

No.

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**In the Supreme Court of the United States**

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

*v.*

DOUGLAS J. HORN,  
RESPONDENT.

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*ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT*

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**PETITION FOR A WRIT OF CERTIORARI**

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### **QUESTION PRESENTED**

The Racketeer Influenced and Corrupt Organizations Act (RICO) creates a civil treble-damages action for “[a]ny person injured in his business or property by reason of” certain offenses. 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.

## II

### **PARTIES TO THE PROCEEDING**

Petitioners Medical Marijuana, Inc., Dixie Holdings, LLC, AKA Dixie Elixirs, and Red Dice Holdings, LLC were appellees in the court of appeals and defendants in the district court. Dixie Botanicals was also a defendant in the district court.

Respondent Douglas J. Horn was appellant in the court of appeals and plaintiff in the district court. Cindy Harp-Horn was also a plaintiff in the district court.

### III

#### **CORPORATE DISCLOSURE STATEMENT**

Petitioners Medical Marijuana, Inc. and Dixie Holdings, LLC, AKA Dixie Elixirs, have no parent corporations, and no publicly held company owns 10% or more of their stock.

Petitioner Red Dice Holdings, LLC is wholly owned by petitioner Medical Marijuana, Inc. No other publicly held company owns 10% or more of its stock.

## IV

### STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

- *Horn v. Medical Marijuana, Inc.*, No. 22-349 (2d Cir. Aug. 22, 2023) (reversing partial judgment for defendants)
- *Horn v. Medical Marijuana, Inc.*, No. 15-cv-701 (W.D.N.Y. Jan. 24, 2022) (entering partial judgment for defendants)

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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Alena Hall & Robby Brumberg, <i>CBD Statistics, Data and Use</i> , Forbes (Sept. 7, 2023), <a href="https://tinyurl.com/3kzxju7f">https://tinyurl.com/3kzxju7f</a> .....	6

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Petitioners Medical Marijuana, Inc., Dixie Holdings, LLC, AKA Dixie Elixirs, and Red Dice Holdings, LLC respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

**OPINIONS BELOW**

The court of appeals' opinion is reported at 80 F.4th 130. Pet.App.1a-22a. The district court's opinion dismissing the civil RICO claim is unreported but available at 2021 WL 4173195. Pet.App.36a-59a.

### JURISDICTION

The amended judgment of the court of appeals was entered on August 22, 2023. This Court has jurisdiction under 28 U.S.C. § 1254(1).

### STATUTORY PROVISION INVOLVED

18 U.S.C. § 1964(c) provides in relevant part:

Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee ....

### STATEMENT

In the decision below, the Second Circuit held that plaintiffs bringing civil suits under the Racketeer Influenced and Corrupt Organizations (RICO) Act can recover for economic harms arising from personal injuries—here, a garden-variety products-liability claim. In so doing, the court widened an intractable and acknowledged 3-2 split over the breadth of RICO's civil cause of action. RICO permits a plaintiff “injured in his business or property by reason of” the defendant's racketeering activity to sue for treble damages and attorneys' fees. 18 U.S.C. § 1964(c). That “business or property” requirement “exclud[es] ... personal injuries.” *RJR Nabisco, Inc. v. Eur. Cmty.*, 579 U.S. 325, 350 (2016). But the circuits are divided on whether economic damages arising from personal injuries—like lost wages or medical expenses—support civil RICO liability. Only this Court can resolve that split, and this case is the ideal vehicle for doing so.

In the Sixth, Seventh, and Eleventh Circuits, civil RICO’s “business or property” requirement firmly excludes economic harms arising from personal injuries. Plaintiffs cannot replead personal-injury lawsuits as treble-damages RICO claims by focusing on the economic consequences of their injuries. As the en banc Sixth Circuit has warned, permitting such lawsuits would deprive RICO’s “business or property” requirement of “restrictive significance.” *Jackson v. Sedgwick Claims Mgmt. Servs.*, 731 F.3d 556, 565 (6th Cir. 2013) (en banc).

In open conflict, the Second Circuit below joined the Ninth Circuit in greenlighting civil RICO claims for economic harms that flow from personal injuries. In those circuits, so long as the plaintiff’s harm, standing alone, can be characterized as one to “business or property,” it is irrelevant how that harm came about. Medical expenses and lost wages can satisfy RICO’s injury to “business or property” requirement, despite flowing entirely from personal injuries. In the decision below, the Second Circuit let respondent’s products-liability claim proceed under RICO because he lost his job after using a legal consumer-wellness product that allegedly caused him to fail a workplace drug test. Though the Second Circuit accepted that respondent’s harm “flow[ed] from a personal injury”—“unwitting ingestion” of a drug—the court held that respondent’s lost job was “an injury to his business” no matter how it arose. Pet.App.7a-8a n.2, 11a.

Commentators and courts—including the Second Circuit below—recognize this glaring split. Indeed, the Sixth and Ninth Circuits have issued warring en banc opinions on the question presented, and the Second Circuit expressly rejected other circuits’ approach. Only this Court’s intervention can resolve the divide.

The question presented is critically important. RICO is a frequently litigated federal statute that imposes treble damages and attorneys' fees. The Second and Ninth Circuits' any-economic-injury-counts rule now governs two of the most popular fora for RICO litigation, New York and California. And RICO's expansive venue rules invite other plaintiffs to file in those circuits. Workplace negligence can cause physical injuries leading to doctors' bills. Defective products can cause health problems that cost wages or jobs. If quintessential personal injuries count as injuries to "business or property" just because economic damage inevitably results, Congress' careful limitation on civil RICO claims would be toothless.

