No. 23-365

In the Supreme Court of the United States

MEDICAL MARIJUANA, INC., ET AL., *Petitioners*,
v.
DOUGLAS J. HORN

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

BRIEF FOR CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, PRODUCT LIABILITY ADVISORY COUNCIL, AND AMERICAN TORT REFORM ASSOCIATION AS *AMICI CURIAE* SUPPORTING PETITIONERS

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JULY 16, 2024

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INTEREST OF *AMICI CURIAE*[1]

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the state and federal courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases that raise issues of concern to the nation's business community.

The Product Liability Advisory Council, Inc. (PLAC) is a non-profit corporation with approximately 90 corporate members representing a broad cross-section of American industry. These companies seek to contribute to the improvement and reform of the law in the United States and elsewhere, with emphasis on the law governing the liability of product manufacturers and others in the supply chain. Since 1983, PLAC has filed over 1,100 briefs as *amicus curiae* in both state and federal courts, including this Court, presenting the broad perspective of product manufacturers seeking fairness and balance in the development and application of the law as it affects product manufacturers and suppliers.

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[1] No counsel for any party authored this brief in whole or in part and no entity or person, aside from *amici curiae*, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

The American Tort Reform Association (ATRA) is a broad-based coalition of businesses, corporations, municipalities, associations, and professional firms that have pooled their resources to promote reform of the civil justice system with the goal of ensuring fairness, balance, and predictability in civil litigation. For more than three decades, ATRA has filed amicus briefs in cases involving important liability issues.

This case is of great concern to *amici* because the broad rule adopted below would dramatically increase businesses' exposure and liability under the Racketeer Influenced and Corrupt Organizations Act (RICO). Virtually all products-liability claims (and a large proportion of tort claims in general) involve allegations that a personal injury resulted in some pecuniary harm. Permitting RICO actions to rest on personal injuries might allow tort plaintiffs to add a RICO claim to their lawsuits whenever they could plead the repeated use of a channel of interstate commerce. Confining the enhanced remedies available under RICO to the scope intended by Congress is of utmost importance to *amici* and their members.

INTRODUCTION AND SUMMARY OF ARGUMENT

This is not a case about a "defect" in statutory drafting, as the Second Circuit put it. Pet. App. 20a. It is instead about poor statutory interpretation. In contrast with some of this Court's prior cases under the Racketeer Influenced and Corrupt Organizations Act (RICO), this case concerns Congress's clearly expressed, sound limits on a statutory cause of action. Those limits should be enforced rather than construed away.

Congress passed RICO in 1970 to "seek the eradication of organized crime in the United States." Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 922, 923 (Statement of Findings and Purpose). By the 1980s, RICO's private civil action became extremely popular and commonplace in lawsuits having nothing to do with "mobsters and organized criminals." *Sedima, S.P.R.L.* v. *Imrex Co., Inc.*, 473 U.S. 479, 499 (1985). The Court concluded that this evolution was the result of RICO's breadth, so that Congress was responsible for correcting the statute's capacious language and expansive application. *Ibid.* In that light, policy concerns about the statute's far reach could not justify the atextual "racketeering injury" requirements the Second Circuit imposed on plaintiffs. *Id.* at 499-500.

The decision below relied extensively on *Sedima*, see Pet. App. 10a, 19a–20a, as did the Ninth Circuit when it similarly concluded that RICO allows certain personal-injury plaintiffs to recover RICO damages. See *Diaz* v. *Gates*, 420 F.3d 897, 901 (9th Cir. 2005) (en banc) (per curiam). But this reliance is misplaced.

The only similarity between the standing inquiry in *Sedima* and the injury inquiry here is that the courts of appeals again went beyond the text of RICO's civil-remedies provision, this time expanding on the text to allow plaintiffs to recover damages flowing from personal injuries, rather than restricting recovery in line with the statutory limits. In *Sedima*, this Court determined that the identified policy and purpose concerns were at odds with the statute's text. Here, in contrast, RICO's text expressed the statutory purpose and accords with sound policy.

First, the statute's text creates a clear categorical limitation on the types of injuries covered—those to "business or property by reason of" the RICO violation itself. 18 U.S.C. §1964(c). That language leaves no room for backdoor access to RICO remedies through personal injuries that have downstream financial consequences.

