In re A Warrant to Search a Certain E-Mail Account Controlled & Maintained by Microsoft Corp.

United States District Court for the Southern District of New York

April 25, 2014, Decided

13 Mag. 2814

Reporter
15 F. Supp. 3d 466 *; 2014 U.S. Dist. LEXIS 59296 **; 42 Media L. Rep. 2275; 2014 WL 1661004

IN THE MATTER OF A WARRANT TO SEARCH A CERTAIN E-MAIL ACCOUNT CONTROLLED AND MAINTAINED BY MICROSOFT CORPORATION

Subsequent History: Reversed by, in part, Vacated by, in part, Remanded by *Microsoft Corp. v. United States (In re Warrant to Search a Certain E-Mail Account Controlled & Maintained by Microsoft Corp.), 2016 U.S. App. LEXIS 12926 (2d Cir. N.Y., July 14, 2016)*

Core Terms

e-mail, stored, provides, electronic communication, search warrant, service provider, electronic, subpoena, user, territorial, server, storage, warrants, abroad, extraterritorial, communications, Internet, customer, records, authorizes, network, target, search and seizure, probable cause, interceptions, conventional, non-content, computer's, ambiguous, messages

Case Summary

Overview

HOLDINGS: [1]-An Internet service provider was required to comply with a warrant to provide information associated with a specified web-based e-mail account which was stored at a data-center in a foreign country, since the Stored Communications Act (SCA), *18 U.S.C.S. § 2701 et seq.*, only required that the warrant be obtained in accordance with federal criminal procedures and did not include the territorial restriction of warrants; [2]-In view of the unique circumstances of obtaining digital information, the warrant under the SCA was a hybrid of a search warrant and a subpoena, like a subpoena the requirement to produce information was not subject to limitation based on the location of the information, and no search occurred until the information was reviewed in the United States.

Outcome

Motion to quash a search warrant denied.

LexisNexis® Headnotes

Communications Law > Federal Acts > Electronic Communications Privacy Act

Business & Corporate Compliance > ... > Communications Law > Federal Acts > Stored Communications Act

Computer & Internet Law > Privacy & Security > Electronic Communications Privacy Act

HN1 The obligation of an Internet Service Provider to disclose to the government customer information or records is governed by the Stored Communications Act, passed as part of the Electronic Communications Privacy Act of 1986 and codified at *18 U.S.C.S. § 2701 et seq.* That statute authorizes the government to seek information by way of

subpoena, court order, or warrant. The instrument law enforcement agents utilize dictates both the showing that must be made to obtain it and the type of records that must be disclosed in response.

Business & Corporate Compliance > ... > Communications Law > Federal Acts > Stored Communications Act

Computer & Internet Law > Privacy & Security > Electronic Communications Privacy Act

Criminal Law & Procedure > ... > Witnesses > Subpoenas > Scope

HN2 The government may proceed to obtain information from an Internet service provider upon an administrative subpoena authorized by a federal or state statute or a federal or state grand jury or trial subpoena. *18 U.S.C.S. § 2703(b)(1)(B)(i)*. In response, the service provider must produce: (1) basic customer information, such as the customer's name, address, Internet Protocol connection records, and means of payment for the account, *18 U.S.C.S. § 2703(c)(2)*; unopened e-mails that are more than 180 days old, *§ 2703(a)*; and any opened e-mails, regardless of age, *§ 2703(b)(1)(B)(i)*. The usual standards for issuance of compulsory process apply, and the Stored Communications Act, *18 U.S.C.S. § 2701 et seq.*, does not impose any additional requirements of probable cause or reasonable suspicion. However, the government may obtain by subpoena the content of e-mail only if prior notice is given to the customer. *§ 2703(b)(1)(B)(i)*.

Business & Corporate Compliance > ... > Communications Law > Federal Acts > Stored Communications Act

Computer & Internet Law > Privacy & Security > Electronic Communications Privacy Act

HN3 If the government secures a court order to obtain information from an Internet service provider pursuant to *18 U.S.C.S. § 2703(d)*, it is entitled to all of the information subject to production under a subpoena and also records or other information pertaining to a subscriber or customer, such as historical logs showing the e-mail addresses with which the customer had communicated. *§ 2703(c)(1)*. In order to obtain such an order, the government must provide the court with specific and articulable facts showing that there are reasonable grounds to believe that the content of a wire or electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation. *§ 2703(d)*.