This case cleanly tees that circuit split up for resolution. Applying the Sixth, Seventh, and Eleventh Circuits' rule barring RICO recovery for economic harms from personal injuries, the district court dismissed the RICO claim. But the Second Circuit joined the Ninth in permitting recovery for such harms and reinstated the claim. As the district court observed, this case turns on a "narrow, dispositive," and "discrete question of statutory interpretation" that requires "little analysis of the underlying facts." Pet.App.29a, 31a. Had respondent sued in the Sixth, Seventh, or Eleventh Circuits, his RICO claim would have been dismissed. Instead, petitioners face a federal trial with treble damages and attorneys' fees on the line. This arbitrariness is intolerable, especially for a federal law as important as RICO.

#### **A. Statutory Background**

In 1970, Congress enacted RICO to combat "organized crime and its economic roots." *Russello v. United States*, 464 U.S. 16, 26 (1983). As RICO's statutory findings explained, "organized crime in the United States [was] a highly sophisticated, diversified, and widespread"

problem. Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 922, 922.

Congress' solution was to attach hefty civil and criminal penalties to "racketeering activity," which RICO defines to "encompass dozens of state and federal offenses," including mail and wire fraud. *See RJR Nabisco*, 579 U.S. at 329-30; 18 U.S.C. § 1961(1). RICO specifically prohibits four racketeering-related offenses like "receiv[ing] any income ... from a pattern of racketeering activity" or "participat[ing] ... in the conduct of [an] enterprise's affairs through a pattern of racketeering activity." 18 U.S.C. § 1962(a)-(d). Those acts are federal felonies punishable by up to 20 years in prison. *Id.* § 1963(a).

RICO also creates a civil cause of action for private plaintiffs to recoup treble damages and attorneys' fees from wrongdoers. *Id.* § 1964(c). But that "civil remedy is not coextensive" with RICO's criminal provision. *RJR Nabisco*, 579 U.S. at 350. Congress crafted RICO's civil provision to "extirpat[e] the baneful influence of organized crime in our economic life." *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 488 (1985) (quoting 116 Cong. Rec. 25,190 (1970)). Thus, only plaintiffs "injured in [their] business or property by reason of a violation of section 1962" may sue civilly. 18 U.S.C. § 1964(c). Though courts sometimes refer to that requirement as "RICO standing," it is simply an element of civil RICO claims. *Lerner v. Fleet Bank, N.A.*, 318 F.3d 113, 129-30 (2d Cir. 2003).

Recognizing that Congress did not impose boundless liability, this Court has cautioned against giving RICO an overly "expansive reading." *Holmes v. Sec. Inv. Prot. Corp.*, 503 U.S. 258, 266 (1992). Thus, the Court held that a RICO plaintiff's injury must have been proximately caused by—*i.e.*, "by reason of"—the defendant's RICO violation. *Id.* at 268. And, of particular relevance here, this



Court has recognized that the phrase “business or property” “cabin[s] RICO’s private cause of action to particular kinds of injury—excluding, for example, personal injuries.” *RJR Nabisco*, 579 U.S. at 350.

### B. Factual and Procedural Background

1. Hemp-based CBD, or cannabidiol, oil is a lawful, “wildly popular” wellness product—so popular that some have dubbed it the “new avocado toast.” Dr. Richard A. Friedman, Opinion, *Is CBD Helpful, or Just Hype?*, N.Y. Times, Dec. 26, 2018; Alex Williams, *Why Is CBD Everywhere?*, N.Y. Times, Oct. 27, 2018; see Pet.App.82a. To date, 60% of U.S. adults have used a CBD product. Alena Hall & Robby Brumberg, *CBD Statistics, Data and Use*, Forbes (Sept. 7, 2023), <https://tinyurl.com/3kzxju7f>.

National chains from Kroger and Wegmans to CVS, Walgreens, and Rite Aid sell myriad CBD products.<sup>1</sup> CBD features in everything from oil-based supplements to fizzy drinks to CBD-enhanced sports bras. Consumers use CBD “for a wide variety of health issues,” including epilepsy, insomnia, and anxiety as well as joint and muscle pain and inflammation. Peter Grinspoon, M.D., *Cannabidiol (CBD): What We Know and What We Don’t*, Harv. Health Publ’g (Sept. 24, 2021), <https://tinyurl.com/mr376e7t>; see Brent A. Bauer, M.D., *What Are the Benefits of CBD—and Is It Safe to Use?*, Mayo Clinic, <https://tinyurl.com/yc7h87z5>. That popularity has driven the CBD industry to an estimated \$6.4 billion market in

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<sup>1</sup> Diane Adam, *Wegmans to Start Carrying cbdMD CBD Products*, Winsight Grocery Bus. (Oct. 3, 2022), <https://tinyurl.com/2wx3ey6m>; Angelica Peebles & Lauren Hirsch, *Kroger to Sell CBD Products in Nearly 1,000 Stores*, CNBC, June 11, 2019; Sean Williams, *9 Major Retailers that Are Selling CBD Products*, Motley Fool (June 3, 2019), <https://tinyurl.com/yury2zrf>.

2022 and 16% projected annual growth. Grand View Research, *Cannabidiol Market Size, Shares & Trends Analysis Report* (2023), <https://tinyurl.com/hc4x2v6p>.