Second, although RICO is a broad statute with a liberal-construction clause, the restrictive text of the injury provision in §1964(c) should be read to effectuate the statute's purpose—to remedy economic harms from patterns of criminal activity. Allowing personal-injury plaintiffs to pursue garden-variety tort claims under RICO would turn the law into a general federal tort statute.

Finally, extending RICO remedies to claims based on personal injuries would have devastating consequences for businesses that would face costly discovery and the risk of treble damages and attorney's fees for conduct beyond RICO's purview. In addition, the resulting conflation of injury and damages inquiries

could have deleterious spillover effects in other areas of the law, including class certification.

All of these reasons—the plain text, the purpose of RICO, and the practical consequences—warrant reversal and a clear statement that the indirect effects of personal injuries are not injuries to "business or property" within the meaning of the statute.

ARGUMENT

I. Permitting Private Plaintiffs To Recover Damages From Personal Injuries Conflicts With RICO's Plain Text.

It is critical that businesses in the United States be able to rely on the ordinary meaning of statutory language. Section 1964(c) states that "[a]ny person injured in his business or property by reason of a" RICO violation is entitled to treble damages and attorney's fees. 18 U.S.C. §1964(c). As a matter of common usage, the restrictive phrase "business or property" limits "RICO's private cause of action to particular kinds of injury—excluding, for example, personal injuries." *RJR Nabisco, Inc.* v. *European Community*, 579 U.S. 325, 350 (2016); see also *Sedima*, 473 U.S. at 509 (Marshall, J., dissenting) ("business or property" restriction "excludes recovery for personal injuries"). By "excluding … personal injuries" from civil RICO's scope, the Court necessarily excluded all damages that flow from those excluded injuries. In contrast with proposed limits on civil RICO based solely in policy, this limit is compelled by the statutory text. Any other reading of the phrase renders the limiting language meaningless.

1. Congress modeled §1964(c) on the private civil provision in the Clayton Act, 15 U.S.C. §15. See *Agency Holding Corp.* v. *Malley-Duff & Assocs., Inc.*, 483 U.S. 143, 150–151 (1987). The two provisions are nearly identical. As this Court observed, "both statutes aim to compensate the same *type* of injury." *Ibid.* (emphasis added). And that sole compensable type of injury is "economic injury." *Id.* at 151. "[C]abining RICO's private cause of action" in this way, *RJR Nabisco*, 579 U.S. at 350, accords both with the plain language of the statute and with the legitimate expectations of businesses that certain types of conduct, while potentially compensable under state tort law, do not trigger liability for "threefold" damages plus attorney's fees under §1964(c).

Addressing the Clayton Act, this Court recognized that, because "Congress must have intended to exclude some class of injuries by the phrase 'business or property,'" the Act's civil-remedies provision "exclude[s] personal injuries." *Reiter* v. *Sonotone Corp.*, 442 U.S. 330, 339 (1979). The same is true for RICO's identical civil-remedies provision. Indeed, when this Court imported the antitrust laws' proximate-cause requirement into RICO, the Court "fairly credit[ed] the 91st Congress, which enacted RICO, with knowing the interpretation federal courts had given the words earlier Congresses had used first in §7 of the Sherman Act, and later in the Clayton Act's §4." *Holmes* v. *Securities Investor Protection Corp.*, 503 U.S. 258, 268 (1992). Here as in *Holmes*, because the Congress chose the same words used in the antitrust laws, the Court "can only assume it intended them to have the same meaning." *Ibid.*; see

Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 322–326 (2012) (discussing the prior-construction canon).

2. In deciding in *Reiter* that the "business or property" terminology excluded recovery for personal injuries, this Court recognized that the statutory language limited recoveries to economic injuries. *Reiter*, 442 U.S. at 339. Although the term "property" expands the scope of relief beyond injury to a "business," each term serves to limit compensable injuries to direct economic harms. Thus, the Court contrasted "personal injuries suffered," which are not injuries to "business or property," with "a consumer's monetary injury arising *directly* out of a retail purchase," which are. *Ibid*. (emphasis added). Rather than disavow its precedent equating injury to "business or property" with "commercial interests," *id.* at 341–342 (citing *Hawaii* v. *Standard Oil Co. of California*, 405 U.S. 251, 264 (1972)), the Court explained that "commercial" encompassed direct injuries to property, including a consumer's pocketbook. As the Court put it, consumers have "sound commercial interests" in not overpaying for products and services. *Id.* at 342. It is those "commercial interests" that the remedial statutes protect, irrespective of the identity of the plaintiff.

