

# SUPREME COURT OF THE UNITED STATES

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IN THE SUPREME COURT OF THE UNITED STATES

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ASHOT YEGIAZARYAN, AKA )  
ASHOT EGI AZARYAN, )  
Petitioner, )  
v. ) No. 22-381  
VITALY IVANOVICH SMAGIN, ET AL., )  
Respondents. )  
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CMB MONACO, FKA COMPAGNIE )  
MONEGASQUE DE BANQUE, )  
Petitioner, )  
v. ) No. 22-383  
VITALY IVANOVICH SMAGIN, ET AL., )  
Respondents. )  
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Pages: 1 through 70

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5 Petitioner, )

6 v. ) No. 22-381

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8 Respondents. )

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15 Respondents. )

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19 Washington, D.C.

20 Tuesday, April 25, 2023

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

25

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 harm is injured -- is felt  
21 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 law -- 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's exactly the  
3 point with -- with intangible property rights.  
4 There's no one place where they're located. I  
5 should add that the first -- we're basing our  
6 rule on not just the Commentaries of Justice  
7 Story and the Court's longstanding instructions  
8 as to how to site property rights.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 suffers.

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

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

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

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

18 JUSTICE JACKSON: Okay. So --

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

21 JUSTICE JACKSON: -- your first  
22 argument is it doesn't matter. I'm talking  
23 about a U.S. citizen who has business interests  
24 here, real estate here, money interests here,  
25 and for whatever reason is residing in London at

1 the time the racketeering activity happens which  
2 is here in the United States.

3 Your answer is no domestic injury?

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

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

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

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

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

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

24 MR. LEVY: That's right.

25 JUSTICE KAVANAUGH: Okay.



1 MR. LEVY: And -- and --

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

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

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

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

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

1 statute by looking to the statute's focus."

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

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

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

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

23 MR. LEVY: Right. So, first, at the  
24 second step, the -- the -- the -- what matters  
25 is the focus of the statute. It doesn't have to

1 be conduct. And I think the Court made that  
2 clear in part four. And the injury is an  
3 element of the claim which is known at common  
4 law, and it's felt by the plaintiff.

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

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

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

19 JUSTICE SOTOMAYOR: No, no, no.

20 MR. LEVY: I -- I --

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

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

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

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

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

20           MR. LEVY: Well, all the cases speak  
21 of a judgment as a debt, and it's held at the --  
22 at the domicile and by the plaintiff. And, in  
23 fact, the First Restatement considered locating  
24 the judgment at the -- at the court issuing it.  
25 It's in the drafts. And that was never adopted.

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

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

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

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

23           JUSTICE SOTOMAYOR: I -- I -- I -- I'm  
24 going to stop you there because I don't disagree  
25 that there's a lot of foreign conduct alleged,

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

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

10 MR. LEVY: Yeah.

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

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

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

25 JUSTICE BARRETT: But it's --

1 MR. LEVY: And --

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

7 MR. LEVY: Right.

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

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

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

24 And -- and -- and the more substantive  
25 point, of course, is we're not actually

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

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

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

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



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

4           JUSTICE GORSUCH: Right.

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

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

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

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

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

6                   So there you go. Two balls in your --  
7                   in the air for you.

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

20                  The second point, which is we do rely  
21                  on comity --

22                  JUSTICE GORSUCH: Before we leave that  
23                  one, why isn't our extraterritoriality rule  
24                  essentially a crystallization and a shorthand  
25                  for comity considerations?

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

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

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

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

25           MR. LEVY: Right. I think there are

1 aspects that are sought to be overruled here,  
2 including what -- the Court's ruling on the  
3 focus. If -- Justice Gorsuch, if you were  
4 referring to the footnote --

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

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

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

21 MR. LEVY: If the plaintiff is  
22 domiciled in the United States, then he or she  
23 passes the 1964(c) requirement of having a  
24 domestic injury. And as far as the -- whether  
25 the conduct is within the scope of RICO, that

1 turns on whether the substantive provisions  
2 apply extraterritorially under the --

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

6 MR. LEVY: Right.

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

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

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

1 issues, also recognizing that the right of  
2 action could be and was narrower than the  
3 substantive scope of RICO, and the Court did  
4 this analysis in RJR.

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

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

15 So how do you square that suggestion  
16 with your test?

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

1 Aramco, following Aramco.

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

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

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

19 MR. LEVY: The Ninth Circuit said that  
20 the key was the judgment.

21 JUSTICE ALITO: Has any other court  
22 addressed that issue?

23 MR. LEVY: Of -- of whether -- well,  
24 in *Cevdet*, the Third Circuit looked at basically  
25 the same facts. There was a judgment that was

1 unpaid. It was here. And it came out the other  
2 way.

