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 FOR RESPONDENT

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QUESTION PRESENTED

The Racketeer Influenced and Corrupt Organizations Act (RICO) permits "[a]ny person injured in his business or property by reason of" racketeering activity to bring a civil lawsuit "for threefold the damages he sustains." 18 U.S.C. § 1964(c).

The question presented is:

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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Ballentine's Law Dictionary with Pronunciations (3d ed. 1969) 11, 12, 15, 17, 23

Black's Law Dictionary (4th ed. unabr. 1951) 12, 15, 16, 17

Bouvier's Law Dictionary (15th ed. 1892) 13

Cohen, Thomas H., Bureau of Justice Statistics, *Tort Trials and Verdicts in Large Counties* (2004) 35

Dobbs, Dan B., et al., *Dobbs' Law of Torts* (2d ed. 2011) 21, 34

Friedman, Lawrence M. & Thomas D. Russell, *More Civil Wrongs: Personal Injury Litigation, 1901-1910*, 34 Am. J. Legal Hist. 295 (1990) 32

Funk & Wagnalls New Standard Dictionary of the English Language (1913) 12-16

Kircher, John J. & Christine M. Wiseman, *Punitive Damages: Law & Practice* (2d ed. 2024) 35

Legal Definitions: A Collection of Words and Phrases as Applied and Defined by the Courts, Lexicographers and Authors of Books on Legal Subjects (Benjamin W. Pope ed., 1919)..12, 13, 16

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Restatement of Employment Law (2015).................26

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U.S. Chamber of Commerce, Institute for Legal Reform, *Nuclear Verdicts: An Update on Trends, Causes, and Solutions* (May 2024)...32

U.S. Food and Drug Administration, *FDA Regulation and Quality Considerations for Cannabis and Cannabis-Derived Compounds* (Feb. 7, 2023)......................................5

U.S. Department of Justice, Tort Policy Working Group, *Report of the Tort Policy Working Group on the Causes, Extent and Policy Implications of the Current Crisis in Insurance Availability and Affordability* (1986)...32

BRIEF FOR RESPONDENT

Respondent Douglas J. Horn respectfully requests that this Court affirm the judgment of the United States Court of Appeals for the Second Circuit.

INTRODUCTION

The civil RICO provision, 18 U.S.C. § 1964(c), allows "any person injured in his business or property by reason of" a pattern of racketeering activity to sue. Respondent Douglas J. Horn's reading of that statute is simple. "Injured" means harmed, and "business" includes employment. Because he lost his employment "by reason of" petitioners' racketeering activity, Mr. Horn can sue under civil RICO.

That reading accords with dictionaries, which generally define "injured" to mean "harmed." It's a sensible rule, allowing compensation for economic harms while prohibiting the sorts of pain-and-suffering damages that comprise the lion's share of most tort recoveries. And were there any doubt about how to read Section 1964(c), Congress has written into the text of RICO a liberal construction provision, meaning ambiguities should be construed in favor of the statute's remedial purpose.

Perhaps the most important thing about Mr. Horn's reading of the statute is that he *has* one. Petitioners, by contrast, can't seem to settle on a rule of their own. Over the course of their brief, they propose that "injured" is limited to the "initial harm" inflicted by a RICO predicate and "not the subsequent economic consequences"; that a plaintiff can suffer a property injury only if "obtaining property" is an element of the RICO predicate offense; and so on,

totaling a half-dozen different rules, each deeply flawed. *See, e.g.*, Petr. Br. 23, 34.

And after all that, the examples petitioners give us don't seem to fit with *any* of their proposed rules, let alone all of them. For instance, petitioners aver that "[t]he kidnapper who extorts ransom money from the victim's family has injured the family's property." Petr. Br. 34. But that hypothetical doesn't satisfy the initial-harm rule—surely the initial harm is the kidnapping, not the ransom payment. Nor does it satisfy the element-of-the-offense rule—obtaining property isn't an element of kidnapping. Nor does it appear to satisfy any of the other rules petitioners propose.

We could go on. But suffice it to say at this juncture that none of petitioners' half-dozen feints at a rule can be squared with each other or with petitioners' own hypotheticals, let alone with RICO's text. So it is anyone's guess what, exactly, petitioners are asking this Court to hold.

This Court should instead read civil RICO to mean what it says and affirm the decision below.

STATEMENT OF THE CASE

A. Legal background

The federal RICO statute targets criminal enterprises that operate under the guise of "legitimate business." Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 922, 923 (Statement of Findings and Purpose). To accomplish that goal, the statute created "enhanced sanctions and new remedies," *id.*, for conduct that was already prohibited by state or federal law. *See* 18 U.S.C. § 1961(1).

One innovation was a new form of criminal liability for those engaged in a pattern of racketeering activity. 18 U.S.C. § 1962. Racketeering activity includes predicate crimes that range from murder and kidnapping to trafficking in nuclear weapons or counterfeit labels for phonorecords. *Id.* § 1961(1).

The RICO statute also created a civil remedy for victims of racketeering activity. 18 U.S.C. § 1964(c). That provision—known colloquially as civil RICO—provides, in pertinent part, that "[a]ny person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor . . . and shall recover threefold the damages he sustains . . . ." *Id.*

Congress borrowed the "[a]ny person injured in his business or property" requirement from turn-of-the-twentieth-century antitrust laws like the Sherman Act and the Clayton Act. *See Holmes v. Secs. Inv. Prot. Corp.*, 503 U.S. 258, 267 (1992). But unlike those statutes, Congress inserted a liberal construction provision into RICO, which mandates that RICO's text "shall be liberally construed to effectuate its remedial purposes." Organized Crime Control Act § 904(a). This Court has affirmed that RICO's "'remedial purposes' are nowhere more evident than in the provision of a private right of action," *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 498 (1985), for those injured by enterprises be they "ostensibly legitimate or admittedly criminal," *United States v. Turkette*, 452 U.S. 576, 585 (1981).

B. Factual background

1. For fourteen years, respondent Douglas J. Horn and his wife, Cindy Harp-Horn, worked as a team of

over-the-road truckers to support themselves and their five daughters. J.A. 33, 91. Their employer relied on them to haul high-value, high-risk loads such as "expedited food, pharmaceuticals and liquid chemicals." J.A. 33.

Because of the high-stakes nature of the Horns' occupation, federal law—and their employer—required the Horns to undergo random drug tests. *See* Pet. App. 5a. Neither of the Horns had used marijuana in their adult lives. J.A. 36.

In February 2012, Mr. Horn was in a serious trucking accident. J.A. 35. He suffered "severe shoulder and back injuries" and experienced chronic pain. *Id.* Neither pain medications nor physical therapy alleviated Mr. Horn's symptoms. *Id.*

Later that year, Mr. Horn investigated whether medicinal marijuana could help his mother-in-law, who was battling cancer. J.A. 33. His research revealed an article about a "new CBD-rich medicine" called Dixie X. Pet. App. 4a. CBD, which is derived from a marijuana plant, is generally federally legal and non-psychoactive. Pet. App. 70a.

Dixie X was sold by petitioner Red Dice Holdings, LLC. Red Dice, in turn, was a joint venture formed in part by petitioner Medical Marijuana, Inc. Pet. App. 83a-84a. Founded by self-described "drug kingpins" who previously imported hundreds of thousands of pounds of marijuana into the United States illegally, Medical Marijuana, Inc., advertised itself as a "publicly traded company" that "does not grow, sell or distribute any substances that violate United States law." Pet. App. 86a; *Life in the Drug Trade*, Time (Nov. 23, 1981), https://perma.cc/527F-CEFE; *An Unusual*

Entrepreneur, Bruce Perlowin https://perma.cc/QN2X-G46L (archived Dec. 8, 2023).

The article about Dixie X quoted petitioners saying the product "contain[ed] 0% THC." Pl. Mot. Summ. J., Ex. 1, at 2, ECF No. 60-7. THC, by contrast to CBD, is the psychoactive ingredient in marijuana; at the time, as little as 0.3% THC could make a product a Schedule I drug. *See* Food & Drug Admin., *FDA Regulation and Quality Considerations for Cannabis and Cannabis-Derived Compounds*, https://perma.cc/X9X6-G6FV (last updated Feb. 7, 2023). By claiming their product contained "0% THC," petitioners assured customers that Dixie X was non-psychoactive and did not violate federal law. J.A. 34.