Rather than recognizing the purpose and context of the "business or property" formulation, the court below instead parsed each element of that phrase in isolation, Pet. App. 9a, both disregarding the terms' "restrictive significance," *Reiter*, 442 U.S. at 339, and straining to expand the reach of each term. That

approach runs afoul of fundamental canons of statutory construction.

For example, under the *expressio unius* principle, Congress's explicit inclusion of a limited rule is an implicit exclusion of a more general rule. *TRW Inc.* v. *Andrews*, 534 U.S. 19, 28 (2001). If Congress wanted to include the downstream damages from personal injuries, it could and would have used different language. Congress could have chosen to provide a remedy for "any person injured in his *person*, business, or property." Or Congress could have placed no limits on compensable injury by simply omitting the phrase "business or property" and instead providing a remedy for any "person injured by reason of" a RICO violation. See *Grogan* v. *Platt*, 835 F.2d 844, 846 (11th Cir. 1988).

When Congress uses unmodified "any injury" language, recovery for personal injuries is permissible. For example, in *Urie* v. *Thompson*, 337 U.S. 163, 181 (1949), this Court held that the broad "any injury" language in the Federal Employers' Liability Act permitted recovery for "every injury" because the words of the statute did not restrict "the cause of injury" or "the particular kind of injury resulting."

Indeed, that is how Georgia's legislature drafted its state RICO statute, which provides a civil cause of action to "[a]ny person who is injured by reason of any violation." *Reaugh* v. *Inner Harbour Hosp., Ltd.*, 214 Ga. App. 259, 264, 447 S.E.2d 617 (1994). The Georgia courts accordingly have held that the law allows recovery for damages flowing from personal injuries precisely because, "[u]nlike the federal act," the state

law "does not limit damages to injuries to business or property." *Ibid.*

The same is true for Florida's RICO statute. "Unlike the federal RICO statute, on which it was patterned, the Florida RICO Act generally allows recovery for 'any person who has been injured' by reason of a pattern of predicate criminal activity." *Berber* v. *Wells Fargo Bank, N.A.*, 2018 WL 10436236, at *3 (S.D. Fla. May 24, 2018). Thus, "the Florida statute does not expressly limit recovery—as does the federal statute—to persons who have suffered injury to their 'business or property,' language which has been interpreted to exclude economic losses arising out of personal injuries." *Ibid.*

Similarly, "the canon of *noscitur a sociis* teaches that a word is given more precise content by the neighboring words with which it is associated." *Fischer* v. *United States*, 144 S. Ct. 2176, 2183 (2024) (cleaned up). This canon "avoid[s] ascribing to one word a meaning so broad that it is inconsistent with the company it keeps." *Id.* at 2183–2184 (cleaned up). Interpreting "property" and "business" as entirely unrelated violates this canon by broadening those words beyond the limit Congress sought to impose. Take the word "business," which according to the court below includes anything related to an individual's "employment," Pet. App. 10a, or the word "property," which even in its narrowest form includes "the right of ownership in a material object." Property, Black's Law Dictionary (12th ed. 2024) (quoting John W. Salmond, Jurisprudence 423–424 (10th ed. 1947)). Reading those words in isolation and to encompass nearly anything that can be valued in cash would ignore the

broader context of Congress's use of the phrase "business or property" to limit compensable injuries to economic harms. While "business" and "property" are separate terms, they are related by their nexus to economic rather than physical harm.

Finally, the Second Circuit's interpretation violates this Court's rule, rooted in federalism, that requires "Congress to enact exceedingly clear language if it wishes to significantly alter the balance between federal and state power." *Sackett* v. *EPA*, 598 U.S. 651, 679 (2023) (rejecting "overly broad interpretation" of the Clean Water Act that "would impinge on" traditional state authority to regulate land and water use) (quoting *United States Forest Service* v. *Cowpasture River Preservation Ass'n*, 590 U.S. 604, 621–622, 680 (2020)).

There is "no question" that tort law is a core aspect of state law: "States possess the traditional authority to provide tort remedies to their citizens as they see fit." *Wos* v. *E.M.A. ex rel. Johnson*, 568 U.S. 627, 639–640 (2013) (cleaned up). Yet the court below interpreted §1964(c) to encompass any personal injury claim that results in pecuniary harm. If affirmed by this Court, that interpretation will result in the transfer of a multitude of routine state tort lawsuits to federal court as RICO cases. And plaintiffs will have every incentive to make that shift to take advantage of RICO's treble damages, attorney's fees, and liberal venue provisions.