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

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

22 CHIEF JUSTICE ROBERTS: Thank you,  
23 counsel.

24 Justice Thomas?

25 JUSTICE THOMAS: So, in your argument



1 then, the debt is the intangible property?

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

5 JUSTICE THOMAS: Okay. So why not the  
6 judgment?

7 MR. LEVY: Well, the judgment is a  
8 debt. So the -- but the judgment --

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

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

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

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

24 JUSTICE THOMAS: That's what I --

25 MR. LEVY: -- that was brought to the

1 United States.

2 JUSTICE THOMAS: So that is the debt?

3 MR. LEVY: That is the initial debt.

4 But the judgment, of course, recognizes it and  
5 exists independently and can be brought.

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

10 MR. LEVY: Well, you can only collect  
11 on those once.

12 JUSTICE THOMAS: Well, so then both  
13 can't be debts.

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

17 JUSTICE THOMAS: Well --

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

21 JUSTICE THOMAS: That's what --  
22 that's -- that's my point, that the debt is  
23 actually the award. And it seems as though the  
24 -- what you're talking about, we keep referring  
25 to as a judgment is a way to -- to collect on a

1 debt in the United States. So I don't know how  
2 that could be a debt.

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

6 JUSTICE THOMAS: A judgment or the  
7 judgment?

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

9 CHIEF JUSTICE ROBERTS: Justice Alito?  
10 Justice Sotomayor?

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

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

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

24 MR. LEVY: I think our -- our first --  
25 our argument is that you don't look at conduct

1 at all. But, if the Court looks at conduct, and  
2 there is certainly different conduct alleged as  
3 to different defendants, here, I think, for all  
4 the defendants, including Mr. Yegiazaryan, the  
5 primary conduct was outside the United States,  
6 and --

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

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

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

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

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

25 CHIEF JUSTICE ROBERTS: Justice Kagan?

1 Justice Kavanaugh?

2 Justice Jackson?

3 I'm sorry.

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

6 (Laughter.)

7 CHIEF JUSTICE ROBERTS: Justice  
8 Barrett. I'm jumping ahead.

9 Justice Jackson? No.

10 Thank you, counsel.

11 Mr. Kennedy.

12 ORAL ARGUMENT OF NICHOLAS O. KENNEDY

13 ON BEHALF OF THE RESPONDENTS

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

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

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

1 was orchestrated by an international fugitive  
2 living in Beverly Hills.

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

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

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

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

24 A conduct focus allows the U.S. court  
25 to address U.S. conduct by U.S. defendants

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

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

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

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

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

22 The property here is the California  
23 judgment issued by the U.S. District Court for  
24 the Central District of California. The -- the  
25 reason it is not the additional London award or

1 an additional judgment in a different country is  
2 twofold.

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

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

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

19 But all of that is derivative on a  
20 dispute that was fundamentally foreign in nature  
21 between foreign parties involving foreign  
22 conduct initially adjudicated in another foreign  
23 country. So the fact that this has migrated, if  
24 you will, to the United States, you know, comes  
25 about only with respect to enforcing the first



1 judgment.

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

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

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

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

19 JUSTICE KAGAN: And so suppose there  
20 was no other conduct in the United States of the  
21 kind that you have alleged, that the only U.S.  
22 connection is the, let's say, California  
23 judgment itself. You know, whatever steps taken  
24 to avoid that judgment, suppose they were all  
25 overseas as well. Would you still have a claim?

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

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

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

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

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

23                   And I'm -- I'm not suggesting that RJR  
24 precludes looking at conduct at all, but doesn't  
25 RJR indicate that the primary focus is on

1 property rather than conduct?

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

7 But RJR recognized that Section  
8 1964(c) is different. That's where the domestic  
9 injury piece, that's where the property gloss,  
10 if you will, on it came in, and that's to be  
11 faithful to the statutory text. The text says  
12 injury in business or property. It doesn't say,  
13 as my friend on the other side said, injuries to  
14 the person. It says injury -- injuries in  
15 business or property.

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

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

23 MR. KENNEDY: That's correct, Your  
24 Honor. We believe each of those words should  
25 have meaning. It says "any person." That

1 defines, as I believe Petitioners pointed out in  
2 their reply, the beginning category, any person,  
3 not any domestic person. It then qualifies that  
4 by saying injuries in business or property.