To state the obvious, CBD products are also quite different from marijuana, which is a prohibited substance under federal law. Many CBD products, including the one at issue here, come from hemp. While hemp and marijuana derive from the same plant, *cannabis sativa*, hemp has been engineered to contain “low concentrations of THC,” the psychoactive agent in marijuana. Pet.App.81a-82a (citation omitted). Put simply, “CBD does not cause a ‘high,’” Grinspoon, *supra*, and “exhibits no effects indicative of any abuse or dependence potential,” World Health Org. Expert Comm. on Drug Dependence, *Cannabidiol (CBD)* 5 (2018), <https://tinyurl.com/3u3xuka5>. Recognizing that distinction, Congress has long exempted portions of the cannabis plant with low quantities of THC, like the stalk of the mature plant, from federal law’s definition of marijuana. 21 U.S.C. § 802(16) (2012). And in 2018, Congress removed hemp from the federal definition of marijuana entirely. 21 U.S.C. § 802(16)(B)(i) (2018).

This case involves a hemp-based CBD supplement called Dixie X. Petitioner Red Dice Holdings LLC—a joint venture of petitioners Medical Marijuana, Inc. and Dixie Holdings LLC—manufactured Dixie X. Despite the name, Medical Marijuana, Inc. sells only hemp-based products fully compliant with federal drug laws, not marijuana. Accordingly, Dixie X was manufactured from mature hemp stalk and was therefore legally distributed under federal law even before Congress in 2018 entirely removed hemp from the federal definition of marijuana. *See* Pet.App.73a-74a; 21 U.S.C. § 802(16) (2012).

Petitioners created Dixie X using a complex extraction and distillation process. Pet.App.83a. Petitioners

took medicinal hemp and distilled it to remove impurities—including any remaining THC—leaving a pure CBD concentrate. Pet.App.83a. Petitioners then infused that concentrate into an extract that users typically dissolve under their tongue, which petitioners sold under the Dixie X trademark. *See* Pet.App.83a.

2. Respondent Douglas Horn experienced chronic pain and inflammation after a car accident. Pet.App.84a. Unsatisfied with prescription medication, Horn began investigating natural remedies. Pet.App.4a.

As a commercial truck driver, Horn knew that he faced random drug tests at work and could lose his job for using marijuana. Pet.App.5a. Horn alleges that he first learned of Dixie X from a magazine article around September 2012. Pet.App.4a. That article described Dixie X’s “non-psychoactive” nature and “medicinal benefit[s].” Pet.App.85a. The article also described Dixie X’s “proprietary extraction process,” which yielded “0% THC” and complied with “federal guidelines for THC, which is 0.3%.” Pet.App.84a-85a. Horn alleges that he confirmed that Dixie X did not contain THC by watching YouTube videos, reading an online FAQ page, and having his wife call a 1-800 number. Pet.App.85a-87a.

Later in September 2012, Horn allegedly bought and used Dixie X. Pet.App.87a. In October 2012, he was selected for a routine drug test at work; he tested positive for THC, and his employer fired him. Pet.App.87a.

3. Horn and his wife sued petitioners in federal court, alleging nine causes of action. All centered around a false-advertising theory whereby the Horns were allegedly misled into thinking that Dixie X was THC-free, that Dixie X in fact contained THC, and that Horn’s unwitting consumption of THC cost him his job. Pet.App.2a-3a.

Eight claims arose under New York law: deceptive business practices, fraudulent inducement, strict products liability, breach of contract, breach of warranty, unjust enrichment, negligence, and negligent infliction of emotional distress. Pet.App.87a-88a. The lone federal claim was a civil RICO claim under 18 U.S.C. § 1964(c). Pet.App.88a.

In April 2019, Horn withdrew three of his state-law claims, and the district court dismissed most of the remaining claims on summary judgment. Pet.App.95a, 113a. First, any damages Horn’s wife suffered were “too attenuated” from any wrongful conduct, so the court dismissed all of her claims. Pet.App.105a, 111a, 113a. As to Horn, the district court granted summary judgment to petitioners on four of the state-law claims, holding that Horn could not prove those claims as a matter of New York law. Pet.App.96a-100a, 111a-113a. That left two claims: Horn’s state-law fraudulent-inducement claim and his civil RICO claim. Pet.App.113a.

The court later granted petitioners summary judgment on the RICO claim, agreeing with petitioners that Horn’s RICO claim sought recovery for a personal injury—unwitting consumption of THC—and thus failed as a matter of law. Pet.App.39a, 46a. The court defined Horn’s injury as “the bodily invasion that [he] suffered when he unwittingly ingested THC.” Pet.App.42a. Any financial harm Horn suffered from his lost employment derived from that “personal injury.” Pet.App.42a. That was a problem, the court held, because RICO permits recovery only for injuries to “business or property”—not “personal injuries.” Pet.App.39a-40a (citations omitted).

Following precedent from the Sixth, Seventh, and Eleventh Circuits, the court held that “lost earnings or wages are not recoverable” in a civil RICO suit “if they flow from a personal injury.” Pet.App.41a-42a (citing

*Jackson*, 731 F.3d at 565-66; *Evans v. City of Chicago*, 434 F.3d 916, 926-27 (7th Cir. 2006), *overruled on other grounds by Hill v. Tangherlini*, 724 F.3d 965, 967 n.1 (7th Cir. 2013); and *Grogan v. Platt*, 835 F.2d 844, 848 (11th Cir. 1988)). Here, because the only “connect[ion]” between Horn’s substantive RICO allegations and his financial harm was “a personal injury,” his RICO claim failed as a matter of law. Pet.App.42a, 46a.

