from precedent than
15 from statutory text, right? The statutory text
16 just says property. It's our precedent that
17 suggests that we generally look to conduct.

18 MR. KENNEDY: You are correct, Your
19 Honor. The statutory text does not say injury.
20 Well, excuse me, it does say injury.

21 The statutory text does not say
22 domestic injury. It does not say conduct. So
23 you have to look at the two together.

24 From -- from our precedent, we get
25 conduct. From our statute, which tells us how

1 to apply that precedent in this specific
2 situation, we get property.

3 JUSTICE KAGAN: And then there's the
4 -- the -- the question that the most relevant
5 precedent is RJR, which seems to walk away from
6 that conduct focus.

7 MR. KENNEDY: I -- I don't know that
8 it did, Your Honor. I think it just didn't get
9 there in that case. It was stipulated that all
10 the conduct and all the effects and all the
11 injury was foreign.

12 That case was purely foreign conduct.
13 As -- as we know, Footnote 12 of RJR left open
14 the question of if a foreign plaintiff can bring
15 a RICO claim.

16 We think today is the day to answer
17 that question. RJR did reaffirm that the Court
18 must look at conduct that is the statute's
19 focus. For Section 1964(c), the conduct that is
20 the statute's focus is the conduct causing the
21 injury, again, informed by the property that was
22 injured.

23 JUSTICE KAVANAUGH: I -- I think you
24 said in response to Justice Barrett that
25 injury -- just the judgment alone, injury to the

1 property alone in California would not be
2 enough.

3 MR. KENNEDY: That's correct, Your
4 Honor.

5 JUSTICE KAVANAUGH: Then I -- I -- I
6 guess, to follow up on Justice Kagan's point, I
7 don't really see how that squares with the text
8 of the statute. And -- and I guess you're just
9 bringing in our precedent to put a gloss on
10 that.

11 But, if the injury to the property is
12 what the text talks about and you're saying the
13 injury to the property is not enough, I don't
14 know what you have. But I guess you're drawing
15 strands from -- from precedent.

16 MR. KENNEDY: Well, Your Honor, if
17 we're going to look at just the statutory text,
18 it doesn't say anything about domestic injury as
19 well. It just says injury. So, in that
20 hypothetical, there would be injury. It would
21 just be abroad.

22 And if we're looking only at the
23 statute, without any interpretive help from the
24 precedent, then -- then we don't have the
25 domestic injury issue.

1 But, when you bring in the domestic
2 injury requirement from precedent, you also have
3 to look at where that came from and the concerns
4 it was -- it was attempting to address.

5 JUSTICE JACKSON: Is it because the
6 injury you're talking about is the interference
7 with the execution of the judgment? So, in
8 Justice Barrett's hypothetical where you just
9 have a judgment and the person is just not
10 paying, maybe there isn't really an injury to
11 the property in the way the statute reads
12 because the property is the judgment and the
13 person is just not paying, but they're not doing
14 anything to the judgment, whereas the allegation
15 here suggests that there are all kinds of
16 conduct that was set up and orchestrated, and
17 it's the racketeering conduct to injure or
18 interfere with the execution of the judgment in
19 an affirmative way.

20 MR. KENNEDY: That's exactly right,
21 Your Honor, and that's why you can't divorce
22 conduct from property. That's why I struggled a
23 bit with the hypothetical, because it's hard to
24 determine, you know, the injury to property
25 without figuring out what injured the property.

1 An injury, you -- you've got to have
2 the cause to understand what actually happened
3 and -- and to apply, again, precedent,
4 interpreting the statute faithfully.

5 JUSTICE ALITO: Could you -- could you
6 comment on the comity question that was posed to
7 Mr. Levy? But, in doing that, let's change the
8 facts and assume that both the plaintiff and the
9 defendant here are British so that, presumably,
10 the -- the debt could be collected in Britain.