Although Mr. Horn thought Dixie X might be able to help him manage his chronic pain, he was initially wary. After all, he did not use marijuana, and he was subject to regular drug testing, including testing for THC. J.A. 35-36. But after watching videos where petitioners stated that their products "did not contain THC," reading on petitioners' website that "our hemp contains no THC," and speaking to a customer service representative who confirmed that Dixie X contained "zero percent THC," Mr. Horn decided Dixie X might alleviate his pain without compromising his employment. Pet. App. 85a-87a. He purchased and consumed Dixie X in September 2012. *Id.* 87a.

A few weeks later, Mr. Horn submitted to a routine random drug screening. Pet. App. 5a. His test came back positive for THC, and his employer immediately fired him. *Id.* ¶¶ 14-15.

Shocked by the test result, Mr. Horn could think of only one possible source of the THC: Dixie X. He ordered another package of the product and sent it to

a lab for testing. J.A. 37. The lab confirmed that, contrary to the company's repeated assurances, Dixie X did, in fact, contain THC. *Id.* Indeed, because of the level of THC in Dixie X, the lab refused to mail the product back to Mr. Horn for fear of violating federal law. *See id.*

As a result of petitioners' misrepresentations, Mr. Horn "lost [his] career and income," plunging his "family into financial ruin." J.A. 38. As he stated in an affidavit, "I would never have taken this product [Dixie X] if Defendants' advertising was truthful and said even 'trace amounts of THC.'" *Id.*

C. Procedural history

In 2015, Mr. Horn filed this suit in the U.S. District Court for the Western District of New York. *See* Pet. App. 87a. Mr. Horn brought a number of state-law tort claims. *See id.* 87a-88a. He also sought relief under civil RICO. *Id.* 88a. To that end, he alleged that petitioners had violated the Controlled Substances Act and engaged in mail and wire fraud—predicate offenses under RICO—and that, as a result, he suffered a compensable business or property injury in the form of lost employment. J.A. 6, 12.

The district court resolved petitioners' motions for summary judgment in 2019. *See* Pet. App. 68a, 80a. As part of that resolution, the district court rejected several of Mr. Horn's state-law claims on the ground that Mr. Horn had not suffered a cognizable personal injury—an essential element of those claims. *Id.* 111a. (The district court also rejected Mr. Horn's civil RICO claim based on violations of the Controlled Substances Act. *Id.* 74a.) This left two remaining claims for trial: a state-law fraudulent-inducement claim and a civil

RICO claim based on petitioners' mail and wire fraud. *Id.* 79a, 113a. Up until that point, petitioners had not challenged Mr. Horn's claim that he had been injured in his business or property, as required by Section 1964(c).

One weekday before trial was set to begin, petitioners argued for the first time that Mr. Horn had not been "injured in his business or property" because his lost employment was "predicated on the bodily invasion plaintiff allegedly sustained when THC was introduced into his system through the ingestion of Dixie X." Pet. App. 39a. The district court ruled for petitioners and granted partial final judgment on the civil RICO claim to allow Mr. Horn to appeal. *Id.* 36a-37a.

On appeal, the Second Circuit vacated the district court's grant of summary judgment and remanded the case for further proceedings. Pet. App. 2a. The Second Circuit concluded that Section 1964(c) does not "bar[] a plaintiff from suing for injuries to business or property simply because they flow from, or are derivative of, a personal injury." Pet. App. 8a n.2. Looking to dictionaries from the time of Section 1964(c)'s codification, the Second Circuit concluded that the term "business" covered "concepts like employment, occupation, or profession engaged in for gain or livelihood." Pet. App. 9a (citation omitted). "Accordingly, when Horn lost his job, he suffered an injury to his business within the plain meaning of § 1964(c)." Pet. App. 11a.

The Second Circuit rejected petitioners' "antecedent-personal-injury bar" as "atextual." *Id.* It agreed with petitioners that Section 1964(c) "excludes recovery for personal injury" but held that "nothing in

RICO's text or structure provides for ignoring" economic harms simply because they "arose following a personal injury." Pet. App. 13a (citation omitted). Moreover, the Second Circuit found it "significant" that Section 1964(c) "incorporates a proximate cause standard." Pet. App. 14a. It explained that "Congress made a judgment concerning the permissible degree of attenuation between a predicate act and a redressable personal injury" and "[t]he antecedent-personal-injury bar coopts that judgment." *Id.* The Second Circuit thus reversed the district court and remanded the case for trial on Mr. Horn's remaining claims.

This Court granted certiorari.

SUMMARY OF THE ARGUMENT

I. 1. Section 1964(c) reads: "Any person injured in his business or property by reason of a violation of section 1962 of this chapter"—that is, by a pattern of racketeering activity—may file suit under civil RICO. "Injured" means "harmed," in both legal and common parlance. Indeed, this Court has characterized civil RICO's injury requirement as a harm requirement in several cases. And the definition of "business" is capacious, covering any occupation or employment. Putting those pieces together yields a straightforward conclusion: Because Mr. Horn was harmed in his employment—he lost his job—he has been "injured in his business or property" for civil RICO purposes.

2. Petitioners claim that because there is a "textual distinction" in Section 1964(c) between "injured" and "damages," "injured" must mean something other than "harmed." That argument is wrong. To start, the obvious "textual distinction" between "injured" and "damages"—the one that, at

times, petitioners themselves seem to endorse—is that "injured" means "harmed," while "damages" are the compensation that a plaintiff receives for that harm. Moreover, the definitions petitioners provide in support of their proposed textual distinction are for the word "damage," singular, not the word "damage*s*," plural. The two mean very different things in legal parlance, and only the latter appears in the statute.

3. Were there any doubt, RICO contains an express liberal construction provision—one of only a handful in the United States Code—that mandates any ambiguities be construed in favor of providing a remedy.

II. By contrast to Mr. Horn's simple rule—making damages available to anyone whose business or property is harmed by reason of a pattern of racketeering activity—petitioners come up with at least six different tests, each deeply flawed:

1. First, petitioners say economic harms "resulting from personal injuries" (Pet. I) don't qualify. But Congress knew how to draft such a resulting-from rule: It did so elsewhere in the United States Code, and did not do so in civil RICO. And it's at odds with petitioners' own examples. For instance, petitioners say that "[i]f a mobster assaults a carwash owner to force the owner to do business with the mob," the carwash's lost profits are an "injury to business or property." Petr. Br. 34. But surely those lost profits "result[ed] from" the assault.

2. Second, petitioners posit that the "initial harm caused by the defendants' wrongdoing" must be economic. *See* Petr. Br. 23. Like the resulting-from test, the initial-harm test is at odds with the rest of petitioners' brief. And the initial-harm test doesn't

mesh with the way courts generally use the term "injured."

3. Third, petitioners maintain that an "injury" is the "invasion of a legal right." Petr. Br. 15 (citation omitted). That's either trivially true—civil RICO protects the right not to be harmed by reason of a pattern of racketeering activity. Or else it would peg the scope of civil RICO to state law, which petitioners disavow and which would make little sense given the statutory scheme.

4. Fourth, petitioners propose a rule that excludes "prototypical" personal injury cases. Petr. Br. 24. They offer no principled rule to identify such "prototypical" cases. For instance, petitioners claim that lost wages are "prototypical" personal injury damages. Petr. Br. 24. But lost wages are awarded in a wide variety of contexts, including under the antitrust statutes from which civil RICO borrowed the "injured in his business or property" requirement.

5. Fifth, petitioners ask this Court to "zero[] in on the core of the suit" and prohibit civil RICO suits that lack an "economic" core. *See* Petr. Br. 23 (citation omitted). But it's entirely unclear what petitioners might mean by an economic core if Mr. Horn's case doesn't have one.

6. Finally, petitioners explain that an extortion case would satisfy the "injured in his business or property" requirement because "[e]xtortion involves obtaining property." *See* Petr. Br. 34 (emphasis omitted). Petitioners never explain what the involves-obtaining-property test means or how it might fit with RICO's text.