Business & Corporate Compliance > ... > Communications Law > Federal Acts > Stored Communications Act

Computer & Internet Law > Privacy & Security > Electronic Communications Privacy Act

Criminal Law & Procedure > ... > Search Warrants > Probable Cause > General Overview

Criminal Law & Procedure > Search & Seizure > Search Warrants > Scope of Search Warrants

HN4 If the government obtains a warrant under *18 U.S.C.S. § 2703(a)*, it can compel an Internet service provider to disclose everything that would be produced in response to a *§ 2703(d)* court order or a subpoena as well as unopened e-mails stored by the provider for less than 180 days. In order to obtain a warrant, the government must use the procedures described in the Federal Rules of Criminal Procedure and demonstrate probable cause. *§ 2703(a)*; *Fed. R. Crim. P. 41(d)(1)*.

Governments > Legislation > Interpretation

HN5 In construing federal law, the starting point in discerning congressional intent is the existing statutory language. Where the statutory language provides a clear answer, the analysis ends there as well. However, a court must search beneath the surface of text that is ambiguous, that is, language that is capable of being understood in two or more possible senses or ways.

Business & Corporate Compliance > ... > Communications Law > Federal Acts > Stored Communications Act

Computer & Internet Law > Privacy & Security > Electronic Communications Privacy Act

Criminal Law & Procedure > Search & Seizure > Search Warrants > General Overview

HN6 See *18 U.S.C.S. § 2703(a)*.

Governments > Legislation > Interpretation

HN7 In light of ambiguity in a statute, it is appropriate to look for guidance in the statutory structure, relevant legislative history, and congressional purposes.

Business & Corporate Compliance > ... > Communications Law > Federal Acts > Stored Communications Act

Computer & Internet Law > Privacy & Security > Electronic Communications Privacy Act

Criminal Law & Procedure > Search & Seizure > Search Warrants > General Overview

Criminal Law & Procedure > ... > Witnesses > Subpoenas > General Overview

HN8 The Stored Communications Act, *18 U.S.C.S. § 2701 et seq.*, authorizes the government to procure a warrant requiring a provider of electronic communication service to disclose e-mail content in the provider's electronic storage. Although *18 U.S.C.S. § 2703(a)* uses the term "warrant" and refers to the use of warrant procedures, the resulting order is not a conventional warrant; rather, the order is a hybrid: part search warrant and part subpoena. It is obtained like a search warrant when an application is made to a neutral magistrate who issues the order only upon a showing of probable cause. On the other hand, it is executed like a subpoena in that it is served on the provider in possession of the information and does not involve government agents entering the premises of the Provider to search its servers and seize the e-mail account in question.

Criminal Law & Procedure > ... > Witnesses > Subpoenas > Scope

HN9 A subpoena requires the recipient to produce information in its possession, custody, or control regardless of the location of that information.

Criminal Law & Procedure > ... > Witnesses > Subpoenas > Scope

HN10 An entity lawfully obligated to produce information must do so regardless of the location of that information.

Business & Corporate Compliance > ... > Communications Law > Federal Acts > Stored Communications Act

Computer & Internet Law > Privacy & Security > Electronic Communications Privacy Act

Criminal Law & Procedure > Search & Seizure > Search Warrants > Execution of Warrants

HN11 In the context of digital information, a search occurs when information from or about the data is exposed to possible human observation, such as when it appears on a screen, rather than when it is copied by the hard drive or processed by the computer.

Governments > Legislation > Effect & Operation > General Overview

Governments > Legislation > Interpretation

HN12 The presumption against territorial application provides that, when a statute gives no clear indication of an extraterritorial application, it has none, and reflects the presumption that United States law governs domestically but does not rule the world.

Judges: **[**1]** JAMES C. FRANCIS IV, UNITED STATES MAGISTRATE JUDGE.