Such an affront to federalism requires a clear expression of congressional intent that is entirely lacking here: "If Congress had intended to provide a federal forum for plaintiffs for so many common law

wrongs, it would at least have discussed it." *Sedima*, 473 U.S. at 525 (Powell, J., dissenting). Yet Congress never surfaced the notion of supplanting state tort law when enacting RICO. See *id.* at 501 (Marshall, J., dissenting). Under the clear-statement rule, legislative silence precludes an inference of "congressional intent to effect such fundamental changes" to the balance of state and federal power. *Ibid.*

That "business or property" is disjunctive does not justify a departure from these principles of statutory construction. Much less does mere disjunction suggest, as the court below would have it, Pet. App. 9a, that Congress intended to embrace any injury that has indirect economic effects. On the contrary, the disjunctive phrase imposed explicit and articulable limits on the type of injury that must occur "by reason of" a RICO violation in order to support civil liability under §1964(c). It is the harm to "business or property"—the economic or "commercial interest" recognized as the limit in *Reiter*—that the RICO violation must cause. It is not enough that the RICO violation causes "personal injuries" that have economic repercussions. *Reiter*, 442 U.S. at 339. As this Court recognized in construing the same language in the Clayton Act, although "'business' was not intended to modify 'property,' nor was 'property' intended to modify 'business,'" the phrase as a whole "retains restrictive significance." *Ibid.* In RICO, as in the Clayton Act, that "restrictive significance" excludes damages from personal injuries.

For all these reasons, Congress's choice of the phrase "business or property" imposes a limiting rule that excludes a more general rule that would allow

recovery for personal injuries that indirectly result in any economic damage—as almost all do. The intrusion of civil RICO into the innermost domain of state tort law violates principles of federalism and affects all businesses, and thus should be limited by the terms Congress used.

3. Under the expansive reasoning below, §1964(c) excludes only non-economic damages for personal injuries. Pet. App. 12a–13a. In other words, if the personal injury had any economic effects that could be characterized as damages either to "business" or to "property" broadly construed, then those damages—trebled—are recoverable under the statute. *Id.* at 13a. The Second Circuit further stated that the "business or property" language is a limitation only "on the *nature* of the harm, not the *source* of the harm." *Id.* at 15a.

That logic is deeply flawed. If the civil-remedies provision excludes personal injuries—as this Court recognized in *RJR Nabisco*, 579 U.S. at 350—then it excludes personal injuries full stop. As petitioners explain (Br. 20–25), the nature of the *harm* directly resulting from the alleged RICO violation here is personal, physical injury. Congress's choice of the words "business or property" closed the door to personal injuries. Only by conflating the injury (personal) with some forms of resulting damages (pecuniary) could the Second Circuit evade the textual limits on compensable injury.

Using the downstream effects of personal injuries as an indirect path to trebled recovery transforms the plain text into a launching pad for remedial creativity. That approach fails "to give effect, if possible, to every

word Congress used," *Carcieri* v. *Salazar*, 555 U.S. 379, 391 (2009), and instead makes the chosen terms into decorative signposts devoid of their intended "restrictive significance." *Reiter*, 442 U.S. at 339.

4. Even in the context of explicitly consumer-facing statutes, courts have recognized that the inherent remedial limits imposed by the phrase "business or property" exclude personal injuries and damages arising from them.

For instance, the Washington Supreme Court, in construing the State's Consumer Protection Act, has held that damages resulting from a personal injury are not compensable as injuries to "business or property." *Ambach* v. *French*, 167 Wash. 2d 167, 169, 216 P.3d 405 (2009). Even if a personal injury results in economic damage, the source of the injury is still personal and thus excluded from the statute's reach. *Ibid.* "Where plaintiffs are both physically and economically injured by one act, courts generally refuse to find injury to 'business or property.'" *Ibid.* (collecting cases). Thus, if a pecuniary injury "cannot be separated from the personal injury," a plaintiff cannot recover for an injury to "business or property." *Id.* at 169. A Hawaii appellate court similarly held that a consumer protection statute allowing recovery for injuries to "business or property" was not a "vehicle for personal injury suits." *Beerman* v. *Toro Mfg. Corp.*, 1 Haw. App. 111, 117–118, 615 P.2d 749 (1980).