III. Petitioners' remaining arguments fare no better.

1. Petitioners protest that without their jury-rigged rule, plaintiffs' lawyers will bring "garden-variety" state tort claims as civil RICO suits. Petr. Br. 25. Not so. Among other things, civil RICO forbids recovery for nonpecuniary harms, such as pain and suffering, which form the lion's share of plaintiffs' awards in tort cases.

2. Petitioners also argue that civil RICO should be interpreted in pari materia with the Clayton Act, which forbids recovery for economic injuries that come after personal ones. Petr. Br. 17-20. But this Court has held that civil RICO should be read more generously than the Clayton Act, and in any event, there's no consensus in the Clayton Act context suggesting petitioners' reading of the "injured in his business or property" requirement is preferable to Mr. Horn's.

3. Finally, petitioners claim that Mr. Horn's reading of civil RICO would wreak havoc on its statute of limitations. Petr. Br. 31-32. But this Court has already made clear that a new injury doesn't necessarily start a new statute of limitations, and the complexities petitioners identify regarding ongoing harms would exist under their rules, too.

ARGUMENT

I. "Injured" in Section 1964(c) simply means "harmed."

1. Section 1964(c) reads: "Any person injured in his business or property by reason of a violation of section 1962 of this chapter"—that is, by a pattern of racketeering activity—"may sue therefor . . . and shall recover threefold the damages he sustains . . . ." Taking each piece of that statutory section in turn yields a straightforward rule: Plaintiffs may recover

by showing a harm to their business or property proximately caused by a pattern of racketeering activity.

Start with the term "injured," the past participle of the verb "injure." To injure is to harm, in both legal and common parlance; and that definition has remained the same from the time the "injured in his business or property" phrase was introduced into the United States Code up until now. *E.g.*, *Injure*, *Ballentine's Law Dictionary with Pronunciations* (3d ed. 1969) ("[t]o harm" or "to hurt"); *Injure*, *Black's Law Dictionary* (4th ed. unabr. 1951) ("To do harm to; to hurt; damage; impair."); *Injure*, *5 Oxford English Dictionary* (1933) ("to hurt, harm, damage"); *Injure*, *Funk & Wagnalls New Standard Dictionary of the English Language* (1943) ("to inflict harm").

This Court has used similar language in characterizing the word "injured" under civil RICO: "[T]he compensable injury necessarily is the harm caused by predicate acts." *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 497 (1985); *see also Klehr v. A.O. Smith Corp.*, 521 U.S. 179, 191 (1997) (equating injury with harm); *Anza v. Ideal Supply Corp.*, 547 U.S. 451, 460 (2006) (same).

The definition of "business" is similarly straightforward. The term "business" includes, of course, "a commercial enterprise." *Business*, *Ballentine's Law Dictionary with Pronunciations*, *supra*. But the term "business" is broader than that; it's a "very comprehensive term" that "embraces everything about which a person can be employed." *Flint v. Stone Tracy Co.*, 220 U.S. 107, 171 (1911). The primary definition of "business" is "occupation or employment." *Business,* 1 *Legal Definitions*

(Benjamin W. Pope ed., 1919). In other words, "business" includes "[t]he work in which one is regularly or usually engaged; the activity in which he spends the major portion of his time, and from which he makes a living." *Business*, *Ballentine's Law Dictionary with Pronunciations*, *supra*. Any occupation or employment suffices; "[a] person does not have to wear a suit and tie to be engaged in 'business.'" *Diaz v. Gates*, 420 F.3d 897, 905 (9th Cir. 2005) (en banc) (Kleinfeld, J., concurring).

There's no dispute about the middle part of the civil RICO provision. "By reason of a violation of section 1962" means that any injury to business or property must be proximately caused by the pattern of racketeering activity. *See Hemi Grp., LLC v. City of New York*, 559 U.S. 1, 9 (2010). And "may sue therefor" tells us that the plaintiffs can claim only those business or property injuries in their suit.

"Damages" are the flip side of "injured." "Injured" means "harmed"; "damages" are what the wrongdoer pays to compensate someone for that harm. A representative definition: "Damages" are "a sum of money awarded to a person injured by the tort of another." Restatement (First) of Torts § 902 (1939); *see also Damages,* 1 *Legal Definitions*, *supra* (1919) ("A compensation, recompense, or satisfaction to the plaintiff, for an injury actually received by him from the defendant."); *Damages*, *Bouvier's Law Dictionary* (William Edward Baldwin ed., 1940) ("The indemnity recoverable by a person who has sustained an injury, either in his person, property, or relative rights, through the act or default of another."); *Damages (pl. Law)*, *Funk & Wagnalls New Standard Dictionary of the English Language*, *supra* ("The indemnity

recoverable by one who has been subjected to an injury" or "[t]he amount demanded in reparation for such an injury."). "Damages" are "the result of the injury alleged and proved" and are "commensurate with" that injury. *Birdsall v. Coolidge*, 93 U.S. 64, 64 (1876).

Putting the pieces together, civil RICO contains a straightforward directive: A person whose employment is proximately harmed by a pattern of racketeering may recover damages for that harm. In this case, Mr. Horn lost his employment by reason of petitioners' racketeering activity, so he can recover for that lost employment.

2. Petitioners dispute that plain-text reading with the following argument: Congress used both "injured" and "damages" in the same sentence; there must be a "textual distinction between injury and damages"; "damages" means "harm"; and so "injured" can't mean "harmed." Petr. Br. 14. (What else, exactly, "injured" might mean isn't clear on petitioners' telling. *See infra* Part II.)

a. There's a simpler explanation. Any "textual distinction" between "injured" and "damages" is between the harm inflicted ("injured") and the compensation for that harm ("damages"). *Supra* at 13-14. As explained above, dictionaries define "damages" to mean "compensation," not "harm." *Id.*

Statutes that use the same "damages sustained" locution as civil RICO drive home the point. For instance, 18 U.S.C. § 2255 allows victims of sexual abuse to choose between "the actual *damages* such person *sustains* or liquidated damages." *Id.* (emphasis added). In other words, the statute allows victims of sexual abuse to choose between two forms of

compensation—“damages sustained” or “liquidated damages.”

Indeed, petitioners seem to *agree* that “damages” means compensation. They cite to the Restatement (Second) of Torts section on “damages,” and that section defines “damages” as “a sum of money awarded to a person injured by the tort of another.” 4 Restatement (Second) of Torts § 902 (1979) (cited by Petr. Br. 15). And each of the statutes they cite uses “damages” to mean “compensation” and “injure” to mean “harm.” The Panama Canal Act requires the government to “pay *damages* for *injuries* to vessels” passing through the Canal: The government must *compensate* for any *harms* to those ships. Petr. Br. 17 n.5 (citing 22 U.S.C. § 3772) (emphasis added). The Federal Tort Claims Act grants jurisdiction when plaintiffs seek “money *damages* . . . for *injury* or loss of property, or personal *injury*” caused by government negligence: Federal courts have jurisdiction where a plaintiff seeks *compensation* for *harms* to her property or person. *Id.* (citing 28 U.S.C. § 1346(b)(1)) (emphasis added). And so on.

b. Petitioners assert instead that the textual distinction between “damages” and “injury” is that “damages” are the “loss, hurt, or harm resulting from the injury.” Petr. Br. 15. For that proposition, petitioners pull a dictionary definition of “damage,” singular, not “damage*s*,” plural, the word in the statute. *Id.* But no dictionary—including the ones petitioners rely on—defines “damage*s*” in the plural as some sort of harmful downstream consequence of an

injury. *Supra* at 13-14.[1] Instead, they define "damages," plural, as a form of compensation.

And even as to "damage" in the singular, most dictionaries define the term interchangeably with "injure,"[2] and not as a downstream consequence of injury. As *Black's Law Dictionary* puts the point, the terms "damage" and "injury" "are used interchangeably, and, within legislative meaning and judicial interpretation, import the same thing." *Injury*, *Black's Law Dictionary*, *supra*.