Opinion by: JAMES C. FRANCIS IV

Opinion

[*467] MEMORANDUM AND ORDER

JAMES C. FRANCIS IV

UNITED STATES MAGISTRATE JUDGE

"The rise of an electronic medium that disregards geographical boundaries throws the law into disarray by creating entirely new phenomena that need to become the subject of clear legal rules but that cannot be governed, satisfactorily, by any current territorially based sovereign." David R. Johnson & David Post, Law and Borders -- The Rise of Law in Cyberspace, *48 Stan. L. Rev. 1367, 1375 (1996)*. In this case I must consider the circumstances under which law enforcement agents in the United States may obtain digital information from abroad. Microsoft Corporation ("Microsoft") moves to quash a search warrant to the extent that it directs Microsoft to produce the contents of one of its customer's e-mails where that information is stored on a server located in Dublin, Ireland. Microsoft contends that courts in the United States are not authorized to issue warrants for extraterritorial search and seizure, and that this is such a warrant. For the reasons that follow, Microsoft's motion is denied.

Background

Microsoft has long owned and operated a web-based **[**2]** e-mail service that has existed at various times under different internet domain names, including Hotmail.com, MSN.com, and Outlook.com. (Declaration of A.B. dated Dec. 17, 2013 ("A.B. Decl."), ¶ 3).[1] Users of a Microsoft e-mail account can, with a user name and a password, send and receive email messages as well as store messages in personalized folders. (A.B. Decl., ¶ 3). E-mail message data include both content information (the message and subject line) and non-content information (such as the sender address, the recipient address, and the date and time of transmission). (A.B. Decl., ¶ 4).

Microsoft stores e-mail messages sent and received by its users in its datacenters. Those datacenters exist at various locations both in the United States and abroad, and where a particular user's information is stored depends in part on a phenomenon known as "network latency"; because the quality of service decreases the farther a user is from the datacenter where his account is hosted, efforts are made **[**3]** to assign each account to the closest datacenter. (A.B. Decl., ¶ 6). Accordingly, based on the "country code" that the customer enters at registration, Microsoft may migrate the account to the datacenter in Dublin. (A.B. Decl., ¶ 7). When this is done, all content and most non-content information associated with the account is deleted from servers in the United States. (A.B. Decl., ¶ 7).

The non-content information that remains in the United States when an account is migrated abroad falls into three categories. First, certain non-content information is retained in a data warehouse in the United States for testing and quality control purposes. (A.B. Decl., ¶ 10). Second, Microsoft retains "address book" information relating to certain web-based e-mail accounts in an "address book clearing house." (A.B. Decl., ¶ 10). Finally, certain basic non-content information about all accounts, such as the user's name and country, is maintained in a database in the United States. (A.B. Decl., ¶ 10).

On December 4, 2013, in response to an application by the United States, I issued the search warrant that is the subject of the instant motion. That warrant authorizes **[*468]** the search and seizure of information **[**4]** associated with a specified web-based e-mail account that is "stored at premises owned, maintained, controlled, or operated by Microsoft Corporation, a company headquartered at One Microsoft Way, Redmond, WA." (Search and Seizure Warrant ("Warrant"), attached as Exh. 1 to Declaration of C.D. dated Dec. 17, 2013 ("C.D. Decl."), Attachment A). The information to be disclosed by Microsoft pursuant to the warrant consists of:

> a. The contents of all e-mails stored in the account, including copies of e-mails sent from the account;
>
> b. All records or other information regarding the identification of the account, to include full name, physical address, telephone numbers and other identifiers, records of session times and durations, the date on which the account was created, the length of service, the types of service utilized, the IP address used to register the account, log-in IP addresses associated with session times and dates, account status, alternative e-mail addresses provided during registration, methods of connecting, log files, and means and sources of payment (including any credit or bank account number);

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[1] Pursuant to an application by Microsoft, certain information that is commercially sensitive, including the identity of persons who submitted declarations, has been redacted from public filings.

c. All records or other information stored by an individual using the account, **[**5]** including address books, contact and buddy lists, pictures, and files;

d. All records pertaining to communications between MSN . . . and any person regarding the account, including contacts with support services and records of actions taken.

(Warrant, Attachment C, ¶ I(a)-(d)).

It is the responsibility of Microsoft's Global Criminal Compliance ("GCC") team to respond to a search warrant seeking stored electronic information. (C.D. Decl., ¶ 3). Working from offices in California and Washington, the GCC team uses a database program or "tool" to collect the data. (C.D. Decl., ¶¶ 3, 4). Initially, a GCC team member uses the tool to determine where the data for the target account is stored and then collects the information remotely from the server where the data is located, whether in the United States or elsewhere. (C.D. Decl., ¶¶ 5, 6).