* * * * *

In sum, a wide variety of courts have held, inside and outside the RICO context, that statutory language limiting recovery to an injury to "business or property" excludes personal injuries whether or not they may

ultimately result in economic damages as well. The contrary conclusions of the Second and Ninth Circuits are outliers that this Court should reject.

II. Personal Injuries Are Outside RICO's Remedial Purpose.

Congress's explicit goal in enacting RICO was "to thwart the organized criminal invasion and acquisition of legitimate business enterprises and property." *Genty* v. *Resolution Trust Corp.*, 937 F.2d 899, 918 (3d Cir. 1991). In particular, a leading reason that "Congress enacted RICO was to protect businesses against competitive injury from organized crime." *Anza* v. *Ideal Steel Supply Corp.*, 547 U.S. 451, 473 (2006) (Thomas, J., concurring in part and dissenting in part) (citing *Sedima*, 473 U.S. at 494–500 (opinion of the Court); *id.* at 500–523 (Marshall, J., dissenting)).

Although intervening precedents have relied on broad statutory terms to weaken the nexus between "racketeering activity" and organized crime, the decision below severs the connection altogether—even the connection with economic crimes without which RICO would have few limits. If a qualifying injury to "business or property" extends to personal injuries and their consequences, RICO becomes an all-purpose federal tort statute, available whenever a plaintiff can plead at least two predicate acts that could be characterized as wire fraud—as little as an advertisement and an email. See *H.J. Inc.* v. *Northwestern Bell Telephone Co.*, 492 U.S. 229, 239 (1989); see also 18 U.S.C. §1961(5) (specifying that a "pattern of racketeering activity" requires at least two predicates committed within 10 years of each other).

RICO was designed to protect legitimate businesses rather than victimize them. The reach of its treble damages provision should be construed in light of the restrictive purpose reflected in the statutory language.

1. The Second Circuit justified this departure from the statute's purpose, in part, because of RICO's liberal construction clause. Pet. App. 10a. But that clause does not license a court to extend the statutory text beyond its intended purpose. Rather, any interpretation of RICO's text must be "liberally construed to effectuate *its* remedial purposes." *Sedima,* 473 U.S. at 498 (emphasis added) (quoting Pub. L. No. 91-452, § 904(a), 84 Stat. 974); see also *Foster* v. *United States*, 303 U.S. 118, 120 (1938) ("Courts should construe laws in harmony with the legislative intent and seek to carry out legislative purpose."). As this Court previously made clear, the liberal construction "clause obviously seeks to ensure that Congress' intent is not frustrated by an overly narrow reading of the statute, but it is not an invitation to apply RICO to new purposes that Congress never intended." *Reves* v. *Ernst & Young*, 507 U.S. 170, 183 (1993). That is especially so in light of the federalism-based clear-statement rule discussed above (at pp. 10–11).

In *Sedima*, this Court construed RICO broadly because the text of the statute did not permit a construction that would exempt those who engage in a "pattern of specifically identified criminal conduct" from civil RICO liability merely because they were "respected businesses" rather than "archetypal, intimidating mobster[s]." 473 U.S. at 499. The statute was defined in terms of predicate acts, and its text did not

support a separate requirement of racketeering injury. *Id.* at 498–499, 500.

In contrast with *Sedima*, however, here there is explicit language limiting the statute's remedial scope to an injury to "business or property." And this Court has held that the same remedial language, in the acknowledged model for §1964(c), includes a variety of direct economic injuries but excludes personal injuries. *Reiter*, 442 U.S. at 339–342. When a statute can be read to effectuate Congress's purpose, that construction should control.

2. In fact, in imposing a proximate-cause requirement on the civil-remedies provision, this Court applied a narrower statutory interpretation to give effect to RICO's purpose. In *Holmes*, the Court noted that RICO's civil-remedies provision could, "of course, be read to" allow plaintiffs to recover by showing only but-for causation. 503 U.S. at 265–266. But the Court said that such a broad "construction is hardly compelled, however, and the very unlikelihood that Congress meant to allow all factually injured plaintiffs to recover persuade[d]" the Court "that RICO should not get such an expansive reading." *Ibid.* (footnote omitted). Since *Holmes*, this Court has repeatedly applied the proximate-cause requirement to underscore the need for a direct relationship between the alleged criminal predicate acts and the injury to the plaintiff's "business or property"—"some direct relation between the injury asserted and the injurious conduct alleged." *Id*. at 268.

