

No. 23-365

In The
Supreme Court of the United States

MEDICAL MARIJUANA, INC.; DIXIE HOLDINGS, LLC
AKA DIXIE ELIXIRS; RED DICE HOLDINGS, LLC,

Petitioners,

v.

DOUGLAS J. HORN,

Respondent.

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

**BRIEF OF WASHINGTON LEGAL FOUNDATION AS
AMICUS CURIAE SUPPORTING PETITIONERS**

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QUESTION PRESENTED

Whether economic harms resulting from personal injuries are injuries to “business or property by reason of” the defendant’s acts for purposes of civil RICO.

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INTEREST OF AMICUS CURIAE*

Washington Legal Foundation is a nonprofit, public-interest law firm and policy center with supporters nationwide. WLF promotes free enterprise, individual rights, limited government, and the rule of law. WLF often appears as an amicus before this Court in key cases construing the scope of civil liability under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 et seq. *See, e.g., RJR Nabisco Inc. v. European Cmty.*, 579 U.S. 325 (2016); *Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639 (2008).

WLF's Legal Studies Division, its publishing arm, often publishes articles by outside experts on the proper scope of civil RICO. *See, e.g.,* Ignacio Sanchez & Kevin O'Scannlain, *Foreign Governments' Misuse of Federal RICO: The Case for Reform*, WLF WORKING PAPER (May 2006); Claire Prechtel-Kluskens, *The Supreme Court Should Limit Civil RICO Claims*, WLF LEGAL OPINION LETTER (Mar. 27, 1992). WLF believes that the Second Circuit's decision expands civil RICO liability beyond what its text can bear and threatens defendants' right to due process.

INTRODUCTION

Congress left no doubt about why it passed the Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 922. It sought to “eradicat[e] organized crime in the United States by strengthening the legal tools in the evidence-gathering process, by

* No party's counsel authored any part of this brief. No person or entity, other than Washington Legal Foundation and its counsel, paid for the brief's preparation or submission.

establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime.” 84 Stat. at 923. Of course, the drafters could not define organized crime. Rather, “[w]hen asked about the” term’s meaning, the statute’s authors “explained that it was impossible to define, but everybody knew what it was.” H.R. Rep. No. 91-1549, *reprinted in*, 1970 U.S.C.C.A.N. 4007, 4091 (dissenting statement of Reps. Conyers, Jr., Mikva, and Ryan).

Despite this Court’s recognizing that RICO was Congress’s attempt “to strike at organized crime,” this Court knows that “in its private civil version, RICO is evolving into something quite different from the original conception of its enactors.” *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 494, 500 (1985). This Court’s decisions have no doubt allowed plaintiffs’ lawyers to use RICO in a way that RICO’s authors would recoil at.

Still, the Court has acknowledged that there are limits to civil RICO’s reach. One key element that limits the statute’s reach is the requirement that a plaintiff suffer injuries to business or property before suing. Other injuries—like those to persons—are not cognizable under civil RICO. (Criminal RICO does not include the injury to business or property requirement.)

The Second Circuit’s decision, however, scoffs at this limit. It essentially allows for disgruntled customers “to harass innocent businessmen engaged in interstate commerce” by authorizing private damage suits.” H.R. Rep. No. 91-1549, 1970

U.S.C.C.A.N. at 4083 (dissenting statement of Reps. Conyers, Jr., Mikva, and Ryan). The Court should reject such baseless suits, which lack any textual support. It can do so here by reversing the Second Circuit’s decision and explaining that civil RICO may not be used to recover for economic harms resulting from personal injuries.

STATEMENT

I. In the late 1960s, “organized crime in the United States [was] a highly sophisticated, diversified, and widespread” problem. 84 Stat. at 922. So Congress penalized racketeering activity, which it defined broadly to include many state and federal crimes. *See* 18 U.S.C. § 1961(1) (laundry list of crimes that constitute racketeering). RICO makes it illegal to receive income from racketeering enterprises and similar actions. *See id.* § 1962. RICO also allows private plaintiffs to sue to recover treble damages and attorney fees from racketeers. *Id.* § 1964(c).