The only other authorities petitioners cite for their textual-distinction claim are two of this Court's extraterritoriality cases. They're of no help either. In the first case, *Yegiazaryan v. Smagin*, 599 U.S. 533

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[1] The only definition of "damages," plural, that petitioners point to is the Restatement provision just noted, which explains that "[d]amages"—in the sense of "a sum of money awarded"—"flow from an injury." Petr. Br. 15 (discussing 4 Restatement (Second) of Torts § 902 cmt. a (1979)). That is, compensation "flow[s] from" harm—compensation comes after harm and depends on the harm.

[2] *See, e.g.*, *Injure*, *Black's Law Dictionary*, *supra* ("To do harm, to hurt, *damage*, impair." (emphasis added)); *Injured*, *Ballentine's Law Dictionary with Pronunciations*, *supra* ("Hurt, *damaged*, wounded." (emphasis added)); *Injury*, *Black's Law Dictionary*, *supra* ("Any wrong or *damage* done to another." (emphasis added)); *Injury*, 1 *Legal Definitions*, *supra* ("Detriment, hurt, harm, *damage*." (emphasis added)); *Injury*, *Funk & Wagnall's New Standard Dictionary of the English Language*, *supra* ("Any wrong, *damage*, or mischief done or suffered." (emphasis added)); *Damage*, *Black's Law Dictionary*, *supra* ("Loss, *injury* or deterioration" (emphasis added)); *Damage*, 1 *Legal Definitions*, *supra* ("Hurt, *injury*, loss." (emphasis added)); *Damage*, *Funk & Wagnalls New Standard Dictionary of the English Language*, *supra* (to "[c]ause *damage*" (emphasis added)).

(2023) (discussed at Petr. Br. 16, 20), everyone agreed on the "injurious effects of the racketeering activity." *Id.* at 545-46. The parties only disagreed over whether those injurious effects were "felt" in California or in Russia. *Id.* The second case, *WesternGeco LLC v. ION Geophysical Corp.*, 585 U.S. 407 (2018) (discussed at Petr. Br. 16), dealt with the Patent Act, not civil RICO. *Id.* at 414-15. Respondents in that case cited civil RICO cases for the proposition that where a plaintiff alleges harm suffered abroad, the statute is being applied extraterritorially. *Id.* This Court clarified that the location of the harm matters in civil RICO because harm is a "substantive element of a cause of action." *Id.* at 416-17. But because the comparable "substantive element" in the Patent Act case is "infringement," not "injury," the dispositive question in that setting is where the infringement occurred. *Id.*

c. Finally, even if petitioners were right that "damages" (again, plural) in Section 1964(c) means "harm," it wouldn't necessarily follow that "injured" means something different. The rule that different words must mean different things is among the weakest of the contextual canons. As Scalia and Garner put the point, "legislators often (out of a misplaced pursuit of stylistic elegance) use different words to denote the same concept." Antonin Scalia & Bryan Garner, *Reading Law: The Interpretation of Legal Texts* § 25 (2012). And here, the plain meaning of "injured" is "harmed," whatever the meaning of "damages." *See supra* at 12.

3. Mr. Horn's plain-text reading should end the debate. But should any doubt remain, the text of the RICO statute contains a tiebreaker: It instructs courts to "liberally construe[]" the statute to "effectuate its

remedial purpose." Organized Crime Control Act of 1970, Pub. L. No. 90-452 § 904(a), 84 Stat. 922, 947 (statutory note to 18 U.S.C. § 1961). That directive doesn't appear in any other statutes that use the "injured in his business or property" locution (including the antitrust statutes from which civil RICO drew the requirement).

To "liberally construe[]" is to "resolve[] all reasonable doubts in favor of the applicability of the statute to the particular case." *Construction – Liberal*, *Black's Law*, *supra*. And the "remedial purpose" of RICO is "nowhere more evident than in" Section 1964(c). *Sedima*, 473 U.S. at 498. That express liberal construction provision thus directs courts confronted with ambiguity to adopt the "less restrictive reading" of the statute—that is, to construe indeterminacies in the statute in favor of those harmed by a pattern of racketeering activity. *See Sedima*, 473 U.S. at 498-99; *see also United States ex rel. Tenn. Valley Auth. v. Welch*, 327 U.S. 546, 551 (1946).

II. The half-dozen different rules petitioners propose are impossible to square with civil RICO's text or even with each other.

By contrast to respondent's simple rule—that civil RICO allows anyone whose business or property is harmed by reason of a pattern of racketeering activity to sue—petitioners come up with at least six different tests. Each is deeply flawed in its own right and at odds with the next.

1. Begin with the rule suggested by petitioners' question presented: "[E]conomic harms *resulting from* personal injuries" are not injuries to business or property. Petr. Br. I (emphasis added); *see also id.* at

12 (arguing that Mr. Horn cannot recover because his "lost wages *flow from*" a personal injury (emphasis added)).

To start, Congress knew how to draft petitioners' resulting-from-personal-injury test if it wanted to. *See, e.g.*, 11 U.S.C. §§ 522(b), (d) (exempting "property that is traceable to" a payment "on account of personal injury" from bankruptcy); 26 U.S.C. § 130 (exempting taxable income from damages "on account of personal injury"). It didn't do so in civil RICO.

Plus, the resulting-from rule is entirely inconsistent with the rest of petitioners' brief. Petitioners concede that "[i]f a mobster assaults a carwash owner to force the owner to do business with the mob," the owner's lost profits are an "injury to business or property." Petr. Br. 34. But those lost profits, presumably, "result[] from," *id.* at I, the personal injury of assault—that is, but for the assault, there would be no lost profits. Similarly, petitioners admit that "[t]he kidnapper who extorts ransom money from the victim's family has injured the family's property." *Id.* at 34. But there, again, the ransom "result[s] from" the kidnapping (a crime that almost certainly entails personal injuries like false imprisonment or battery).

And it's not just petitioners' own hypotheticals that the resulting-from test would appear to foreclose. Recall that civil RICO authorizes claims for those injured by reason of a long list of predicate racketeering activities. *See* 18 U.S.C. §§ 1961-1962. The resulting-from test would effectively read out many of those. Petitioners claim their position still allows recovery under civil RICO for "the core of RICO's substantive prohibition like murder,

kidnapping, extortion, and the collection of unlawful debts." Petr. Br. 33-34. But it's hard to imagine a murder or a kidnapping where any business or property injury *doesn't* result from a personal injury. And that's only slightly less true for extortion: After all, extortion typically involves obtaining property via "the wrongful use of actual or threatened force, violence or fear." *See, e.g.*, 18 U.S.C. § 1951(b)(2).

When Congress has wanted to exempt predicate activities from civil RICO, it has explicitly done so. For instance, in 1995, Congress amended Section 1964(c) to carve out predicate activities involving securities fraud. Private Securities Litigation Reform Act of 1995, Pub. L. No. 104-67, § 107, 109 Stat. 737, 758 (amending 18 U.S.C. § 1964(c)). There's no such carveout for the many offenses listed among civil RICO's predicates that invariably inflict personal injuries en route to any business or property injury.

Petitioners appear to derive their resulting-from rule from the negative-implication canon—that is, from the fact that the statute references business and property injuries but does not mention personal injuries. *See* Pet. 21. The negative-implication canon means that a plaintiff who alleges *only* personal injuries without a business or property injury cannot bring suit. But it doesn't follow that a plaintiff who was "injured in his business or property" is excluded simply because the business or property injury "resulted from," Petr. Br. I, a personal injury.

To see why, imagine an emergency room triage policy that admits those with "injuries to the head or chest" before all others. Certainly, someone who has only a foot injury should wait her turn. But a patient who fractured her skull shouldn't be turned away

simply because the skull fracture "resulted from" another sort of injury (let's say spraining her ankle caused the fall that fractured her skull).

2. Petitioners next suggest that an "injury" is only "the initial harm caused by the defendant's wrongdoing—not the subsequent economic damages." Petr. Br. 23. But the initial-harm test suffers from the same flaws as the resulting-from test. Like that test, it would read out a hefty chunk of RICO's predicate offenses. *Supra* at 19-20. And as with the resulting-from test, it's inconsistent with petitioners' examples: In the mobster-extorting-a-carwash-owner hypothetical, the "initial harm" is presumably the assault, and in the ransom-money hypothetical, the "initial harm" is presumably the kidnapping, *see id.* at 34, both of which are personal injuries.