First in *Anza* v. *Ideal Steel Supply Corp.*, the Court stated: "When a court evaluates a RICO claim for proximate causation, the central question it must ask

is whether the alleged violation led *directly* to the plaintiff's injuries." 547 U.S. 451, 461 (2006) (emphasis added). Then in *Hemi Group, LLC* v. *City of New York*, the Court rejected a foreseeability theory of causation and reiterated that "the general tendency of the law, in regard to damages at least, is not to go beyond the first step," and this general tendency "applies with full force to proximate cause inquiries under RICO." 559 U.S. 1, 10 (2010) (cleaned up). This Court further emphasized that its "precedents make clear that in the RICO context, the focus is on the *directness* of the relationship between the conduct and the harm." *Id.* at 12 (emphasis added). Those precedents "never even mention the concept of foreseeability." *Ibid.*

Reading RICO to allow recovery for pecuniary damages flowing from personal injuries would undermine this Court's narrowing of RICO's causation requirement, which to better effectuated Congress's purpose in passing the law. Indeed, in staking out the position adopted and expanded by the decision below, the Ninth Circuit relied on a view of RICO that directly contradicts this Court's emphasis on "directness" in *Anza* and *Hemi Group*. In the Ninth Circuit's view, there was "no room in the statutory language for an additional, amorphous requirement that, for an injury to be to business or property, the business or property interest have been the 'direct target' of the predicate act." *Diaz*, 420 F.3d at 901. But the statute itself requires—and this Court's precedents confirm—that the *injury* to business or property must directly result from the RICO violation, whatever the violation's intended "target."

Although *Diaz* preceded this Court's reaffirmance of the "directness" limit in *Hemi Group*, the decision below had the benefit of this Court's latest guidance on the point. Yet the Second Circuit nonetheless stated that RICO's proximate-cause requirement "is generous enough to include the unintended, though foreseeable, consequences of RICO predicate acts." Pet. App. 14a (quoting *Diaz*, 420 F.3d at 901). This misconstrues the proximate-cause requirement, which is designed as a limit on relief, not an open and "generous" floodgate. As this Court explained, "the notion of proximate cause reflects 'ideas of what justice demands, or of what is administratively possible and convenient.'" *Holmes*, 503 U.S. at 268 (quoting W. Page Keeton et al., Prosser and Keeton on Law of Torts § 41, p. 264 (5th ed. 1984)).

Moreover, as noted above, this Court has explicitly rejected "foreseeability" as a basis to expand civil liability under RICO. *Hemi Group*, 559 U.S. at 12. Yet foreseeability, not directness, provides the conceptual underpinning for the courts of appeals that characterize personal injuries as injuries to "business or property" that are compensable—trebled—under §1964.

Thus, the court below was wrong to conclude that excluding personal injuries works against RICO's proximate-cause requirement. See Pet. App. 14a–15a. The opposite is true. Excluding downstream damages from personal injuries (i.e., indirect harm) reinforces this Court's explicit admonition that RICO causation requires "directness of the relationship between the conduct and the harm." *Hemi Group*, 559 U.S. at 12. In contrast, including personal injuries contradicts

this Court's precedent regarding the direct injury requirement and expands RICO beyond its intended purpose.

III. An Unduly Expansive Reading Of RICO Will Harm Businesses And Create A Flood of Litigation.

1. It is no secret that RICO's civil provision has "evolv[ed] into something quite different from the original conception of its enactors." *Sedima*, 473 U.S. at 500. Construing the statute to provide recoveries for personal injuries that have economic consequences would accelerate the transformation of RICO into an all-encompassing federal tort statute. Nearly every personal injury case involves pecuniary harm. And many can be pleaded to involve two or more instances of wire fraud, whether through ads or emails. Were this Court to affirm, Plaintiffs could replead numerous claims, especially those involving products liability, as injuries to "business or property" under RICO. And RICO's liberal remedial and venue provisions give plaintiffs strong incentives to do. See Br. 30.