But not every criminal violation of RICO allows for a civil action. This is because Congress sought, through civil RICO, to help stop racketeering activities from harming people’s pocketbooks. *See Sedima, S.P.R.L.*, 473 U.S. at 488 (citation omitted). It accomplished this goal by allowing civil RICO claims by only those “injured in [their] business or property by reason of a violation of section 1962.” 18 U.S.C. § 1964(c). This provision limits “RICO’s private cause of action to particular kinds of injury—excluding, for example, personal injuries.” *RJR Nabisco*, 579 U.S. at 350.

II. Hemp-based cannabidiol oil is a booming business. To take advantage of that market, Medical Marijuana, Inc. and Dixie Holdings, LLC formed a joint venture, Red Dice Holdings, LLC, which sells a hemp-based CBD supplement called Dixie X that fully complies with federal drug laws. To create Dixie X, Red Dice Holdings removes impurities and delta-9-tetrahydrocannabinol (THC) from medicinal hemp.

Users typically dissolve Dixie X under their tongue. One of those users was Douglas Horn, a commercial truck driver. He suffered from chronic pain and inflammation after an accident. Horn alleges that he used Dixie X only because it was advertised as 0% THC. In October 2012, Horn failed a drug test for THC and was fired.

Horn and his wife sued, asserting nine causes of action. They were all based on a false-advertising theory. According to Horn, Petitioners misled him into thinking that Dixie X had no THC. He alleges that despite those ads, Dixie X contained THC and caused him to be fired. The only federal claim was violation of civil RICO. After summary judgment, only Horn's state-law fraudulent-inducement claim remained.

In granting summary judgment on the civil RICO claim, the District Court held that Horn's claim failed as a matter of law because he sought damages for a personal injury—THC consumption. This personal injury was what led to any economic damages Horn suffered. The District Court then granted partial final judgment on the civil RICO claim, allowing Horn to appeal that decision.

The Second Circuit reversed, although on a ground not raised by Horn. Agreeing with the Ninth Circuit, the panel held that plaintiffs may sue under civil RICO for injuries that “flow from, or are derivative of, a personal injury.” Pet. App. 11a, 13a. This, the Second Circuit said, is because “the phrase ‘business or property’ focuses on the nature of the harm, not the source of the harm.” Pet. App. 15a. As Horn’s loss of employment was an economic injury, the Second Circuit held that he had RICO standing to sue. This Court granted certiorari to resolve a circuit split on this important issue.

SUMMARY OF ARGUMENT

I.A. The Second Circuit’s superfluidity analysis fails to acknowledge that some crimes typically involving only personal injuries can also injure business or property. For example, murders and kidnappings can cause direct injury to business and property.

B. Horn’s arguments ignore RICO’s criminal provisions. There is no superfluidity problem because all the predicate offenses listed in the statute can result in criminal prosecution. And the Department of Justice does not hesitate to indict people who engage in racketeering activities involving murder and kidnapping.

II.A. Civil RICO violations carry treble damages. Unlike ordinary or even double damages, treble damages are punitive and trigger heightened due-process protections for parties accused of civil RICO violations.

B. RICO violations carry potential criminal penalties. As with treble damages, the threat of criminal penalties also triggers heightened due-process protections.

C. The Second Circuit's decision ignores these due-process protections. At the heart of due process of law is the right to know what conduct is prohibited. Petitioners did not have fair notice that they could face treble damages because civil RICO's plain language allows actions to recover only for injuries to business and property. The statute does not allow for recovery of personal injuries, the type of injury that Horn suffered here.

ARGUMENT

I. THE SECOND CIRCUIT'S SUPERFLUIDITY ANALYSIS IS WRONG.

A. Every Predicate Offense Can Cause Direct Injury To Business Or Property.

The Second Circuit held that civil RICO must cover personal injuries resulting in economic harm because otherwise the inclusion of certain predicate offenses in 18 U.S.C. § 1961(1)(A) would be superfluous. In its view, "because personal injuries, including murder and kidnapping, are expressly listed in section 1961 as racketeering conduct that can give rise to claims under the statute, § 1964(c) cannot be read to deny RICO standing for injuries to business or property simply because the plaintiff suffered an antecedent personal injury." Pet. App. 16a (cleaned up). This argument fails for two reasons. First, it

overlooks the different ways that someone can be murdered or kidnapped. Second, it ignores how criminal RICO can be—and is—used to prosecute racketeers who murder or kidnap people.