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

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

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

22           MR. KENNEDY: Yes, Your Honor. That  
23 distinction came from the Chattanooga case.

24           JUSTICE ALITO: Right. Do you agree  
25 -- do you want us to read "in property" to mean

1 "to property"?

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

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

19 JUSTICE ALITO: Could you -- could you  
20 say succinctly what legal test you would like us  
21 to adopt?

22 MR. KENNEDY: Absolutely. A domestic  
23 injury is one that arises in the United States,  
24 one that focuses primarily on the location of  
25 the conduct that is the statute's focus. It is

1 informed by the location of the property  
2 injured.

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

9 JUSTICE ALITO: So conduct is the main  
10 thing?

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

17 JUSTICE ALITO: So, if there was  
18 conduct without the judgment, would you still  
19 win?

20 MR. KENNEDY: In our case, we believe  
21 there is sufficient domestic conduct that would  
22 allow the presumption -- that would establish  
23 domestic injury and allow the presumption  
24 against extraterritoriality to be overturned --  
25 to be overcome for this claim.

1 JUSTICE KAVANAUGH: Where would the  
2 domestic injury be in that scenario?

3 MR. KENNEDY: Well, it would depend on  
4 what the property is, Your Honor. You can't  
5 divorce injury --

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

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

21 CHIEF JUSTICE ROBERTS: Your -- your  
22 -- your friend says -- has emphasized that  
23 there's conduct all over the world, conduct in  
24 London, conduct in Liechtenstein. What is it  
25 about in your presentation that makes the

1 conduct in California any stronger than the  
2 conduct in -- in London, Liechtenstein, other  
3 places?

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

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

20 In today's world, often conduct has,  
21 you know, effects overseas or has a full circle,  
22 but each one of these actions began in  
23 California, may or may not have had a secondary  
24 component abroad, but came back full circle to  
25 California because that -- any foreign conduct



1 was then used again by Mr. Yegiazaryan in  
2 California to submit false documents to the U.S.  
3 court and otherwise avoid his --

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

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

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

21 So, while bright-line rules are  
22 easier, this Court has been doing extraterri- --  
23 and other lower courts have been doing  
24 extraterritoriality analysis with a similar test  
25 that looks at conduct for -- for decades now.

1 And we have confidence that the courts can do  
2 it.

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

8 MR. KENNEDY: That's correct, Your  
9 Honor.

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

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

24 JUSTICE ALITO: Wouldn't -- doesn't it  
25 seem strange that your collecting on the debt in

1 Liechtenstein extinguishes the -- the -- your --  
2 the property interest in California that you're  
3 relying on if he can only collect on this once?

4 MR. KENNEDY: Your Honor, because of  
5 this scheme, we haven't been able to collect on  
6 it at all.

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

14 But, if that would be extinguished by  
15 collecting on the debt in Liechtenstein, doesn't  
16 that seem odd?

17 MR. KENNEDY: I don't believe so, Your  
18 Honor. Property interests can come and go.  
19 More importantly, the fact that parallel  
20 collection efforts can be undertaken --  
21 undertaken, that was Congress's decision when  
22 adopting the -- the New York Convention. And  
23 not just Congress, of course, countries all over  
24 the world have adopted that. And that envisions  
25 parallel enforcement proceedings in -- for

1 example, in Liechtenstein and the U.S.

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

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

15 JUSTICE KAVANAUGH: What do you do  
16 about the common law rule and the difference  
17 between the First Restatement and the Second  
18 Restatement, which your colleague on the other  
19 side discussed?

20 MR. KENNEDY: Sure. First of all, we  
21 don't think that conflict-of-law principles are,  
22 you know, really applicable to where you site or  
23 how you analyze domestic injury given the -- the  
24 long history of the -- the presumption against  
25 extraterritoriality.

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

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

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

20          So, if we are looking at the -- the  
21    trend of the law or the state of the law,  
22    whatever we want to call it, to the extent the  
23    background law is relevant, it is look at the  
24    conduct, look at this multifactor test. It is  
25    not domicile only.

1 JUSTICE BARRETT: Counsel, I want to  
2 follow up on the questions that Justices Kagan  
3 and Alito were asking you just to make sure I  
4 understand your position.

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

17 Do you concede then that you would not  
18 be able to sue him, that the property injury  
19 wouldn't be here, or is purely the California  
20 judgment enough, even though the conspiracy and  
21 all of the bad conduct happened abroad?