11 Does it -- what would be the comity
12 implications there of allowing this to -- to
13 take -- allowing a -- a RICO claim of this sort
14 to go ahead in the United States?

15 MR. KENNEDY: Well, Your Honor, I want
16 to make sure I understand your hypothetical. I
17 think you said both parties are British in the
18 hypothetical. But, if the conduct still
19 occurred in the United States, we don't believe
20 there is comity issues.

21 Comity looks at issues, addresses
22 regulation of foreign conduct, very similar to
23 what the presumption of extraterritoriality
24 does. So, so long as U.S. law is regulating
25 U.S. conduct, we don't believe there is comity

1 issues regardless of the citizenship of the
2 parties.

3 JUSTICE ALITO: Well, why -- what's
4 involved here at base is this debt that arose
5 from fraudulent conduct in Russia, right?

6 MR. KENNEDY: That's where the
7 original arbitration award came from.

8 JUSTICE ALITO: That's where -- okay.
9 And I assume that your client could not -- does
10 not feel that he could engage in judicial
11 proceedings at this point in Russia?

12 MR. KENNEDY: It's about locating
13 assets and the assets we found -- and about
14 where the judgment debtor is. He's in the U.S.
15 That's why that's kind of the current stage
16 we're in at this --

17 JUSTICE ALITO: Well, what I'm saying
18 is, when -- when the underlying debt arose from
19 conduct in a foreign country between two
20 individuals who are citizens of that country,
21 allowing efforts to collect on this to be
22 adjudicated in a court in the United States
23 under RICO would seem to present comity
24 concerns, and that's what I want you to address.

25 The -- the simple response in -- in

1 the case where there would be no difficulty with
2 a legal system in the country where the debt
3 arose would be, why don't they adjudicate this
4 -- this dispute in the courts of the country
5 where all of this occurred and where they are
6 citizens?

7 MR. KENNEDY: I -- I think I've got
8 three responses to that, Your Honor.

9 First, the debt at issue in this RICO
10 case is not the debt from the real estate deal
11 in Russia. It's not even the London award. It
12 is a U.S. judgment. The New York Convention
13 teaches us that a U.S. judgment confirming an
14 arbitration award is the same as any other U.S.
15 judgment.

16 Second, that's a substantive issue for
17 Congress. Congress has written the RICO
18 statute. They have not carved out enforcement
19 of foreign arbitration awards. Congress knows
20 how to carve out RICO conduct, as they did when
21 they went back and amended it to carve out
22 securities fraud.

23 So -- and, third, enforcement actions,
24 again, Congress's decision, a policy judgment,
25 they make the decision that you can take --

1 they -- Congress has made the decision that you
2 can take a -- a foreign arbitration award, bring
3 it to the U.S. at the same time you're also
4 enforcing it elsewhere.

5 JUSTICE KAGAN: But, if I could
6 clarify, really, you've admitted that you
7 wouldn't have a case except for all the alleged
8 acts of fraud and so forth that -- that --
9 that -- that you say the other side has engaged
10 in to hide assets and so make the judgment of
11 the California court unenforceable, is that
12 correct?

13 I mean, your whole theory is based not
14 on anything that happened overseas but based on
15 all the kind of alleged fraud and hiding of
16 assets that occurred here, is that correct?

17 MR. KENNEDY: Absolutely correct, Your
18 Honor. Our entire RICO case hinges on the RICO
19 conspiracy that was created, coordinated, and
20 carried out from California after the London
21 award was issued and after the U.S. enforcement
22 action was filed. It's at --

23 JUSTICE BARRETT: And --

24 MR. KENNEDY: Excuse me.

25 JUSTICE BARRETT: Well, and for that

1 reason, you know, Justice Alito was asking about
2 the relationship between the London award and
3 the -- and the -- the money that you are
4 entitled to because of the arbitration abroad
5 versus the California judgment and whether you
6 can double-collect.