There are many ways to murder someone while directly causing injury to property or business. For example, Tommy Gilardi and his driver were killed by a car bomb. *See The Sopranos: Two Tonys* (HBO television broadcast Mar. 7, 2004). This was a direct injury to property caused by the murder. So the car's owner (or his estate) could sue under civil RICO for the damage to property caused by the predicate murder offense.

The same holds true for injury to business. Imagine a mobster murders a storekeeper who refuses to launder money using a firebomb. *Cf. Jennifer Learn, Return To 'mob City' Arson Deaths, Firebombings Part Of Bad Old Days, TIMES LEADER, Feb. 11, 1996, at 1* (describing organized crime's murdering of people using firebombs). The business owner could sue for the damage to his business caused by the firebombing.

Kidnapping is no different. Imagine a chauffeur kidnaps a passenger and his employer is not paid because the contract is not fulfilled. *See Mozart in the Jungle: Opening Night* (Amazon Prime streaming broadcast Dec. 23, 2014). This would be an injury to business that the owner could recover under civil RICO.

In short, each predicate offense listed in Section 1961(1) can cause direct injuries to property or business. There is no need to stretch Section 1964's

plain language to include personal injuries that result in economic harm. Yet that is what the Second Circuit did here. It refused to apply the statute as written because it failed to explore the different ways that mobsters sometimes commit predicate offenses. This is just one way in which the court's superfluidity analysis is flawed.

B. The Department Of Justice Often Enforces RICO's Ban On Racketeering Involving Murder And Kidnapping.

The Second Circuit's opinion excised Section 1963 from RICO. In fact, that statutory section is not cited once in the lower court's opinion. *See* Pet. App. 1a-22a. This failure to consider the entire RICO statute helps explain why the court's superfluidity analysis is so flawed.

One touchstone of statutory interpretation is that courts "do not construe statutory phrases in isolation; [they] read statutes as a whole." *Samantar v. Yousuf*, 560 U.S. 305, 319 (2010) (quoting *United States v. Morton*, 467 U.S. 822, 828 (1984) (cleaned up)). In other words, courts "consider the entire text, in view of its structure and of the physical and logical relation of its many parts." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 167 (2012).

RICO is not a long or complicated statute. It is only eight sections long and each section is relatively short. So it is not hard to understand how the different parts of the statute work together to achieve Congress's goal. And as detailed above, RICO was

passed as an added tool to fight organized crime. Nothing in the statutory text or legislative history suggests that RICO was passed to help the plaintiffs' bar or to punish businesses engaging in lawful interstate commerce.

Examining the first four sections of RICO shows just how far afield the Second Circuit's analysis is. Section 1961 is a list of definitions used in the remainder of the statute. The first definition is for "racketeering activity." 18 U.S.C. § 1961(1). That subsection is a laundry list of acts that constitute racketeering activity, including "any act or threat involving murder[or] kidnapping." *Id.* § 1961(1)(A). Other listed acts include shaving points or transporting stolen cars across state lines. *Id.* § 1961(1)(B). RICO's second section generally makes it unlawful to engage in a pattern of racketeering activity. *See id.* § 1962.

RICO's third section is the statutory provision that the Second Circuit ignored. It allows for the criminal prosecution of anyone engaged in a pattern of racketeering activity and the forfeiture of a long list of property involved in the racketeering activity. 18 U.S.C. § 1963. The maximum period of imprisonment under Section 1963 is either 20 years or life, depending on the maximum penalty for the predicate offenses. *See id.* § 1963(a). Finally, RICO's fourth section creates a private right of action. *See id.* § 1964. Better known as civil RICO, this is the section that Horn sued under and that is exploited by plaintiffs' attorneys.

In the Second Circuit's view, personal injuries that lead to economic harm must be cognizable under

Section 1964 because otherwise they would be superfluous inclusions in Section 1961(1)(A). The court reasoned that, under the canon against superfluidity, civil RICO plaintiffs must be able to sue to recover for personal injuries that lead to economic damages. This, however, ignores Section 1963 and RICO's structure.