Despite petitioners' claim that they are *not* putting forth an "attenuation principle," Petr. Br. 33, the initial-harm test would seem to be just that. After all, the question whether the injury alleged is the initial harm or a harm several links down the chain of causation is a question of attenuation. In any event, the initial-harm proposal is unnecessary: It's proximate cause, not the "injured in his business or property" requirement, that limits the number of links in the causal chain between the RICO predicate acts and the business or property injury.[3]

[3] *See Holmes v. Sec. Inv. Protec. Corp.*, 503 U.S. 258, 271 (1992) (no proximate cause where there were too many "link[s] . . . between the stock manipulation alleged and the consumers' harm"); *Hemi Grp., LLC v. City of New York*, 559 U.S. 1, 15 (2010) (no proximate cause where "[m]ultiple steps . . . separate the alleged fraud from the asserted injury");

Moreover, courts and lawmakers use the word "injured" to refer to harms well beyond the initial harm. For instance, under the Clayton Act, a plaintiff harmed by consequences of the defendant's actions is "injured in his business or property" even if that harm was not the initial harm.[4] Tort cases decided around the time the phrase "injured in his business or property" was first introduced into the United States Code are similar: Even where the initial harm of a tort is to the person, the cases routinely refer to subsequent economic harms as "injur[ies] to business."[5] Likewise, in the Article III context, a plaintiff who identifies a harm multiple links down the chain of causation from a defendant's conduct might

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Anza v. Ideal Steel Supply Corp., 547 U.S. 451, 482 (2006) (Breyer, J., concurring in part and dissenting in part) (proximate cause deals with the number of links in the "causal chain" between the forbidden act and the ultimate injury); *see generally* Restatement (Second) of Torts § 430 (1965); Dan B. Dobbs et al., *Dobbs' Law of Torts* § 198 (2d ed. 2011).

[4] *See, e.g.*, *Volvo Trucks N. Am., Inc. v. Reeder-Simco GMC, Inc.*, 546 U.S. 164, 176 (2006) (describing price discrimination that injures competition among dealerships, who pass costs on to customers, as injury to consumers' property).

[5] *See, e.g.*, *Lucas v. Flinn*, 35 Iowa 9, 13 (1872) (plaintiff can recover for "injury to business" in action for battery); *Bd. of Comm'rs of Howard Cnty. v. Legg*, 11 N.E. 612, 616 (1887) (jury may consider "injury to his business" in fixing damages in wrongful death case); *Clapp v. Minneapolis & St. L. Ry. Co.*, 36 Minn. 6, 8 (1886) (same, in action where decedent killed in railroad accident).

fail on the causation or redressability prongs, but no one would say they were not "injured."[6]

Indeed, in prior civil RICO cases, this Court has assumed that plaintiffs can satisfy the "injured in his business or property" requirement by pointing to a harm other than the initial harm. Consider *Rotella v. Wood*, 528 U.S. 549 (2000), in which the plaintiff alleged that doctors conspired to treat him at a psychiatric hospital under false pretenses. *Id.* at 551, n.1, 552. The initial harm was surely false imprisonment—the unnecessary confinement in the psychiatric hospital. But this Court assumed that plaintiff had alleged a business or property injury (the fraudulent charges for that unnecessary treatment): "RICO provides for civil actions (*like this one*) by which [a]ny person injured in his business or property by a RICO violation may seek treble damages" and "*Rotella alleged such injury.*" *Id.* at 552 (emphasis added) (citation omitted).

Petitioners' sole support for their initial-harm test is a pair of century-old maritime law cases brought by sailors who were wounded at sea. Petr. Br. 23. Petitioners claim that in those cases, only the "initial harm"—the "invasion of [plaintiffs'] primary right of bodily autonomy"—constituted an injury and that the subsequent lost wages and the like were "economic consequences" rather than injuries. *Id.* But petitioners

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[6] *See, e.g.*, *Simon v. E. Ky. Welfare Rts. Org.*, 426 U.S. 26, 40 (1976) (IRS ruling allowed hospitals to reduce free services, which gave plaintiffs less access to health care; plaintiffs had "of course" alleged an injury, though connection between challenged conduct and injury was too "indirect[]").

have cherry-picked quotes from entirely inapposite cases.

The two cases were res judicata cases: A seaman could not recover twice for the same incident by filing two separate negligence suits (for instance, one for the unseaworthiness of the vessel and one for the negligence of the captain). *See Pac. S.S. Co. v. Peterson*, 278 U.S. 130, 138 (1928); *Balt. S.S. Co. v. Phillips*, 274 U.S. 316, 321 (1927). Independent of recovery for the personal injuries, though, a seaman could in a separate action also claim "maintenance" (room and board), "cure" (medical expenses), and "wages" whether or not he could prove negligence—that remedy was guaranteed as a matter of contract. *Pac. S.S. Co.*, 278 U.S. at 138; *Balt. S.S. Co.*, 274 U.S. at 321. But this Court never suggested that loss of work would not be an "injury" simply because it was not the "initial harm" visited on the seaman.

3. Taking a different tack, petitioners propose that an injury isn't just any harm but "the invasion of a legal right." Petr. Br. 15 (citing *Ballentine's Law Dictionary* 627 (3d ed. 1969)). But petitioners don't offer any guidance as to how we define that "legal right."

If that legal right stems from the text of the civil RICO statute, petitioners' point would seem to be trivially true. The "legal right" defined by civil RICO is simply the right not to be harmed by reason of a pattern of racketeering activity. Once a plaintiff has shown he was harmed by reason of such a pattern, he has shown an invasion of a legal right.

If that legal right is derived from some assessment of the purpose of the federal RICO statute, this Court rejected a similar argument in *Sedima, S.P.R.L. v.*

Imrex Co., 473 U.S. 479 (1985). In that case, defendants argued that a civil RICO plaintiff must prove he suffered "the kind of economic injury" that was "caused by an activity which RICO was designed to deter." *Id.* at 494 (cleaned up). This Court held there was "no room in the statutory language for an additional, amorphous 'racketeering injury' requirement." *Id.* at 495. So too here.

Petitioners wisely disclaim that the "injured in his business or property" requirement refers to the invasion of a legal right under state law. They concede that "injured" in 18 U.S.C. § 1964(c) does not refer to a "cognizable" or "compensable" injury under state law. Petr. Br. 21-22. As they must: Petitioners continue to insist that Mr. Horn has suffered a "personal injury" (*see, e.g.*, *id.* at 14, 20) even though he has suffered the invasion of no state-law right from his ingestion of THC (*id.* at 21-22). Plus, a rule that pegs civil RICO to state law would read out large swaths of the statute: Crimes like copyright violations or nuclear weapons trafficking don't map onto any state-law "legal right." *See* 18 U.S.C. § 1961(1).

4. The fourth rule petitioners propose is that civil RICO does not allow recovery for "prototypical" personal injury cases. Petr. Br. 24. Petitioners make no attempt to ground this rule in the statute's text, which doesn't even mention personal injuries, let alone prototypical personal injuries. In any case, the prototypical-personal-injury rule doesn't make much sense.

Petitioners first seem to contemplate that the statutory phrase "injured in his business or property" requires courts to analogize a RICO case to a common-law tort, then ascertain whether that tort is listed as

personal or economic in hornbooks. *See, e.g.*, Petr. Br. 21-22. Suffice it to say that would be a strange way to interpret civil RICO. What's the common-law analog for "trafficking in counterfeit labels for phonorecords" (one of the RICO predicate acts)? *See* 18 U.S.C. § 1961(1). For harboring undocumented immigrants? *Id.* In short, there is no basis for thinking that civil RICO requires identifying a common-law cousin for a given RICO predicate.

And even predicate acts that sound like traditional torts might map onto multiple such torts, some of which concern personal injuries, but some of which do not. In Mr. Horn's case, for instance, petitioners insist that mail and wire fraud maps onto a products liability claim, but these predicates are equally consistent with a fraudulent misrepresentation tort or intentional interference with economic interests tort—neither of which count as personal injury claims. *See* Dan B. Dobbs, et al., *The Law of Torts* § 515 (2d ed. 2011) (listing both torts as "pure economic torts").[7] (Indeed, Mr. Horn brought fraudulent inducement, breach of warranty, and breach of contract claims under state law. J.A. 13-15.)