22 MR. KENNEDY: California conduct is  
23 necessary to overcome the presumption against  
24 extraterritoriality. California conduct is  
25 present here. In the scenario you posed where

1 the only California link is the California  
2 judgment, of course, that's not this case --

3 JUSTICE BARRETT: Right, right.

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

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

12 MR. KENNEDY: We do -- I do agree,  
13 Your Honor, that the conduct's primary, the  
14 location of the judgment is secondary. So, in  
15 your hypothetical, the judgment would not be  
16 enough.

17 JUSTICE BARRETT: Thank you.

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

20 MR. KENNEDY: I -- I connect it  
21 twofold. One, to the text of the statute, which  
22 refers to business or property. That's why we  
23 have to look at the property.

24 But, two, to the presumption against  
25 extraterritoriality. That's a long line of

1 cases, again, going back to, you know, Morrison  
2 through RJR Nabisco that tells us conduct is the  
3 primary focus.

4 So it's -- it's -- it's our precedent  
5 versus -- plus our statute that tells us to look  
6 at conduct first, but in this specific  
7 circumstance --

8 JUSTICE KAGAN: Well, it sounds like  
9 you have a better argument from precedent than  
10 from statutory text, right? The statutory text  
11 just says property. It's our precedent that  
12 suggests that we generally look to conduct.

13 MR. KENNEDY: You are correct, Your  
14 Honor. The statutory text does not say injury.  
15 Well, excuse me, it does say injury.

16 The statutory text does not say  
17 domestic injury. It does not say conduct. So  
18 you have to look at the two together.

19 From -- from our precedent, we get  
20 conduct. From our statute, which tells us how  
21 to apply that precedent in this specific  
22 situation, we get property.

23 JUSTICE KAGAN: And then there's the  
24 -- the -- the question that the most relevant  
25 precedent is RJR, which seems to walk away from



1 that conduct focus.

2 MR. KENNEDY: I -- I don't know that  
3 it did, Your Honor. I think it just didn't get  
4 there in that case. It was stipulated that all  
5 the conduct and all the effects and all the  
6 injury was foreign.

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

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

18 JUSTICE KAVANAUGH: I think you said  
19 in response to Justice Barrett that injury --  
20 just the judgment alone, injury to the property  
21 alone in California would not be enough.

22 MR. KENNEDY: That's correct, Your  
23 Honor.

24 JUSTICE KAVANAUGH: Then I -- I -- I  
25 guess, to follow up on Justice Kagan's point, I

1 don't really see how that squares with the text  
2 of the statute. And -- and I guess you're just  
3 bringing in our precedent to put a gloss on  
4 that.

5 But, if the injury to the property is  
6 what the text talks about and you're saying the  
7 injury to the property is not enough, I don't  
8 know what you have. But I guess you're drawing  
9 strands from -- from precedent.

10 MR. KENNEDY: Well, Your Honor, if  
11 we're going to look at just the statutory text,  
12 it doesn't say anything about domestic injury as  
13 well. It just says injury. So, in that  
14 hypothetical, there would be injury. It would  
15 just be abroad.

16 And if we're looking only at the  
17 statute, without any interpretive help from the  
18 precedent, then -- then we don't have the  
19 domestic injury issue.

20 But, when you bring in the domestic  
21 injury requirement from precedent, you also have  
22 to look at where that came from and the concerns  
23 it was -- it was attempting to address.

24 JUSTICE JACKSON: Is it because the  
25 injury you're talking about is the interference

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

14 MR. KENNEDY: That's exactly right,  
15 Your Honor, and that's why you can't divorce  
16 conduct from property. That's why I struggled a  
17 bit with the hypothetical, because it's hard to  
18 determine, you know, the injury to property  
19 without figuring out what injured the property.

20 An injury, you -- you've got to have a  
21 cause to understand what actually happened  
22 and -- and to apply, again, precedent,  
23 interpreting the statute faithfully.

24 JUSTICE ALITO: Could you -- could you  
25 comment on the comity question that was posed to

1 Mr. Levy? But, in doing that, let's change the  
2 facts and assume that both the plaintiff and the  
3 defendant here are British so that, presumably,  
4 the -- the debt could be collected in Britain.

5 Does it -- what would be the comity  
6 implications there of allowing this to -- to  
7 take -- allowing a RICO claim of this sort to go  
8 ahead in the United States?

9 MR. KENNEDY: Well, Your Honor, I want  
10 to make sure I understand your hypothetical. I  
11 think you said both parties are British in the  
12 hypothetical. But, if the conduct still  
13 occurred in the United States, we don't believe  
14 there is comity issues.