At Horn’s request, the district court entered partial final judgment on the RICO claim under Federal Rule of Civil Procedure 54(b) to permit an immediate appeal. Pet.App.26a-27a. As the court explained, this “narrow, dispositive,” and “discrete question of statutory interpretation” “would demand little analysis of the underlying facts,” making immediate appeal appropriate. Pet.App.29a, 31a.

4. The Second Circuit reversed. Horn did not contest the district court’s holding that RICO excludes economic harms resulting from personal injury, but argued that his injury did not fall into that category. C.A. Horn Br. 9-11. The Second Circuit declined to address that contention, instead deciding only the “logically antecedent legal question” of “whether § 1964(c) bars 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. The Second Circuit rejected any such bar, weighing in on an acknowledged circuit split.

The court recognized that “the en banc Sixth Circuit,” along with the Seventh and Eleventh Circuits, “denies RICO standing to any plaintiff whose pecuniary loss ‘flows from or is derivative of,’ an antecedent personal injury.” Pet.App.11a-12a & n.5 (citation omitted). But the Second Circuit declared itself “not persuaded,” dismissing those decisions as “backwards.” Pet.App.12a n.5, 13a.

Instead, the Second Circuit sided with “the en banc Ninth Circuit” and held that civil RICO permits recovery for injuries that “flow from, or are derivative of, a personal injury.” Pet.App.11a, 13a. In the Second Circuit’s view, “the phrase ‘business or property’ focuses on the *nature* of the harm, not the *source* of the harm.” Pet.App.15a. The court therefore found “no basis” to bar recovery when “there is an antecedent personal injury.” Pet.App.18a-19a. Because Horn suffered an economic injury when he “lost his job,” the Second Circuit held, Horn could state a RICO claim even though his harm resulted solely from his personal injury. Pet.App.10a-11a.

#### **REASONS FOR GRANTING THE PETITION**

This petition is the ideal vehicle for resolving an entrenched, well-recognized 3-2 circuit split over whether RICO’s civil cause of action covers economic harms arising from personal injuries. Three circuits hold that civil RICO’s “business or property” requirement excludes such harms, permitting recovery only for direct injuries to business or property. But two circuits hold that civil RICO reaches any economic harms to someone’s business or property, even if those harms stem from personal injuries. Those circuits thus let plaintiffs seek treble damages for lost wages, medical expenses, and myriad other harms flowing from personal injuries. The Second Circuit below and many other circuits have acknowledged this split, yet remain divided in opposing camps after multiple en banc proceedings. Only this Court can break the logjam.

The question presented is important, recurring, and squarely presented. The Second Circuit reinstated respondent’s RICO claim exclusively based on its holding that civil RICO applies to economic harms arising from

personal injuries. Two of the largest fora for RICO litigation—the Second and Ninth Circuits—now apply an expansive view of RICO-recoverable injuries, allowing countless claims that three other circuits reject. This Court should grant certiorari to restore uniformity to this frequently litigated federal statute.

**I. The Circuits Are Divided 3-2 Over RICO’s Application to Economic Harms from Personal Injuries**

Three circuits hold that RICO’s “business or property” requirement bars suits for economic harms that arise from personal injuries. Two circuits hold the opposite and allow such RICO claims. Absent this Court’s intervention, the split will persist indefinitely and produce grossly disparate consequences based on geography.

1. The Sixth, Seventh, and Eleventh Circuits hold that RICO’s civil cause of action does not encompass economic harms arising from personal injuries.

The Sixth Circuit resolved this issue en banc and held that “both personal injuries and pecuniary losses flowing from those personal injuries fail to confer relief under § 1964(c).” *Jackson*, 731 F.3d at 565-66; *accord Brown v. Ajax Paving Indus., Inc.*, 752 F.3d 656, 657 (6th Cir. 2014). The Sixth Circuit “exclud[es] damages ‘arising directly out of’ a personal injury” to give “restrictive significance [to] the phrase ‘business or property.’” *Jackson*, 731 F.3d at 565. Because “personal injuries often lead to monetary damages,” a contrary rule would let plaintiffs recast personal injuries as economic harms and plead around RICO’s “business or property” requirement. *Id.*

Thus, the en banc Sixth Circuit dismissed RICO claims based on work-related injuries where the plaintiffs’ employer allegedly committed fraud to deny workers’

compensation benefits for those injuries. *Id.* at 558. Though the workers sued for lost wages and medical expenses, those economic harms “merely reflect[ed] the pecuniary losses associated with the personal injury” and were not actionable under civil RICO. *Id.* at 566.