Alternatively, petitioners' rule might turn on whether *damages*—rather than the predicate acts—

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[7] *See* Restatement (Second) of Torts § 525 (1976) (one who "fraudulently" makes a "misrepresentation" is liable "for pecuniary loss caused" to one who "justifiabl[y] reli[es] upon the misrepresentation"); *S. Dev. Co. of Nev. v. Silva*, 125 U.S. 247, 250 (1888) (listing elements of fraudulent misrepresentation); Restatement (Second) of Torts § 766 (1976) ("One who intentionally and improperly interferes with the performance of a contract . . . between another and a third person . . . is subject to liability to the other for the pecuniary loss resulting" from failure to perform).

are prototypical of personal or economic cases. *See* Petr. Br. 24 ("[L]ost wages are prototypical damages from [a] personal injury."). But lost wages aren't "prototypical" of any one type of case. True, lost wages are often awarded in personal injury suits. But they're also awarded all the time in cases where no personal injury is involved. Under the Clayton Act, courts have recognized loss of employment as an "injur[y] to business or property" for decades, since well before civil RICO borrowed that language from the antitrust statutes.[8] And lost wages can be awarded for breaches of contract[9] and for economic torts.[10]

Indeed, the very case petitioners cite, *United States v. Burke*, 504 U.S. 229 (1992), makes clear that lost wages are *not* "prototypical" personal injury damages. The question was whether a payment received to settle an employment discrimination claim for lost wages counted as "damages received . . . on account of personal injuries." *Id.* at 235-37 (quoting 26 U.S.C. § 104(a)(2)). This Court listed the "traditional harms associated with personal injury" as those that "redress intangible elements of injury that are deemed important, even though not pecuniary in their immediate consequence"—things like "emotional distress and pain and suffering." *Id.* (citation omitted). By contrast, damages "necessary to reimburse actual

[8] *See, e.g.*, *Vines v. Gen. Outdoor Advert. Co.*, 171 F.2d 487, 491-92 (2d Cir. 1948) (Hand, J.); *Quinonez v. Nat'l Assoc. of Sec. Dealers*, 540 F.2d 824, 829-830 (5th Cir. 1976); *Daily v. Quality Sch. Plan, Inc.*, 380 F.2d 484, 487 (5th Cir. 1967) (collecting cases); *Nichols v. Int'l Press, Inc.*, 371 F.2d 332, 334 (7th Cir. 1967).

[9] Restatement of Employment Law §§ 9.01, 9.02 (2015).

[10] Restatement (Second) of Torts §§ 549, 766C (1965).

monetary loss"—including compensation for "diminished future earning capacity" and, yes, "lost wages"—were *not* "damages received . . . on account of personal injuries." *Id.* at 235-36, 242.

A "prototypical" damages rule, one that classifies lost wages (but not lost profits) as personal injury damages, would also have strange consequences, providing special protection for CEOs while leaving ordinary workers high and dry. If a mobster assaults a carwash owner to force him to do business with the mob, the owner can recover treble damages for lost profits. *See* Petr. Br. 34. But if the same mobster assaults the carwash attendant to force him to quit his job, the attendant can't recover a cent of his lost wages. Section 1964(c) draws no such distinction between the Ebenezer Scrooges of the world and the Bob Cratchits.

5. Petitioners next ask this Court to "'zero[] in on the core of the suit' to determine what conduct 'actually injured' the plaintiff." Petr. Br. 23 (quoting *OBB Personenverkehr AG v. Sachs*, 577 U.S. 27, 35 (2015)). But the language petitioners quote for the "core of the suit" test comes from a case interpreting the Foreign Sovereign Immunities Act. That statute creates an exception to sovereign immunity when "the action is *based upon* a commercial activity carried on in the United States." *OBB*, 577 U.S. at 31 (quoting 28 U.S.C. § 1605(a)(2) (emphasis added)). Interpreting the phrase "based upon," this Court concluded that it directs courts to identify the "basis or foundation for a claim." *Id.* at 33 (citation omitted). It should go without saying that civil RICO contains no equivalent "based upon" requirement.

Besides, it's entirely unclear what petitioners might mean by an economic "core" if Mr. Horn's

injuries don't have one. In this case, the predicate racketeering acts were economic: Mr. Horn alleged mail and wire fraud. J.A. 11-12. The harm that Mr. Horn first perceived was economic: He didn't even discover that petitioners' product had "invade[d]" his "bodily autonomy," Petr. Br. 21, until *after* he was fired; until that point, he had no idea he'd ingested THC. And the basis for Mr. Horn's suit is, at this point, entirely economic: Petitioners themselves argued that Mr. Horn suffered no cognizable personal injury whatsoever, and the only state-law claims that survived summary judgment at the district court were economic. *Id.* 21-22.

Indeed, petitioners' core-of-the-suit test would produce nonsensical results. Imagine that, rather than being fired for failing a drug test, Mr. Horn was fired because his employer discovered an unopened package of Dixie X in his locker. *See* 49 C.F.R. § 392.4 (banning commercial truck drivers from possessing, as well as using, controlled substances). Mr. Horn would bring precisely the same suit: The predicate racketeering acts (mail and wire fraud) would be the same; the immediate harm (being fired) would be the same; and the economic consequences (losing wages and opportunities for future employment) would be the same. Yet petitioners would apparently say that the "core" of his suit had changed, because there was no longer any "bodily invasion." *See* Petr. Br. 23.

6. Petitioners' final suggestion appears in the hypothetical involving a carwash owner extorted by a mobster. Petr. Br. 34. Petitioners say the carwash owner can recover for lost profits because "[e]xtortion involves obtaining property." *Id.* (emphasis omitted). Setting aside that petitioners make no effort to tether

their involves-obtaining-property test to the statute's text, it's entirely unclear what petitioners mean. There are at least three different ways to read that sentence, none of which make much sense.

By "[e]xtortion involves obtaining property," petitioners might mean that "obtaining property" is an *element* of the crime of extortion. But petitioners aver that "the kidnapper who extorts ransom money from the victim's family has injured the family's property," Petr. Br. 34, and obtaining property isn't a necessary element of kidnapping, *see* Model Penal Code § 212.1 (1962); 18 U.S.C. § 1201. Conversely, petitioners claim that Mr. Horn cannot recover, but a deprivation of property *is* required under the mail and wire fraud predicates Mr. Horn alleged in this case. *See* 18 U.S.C. §§ 1341, 1343. Besides, had Congress meant such an elements-based approach it would have said so: The requirement might read "injured in his business or property *in the course of* a violation of Section 1962." *See, e.g.*, 5 U.S.C. § 8102(b)(1) (allowing compensation for someone "injured or taken while engaged in the course of his employment"). And requiring that deprivation of property be an element of the offense would read out a significant majority of the RICO predicate offenses from the statute, including everything from murder to sexual abuse to obstruction of justice. *See* 18 U.S.C. § 1961(1).

Alternatively, by "[e]xtortion involves obtaining property," petitioners might mean that the mobster personally benefitted from the carwash owner's economic loss. But Section 1964(c) isn't merely a forfeiture statute; other provisions of RICO deal with the return of property acquired from a victim. *See, e.g.*, 18 U.S.C. § 1963(a)(3). And of the four types of

activities prohibited under 18 U.S.C. § 1962, only two require obtaining property.[11] Congress didn't create a cause of action for any person whose business or property was *obtained* by a RICO defendant. It created a cause of action for "any person *injured* in his business or property." *Id.* § 1964(c) (emphasis added).

Or perhaps petitioners think the carwash owner can recover because the *motive* of the mobster was to deprive him of property. If so, that rule is squarely foreclosed by this Court's ruling in *National Organization of Women v. Scheidler*, 510 U.S. 249 (1994), which rejected the argument that civil RICO applies only when the racketeering acts had an "economic motive." *Id.* at 252. This Court rejected that motive rule with good reason. Tony Soprano might firebomb a home to try to kill a rival mobster out of vengeance, with no economic motive. But if the home burns down, surely the rival can recover for an injury to property. And conversely, courts (or creative lawyers) can come up with all sorts of motivations for a given predicate act. In petitioners' hypothetical about the defendant who breaks a victim's jaw to intimidate her, for instance, the motive might be to cause her pain, or it might be to put her out of work. *See* Petr. Br. 28. Petitioners would apparently allow recovery only if it's the latter.