Sections 1963 and 1964 both cover activity that Section 1962 declares illegal. Patterns of racketeering activity, as defined in Section 1961(1), are made illegal by Section 1962. This means there are no separate lists of predicate offenses that trigger criminal liability under Section 1963 and civil liability under Section 1964.

Congress limited the reach of criminal and civil liability not through separate lists of predicate offenses but through separate provisions creating criminal and civil liability. In other words, Sections 1963 and 1964 were meant to limit which cases could be brought in different contexts. Civil RICO actions are limited to only direct injuries to business or property. If any predicate offense does not cause direct injury to business or property, Congress thought it best to leave RICO's enforcement to the Department of Justice.

The Department of Justice has taken that responsibility seriously. Although the number of civil RICO cases far outpaces the number of criminal RICO prosecutions, most civil RICO cases involve acts that do not threaten the health and safety of the public. When the Department of Justice brings criminal RICO charges, they often are based on the predicate offenses of murder and kidnapping. This shows that

including these offenses in Section 1961(1)(A) is not superfluous under Petitioners' correct interpretation of Section 1964.

The Department of Justice's pursuit of those who engaged in racketeering involving murder is a good example. Between 2012 and 2021, 32 people were charged under criminal RICO with a predicate offense of first-degree murder. Federal Justice Statistics Program, Bureau of Just. Stats. (June 17, 2024), <https://perma.cc/UEX7-ZRJM>. Another 12 people were charged under criminal RICO with a predicate offense of second-degree murder. *Id.* Finally, 120 people were charged under RICO with a predicate offense of murder. *Id.* So over that ten-year period, the Department of Justice charged at least 164 people under Section 1963 with murder as the predicate offense.

These numbers, however, are likely lower than the actual number of people charged under Section 1963 when murder was the predicate offense. This is because the statistics rely on humans to correctly code the charging documents and CM/ECF. The actual number of people charged under RICO for predicate offenses of murder and kidnapping is far higher.

The way that coding variance happens for kidnapping is a good example. According to published Department of Justice statistics, only one person over the past 30 years has been charged under Section 1963 with a predicate offense of kidnapping. Federal Justice Statistics Program, Bureau of Just. Stats. (June 17, 2024), <https://perma.cc/7Z25-9DLD>. But a cursory Westlaw search reveals that there are many more Section 1963 cases where kidnapping was a

predicate offense. These cases just were not coded correctly by the Department of Justice or in CM/ECF.

For example, in the mid-1990s, three individuals were convicted of RICO offenses with kidnapping as one of the predicate offenses. The three “belong[ed] to the so-called Fern Street Crew.” *United States v. Sumler*, 136 F.3d 188, 189 (D.C. Cir. 1998). These three prosecutions alone are triple the number reported in the Department of Justice’s statistics. But there are many similar cases. *E.g.*, *United States v. Green*, 2024 WL 2716472, *4 (D.D.C. May 28, 2024); *United States v. Tran*, 2022 WL 7132195, *1 (E.D.N.Y. 2022); *United States v. Celestine*, 2022 WL 3974143, *6 (E.D.N.C. Aug. 31, 2022), *aff’d*, 2023 WL 2625606 (4th Cir. Mar. 24, 2023) (per curiam).

These statistics and cases show that the Department of Justice often charges people under Section 1963 when they commit murder or kidnapping as part of a criminal enterprise. This is what Congress wanted to happen when it enacted RICO. It viewed Section 1963 as the proper vehicle for punishing racketeering activities that lead to personal injuries.

What Congress did not want was for those who suffer personal injuries to bring civil RICO suits. Rather, Congress thought that private parties should bring suits only when racketeering activity directly injured business or property. These RICO violations are less likely to be criminally prosecuted. Allowing private parties to recover treble damages, costs, and attorney fees achieves the same deterrence as the threat of criminal penalties.

The Second Circuit’s superfluidity analysis ignores how Congress structured RICO to allow for both criminal and civil liability. This led the court to overlook how the Department of Justice charges people with RICO violations when they engage in murder or kidnapping. These criminal cases show that adopting Petitioners’ construction of Section 1964 does not lead to superfluidity. Rather, it ensures that the statute’s plain language is followed without allowing for any superfluidity.