The Seventh Circuit follows the same rule: “The terms ‘business or property’ are, of course, words of limitation which preclude recovery for personal injuries and the pecuniary losses incurred therefrom.” *Doe v. Roe*, 958 F.2d 763, 767 (7th Cir. 1992); accord *Ryder v. Hyles*, 27 F.4th 1253, 1257 (7th Cir. 2022); *Evans*, 434 F.3d at 925-26. “Most personal injuries ... will entail some pecuniary consequences,” that court explained. *Doe*, 958 F.2d at 770. Thus, treating “the economic aspects of such injuries ... as injuries to ‘business or property’” would evade RICO’s limitation on qualifying injuries. *Id.*

Applying that rule, the Seventh Circuit rejected a civil RICO claim against a sexual harasser who caused the plaintiff severe “emotional distress.” *Id.* Though the plaintiff sued for economic damages—“loss of earnings,” the cost of a security system, and attorneys’ fees—those harms were “plainly derivatives of her emotional distress” and thus “personal injuries which are not compensable under RICO.” *Id.* Likewise, the Seventh Circuit denied civil RICO recovery for “malicious prosecution and false imprisonment”—“traditional tort claims which result in a personal injury.” *Evans*, 434 F.3d at 927. While that plaintiff focused his claim on “[t]he loss of income as a result of being unable to pursue employment opportunities while allegedly falsely imprisoned,” that lost income was “an indirect, or secondary effect, of the personal injuries.” *Id.* at 926-27. So the lost income was not “a cognizable injury to ‘business or property’” under RICO. *Id.* at 927.



The Eleventh Circuit also precludes “recovery for the economic aspects of personal injuries.” *Grogan*, 835 F.2d at 845; accord *Blevins v. Aksut*, 849 F.3d 1016, 1021 (11th Cir. 2017); *Pilkington v. United Airlines*, 112 F.3d 1532, 1536 (11th Cir. 1997). As that court has explained, “the ordinary meaning of the phrase ‘injured in his business or property’ excludes personal injuries, including the pecuniary losses therefrom.” *Grogan*, 835 F.2d at 847. Had Congress wanted to cover all financial losses, Congress “could have enacted a statute referring to injury generally, without any restrictive language.” *Id.* (citation omitted). Instead, Congress limited civil RICO’s reach to injuries in “business or property.” *Id.* at 846.

The Eleventh Circuit has thus deemed claims for severe harassment that led to a leave of absence from work “not cognizable under RICO.” *Pilkington*, 112 F.3d at 1536. That court likewise rejected civil RICO claims for murder even when the plaintiffs targeted the “real economic consequences” to the victims’ families, like lost income. *Grogan*, 835 F.3d at 846. Those “pecuniary aspects of personal injury losses” are “nonrecoverable under RICO.” *Id.* at 848.

2. In direct conflict, the Second and Ninth Circuits allow civil RICO claims for collateral economic consequences of personal injuries.

The Second Circuit adopted that rule in the decision below. The court “agree[d]” that civil RICO “excludes recovery for personal injuries.” Pet.App.13a. But the Second Circuit declared itself “not persuaded” by the Sixth, Seventh, and Eleventh Circuit’s position and “reject[ed] the antecedent-personal-injury bar.” Pet.App.13a. In the Second Circuit’s view, “§ 1964(c) does not bar a plaintiff

from suing for injuries to business or property simply because those injuries flow from, or are derivative of, an antecedent personal injury.” Pet.App.22a.

The en banc Ninth Circuit has likewise held that plaintiffs may recover for damage to a “property interest valid under state law” even where that harm “result[s] from a personal injury.” *Diaz v. Gates*, 420 F.3d 897, 900 (9th Cir. 2005) (en banc); accord *Guerrero v. Gates*, 442 F.3d 697, 707-08 (9th Cir. 2006). In the Ninth Circuit’s view, “the personal injury” is “separate” from the subsequent “property injury.” *Diaz*, 420 F.3d at 902. Thus, the en banc Ninth Circuit held that a plaintiff who suffered “the personal injury of false imprisonment” stated a cognizable RICO injury. *Id.* That false imprisonment led to the “property injury of interference with current or prospective contractual relations” because the plaintiff could not work from jail, so the plaintiff could sue under RICO for that “claimed financial loss.” *Id.* at 900-02.

3. The circuits widely recognize the conflict. The Second Circuit below cataloged the extant 3-1 split and aligned itself with the Ninth Circuit, calling other circuits’ holdings “backwards.” Pet.App.11a-13a & n.5. The Seventh Circuit recognizes that its position “is at odds with that of the United States Court of Appeals for the Ninth Circuit.” *Evans*, 434 F.3d at 930 n.26. And the Ninth Circuit has rejected the Eleventh Circuit’s reasoning as “flawed.” *Diaz*, 420 F.3d at 902; see *id.* at 908 (Gould, J., dissenting) (“[T]he majority creates a split with the Eleventh Circuit ... and the Seventh Circuit.”). Lower courts have repeatedly noted this unambiguous split too.<sup>2</sup>

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<sup>2</sup> *E.g.*, *Spadaro v. City of Miramar*, 855 F. Supp. 2d 1317, 1353 n.30 (S.D. Fla. 2012) (“The Circuit Courts of Appeals are divided on this

Likewise, legions of commentators acknowledge that the “circuits are currently split as to whether civil RICO grants standing to those who have suffered a property harm derived from a personal injury.” Patrick Wackerly, Comment, *Personal Versus Property Harm and Civil RICO Standing*, 73 U. Chi. L. Rev. 1513, 1513 (2006).<sup>3</sup> Indeed, as Judge Rakoff has observed, the Seventh and Ninth Circuits “addressed the same issue and reached a different conclusion” on materially identical facts. Jed S. Rakoff et al., *RICO: Civil and Criminal Law and Strategy* § 1.07[4] (Jan. 2023 update).<sup>4</sup> Plaintiffs sued police officers for false imprisonment because they missed out on

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issue.”); *Aston v. Johnson & Johnson*, 248 F. Supp. 3d 43, 50 & n.4 (D.D.C. 2017) (following “majority position” instead of the “unpersuasive,” “more expansive view of ‘business or property’ taken by the Ninth Circuit”); *Ryder v. Hyles*, 2021 WL 7285358, at \*3 (N.D. Ill. July 29, 2021) (contrasting Seventh and Ninth Circuit precedent); *Miller v. York Risk Servs. Grp.*, 2013 WL 6442764, at \*4 (D. Ariz. Dec. 9, 2013) (“[C]oncerns ... discussed in the Sixth Circuit’s majority opinion [in] *Jackson* ... do not find support under Ninth Circuit law.”).