* * *

[11] *Compare* 18 U.S.C. § 1962(a) (unlawful to receive income derived from racketeering activity) *and id.* § 1962(b) (unlawful to collect debt through a racketeering activity) *with* 18 U.S.C. § 1962(c) (unlawful to participate in an enterprise through racketeering activity) *and id.* § 1962(d) (unlawful to conspire to do §§ 1962(a)-(c)).

That petitioners can't come up with a consistent rule is reason enough to doubt their position. This Court should stick with the rule that the plain text of the statute offers up: "Injured" just means "harmed."

III. Petitioners' remaining arguments are unavailing.

With no consistent rule of their own, petitioners fire off a handful of potshots at Mr. Horn's. But they all miss the mark.

1. First, contrary to petitioners' argument, reading civil RICO according to its terms would not permit plaintiffs to recover for the "lion's share of personal-injury damages." *See* Petr. Br. 29.

a. The "business or property" language in Section 1964(c) has critical "restrictive significance": It excludes damages for what tort law calls "nonpecuniary," "noneconomic," or "general" injuries—things like pain and suffering, emotional distress, and the like, for which a plaintiff can't produce receipts. And petitioners' own amici describe those nonpecuniary damages—not lost wages—as the "lion's share" of tort recoveries.[12]

Nonpecuniary damages have dominated tort recoveries since at least the turn of the twentieth century, when the "injured in his business or property"

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[12] *See* U.S. Chamber of Com. Inst. for Legal Reform, *Nuclear Verdicts: An Update on Trends, Causes, and Solutions* 3-4 (2024), https://perma.cc/5JB3-8CZA; *see also* U.S. Dep't of Just. Tort Pol'y Working Grp., *Report of the Tort Policy Working Group on the Causes, Extent and Policy Implications of the Current Crisis in Insurance Availability and Affordability* 2 (1986) (non-economic damages play primary role in "explosive growth in large verdicts").

phrase first entered the United States Code. One study, examining personal injury suits in Alameda County from 1901-1910, found that "nearly all" of the average award (more than 95%) came from nonpecuniary damages (things like compensation for pain and suffering) rather than pecuniary damages (things like property damage, lost earnings and the like). Lawrence M. Friedman & Thomas D. Russell, *More Civil Wrongs: Personal Injury Litigation, 1901-1910*, 34 Am. J. Legal Hist. 295, 303 (1990). By limiting plaintiffs under civil RICO and its predecessor statutes to recovery for "business or property"—things for which they could produce receipts, like lost profits, increased expenditures, bills, lost wages, and the like—Congress limited the possibility of astronomical awards based on amorphous pain-and-suffering damages.

b. Petitioners protest that defining property by reference to state law would "vitiate[] any exclusion for 'non-pecuniary' damages." Petr. Br. 29. But Mr. Horn doesn't take a position on whether "property" is, in fact, defined according to state law or, as in the antitrust context, according to federal common law. *See Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979) (suggesting that property for Clayton Act purposes does not conform to state law definitions). His argument is that he was deprived of his *business*, and in any event, wages pursuant to a contract are property under any definition of the term. The quoted

section of the BIO simply summarizes the case law of the lower courts. BIO 16.[13]

c. And civil RICO contains additional guardrails to ensure that "everyday tort plaintiffs," Petr. Br. 3, can't bring civil RICO actions. First, plaintiffs must prove a pattern of racketeering activity. 18 U.S.C. §§ 1962, 1964(c). That alone will foreclose the vast majority of tort suits: RICO's predicate offenses are generally intentional crimes or crimes with a recklessness mens rea, yet the vast majority tort suits are brought for negligence or strict liability.[14] On top of predicate acts, the plaintiff must show that those acts amounted to a "pattern" and were committed by an "enterprise" (that is, not just a group of people who happen to commit crimes together, but "an ongoing organization" that "functions as a continuing unit"). *Id.* § 1962; *United States v. Turkette*, 452 U.S. 576, 580 (1981).

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[13] Even if "property" were defined according to state law, petitioners' concerns about non-pecuniary damages are unfounded. Petitioners cite cases about damages for pain and suffering and loss of consortium. Petr. Br. 29. As to the first, petitioners' cases simply note that "*damages* for pain and suffering"—that is, money in a plaintiff's bank account after a lawsuit—are property just like any other money in the plaintiff's bank account. *Evans v. Twin Falls County*, 796 P.2d 87, 93 (Idaho 1990) (emphasis added); *Brown v. Brown*, 675 P.2d 1207, 1212 (Wash. 1984). And as to the second, it's true that loss of consortium is a property right in some States, but everyone acknowledges it's an "anachronistic holdover," dating back to a time when a wife was considered her husband's property, and is falling out of favor. *See Nelson v. Jacobsen*, 669 P.2d 1207, 1223 (Utah 1983) (Durham, J., concurring in judgment).

[14] *Compare* 18 U.S.C. § 1961(1) *with* Steven K. Smith et al., Bureau of Just. Stats., *Tort Cases in Large Counties: Civil Justice Survey of State Courts* 2 & tbl.1, 6 (1995).

Second, "to state a claim under civil RICO, the plaintiff is required to show that a RICO predicate offense not only was a 'but for' cause of his injury, but was the proximate cause as well." *Hemi Grp., LLC v. City of New York*, 559 U.S. 1, 9 (2010) (citation omitted). The harm cannot be "too remote," "purely contingent," or "indirect." *Id.* Civil RICO's proximate cause requirement has a "common-law foundation[]." *Id.* at 2. And at common law, proximate cause requires that the harm "result[] from the risks that made the defendant's conduct tortious"—or, in this case, criminal—"in the first place." Dan B. Dobbs et al., *Dobbs' Law of Torts* § 198 (2d ed. 2011).[15]

Those limitations thoroughly douse petitioners' parade of horrible. A company isn't liable to a "garden-variety" products liability" plaintiff, Petr. Br. 29. because the plaintiff won't be able to show even one RICO predicate—most products liability claims are strict liability or negligence actions, while most RICO predicates involve intent or recklessness. *See* 1 John J. Kircher & Christine M. Wiseman, *Punitive Damages: Law & Practice* § 6:1 (2d ed. 2024).[16] That's

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[15] Petitioners claim that "RICO proximate causation offers little comfort if Horn's claim passes muster," smuggling in some aspersions regarding that element of Mr. Horn's claim. *See* Petr. Br. 31. Petitioners have long since forfeited any argument that Mr. Horn's civil RICO claim lacks proximate cause: They didn't raise it on appeal to the circuit court or at the certiorari stage before this Court. *See* Pet. App. 14a; Pet. 24.

[16] By one measure—treating punitive damage awards at trial as a proxy for products liability cases that involve intentional wrongdoing—only eight out of every 10,000 product liability cases involve intentional torts. *See* Thomas H. Cohen, Bureau of Just. Stats., *Tort Trials and Verdicts in Large Counties* 3 (2004).

why the civil RICO claims for products liability tend to be cases of concerted, long-term campaigns to deceive consumers—the litigation against opioid manufacturers, for instance. *See In re Nat'l Prescription Opiate Litig.*, 2018 WL 6628898, at *9 (N.D. Ohio Dec. 19, 2018). A martial arts fighter who fraudulently conceals his doping is not liable for business harm to his opponent because "[e]ach link in the chain of causation is speculative." *Hunt v. Zuffa, Inc.*, 361 F. Supp. 3d 992, 997, 1005 (D. Nev. 2019) (discussed at Petr. Br. 27). And plaintiffs can't sue a pornographic web site for radicalizing school shooters because a school shooting was not one of the risks that makes obscenity a crime. *See James v. Meow Media, Inc.*, 90 F. Supp. 2d 798, 817-18 (W.D. Ky. 2000) (discussed at Petr. Br. 31).