This is not just speculation, as the present case makes clear. For an example of the consequences of affirmance here, take the D.C. district court's decision in *Morrison* v. *Syntex Laboratories, Inc.*, 101 F.R.D. 743 (D.D.C. 1984). The plaintiffs in that case brought products-liability claims, including negligence and breach of warranty, and later sought to amend their complaint to assert a RICO cause of action. *Id.* at 744. The plaintiffs claimed that certain officials and employees of the defendant corporation engaged in a scheme of fraudulent advertising of infant formula through the mail. *Ibid.* And these new factual

allegations, according to the plaintiffs, supported the addition of a RICO claim because of the asserted economic damages from medical treatment and lost future earnings incurred from the consumption of the infant formula. *Id.* at 746.

The court rejected the proposed amendment because the case involved "personal injury arising out of a tort in a products liability case." *Id.* at 744. That prevented the plaintiffs from stating a RICO claim, which requires instead an injury to "business or property." *Id.* at 746. In other words, the case stemmed from the plaintiffs' "alleged bodily injury," and the financial harm that resulted from that injury was "not cognizable under RICO." *Ibid.* The court went on to explain that "[i]f RICO applied in this case, it would most likely apply in every products liability case involving" false representations. *Id.* at 744.

The Sixth Circuit's decision in *Drake* v. *B.F. Goodrich Co.*, 782 F.2d 638 (6th Cir. 1986), provides another illustration. The plaintiffs alleged that the defendant had exposed employees to toxic chemicals, causing various direct and indirect injuries. The court of appeals rejected the notion that pecuniary harm traceable to a personal injury constituted injury to business or property under RICO. *Id.* at 644. See also *Genty*, 937 F.2d at 913–914 (rejecting similar toxics claim on other grounds).

Had *Morrison* and *Drake* been decided in accord with the decision below, however, the RICO claims would have gone forward. And if this Court were to agree that personal injuries resulting in economic harm are injuries to business or property under §1964(c), nearly every products-liability or toxic

exposure plaintiff will be able to add a RICO count. Indeed, as petitioners explain (Br. 25–26, 30–31), an expansive injury standard would bring a dizzying array of other personal injury claims within RICO.[2]

In the Ninth Circuit, *Diaz* has provided expansive access to civil RICO for some time. Though *Diaz* required a nexus to a state-recognized property right—a limitation not required by the decision below—subsequent cases illustrate the broadening effect of allowing personal injuries to support RICO recoveries. The Northern District of California, for example, invited a plaintiff to add allegations that a hip replacement surgery with an allegedly defective hip implant constituted an injury to "business or property" under RICO. *Muldoon* v. *DePuy Orthopaedics, Inc.*, 2024 WL 1892907, at *5 (N.D. Cal. Apr. 30, 2024). And a Nevada court found the injury element satisfied in a putative class action concerning sexual abuse, though the RICO claims ultimately were dismissed on other grounds. *Schrader* v. *Wynn Las Vegas, LLC*, 2020 WL 8513790, at *1, *4 (D. Nev. Dec. 9, 2020), *report and recommendation adopted in part and reversed in part sub nom. Schrader* v. *Wynn*, 2021 WL 619376, at *6–8 (D. Nev. Feb. 17, 2021) (dismissing RICO claims without prejudice based on inadequate pleading of predicate acts). See also *Al-Sadhan* v. *Twitter Inc.*, 2024 WL 536311, at *5, *15–

[2] See, *e.g.*, *Jackson* v. *Sedgwick Claims Mgmt. Servs., Inc.*, 731 F.3d 556 (6th Cir. 2013) (en banc) (denial of workers compensation claims for personal injuries); *Doe* v. *Roe*, 958 F.2d 763 (7th Cir. 1992) (fraudulent inducement of sexual relationship); *James* v. *Meow Media, Inc.*, 90 F. Supp. 2d 798 (W.D. Ky. 2000) (video games allegedly responsible for school shooting), *aff'd,* 300 F.3d 683 (6th Cir. 2002).

16 (N.D. Cal. Feb. 9, 2024) (RICO action time-barred because injury to "business or property" occurred once kidnapping deprived plaintiff of employment opportunities).

2. These examples illustrate why endorsement by this Court of the use of civil RICO to redress personal injuries would reprise the "civil RICO explosion" of the 1980s. Patrick Wackerly, *Personal versus Property Harm and Civil RICO Standing*, 73 U. Chi. L. Rev. 1513, 1515 (2006). Indeed, RICO claims were so commonplace during that time that one lawyer commented: "[I]t is so easy and tempting to allege a RICO claim that counsel may commit malpractice if a RICO claim is not made." Ethan M. Posner, *Clarifying A "Pattern" of Confusion: A Multi-Factor Approach to Civil RICO's Pattern Requirement*, 86 Mich. L. Rev. 1745, 1770 (1988). That will again become the case, but for personal-injury claims rather than business torts.