In this case, Microsoft complied with the search warrant to the extent of producing the non-content information stored on servers in the United States. However, after it determined that the target account was hosted in Dublin and the content information stored there, it filed the instant motion seeking to quash the warrant to the extent that it directs the **[**6]** production of information stored abroad.

Statutory Framework

HN1 The obligation of an Internet Service Provider ("ISP") like Microsoft to disclose to the Government customer information or records is governed by the Stored Communications Act (the "SCA"), passed as part of the Electronic Communications Privacy Act of 1986 (the "ECPA") and codified at *18 U.S.C. §§ 2701-2712*. That statute authorizes the Government to seek information by way of subpoena, court order, or warrant. The instrument law enforcement agents utilize dictates both the showing that must be made to obtain it and the type of records that must be disclosed in response.

HN2 First, the Government may proceed upon an "administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury or trial subpoena." *18 U.S.C. § 2703(b)(1)(B)(i)*. In response, the service provider must produce (1) basic customer information, such as the customer's name, address, Internet Protocol connection records, and means of payment for the account, *18 U.S.C. § 2703(c)(2)*; unopened e-mails that are more than 180 days old, *18 U.S.C. § 2703(a)*; **[*469]** and any opened e-mails, regardless of age, *18 U.S.C. §§ 2703(b)(1)(B)(i)*.[2] The usual **[**7]** standards for issuance of compulsory process apply, and the SCA does not

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[2] The distinction between opened and unopened e-mail does not appear in the statute. Rather, it is the result of interpretation of the term "electronic storage," which affects whether the content of an electronic communication is subject to rules for a provider of electronic communications service ("ECS"), *18 U.S.C. § 2703(a)*, or those for a provider of remote computing service ("RCS"), *18 U.S.C. § 2703(b)*. The SCA regulates the circumstances under which "[a] governmental entity may require the disclosure by a provider of electronic communication service of the contents of a wire or electronic communication [] that is in electronic storage in an electronic communications system . . . ." *18 U.S.C. § 2703(a)*. "Electronic storage" is in turn defined as "(A) any temporary intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and (B) any storage **[**8]** of such communication by an electronic communication service for the purposes of backup protection of such communication." *18 U.S.C. § 2510(17)*. While most courts have held that an e-mail is no longer in electronic storage once it has been opened by the recipient, see, e.g., *Crispin v. Christian Audigier, Inc., 717 F. Supp. 2d 965, 987 (C.D. Cal. 2010)*; *United States v. Weaver, 636 F. Supp. 2d 769, 771-73 (C.D. Ill. 2009)*; see also Owen S. Kerr, A User's Guide to the Stored Communications Act, and a Legislator's Guide to Amending It, *72 Geo. Wash. L. Rev. 1208, 1216 (2004)* (hereinafter A User's Guide) ("The traditional understanding has been that a copy of an opened e-mail sitting on a server is protected by the RCS rules, not the ECS rules"), the Ninth Circuit has instead focused on whether "the underlying message has expired in the normal course," *Theofel v. Farey-Jones, 359 F.3d 1066, 1076 (9th Cir. 2004)*; see also *id. at 1077* ("[W]e think that prior access is irrelevant to whether the messages at issue were in electronic storage."). Resolution of this debate is unnecessary for purposes of the issue before me.

Likewise, it is not necessary to determine whether Microsoft was providing **[**9]** ECS or RCS in relation to the communications in question. The statute defines ECS as "any service which provides users thereof the ability to send or receive wire or electronic communications," *18 U.S.C. § 2510(15)*, while RCS provides "to the public [] computer storage or processing services by means of an electronic communications system, *18 U.S.C. § 2711(2)*. Since service providers now generally perform both functions, the

impose any additional requirements of probable cause or reasonable suspicion. However, the Government may obtain by subpoena the content of e-mail only if prior notice is given to the customer. *18 U.S.C. § 2703(b)(1)(B)(i)*.

HN3 If the Government secures a court order pursuant to *18 U.S.C. § 2703(d)*, it is entitled to all of the information subject to production under a subpoena and also "record[s] or other information pertaining to a subscriber [] or customer," such as historical logs showing the e-mail addresses with which the customer had communicated. *18 U.S.C. § 2703(c)(1)*. In order to obtain such an order, the Government must provide the court with "specific and articulable facts showing that there are reasonable grounds to believe that the content of a wire or electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation." *18 U.S.C. 2703(d)*.