7 But you probably can get treble
8 damages distinct from -- I assume that would be
9 your answer, you know, because Justice Kagan
10 just asked you about the conduct that was here.

11 That's a distinct RICO claim, the
12 illegal shenanigans and fraud that happened in
13 California to hide assets, so I assume your
14 answer would be that you have a cause of action
15 for which you can get treble damages that's
16 unrelated to whatever underlying debt you're
17 owed from the arbitration, or am I not
18 following?

19 MR. KENNEDY: I -- I think I agree,
20 Your Honor. There is a RICO claim that is based
21 on separate and independent action that came
22 after the arbitration award was issued. The
23 question of damages, that's a substantive issue,
24 a merits issue, not a we're -- we're at the
25 standing stage.

1 Additionally, you know, we've heard
2 some policy arguments that treble damages
3 shouldn't be available in a case like this.
4 Again, Congress can carve out enforcement
5 actions -- carve enforcement actions out of RICO
6 if it wishes to do so, but we're talking about
7 distinct acts that occurred after entry of the
8 arbitration.

9 JUSTICE BARRETT: And that's my --
10 that's my question about the distinctness of
11 this as opposed to the award that you received
12 in London. It's -- it's going -- it's getting
13 at different conduct, different things,
14 different injuries.

15 MR. KENNEDY: Absolutely right. And
16 as to the damages piece, it's not as simple as I
17 get three times my judgment. I've got to, just
18 like any other RICO case, prove proximate
19 causation, prove a damages theory. But, again,
20 that's a -- a -- an issue that the courts will
21 sort through upon remand. That's not a
22 threshold standing issue, which is what we're
23 here today for.

24 JUSTICE ALITO: Well, do you think
25 that the availability of treble damages under

1 RICO is an answer to the comity concern that
2 might be expressed, or do you think it is a
3 basis for the comity concern that might be
4 expressed? That has been something that's been
5 prominently cited, if my memory serves me
6 correctly, in other cases where foreign nations
7 have filed briefs here in extraterritoriality
8 cases and have said: Our legal system provides
9 just compensation for -- just -- just relief for
10 the conduct that occurred within our borders
11 that is alleged here, and it violates principles
12 of comity to allow that to be adjudicated under
13 the U.S. legal system, which is very unlike that
14 of most other countries in the world in allowing
15 such a thing as treble damages under a statute
16 like the RICO statute.

17 MR. KENNEDY: I -- I agree with you
18 that the U.S. legal system and RICO treble
19 damages are unique, Justice Alito. One, I would
20 say there has been no foreign amicus briefs
21 here, as in the other extraterritoriality cases.
22 Two, that is because there's not -- we're not
23 talking about foreign conduct here. We're
24 talking about domestic conduct. And, three,
25 that's why I don't think we get to the -- the

1 prescriptive comity issue because we're talking
2 about stuff that happened in the U.S.

3 We're not regulating conduct in
4 foreign countries. We are regulating U.S.
5 conduct. And, again, this gets us back to why
6 it's so important to focus on conduct, because
7 it avoids comity concerns. It avoids, you know,
8 regulating foreign conduct.

9 Mr. Smagin is the victim of a RICO
10 enterprise led by an international fugitive
11 living in Beverly Hills. That criminal created,
12 coordinated, and carried out his scheme from
13 California instead of a Russian prison. He was
14 held in contempt of the U.S. court two years ago
15 for some of these same RICO violations here, and
16 he remains in contempt today.

17 He's shown a complete disdain for the
18 U.S. judgment system -- excuse me, the U.S.
19 justice system and the judgment it issued, and
20 his RICO enterprise has protected him from the
21 consequences of that action.

22 As we've talked about, domestic injury
23 focuses on the relevant conduct informed by the
24 location of the relevant property. Mr. Smagin
25 states a RICO claim because he alleged injury to

1 his California judgment from California
2 property.