II. THE SECOND CIRCUIT’S INTERPRETATION OF RICO VIOLATED PETITIONERS’ DUE-PROCESS RIGHTS.

A. Civil RICO’s Treble Damages Trigger Heightened Due-Process Protections.

Prevailing plaintiffs in civil RICO cases recover treble damages. *See* 18 U.S.C. § 1964(c). Statutory treble damages are often punitive. *See Vt. Agency of Nat. Res. v. United States ex rel. Stevens*, 529 U.S. 765, 784 (2000). That is why some courts have viewed RICO’s treble-damages provision as punitive. *See, e.g., Pizana v. SanMedica Int’l, LLC*, 2023 WL 8528640, *8 n.7 (E.D. Cal. Dec. 8, 2023) (citation omitted); *see also Genty v. Resolution Tr. Corp.*, 937 F.2d 899, 910 (3d Cir. 1991) (“There is convincing authority that Congress authorized civil RICO’s powerful treble damages provision to serve a punitive purpose.”).

True, this Court has said that civil RICO is “designed to remedy economic injury by providing for the recovery of treble damages, costs, and attorney’s

fees.” *Agency Holding Corp. v. Malley-Duff & Assocs., Inc.*, 483 U.S. 143, 151 (1987). But this statement was dicta comparing civil RICO to the Clayton Act. The question the Court was resolving involved the statute of limitations for civil RICO. *See id.* at 144. That is a far different question than whether the treble-damages provision of RICO is punitive for due-process purposes.

Agency Holding also came years before *Vermont Agency of Natural Resources*. There, the Court distinguished between double damages (which are compensatory) and treble damages (which are punitive). 529 U.S. at 785-86. Thus, the Court in *Agency Holding* did not have the benefit of *Vermont Agency of Natural Resources* and had no reason to be more precise with its language about the nature of civil RICO’s treble-damages provision.

A decision earlier that year confirms that *Agency Holding* was imprecise in its description of civil RICO’s treble-damages provision. In *Shearson/Am. Exp., Inc. v. McMahon*, the Court explained that civil RICO’s legislative history reveals that Congress wanted to “give[] access to a legal remedy” for “those who have been wronged by organized crime.” 482 U.S. 220, 240 (1987) (quoting *Hearings on S. 30 and Related Proposals before Subcomm. No. 5 of the H. Comm. on the Judiciary*, 91st Cong., 2d Sess., 520 (1970) (statement of Rep. Steiger)). This is what the Court in *Agency Holding* meant by saying that civil RICO’s treble-damages provision is remedial—it provides a right of action that was previously unavailable to private actors. *See* 116 Cong. Rec. 25,190 (statement of Sen. McClellan) (civil RICO “authorize[s] private civil damage suits”).

Although the Court highlighted Congress's goal in allowing private parties to sue under civil RICO, it also recognized that civil RICO's "policing function" was also "important." *Shearson/Am. Exp.*, 482 U.S. at 240. In other words, civil RICO is not purely remedial. Rather, it created a private right of action for those injured by organized crime and punished those found liable with treble damages, costs, and attorney fees.

Sixteen years after *Agency Holding*, this Court recognized that the case law on statutory treble damages is, at best, confusing. See *PacifiCare Health Sys., Inc. v. Book*, 538 U.S. 401, 405-06 (2003). This Court's "cases have placed different statutory treble-damages provisions on different points along the spectrum between purely compensatory and strictly punitive awards." *Id.* at 405. In most cases, "it is important to realize that treble damages have a compensatory side, serving remedial purposes in addition to punitive objectives." *Cook Cnty., Ill. v. United States ex rel. Chandler*, 538 U.S. 119, 130 (2003) (collecting cases).

The Court's discussion of treble-damages provisions in *PacifiCare* shows that the treble damages available under civil RICO are not purely compensatory. They have at least some punitive component, even if the extent of that punitive part may be disputed. (It makes sense that two-thirds of the treble damages are punitive because plaintiffs can recover costs and attorney fees too.)