15 Comity looks at issues, addresses  
16 regulation of foreign conduct, very similar to  
17 what the presumption of extraterritoriality  
18 does. So, so long as U.S. law is regulating  
19 U.S. conduct, we don't believe there is comity  
20 issues regardless of the citizenship of the  
21 parties.

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

25 MR. KENNEDY: That's where the

1 original arbitration award came from.

2 JUSTICE ALITO: That's where -- okay.  
3 And I assume that your client could not -- does  
4 not feel that he could engage in judicial  
5 proceedings at this point in Russia?

6 MR. KENNEDY: It's about locating  
7 assets and the assets we found -- and about  
8 where the judgment debtor is. He's in the U.S.  
9 That's why that's kind of the current stage  
10 we're in at this --

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

19 The -- the simple response in -- in  
20 the case where there would be no difficulty with  
21 a legal system in the country where the debt  
22 arose would be, why don't they adjudicate this  
23 -- this dispute in the courts of the country  
24 where all of this occurred and where they are  
25 citizens?

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

3           First, the debt at issue in this RICO  
4 case is not the debt from the real estate deal  
5 in Russia. It's not even the London award. It  
6 is a U.S. judgment. The New York Convention  
7 teaches us that a U.S. judgment confirming an  
8 arbitration award is the same as any other U.S.  
9 judgment.

10           Second, that's a substantive issue for  
11 Congress. Congress has written the RICO  
12 statute. They have not carved out enforcement  
13 of foreign arbitration awards. Congress knows  
14 how to carve out RICO conduct, as they did when  
15 they went back and amended it to carve out  
16 securities fraud.

17           So -- and, third, enforcement actions,  
18 again, Congress's decision, a policy judgment,  
19 they make the decision that you can take --  
20 they -- Congress has made the decision that you  
21 can take a -- a foreign arbitration award, bring  
22 it to the U.S. at the same time you're also  
23 enforcing it elsewhere.

24           JUSTICE KAGAN: But, if I could  
25 clarify, really, you've admitted that you

1 wouldn't have a case except for all the alleged  
2 acts of fraud and so forth that -- that --  
3 that -- that you say the other side has engaged  
4 in to hide assets and so make the judgment of  
5 the California court unenforceable, is that  
6 correct?

7 I mean, your whole theory is based not  
8 on anything that happened overseas but based on  
9 all the kind of alleged fraud and hiding of  
10 assets that occurred here, is that correct?

11 MR. KENNEDY: Absolutely correct, Your  
12 Honor. Our entire RICO case hinges on the RICO  
13 conspiracy that was created, coordinated, and  
14 carried out from California after the London  
15 award was issued and after the U.S. enforcement  
16 action was filed. It's at --

17 JUSTICE BARRETT: And --

18 MR. KENNEDY: Excuse me.

19 JUSTICE BARRETT: Well, and for that  
20 reason, you know, Justice Alito was asking about  
21 the relationship between the London award and  
22 the -- and the -- the money that you are  
23 entitled to because of the arbitration abroad  
24 versus the California judgment and whether you  
25 can double-collect.

1           But you probably can get treble  
2 damages distinct from -- I assume that would be  
3 your answer, you know, because Justice Kagan  
4 just asked you about the conduct that was here.

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

13           MR. KENNEDY: I -- I think I agree,  
14 Your Honor. There is a RICO claim that is based  
15 on separate and independent action that came  
16 after the arbitration award was issued. The  
17 question of damages, that's a substantive issue,  
18 a merits issue, not a we're -- we're at the  
19 standing stage.

20           Additionally, you know, we've heard  
21 some policy arguments that treble damages  
22 shouldn't be available in a case like this.  
23 Again, Congress can carve out enforcement  
24 actions -- carve enforcement actions out of RICO  
25 if it wishes to do so, but we're talking about



1 distinct acts that occurred after entry of the  
2 arbitration.

3 JUSTICE BARRETT: And that's my --  
4 that's my question about the distinctness of  
5 this as opposed to the award that you received  
6 in London. It's -- it's going -- it's getting  
7 at different conduct, different things,  
8 different injuries.