<sup>3</sup> Accord Jacob Poorman, Comment, *Exercising the Passive Virtues in Interpreting Civil RICO “Business or Property,”* 75 U. Chi. L. Rev. 1773, 1777 n.24 (2008) (“The circuits are divided ... as to what constitutes an excludable ‘personal injury.’”); Eric Lloyd, Comment, *Making Civil RICO “Suave”: Congress Must Act to Ensure Consistent Judicial Interpretations of the Racketeer Influenced and Corrupt Organizations Act*, 47 Santa Clara L. Rev. 123, 124 (2007) (observing the “split between the Ninth Circuit and the Seventh and Eleventh Circuits”); *Current Circuit Splits: Criminal Matters*, 2 Seton Hall Cir. Rev. 261, 265-66 (2005) (question presented on list of “current circuit splits”).

<sup>4</sup> Accord Reid J. Schar, 12 Bus. & Com. Litig. Fed. Cts. § 126:35 (5th ed. Nov. 2022 update) (The Seventh Circuit “expressly disagreed with the Ninth Circuit[.]”); Joel W. Mohrman et al., *Recent Developments in Business Litigation*, 42 Tort Trial & Ins. Prac. L.J. 327, 350 (2007) (“On similar facts, the Seventh Circuit reached a different result.”).

job opportunities while in jail. In the Ninth Circuit, the plaintiff had a viable RICO claim. *Diaz*, 420 F.3d at 902. In the Seventh Circuit, he did not. *Evans*, 434 F.3d at 926.

The circuit split is deeply entrenched, with no hope of abating. Two circuits—the Sixth and the Ninth—have gone en banc on the question presented and came out opposite ways. *Jackson*, 731 F.3d at 565-66; *Diaz*, 420 F.3d at 900. Other circuits have hewed to their position after considering cases on the other side. The Seventh Circuit has rejected the Ninth Circuit’s acceptance of harms flowing from personal injuries as a “mischaracterization of the RICO statute.” *Evans*, 434 F.3d at 930 n.26. Conversely, the Second Circuit below rejected the Sixth, Seventh, and Eleventh Circuit’s views as “backwards” and “not persuasive.” Pet.App.11a-13a & n.5. Only this Court can cure the conflict and restore uniformity to civil RICO, one of the most widely litigated federal statutes.

## **II. The Question Presented Is Important, Recurring, and Squarely Presented**

1. Whether civil RICO applies to economic harms arising from personal injuries is a question of exceptional importance. Despite Congress’ “relatively narrow focus upon ‘organized crime,’” *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 255 (1989) (Scalia, J., concurring in the judgment), RICO has “evol[ed] into something quite different from the original conception of its enactors.” *Sedima*, 473 U.S. at 500. Today, “the majority of civil RICO cases” have “no apparent connection to organized crime.” *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 472 (2006) (Thomas, J., concurring in part). “[T]he prospect of treble damages and attorney’s fees” offers plaintiffs a “strong incentive” to replead claims that might have been brought under other statutes or state law as federal RICO claims.

*Sedima*, 473 U.S. at 504 (Marshall, J., dissenting). As one commentator puts it, civil RICO litigation is “a three-ring circus.” Nicholas L. Nybo, Note, *A Three Ring Circus: The Exploitation of Civil RICO, How Treble Damages Caused It, and Whether Rule 11 Can Remedy the Abuse*, 18 Roger Williams U. L. Rev. 19 (2013).

In the last five years, plaintiffs filed over 6,500 new RICO cases. See Admin. Off. of the U.S. Cts., *U.S. District Courts—Civil Cases Filed, by Nature of Suit* tbl. 4.4 (2022), <https://tinyurl.com/bd8pc86p>. Any defendant that arguably violates any of “dozens of state and federal offenses” faces potential treble-damages liability in federal court. See *RJR Nabisco*, 579 U.S. at 330.

Permitting RICO claims for the economic harms of personal injuries risks eliminating an otherwise critical limitation on RICO’s scope. Virtually all personal injuries produce some “monetary losses.” *Evans*, 434 F.3d at 927. Thus, the Second and Ninth Circuits’ rule “opens the RICO door to any plaintiff’s lawyer savvy enough to include an allegation that other wrongs lead” to monetary harm, converting countless state-law personal-injury claims into federal treble-damages claims. *Diaz*, 420 F.3d at 914 (Gould, J., dissenting). Here, for example, Horn has attempted to replead a products-liability claim that failed under New York law into a federal RICO claim.