[*470] ***HN4*** Finally, if the Government obtains a warrant under *section 2703(a)* (an "SCA Warrant"), it can compel a service provider to disclose everything that would be produced in response to a *section 2703(d)* order or a subpoena as well as unopened e-mails stored by the **[**11]** provider for less than 180 days. In order to obtain an SCA Warrant, the Government must "us[e] the procedures described in the Federal Rules of Criminal Procedure" and demonstrate probable cause. *18 U.S.C. § 2703(a)*; see *Fed. R. Crim. P. 41(d)(1)* (requiring probable cause for warrants).

Discussion

Microsoft's argument is simple, perhaps deceptively so. It notes that, consistent with the SCA and *Rule 41 of the Federal Rules of Criminal Procedure*, the Government sought information here by means of a warrant. Federal courts are without authority to issue warrants for the search and seizure of property outside the territorial limits of the United States. Therefore, Microsoft concludes, to the extent that the warrant here requires acquisition of information from Dublin, it is unauthorized and must be quashed.

That analysis, while not inconsistent with the statutory language, is undermined by the structure of the SCA, by its legislative history, and by the practical consequences that would flow from adopting it.

A. Statutory Language

HN5 In construing federal law, the "starting point in discerning congressional intent is the existing statutory language." *Lamie v. United States Trustee, 540 U.S. 526, 534, 124 S. Ct. 1023, 157 L. Ed. 2d 1024 (2004)* **[**12]** (citing *Hughes Aircraft Co. v. Jacobson, 525 U.S. 432, 438, 119 S. Ct. 755, 142 L. Ed. 2d 881 (1999)*. "And where the statutory language provides a clear answer, [the analysis] ends there as well." *Hughes Aircraft Co., 525 U.S. at 438*. However, a court must search beneath the surface of text that is ambiguous, that is, language that is "capable of being understood in two or more possible senses or ways." *Chickasaw Nation v. United States, 534 U.S. 84, 90, 122 S. Ct. 528, 151 L. Ed. 2d 474 (1985)* (internal quotation marks omitted). Here, the relevant section of the SCA provides in pertinent part:

> ***HN6*** A governmental entity may require the disclosure by a provider of electronic communication service of the contents of a wire or electronic communication, that is in electronic storage in an electronic communications system for one hundred and eighty days or less, only pursuant to a warrant issued using the procedures described in the Federal Rules of Criminal Procedure . . . by a court of competent jurisdiction.

18 U.S.C. § 2703(a). This language is ambiguous in at least one critical respect. The words "using the procedures

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distinction, which originated in the context of earlier technology, is difficult to apply. See *Crispin, 717 F. Supp. 2d at 986 n.42*; *In re Application of the United States of America for a Search Warrant for Contents of Electronic Mail and for an Order Directing a Provider of Electronic Communication Services to not Disclose the Existence of the Search Warrant, 665 F. Supp. 2d 1210, 1214 (D. Or. 2009)* (hereinafter In re United States) ("Today, most ISPs provide both ECS and RCS; thus, the distinction serves to define the service that is being provided at a particular time (or as to a particular piece of electronic communication at a particular time), rather than to define the service provider itself."); Kerr, *A User's Guide at 1215* ("The distinction of providers **[**10]** of ECS and RCS is made somewhat confusing by the fact that most network service providers are multifunctional. They can act as providers of ECS in some contexts, providers of RCS in some contexts, and as neither in some contexts as well.").

described in the Federal Rules of Criminal Procedure" could be construed to mean, as Microsoft argues, that all aspects of *Rule 41* are incorporated **[**13]** by reference in *section 2703(a)*, including limitations on the territorial reach of a warrant issued under that rule. But, equally plausibly, the statutory language could be read to mean that while procedural aspects of the application process are to be drawn from *Rule 41* (for example, the presentation of the application based on sworn testimony to a magistrate judge), more substantive rules are derived from other sources. See *In re United States, 665 F. Supp. 2d at 1219* (finding ambiguity in that "'[i]ssued' may be read to limit the procedures that are applicable under *§ 2703(a)*, or it might merely have been used as a shorthand for the process of obtaining, issuing, executing, and returning a warrant, as described in *Rule 41*"); *In re Search of Yahoo, Inc., No. 07-3194, **[*471]** 2007 U.S. Dist. LEXIS 37601, 2007 WL 1539971, at *5 (D. Ariz. May 21, 2007)* (finding that "the phrase 'using the procedures described in' the Federal Rules remains ambiguous"). ***HN7*** In light of this ambiguity, it is appropriate to look for guidance in the "statutory structure, relevant legislative history, [and] congressional purposes." *Florida Light & Power Co. v. Lorion, 470 U.S. 729, 737, 105 S. Ct. 1598, 84 L. Ed. 2d 643 (1985)*; see *Board of Education v. Harris, 444 U.S. 130, 140, 100 S. Ct. 363, 62 L. Ed. 2d 275 (1979)*; **[**14]** *Hall v. EarthLink Network, Inc., 396 F.3d 500, 504 (2d Cir. 2005)*.