This massive increase in RICO claims will have significant ramifications for the businesses named in these lawsuits, which often will be relatively small businesses like petitioners here, or professional corporations as in *Muldoon*. RICO allows for broad discovery, which will pressure defendants to settle rather than spend exorbitant amounts of time and money on invasive discovery. See *ibid.* RICO claims also increase settlement pressure because defendants fear "being labeled a racketeer." *Id.* at 1770–1771 These financial and reputational pressures will exist no matter how baseless the lawsuit turns out to be once the facts are subject to scrutiny.

The increase in litigation will also harm consumers. The expenses necessary to litigate or settle cases will increase the costs of doing business. And those costs ultimately will be passed on to customers. Thus, expanding civil RICO to compensate personal injuries thrice over will not impede organized criminals. Instead, legitimate businesses and their customers will bear the outsized costs of litigating new RICO claims.

3. But that is not the only practical implication of the rule adopted below. As petitioners explain (Pet. Br. 15–17, 22–25), the Second Circuit conflated compensable injury—which §1964(c) explicitly restricts—with recoverable damages. In essence, the decision below holds that a plaintiff satisfies a requirement of *injury* to "business or property" whenever physical injury to a person also results in some kind of economic *damages*.

But those two concepts are distinct throughout the law, and often are articulated as separate elements of claims, including under the antitrust laws. *E.g.*, *In re Hydrogen Peroxide Antitrust Litig.*, 552 F.3d 305, 311 (3d Cir. 2008). In addition, injury is an element of Article III standing, see, *e.g.*, *TransUnion LLC* v. *Ramirez*, 594 U.S. 413, 423 (2021), while damages are not (most obviously because plaintiffs may have standing to pursue injunctive relief against imminent but not-yet-realized harm).

A holding by this Court approving the conflation of injury and damages under RICO likely would have spillover effects into other areas of the law. To take only one example, in the class-certification context, some courts of appeals have declared that "the

presence of individualized damages cannot, by itself, defeat class certification under Rule 23(b)(3)." *Leyva* v. *Medline Industries, Inc.*, 716 F.3d 510, 514 (9th Cir. 2013). But see *Comcast Corp.* v. *Behrend*, 569 U.S. 27, 34 (2013) (without an adequate common method of calculating damages, "[q]uestions of individual damage calculations will inevitably overwhelm questions common to the class"); *Wal-Mart Stores, Inc.* v. *Dukes*, 564 U.S. 338, 349–350 (2011) ("Commonality requires the plaintiff to demonstrate that the class members have suffered the same injury." (cleaned up)). These courts have recognized that individualized questions of *injury* are different, and can preclude certification. *E.g.*, *Olean Wholesale Grocery Cooperative, Inc.* v. *Bumble Bee Foods, LLC*, 31 F.4th 651, 668–669 (9th Cir. 2022) (en banc), *cert denied sub nom. Starkist Co.* v. *Olean Wholesale Grocery Coop. Inc.,* 143 S. Ct. 424 (2022) (mem.).

Blurring the boundaries between injury and damages could result in improper class certifications both in civil RICO class actions and more broadly. This Court should construe the statute as written and forestall those deleterious consequences.[3]

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[3] The decision below expressed concern that excluding personal injuries from the scope of civil RICO would allow murder and battery in connection with criminal extortion to escape RICO liability. See Pet. App. 16a–17a. Extortion and its economic injuries are subject to RICO. See Pet. Br. 33–35. Intentional torts like murder and battery are amply remedied under state tort law, which in such cases generally provides punitive damages that could easily exceed treble damages. RICO's "cabin[ed]" remedy does not, and was not intended to, supplant the sufficient state-law remedies for intentional torts harming a person rather than his or her business or property.

CONCLUSION

The Second Circuit was dead wrong to characterize this case as arising from a "defect … inherent in the statute as written" that only Congress can fix. Pet. App. 20a. Congress did its job, and allowed plaintiffs to recover only for injuries to "business or property"—not for personal injuries and their indirect economic consequences. The necessary limits are textual and should be enforced in accord with civil RICO's established focus on economic injury. The judgment of the court of appeals should be reversed.

Respectfully submitted,

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July 16, 2024