3 We believe the opinion below should be
4 affirmed.

5 CHIEF JUSTICE ROBERTS: Thank you,
6 counsel.

7 Justice Thomas?

8 Justice Alito?

9 Justice Sotomayor?

10 Justice Kagan?

11 Justice Kavanaugh?

12 Justice Barrett?

13 JUSTICE BARRETT: No.

14 CHIEF JUSTICE ROBERTS: Justice
15 Jackson?

16 Thank you, counsel.

17 Mr. Levy, rebuttal?

18 REBUTTAL ARGUMENT OF VINCENT LEVY

19 ON BEHALF OF THE PETITIONERS

20 MR. LEVY: Thank you. My friends
21 agree that RICO covers economic injury alone,
22 and -- and they have to. The text of the
23 statute so says. It's been interpreted in that
24 way, starting from Chattanooga Foundry, the time
25 the Sherman Act was enacted, and again through

1 cases such as Reiter, which relied on -- on
2 Chattanooga Foundry to interpret the antitrust
3 laws in 1979 and agency holding.

4 It's also no -- there's also no
5 dispute that the First Restatement rule would
6 site the injury at the plaintiff's domicile in
7 the event of an economic injury. That is the
8 end of the analysis.

9 It's a bright-line rule. It's not
10 perfect. But Empagran, RJR, and other
11 precedents of this Court instruct that it is
12 preferred in this context. And Congress is, of
13 course, free to revise it, as it did in Aramco,
14 where the Court excluded a U.S. citizen from
15 abroad from invoking Title VII. And the -- and
16 Congress thereafter went back and -- and said
17 what it wanted to happen, which it hadn't
18 clearly said before.

19 My friends repeatedly say that the
20 focus here is conduct. RJR said that it was the
21 injury. This is not a new concept. We cite the
22 great Alabama case from 1898, an Alabama
23 decision interpreting an Alabama state statute,
24 and it says that -- that case concerned
25 negligent conduct that occurred in Alabama and

1 an injury in Tennessee, and it said that read
2 into the statute is a presumption that the
3 statute covers only injuries in Alabama, and for
4 injuries in Mississippi, you have to look to the
5 state of -- the state law of Mississippi. The
6 injury here occurred at the domicile of the
7 plaintiff.

8 There's a -- a reference to, of
9 course, the judgment and where the judgment is
10 located. There is a U.S. judgment. It does not
11 only exist in California. It can be brought
12 elsewhere in the United States. It can be
13 brought and recognized across the world.
14 There's a 20-year limitation period for
15 recognizing judgments and for enforcing them.
16 They have rights to enforce that judgment.

17 But it can be brought everywhere in
18 the world and replicated. And that is -- that
19 is the issue. And that is why the common law
20 sites it at the place of the creditor, not the
21 debtor. It is enforceable everywhere by the
22 creditor. It can be sold and -- and brought to
23 auction elsewhere.

24 And in -- in Texas versus New Jersey,
25 the Court was focusing on siting debts for

1 purposes of escheatment, rejected a multifactor
2 test that was proposed by one of the parties
3 based on jurisdictional precedent, rejected the
4 notion that it should look to the domicile of
5 the debtor because that would have the odd
6 result of changing -- turning a liability into
7 -- looking at where a liability exists to site
8 the asset. What we're talking about here is
9 siting the asset.

10 The judgment is enforceable
11 everywhere. And, indeed, it is currently sought
12 to be enforced in Liechtenstein, where there are
13 enforcement proceedings. There's a proceeding
14 in Monaco and related to the assets that are at
15 the bank to determine the -- the lawful owner of
16 the assets.

17 None of this is the basis for a RICO
18 claim. None of this provides a basis for a
19 foreign plaintiff with a foreign judgment to --
20 to create an injury here by -- by seeking to
21 have it recognized here.

22 CHIEF JUSTICE ROBERTS: Thank you,
23 counsel. The case is submitted.

24 (Whereupon, at 11:07 a.m., the case
25 was submitted.)

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