The universe of potential personal-injury-related claims that could transform into RICO claims is vast, giving plaintiffs in two massively populous circuits—the Second and Ninth—every spur to creativity. As the cases underlying the circuit split illustrate, the question presented has already recurred prolifically in lawsuits against defendants from bank robbers, *Grogan*, 835 F.2d at 845, to

divorce attorneys, *Doe*, 958 F.2d at 765, to soft-drink manufacturers, *Jackson*, 731 F.3d at 558. District courts in the Ninth Circuit—including the Central and Northern Districts of California—are already national leaders in RICO filings. TRAC Reports, *Anti-Racketeering Civil Suits Jump in 2018* (Oct. 30, 2018), <https://tinyurl.com/3akvkevu>. Now that the expansive-liability camp includes the Second Circuit—where the Southern District of New York already draws an enormous volume of RICO claims, *see id.*—civil RICO claims will proliferate further.

Civil RICO’s expansive venue provision also invites forum shopping. Plaintiffs can file RICO suits in any district where a defendant “resides, is found, has an agent, or transacts his affairs.” 18 U.S.C. § 1965(a). Courts can join other defendants with no connection to the forum when “the ends of justice” so require. *Id.* § 1965(b). Given the number of companies that do *some* business in the Second or Ninth Circuits, those circuits’ plaintiff-friendly rule risks becoming the nationwide norm.

Given RICO’s breadth and the frequency with which plaintiffs pursue civil RICO claims, “clarity and predictability in RICO’s civil applications are particularly important.” *H.J. Inc.*, 492 U.S. at 255 (Scalia, J., concurring in the judgment). That concern is especially salient here, where the issue is frequently case dispositive. Because the question presented goes to whether the plaintiff has stated an element of the cause of action, complaints that would be dismissed in the Sixth, Seventh, and Eleventh Circuits will proceed in the Second and Ninth.<sup>5</sup>

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<sup>5</sup> *E.g.*, *Grogan*, 835 F.2d at 845, 848 (affirming dismissal “for failure to state an injury to business or property” without “reach[ing] the defendant’s other arguments”); *Doe*, 958 F.2d at 765, 767 (affirming

2. This case is the ideal vehicle to resolve the circuit split. Following the Sixth, Seventh, and Eleventh Circuits' rule, the district court dismissed Horn's RICO claim. Pet.App.41a-42a. The Second Circuit reversed solely on the ground that harms resulting from personal injuries are actionable. Pet.App.3a. In doing so, the Second Circuit waded right into the circuit split and expressly sidestepped Horn's narrower argument that his harm did not flow from a personal injury. Pet.App.7a-8a n.2.

As the district court observed, "the underlying factual record is largely irrelevant" to the question presented, which is a "narrow, dispositive," and "discrete question of statutory interpretation." Pet.App.29a, 31a. This case therefore cleanly presents the question of whether civil RICO applies to economic harms arising from personal injuries without any factual baggage. In the Sixth, Seventh, and Eleventh Circuits, Horn's civil RICO claim would have been dismissed—as it was when the district court applied those circuits' law. But because Horn sued in the Second Circuit, petitioners now face potential treble damages and attorneys' fees. This Court should grant certiorari to correct that stark, arbitrary disparity.

### III. The Decision Below Is Incorrect

As this Court has recognized, RICO's civil cause of action does not apply to personal injuries because such plaintiffs are not injured in their "business or property." *RJR Nabisco*, 579 U.S. at 350. Plaintiffs cannot evade

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dismissal "on the grounds that [Doe's complaint] did not allege an injury to 'business or property'" because "RICO cannot encompass such a claim"); *Jackson*, 731 F.3d at 562-63 (affirming dismissal because "plaintiffs ha[d] failed to allege that they were injured in their business or property" and "declin[ing] to reach ... other arguments in support of the district court's judgment" (cleaned up)).

that statutory limitation by seeking recovery for economic harms that flow from personal injuries.

1. Civil RICO requires that the plaintiff be “injured in his business or property by reason of” the defendant’s racketeering activity. 18 U.S.C. § 1964(c). An “injury” is a “wrong or damage done to another, either in his person, rights, reputation, or property.” *Black’s Law Dictionary* 924 (Rev. 4th ed. 1968). “Business” includes “means of material being and livelihood.” *Id.* at 248. And “property” is an “exclusive right” “guaranteed and protected by the government.” *Id.* at 1382. As this Court has noted in the context of the Clayton Act, the phrase “business or property” is thus “restrictive.” *Reiter v. Sonotone Corp.*, 442 U.S. 330, 338 (1979). That language necessarily excludes “particular kinds of injur[ies],” including “personal injuries.” *RJR Nabisco*, 579 U.S. at 350; *see* Pet.App.13a.

Personal injuries are the antithesis of injuries to business or property. A “personal injury” is a “hurt or damage done to a man’s *person* ... as distinguished from an injury to his property or reputation.” *Black’s Law, supra*, at 925. “[C]ommon law tort law” helps elucidate the scope of “a ‘personal injury.’” *United States v. Burke*, 504 U.S. 229, 234 (1992) (citation omitted). Under tort law, the “typical recovery in a personal injury case” includes “(a) medical expenses, (b) lost wages, and (c) pain, suffering, and emotional distress.” *Comm’r v. Schleier*, 515 U.S. 323, 329 (1995). Economic damages resulting from personal injuries, like medical expenses or the lost wages at issue here, are therefore part of the personal injury—not injuries to “business or property” covered by civil RICO.

Any other reading would deprive RICO’s “business or property” requirement of “restrictive significance.” *Jackson*, 731 F.3d at 565. “[P]ersonal injuries often lead to



monetary damages.” *Id.* “[L]oss of consortium, loss of security and peace, wrongful death and similar claims sounding in tort” all produce “monetary losses.” *Evans*, 434 F.3d at 927.