B. Structure of the SCA

The SCA was enacted at least in part in response to a recognition that the *Fourth Amendment* protections that apply in the physical world, and especially to one's home, might not apply to information communicated through the internet.

> Absent special circumstances, the government must first obtain a search warrant based on probable cause before searching a home for evidence of crime. When we use a computer network such as the Internet, however, a user does not have a physical "home," nor really any private space at all. Instead, a user typically has a network account consisting of a block of computer storage that is owned by a network service provider, such as America Online or Comcast. Although a user may think of that storage space as a "virtual home," in fact that "home" is really just a block of ones and zeroes stored somewhere on somebody else's computer. This means that when we use the Internet, we communicate with and through that remote computer to contact other computers. Our most private information ends up being sent to private third parties and held far away on remote network servers.
>
> This **[**15]** feature of the Internet's network architecture has profound consequences for how the *Fourth Amendment* protects Internet communications -- or perhaps more accurately, how the *Fourth Amendment* may not protect such communications much at all.

See Kerr, *A User's Guide at 1209-10* (footnotes omitted).

Accordingly, the SCA created "a set of *Fourth Amendment*-like privacy protections by statute, regulating the relationship between government investigators and service providers in possession of users' private information." *Id. at 1212*. Because there were no constitutional limits on an ISP's disclosure of its customer's data, and because the Government could likely obtain such data with a subpoena that did not require a showing of probable cause, Congress placed limitations on the service providers' ability to disclose information and, at the same time, defined the means that the Government could use to obtain it. See *id. at 1209-13*.

In particular, ***HN8*** the SCA authorizes the Government to procure a warrant requiring a provider of electronic communication service to disclose e-mail content in the provider's electronic storage. Although *section 2703(a)* uses the term "warrant" and refers to the use of **[**16]** warrant procedures, the resulting order is not a conventional warrant; rather, the order is a hybrid: part search warrant and part subpoena. It is obtained like a search warrant when an application is made to a neutral magistrate who issues the order only upon a showing of probable cause. On the other hand, it is executed like a subpoena in that it is served on the ISP in possession of the information and does not involve government agents entering the premises of the ISP to search its servers and seize the e-mail account in question.

[*472] This unique structure supports the Government's view that the SCA does not implicate principles of extraterritoriality. It has long been the law that ***HN9*** a subpoena requires the recipient to produce information in its

possession, custody, or control regardless of the location of that information. See *Marc Rich & Co., A.G. v. United States, 707 F.2d 663, 667 (2d Cir. 1983)* ("Neither may the witness resist the production of documents on the ground that the documents are located abroad. The test for production of documents is control, not location." (citations omitted)); *Tiffany (NJ) LLC v. Qi Andrew, 276 F.R.D. 143, 147-48 (S.D.N.Y. 2011)* ("If the party suboenaed **[**17]** has the practical ability to obtain the documents, the actual physical location of the documents -- even if overseas -- is immaterial."); *In re NTL, Inc. Securities Litigation, 244 F.R.D. 179, 195 (S.D.N.Y. 2007)*; *United States v. Chase Manhattan Bank, N.A.., 584 F. Supp. 1080, 1085 (S.D.N.Y. 1984)*. To be sure, the "warrant" requirement of *section 2703(a)* cabins the power of the government by requiring a showing of probable cause not required for a subpoena, but it does not alter the basic principle that ***HN10*** an entity lawfully obligated to produce information must do so regardless of the location of that information.

This approach is also consistent with the view that, ***HN11*** in the context of digital information, "a search occurs when information from or about the data is exposed to possible human observation, such as when it appears on a screen, rather than when it is copied by the hard drive or processed by the computer." Orin S. Kerr, Searches and Seizures in a Digital World, *119 Harv. L. Rev. 531, 551 (2005)*. In this case, no such exposure takes place until the information is reviewed in the United States, and consequently no extraterritorial search has occurred.