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

18 JUSTICE ALITO: Well, do you think  
19 that the availability of treble damages under  
20 RICO is an answer to the comity concern that  
21 might be expressed, or do you think it is a  
22 basis for the comity concern that might be  
23 expressed? That has been something that's been  
24 prominently cited, if my memory serves me  
25 correctly, in other cases where foreign nations

1 have filed briefs here in extraterritoriality  
2 cases and have said: Our legal system provides  
3 just compensation for -- just -- just relief for  
4 the conduct that occurred within our borders  
5 that is alleged here, and it violates principles  
6 of comity to allow that to be adjudicated under  
7 the U.S. legal system, which is very unlike that  
8 of most other countries in the world in allowing  
9 such a thing as treble damages under a statute  
10 like the RICO statute.

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

22 We're not regulating conduct in  
23 foreign countries. We are regulating U.S.  
24 conduct. And, again, this gets us back to why  
25 it's so important to focus on conduct, because

1 it avoids comity concerns. It avoids, you know,  
2 regulating foreign conduct.

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

11 He's shown a complete disdain for the  
12 U.S. judgment system -- excuse me, the U.S.  
13 justice system and the judgment at issue, and  
14 his RICO enterprise has protected him from the  
15 consequences of that action.

16 As we've talked about, domestic injury  
17 focuses on the relevant conduct informed by the  
18 location of the relevant property. Mr. Smagin  
19 states a RICO claim because he alleged injury to  
20 his California judgment from California  
21 property.

22 We believe the opinion below should be  
23 affirmed.

24 CHIEF JUSTICE ROBERTS: Thank you,  
25 counsel.

1 Justice Thomas?

2 Justice Alito?

3 Justice Sotomayor?

4 Justice Kagan?

5 Justice Kavanaugh?

6 Justice Barrett?

7 JUSTICE BARRETT: No.

8 CHIEF JUSTICE ROBERTS: Justice  
9 Jackson?

10 Thank you, counsel.

11 Mr. Levy, rebuttal?

12 REBUTTAL ARGUMENT OF VINCENT LEVY

13 ON BEHALF OF THE PETITIONERS

14 MR. LEVY: Thank you. My friends  
15 agree that RICO covers economic injury alone,  
16 and -- and they have to. The text of the  
17 statute so says. It's been interpreted in that  
18 way, starting from Chattanooga Foundry, the time  
19 the Sherman Act was enacted, and again through  
20 cases such as Reiter, which relied on -- on  
21 Chattanooga Foundry to interpret the antitrust  
22 laws in 1979 and agency holding.

23 It's also no -- there's also no  
24 dispute that the First Restatement rule would  
25 site the injury at the plaintiff's domicile in

1 the event of an economic injury. That is the  
2 end of the analysis.

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

13 My friends repeatedly say that the  
14 focus here is conduct. RJR said that it was the  
15 injury. This is not a new concept. We cite the  
16 great Alabama case from 1898, an Alabama  
17 decision interpreting an Alabama state statute,  
18 and it says that -- that case concerned  
19 negligent conduct that occurred in Alabama and  
20 an injury in Tennessee, and it said that read  
21 into the statute is a presumption that the  
22 statute covers only injuries in Alabama, and for  
23 injuries in Mississippi, you have to look to the  
24 state of -- the state law of Mississippi. The  
25 injury here occurred at the domicile of the

1 plaintiff.

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

11           But it can be brought everywhere in  
12 the world and replicated. And that is -- that  
13 is the issue. And that is why the common law  
14 sites it at the place of the creditor, not the  
15 debtor. It is enforceable everywhere by the  
16 creditor. It can be sold and -- and brought to  
17 auction elsewhere.

18           And in -- in Texas versus New Jersey,  
19 the Court was focusing on siting debts for  
20 purposes of escheatment, rejected a multifactor  
21 test that was proposed by one of the parties  
22 based on jurisdictional precedent, rejected the  
23 notion that it should look to the domicile of  
24 the debtor because that would have the odd  
25 result of changing -- turning a liability into

1 -- looking at where a liability exists to site  
2 the asset. What we're talking about here is  
3 siting the asset.

4 The judgment is enforceable  
5 everywhere. And, indeed, it is currently sought  
6 to be enforced in Liechtenstein, where there are  
7 enforcement proceedings. There's a proceeding  
8 in Monaco related to the assets that are at the  
9 bank to determine the -- the lawful owner of the  
10 assets.

11 None of this is the basis for a RICO  
12 claim. None of this provides a basis for a  
13 foreign plaintiff with a foreign judgment to --  
14 to create an injury here by -- by seeking to  
15 have it recognized here.

16 CHIEF JUSTICE ROBERTS: Thank you,  
17 counsel. The case is submitted.

18 (Whereupon, at 11:07 a.m., the case  
19 was submitted.)

20  
21  
22  
23  
24  
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