Indeed, virtually every case marshalled by petitioners was dismissed on multiple grounds that have nothing to do with the "injured in his business or property" requirement.[17] That's presumably why we've seen no flood of garden-variety tort claims masquerading as civil RICO actions in circuits that

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[17] *See, e.g.*, *Aaron v. Durrani*, 2014 WL 996471, at *5 (S.D. Ohio Mar. 13, 2014) (discussed at Petr. Br. 27; dismissed because plaintiffs failed to plead "conduct" under RICO, existence of a RICO "enterprise," a "pattern" of racketeering activity, or, with sufficient specificity, fraud); *Doe v. Varsity Brands, LLC*, 2023 WL 4931929, at *10-11 (N.D. Ohio Aug. 2, 2023) (discussed at Petr. Br. 27; suit by sexual abuse victims against cheerleading organization dismissed for lack of proximate cause); *Magnum v. Archdiocese of Phila.*, 2006 WL 3359642, at *3-4, 7 (E.D. Pa. Nov. 17, 2006), *aff'd*, 253 Fed. Appx. 224 (3d Cir. 2007) (discussed at Petr. Br. 27; suit by sexual abuse victims against Catholic church dismissed for lack of proximate cause, lack of "enterprise," and lack of "pattern" of racketeering activity).

have, for decades, read Section 1964(c) according to its plain terms. *See* BIO 29-30.

Finally, this Court has rejected scaremongering about state tort claims alchemizing into civil RICO suits before. As this Court has explained, civil RICO was *intended* to "move large substantive areas formerly totally within the police power of the State into the Federal realm." *Turkette*, 452 U.S. 576 at 586-87 (citation omitted). And this Court has "repeatedly refused to adopt narrowing constructions of RICO in order to make it conform to a preconceived notion of what Congress intended to proscribe." *Bridge v. Phx. Bond & Indem. Co.*, 553 U.S. 639, 660 (2008).[18]

2. Second, petitioners are unpersuasive when they argue that civil RICO's "injured in his business or property" provision should be interpreted identically to the Clayton Act, and that the Clayton Act, in turn, has been interpreted by lower courts to reject Mr. Horn's straightforward reading of the phrase. Petr. Br. 17-20. Neither claim is true.

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[18] *See, e.g.*, *Bridge*, 553 U.S. at 659-60 ("[P]etitioners contend that we should interpret RICO . . . to avoid the 'over-federalization' of traditional state-law claims . . . . Whatever the merits of petitioners' arguments as a policy matter, we are not at liberty to rewrite RICO to reflect their—or our—views of good policy."); *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 500 (1985) (rejecting an "amorphous" racketeering injury requirement and instead concluding that "[t]he 'extraordinary' uses to which civil RICO has been put appear to be primarily the result of the breadth of the predicate offenses, in particular the inclusion of wire, mail, and securities fraud"); *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 249 (1989) ("RICO may be a poorly drafted statute; but rewriting it is a job for Congress, if it is so inclined, and not for this Court.").

To begin, this Court has routinely held that civil RICO must be interpreted more *broadly* than its Clayton Act counterpart. *See, e.g.*, *Sedima*, 473 U.S. at 510-511 (faulting courts for "reading far too much into the antitrust analogy"). That is because, although Congress modeled civil RICO after the Clayton Act, it intended a more expansive remedy. Among other things, Congress included a liberal construction provision in civil RICO, but not in the Clayton Act. *Supra* at 17-18.

Besides, there is no body of case law shoehorning the Clayton Act's injury to business or property requirement into any one of petitioners' proposed rules. Petitioners cite to just one district-court case rejecting a Clayton Act claim because it involved a personal injury.[19] But another district-court case—in fact, one cited by petitioners at the certiorari stage (Pet. 22-23)—holds the opposite, allowing recovery under the federal antitrust law for economic harms that stem from personal injuries. *See, e.g.*, *Iron Workers Loc. Union No. 17 Ins. Fund v. Philip Morris,*

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[19] *Gause v. Philip Morris*, 2000 WL 34016343, at *1, *5 (E.D.N.Y. Aug. 8, 2000), *aff'd*, 29 Fed. Appx. 761 (2d Cir. 2002) (discussed at Petr. Br. 20). The other three cases petitioners cite are inapposite. *See* Petr. Br. 19-20. One rejected a claim because the complaint "did not disclose what acts these defendants performed in violation of the anti-trust laws." *Tepler v. Frick*, 112 F. Supp. 245, 245 (S.D.N.Y. 1952), *aff'd*, 204 F.2d 506 (2d Cir. 1953). Another rejected a claim based on the proximate cause requirement. *See Or. Laborers-Emps. Health & Welfare Tr. Fund v. Philip Morris, Inc.*, 185 F.3d 957, 964 (9th Cir. 1999). In the final case, the plaintiff's "barely intelligible" complaint alleged neither anti-competitive conduct nor a predicate act nor any damages at all. *See Chadda v. Burcke*, 2004 WL 2850048, at *1 (E.D. Pa. Dec. 9, 2004), *aff'd*, 180 Fed. Appx. 370, 371-72 (3d Cir. 2006).

Inc., 23 F. Supp. 2d 771, 785 (N.D. Ohio 1998) (cited at Pet. 22-23; finding injury to business where tobacco companies' wrongdoing forced healthcare funds to pay medical expenses for smoking-related illnesses).[20]

And lower courts have recognized lost employment as an injury to business and property in Clayton Act cases for decades, before Congress borrowed that language for civil RICO. *See, e.g.*, *Vines v. Gen. Outdoor Advert. Co.*, 171 F.2d 487, 491-92 (2d Cir. 1948) (Hand, J.) (plaintiff who expected to continue employment with brewery could recover when antitrust violations resulted in termination of employment); *Quinonez v. Nat'l Assoc. of Sec. Dealers*, 540 F.2d 824, 829-30 (5th Cir. 1976) (plaintiff who could not be hired due to anticompetitive boycott could recover for loss of earning potential under Clayton Act). If the two statutes are to be interpreted the same way, as petitioners would have it, there should be no issue with awarding Mr. Horn lost wages here.

3. Finally, petitioners urge that allowing this case to proceed would "upend" civil RICO's four-year

[20] Petitioners claim this Court "approvingly cited" a District of Montana Clayton Act case rejecting a business or property injury because of a personal injury in the chain of causation. Petr. Br. 18 (discussing citation to *Hamman v. United States*, 267 F. Supp. 420, 432 (D. Mont. 1967), in *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979)). Petitioners mischaracterize that case: The court held that a loss of consortium was not the sort of "property . . . encompassed by the antitrust laws" and that "any [such] injuries were collateral to and not proximately caused by" the antitrust violation. *Hamman*, 267 F. Supp. at 432. It nowhere suggested that if the loss of consortium *had* been a property injury proximately caused by the antitrust violation, the claim would fail simply because there was an antecedent personal injury. *See id.*

statute of limitations because "plaintiffs could redefine each new economic damage from a personal injury as a new injury." Petr. Br. 32. But this Court has already concluded that plaintiffs cannot "recover for the injury caused by old overt acts outside the limitations period" under civil RICO. *See Klehr v. A.O. Smith Corp.*, 521 U.S. 179, 189-90 (1997); *see also Urie v. Thompson*, 337 U.S. 163, 170 (1949) (rejecting "the theory that each intake of dusty breath is a fresh 'cause of action'" for statute of limitations purposes); *Zenith Radio Corp. v. Hazeltine Rsch., Inc.*, 401 U.S. 321, 338-42 (1971) (plaintiff bringing Clayton Act claim should request not only compensation for harm to date but for future harm).

Besides, the same prospect of a fresh cause of action exists even if there has ever been a personal injury. Shoddy manufacturing might lead first to a roof collapsing and then, years later, a floor; trademark infringement may dilute the brand today and further dilute it over the subsequent decades; a breach of fiduciary obligation might not result in a decreased investment value for many months. In each case, there's "new damage" (Petr. Br. 32) that even petitioners would have to admit is purely "economic." That prospect hasn't doomed the statute of limitations under civil RICO.

* * *

This Court should adhere to civil RICO's plain text and hold that the phrase "injured in his business or property" means exactly what it says. The alternative, as petitioners' panoply of flawed and conflicting rules makes clear, is at odds with the statute's words and Congress's express admonition to liberally construe them.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be affirmed.

Respectfully submitted,

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