This analysis is not undermined **[**18]** by the Eighth Circuit's decision in *United States v. Bach, 310 F.3d 1063 (8th Cir. 2002)*. There, in a footnote the court noted that "[w]e analyze this case under the search warrant standard, not under the subpoena standard. While warrants for electronic data are often served like subpoenas (via fax), Congress called them warrants and we find that Congress intended them to be treated as warrants." *Id. at 1066 n.1*. Given the context in which it was issued, this sweeping statement is of little assistance to Microsoft. The issue in *Bach* was whether the fact that a warrant for electronic information was executed by employees of the ISP outside the supervision of law enforcement personnel rendered the search unreasonable in violation of the *Fourth Amendment*. *Id. at 1065*. The court utilized the stricter warrant standard for evaluating the reasonableness of the execution of a search, as opposed to the standard for executing a subpoena; this says nothing about the territorial reach of an SCA Warrant.

C. Legislative History

Although scant, the legislative history also provides support for the Government's position. When the SCA was enacted as part of the ECPA, the Senate report, although it did **[**19]** not address the specific issue of extraterritoriality, reflected an understanding that information was being maintained remotely by third-party entities:

> The Committee also recognizes that computers are used extensively today for the processing and storage of information. With the advent of computerized recordkeeping systems, Americans have lost the ability to lock away a great deal of personal and business information. For example, physicians and hospitals maintain medical files in offsite data banks, businesses of all sizes transmit their records to remote computers **[*473]** to obtain sophisticated data processing services. . . . [B]ecause it is subject to control by a third party computer operator, the information may be subject to no constitutional privacy protection.

S. Rep. No. 99-541, at 3 (1986).

While the House report did address the territorial reach of the law, it did so ambiguously. Because the ECPA amended the law with respect to wiretaps, the report notes:

> By the inclusion of the element "affecting (affects) interstate or foreign commerce" in these provisions the Committee does not intend that the Act regulate activities conducted outside the territorial United States. Thus, insofar **[**20]** as the Act regulates the "interception" of communications, for example it . . . regulates only those "interceptions" conducted within the territorial United States. Similarly, the controls in Section 201 of the Act [which became the SCA] regarding access to stored wire and electronic communications are intended to apply only to access within the territorial United States.

H.R. Rep. 99-647, at 32-33 (1986) (citations omitted). While this language would seem to suggest that information stored abroad would be beyond the purview of the SCA, it remains ambiguous for two reasons. First, in support of its observation that the ECPA does not regulate activities outside the United States, the Committee cited *Stowe v.*

DeVoy, 588 F.2d 336 (2d Cir. 1978). In that case, the Second Circuit held that telephone calls intercepted in Canada by Canadian authorities were admissible in a criminal proceeding even if the interception would have violated Title III of the Omnibus Crime Control Act of 1968 if it had occurred in the United States or been performed by United States officials. *Id. at 340-41*. This suggests that Congress was addressing not the reach of government authority, but rather the scope of **[**21]** the individual rights created by the ECPA. Second, in referring to "access" to stored electronic communications, the Committee did not make clear whether it meant access to the location where the electronic data was stored or access to the location of the ISP in possession of the data.

Additional evidence of congressional intent with respect to this latter issue can be gleaned from the legislative history of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the "Patriot Act"). Section 108 of the Patriot Act provided for nationwide service of search warrants for electronic evidence. The House Committee described the rationale for this as follows:

> Title *18 U.S.C. § 2703(a)* requires a search warrant to compel service providers to disclose unopened e-mails. This section does not affect the requirement for a search warrant, but rather attempts to address the investigative delays caused by the cross-jurisdictional nature of the Internet. Currently, *Federal Rules of Criminal Procedure 41* requires that the "warrant" be obtained "within the district" where the property is located. An investigator, for example, located **[**22]** in Boston who is investigating a suspected terrorist in that city, might have to seek a suspect's electronic e-mail from an Internet service provider (ISP) account located in California. The investigator would then need to coordinate with agents, prosecutors and judges in the district in California where the ISP is located to obtain the warrant to search. These time delays could be devastating to an investigation, especially where additional criminal or terrorist acts are planned.
>
> **[*474]** Section 108 amends *§ 2703* to authorize the court with jurisdiction over the investigation to issue the warrant directly, without requiring the intervention of its counterpart in the district where the ISP is located.