Because civil RICO's damages are punitive, there are strict constitutional limits on the notice and proof required to succeed in a civil RICO case. The

“Due Process Clause places outer limits on the size of a civil damages award made pursuant to a statutory scheme.” *Browning-Ferris Indus. of Vt., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 276 (1989) (citing *St. Louis, I. M. & S. R. Co. v. Williams*, 251 U.S. 63, 66-67 (1919)). Purely compensatory damages cannot violate substantive due-process protections if supported by sufficient evidence. Yet civil RICO damages can violate the Due Process Clause because they are punitive. Besides procedural due-process protections, then, courts should consider substantive due-process principles.

B. RICO’s Dual Civil-Criminal Nature Triggers Heightened Due-Process Protections.

Along with punitive treble damages, RICO violations may carry criminal penalties. 18 U.S.C. § 1963. This also shapes the due-process protections afforded defendants in civil RICO actions. “[T]he relative importance of fair notice and fair enforcement” mandated by the Due Process Clause “depends in part on the nature of the enactment.” *Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498 (1982). Although this is a civil action, for statutes like RICO with both criminal and civil penalties, courts apply “the rule of lenity” to both parts of the statute. *Leocal v. Ashcroft*, 543 U.S. 1, 12 n.8 (2004) (citing *United States v. Thompson/Ctr. Arms Co.*, 504 U.S. 505, 517-18 (1992) (plurality)).

C. The Second Circuit’s Holding Flouts These Heightened Due-Process Protections.

Civil RICO therefore requires heightened due-process protections for two reasons. Both the punitive nature of civil RICO’s treble damages and the criminal penalties for RICO violations require enhanced due-process protections. Yet the Second Circuit’s decision sidestepped these protections in holding that plaintiffs can sue for personal injuries that cause economic harm.

Under the Second Circuit’s holding, defendants lack fair notice of the conduct that could lead to punitive civil sanctions. Fair notice of what conduct is prohibited is at the core of the Due Process Clause. *City of Chicago v. Morales*, 527 U.S. 41, 58 (1999) (citing *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939)).

The Court has long recognized the importance of fair notice under the Due Process Clause. Almost 100 years ago, the Court described the fair notice requirement as “the first essential of due process of law.” *Connally v. Gen. Const. Co.*, 269 U.S. 385, 391 (1926) (citing *Int’l Harvester Co. of Am. v. Kentucky*, 234 U.S. 216, 221 (1914)).

General Construction Company highlights the problems with the Second Circuit’s decision. There, an Oklahoma statute required that firms performing under contract with the State pay their workers “the current rate of per diem wages in the locality where the work is performed.” Okla. Stat. § 7255 (1921). Finding that the statute violated the Due Process

Clause, the Court explained that the term “current rate of wages” was “indeterminate[]” and obscure. *Gen. Const. Co.*, 269 U.S. at 394. And because the statute was “so uncertain that” it could “reasonably admit of different constructions,” it violated the Due Process Clause. *Id.* at 393.

A recent case reveals what fair notice requires when heightened due-process protections apply. In *Skilling v. United States*, the Court held that the defendant received fair notice that bribery and kickbacks violated the honest-services statute. 561 U.S. 358, 412 (2010). The Court explained that this was “as plain as a pikestaff.” *Id.* (quotation omitted). But other conduct was not so clear. And because the defendant did not receive fair notice that his conduct violated the statute, the Court vacated the conviction. *Id.* at 413-14.

Although it was “plain as a pikestaff” that direct injuries to business or property are actionable under civil RICO, there were no such injuries here. Rather, Horn sued because he allegedly suffered economic harm flowing from personal injuries caused by Petitioners’ alleged racketeering activities. This is like the conduct that *Skilling* found was not clear enough to comply with the heightened due-process protections.

For 150 years, this Court has repeatedly returned to the idea of fair notice. Each time, the Court has explained why this fair-notice requirement is critical to due process of law. As explained above, civil RICO’s treble damages are punitive. A RICO violation also carries potential criminal liability. So the Court’s heightened fair-notice requirements

should also govern civil RICO cases. Otherwise, civil RICO's constitutionality would be in doubt. Because Petitioners' construction of RICO avoids these constitutional concerns, this Court should reject the Second Circuit's atextual reading of the statute.

CONCLUSION

This Court should reverse.

Respectfully submitted,

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