If plaintiffs suffering any monetary harm can sue under civil RICO, Congress’ choice to limit the statute to “business or property” injuries would be virtually meaningless. Countless state-law tort claims could be repleaded as federal treble-damages actions. Peanut allergy sufferers could bring RICO suits against food manufacturers for medical expenses if food labels fail to disclose that products were manufactured in a facility that also processes peanuts. A company could use RICO against a hot-air-balloon manufacturer if the manufacturer’s shoddy labor practices cause the balloon to crash, injuring the company’s CEO and harming the company’s bottom line. Customers could lob RICO claims against casinos if the slippery casino floor causes customers to break bones in a slip and fall, with the customer asserting lost-wages damages for missed work.

RICO’s provenance confirms that civil RICO is not a supercharged state tort statute. Congress “modeled” RICO’s civil cause of action, including its “business or property” requirement, “on the civil-action provision of the federal antitrust laws, § 4 of the Clayton Act.” *Holmes*, 503 U.S. at 267. The Clayton Act naturally focuses on direct economic injuries. Thus, in the antitrust context, courts on both sides of the split recognize that economic aspects of personal injuries, like medical expenses, are not “injur[ies] to business or property.” *E.g.*, *Or. Labs.-Emps. Health & Welfare Tr. Fund v. Philip Morris Inc.*, 185 F.3d 957, 964 (9th Cir. 1999); *Iron Workers Loc. Union No. 17 Ins. Fund v. Philip Morris Inc.*, 23

F. Supp. 2d 771, 785 (N.D. Ohio 1998). There is no basis for reading that same language differently in RICO.

2. The Second Circuit’s contrary conclusion is unpersuasive. The Second Circuit started from the presumption that RICO’s exclusion of personal injuries is “implicit,” so that exclusion should be interpreted narrowly. Pet.App.3a, 12a-13a, 15a, 17a-18a, 22a. But RICO’s “business or property” requirement appears center stage in the text. Civil RICO expressly permits recovery only by plaintiffs who have suffered “business or property” injuries. That language does not permit recovery for any other kind of injury, including personal ones, as this Court has observed. *RJR Nabisco*, 579 U.S. at 350. RICO’s “business or property” requirement deserves a fair reading, just like any other statutory provision.

The Second Circuit reasoned that “business” includes “employment,” so Horn’s lost job was “an injury ‘in his business’” no matter how it arose. Pet.App.10a-11a. Because “the phrase ‘business or property’ focuses on the *nature* of the harm, not the *source* of the harm,” the court deemed it irrelevant that Horn lost his job due to the personal injury of unwittingly ingesting THC. Pet.App.15a.

But RICO is not indifferent to the source of the harm. To decide whether a plaintiff has suffered a qualifying injury, courts do not look at “the injury ... in isolation.” *Yegiazaryan v. Smagin*, 599 U.S. 533, 545 (2023). They examine “the circumstances surrounding the injury,” including how it “arose.” *Id.* Economic harms from personal injuries are part of the personal injury and thus not injuries to “business or property” covered by RICO.

The Second Circuit claimed that its approach left RICO’s “business or property” limitation with “restrictive

significance” because injuries like “mental anguish” and “pain and suffering” cannot be recast as injuries to “business or property.” Pet.App.21a (citation omitted). But the Second Circuit’s reasoning offers no basis for that line-drawing. Personal-injury plaintiffs routinely recover economic damages, *i.e.*, money, for mental anguish or pain and suffering, just as they recover economic damages for lost wages or medical expenses. *Schleier*, 515 U.S. at 329. “Money, of course, is a form of property.” *Reiter*, 442 U.S. at 338. If the “nature of the harm” is all that matters, as the Second Circuit thought, Pet.App.15a (emphasis omitted), then pain and suffering should equally be an injury to “property” recoverable under RICO. Yet that would nullify RICO’s “business or property” limitation, as the Second Circuit seemingly recognized. Pet.App.21a.

Even spotting the Second Circuit’s premise that pain, suffering, and the like are distinguishable from other aspects of personal injuries, virtually all personal injuries have *some* economic aspect. If “mental anguish” requires a day off work or “pain and suffering” leads to a doctor’s office copay, those economic consequences would be injuries to business or property in the Second Circuit.

The Second Circuit found “significant” that RICO limits liability by requiring that the plaintiff’s harm be “by reason of” the defendant’s acts, *i.e.*, that there be “proximate cause.” Pet.App.14a (citations omitted). In the Second Circuit’s view, excluding the economic harms of personal injuries “coopts that judgment” by “imposing a more restrictive attenuation principle” in personal-injury cases. Pet.App.14a. But the fact that RICO also imposes a proximate-causation requirement cannot justify rendering the “business or property” requirement toothless.

The Second Circuit also worried that excluding economic harms flowing from personal injuries would prevent recovery for classic RICO predicate acts like murder and kidnapping. Pet.App.16a-17a. But Congress purposefully limited RICO’s civil cause of action to injuries in “business or property.” Murder and kidnapping are prosecutable under *criminal* RICO, which has no business or property limitation. But Congress cast RICO’s civil net more narrowly, focusing on only racketeering activity’s direct economic harm. What the Second Circuit viewed as a bug is a central feature of civil RICO’s more limited text.

#### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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