H.R. Rep. 107-236(I), at 58 (2001). This language is significant, because it equates "where the property is located" with the location of the ISP, not the location of any server. See *In re Search of Yahoo, Inc., 2007 U.S. Dist. LEXIS 37601, 2007 WL 1539971, at *4* ("Commentators have suggested that one reason for the amendments effected by Section 220 of the Patriot Act was to alleviate the burden placed on federal district courts in the Eastern District of Virginia and the Northern District of California where major internet **[**23]** service providers [] AOL and Yahoo, respectively, are located.") (citing, inter alia, Patricia L. Bellia, Surveillance Law Through Cyberlaw's Lens, *72 Geo. Wash. L. Rev. 1375, 1454 (2004)*).

Congress thus appears to have anticipated that an ISP located in the United States would be obligated to respond to a warrant issued pursuant to *section 2703(a)* by producing information within its control, regardless of where that information was stored.[3]

D. Practical Considerations

If the territorial restrictions on conventional warrants applied to warrants issued under *section 2703(a)*, the burden on the Government would be substantial, and law enforcement efforts would be seriously impeded. If **[**24]** this were merely a policy argument, it would be appropriately addressed to Congress. But it also provides context for understanding congressional intent at the outset, for it is difficult to believe that, in light of the practical consequences that would follow, Congress intended to limit the reach of SCA Warrants to data stored in the United States.

First, a service provider is under no obligation to verify the information provided by a customer at the time an e-mail account is opened. Thus, a party intending to engage in criminal activity could evade an SCA Warrant by the simple

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[3] Suppose, on the contrary, that Microsoft were correct that the territorial limitations on a conventional warrant apply to an SCA warrant. Prior to the amendment effected by the Patriot Act, a service provider could have objected to a warrant issued by a judge in the district where the provider was headquartered on the basis that the information sought was stored on a server in a different district, and the court would have upheld the objection and quashed the subpoena. Yet, I have located no such decision.

expedient of giving false residence information, thereby causing the ISP to assign his account to a server outside the United States.

Second, if an SCA Warrant were treated like a conventional search warrant, it could only be executed abroad pursuant to a Mutual Legal Assistance Treaty ("MLAT"). As one commentator has observed, "This process generally remains slow and laborious, as it requires the cooperation of two governments and one of those governments may not prioritize the case as highly as the other." Orin S. Kerr, The Next Generation Communications Privacy Act, *162 U. Penn. L. Rev. 373, 409 (2014)*. **[**25]** Moreover, nations that enter into MLATs nevertheless generally retain the discretion to decline a request for assistance. For example, the MLAT between the United States and Canada provides that "[t]he Requested State may deny assistance to the extent that . . . execution of the request is contrary to its public interest as determined by its Central Authority." Treaty on Mutual Legal Assistance in Criminal Matters, U.S.-Can., March 18, 1985, *24 I.L.M. 1092* ("U.S.-Can. MLAT"), Art. V(1). Similarly, the **[*475]** MLAT between the United States and the United Kingdom allows the Requested State to deny assistance if it deems that the request would be "contrary to important public policy" or involves "an offense of a political character." Treaty on Mutual Legal Assistance in Criminal Matters, U.S.-U.K., Jan. 6, 1994, S. Treaty Doc. No. 104-2 ("U.S.—U.K. MLAT"), Art. 3(1)(a) & (c)(i). Indeed, an exchange of diplomatic notes construes the term "important public policy" to include "a Requested Party's policy of opposing the exercise of jurisdiction which is in its view extraterritorial and objectionable." Letters dated January 6, 1994 between Warren M. Christopher, Secretary of State of the United States, **[**26]** and Robin W. Renwick, Ambassador of the United Kingdom of Great Britain and Northern Ireland (attached to U.S.-U.K. MLAT). Finally, in the case of a search and seizure, the MLAT in both of these examples provides that any search must be executed in accordance with the laws of the Requested Party. U.S.-Can. MLAT, Art. XVI(1); U.S.-U.K. MLAT, Art. 14(1), (2). This raises the possibility that foreign law enforcement authorities would be required to oversee or even to conduct the acquisition of information from a server abroad.

Finally, as burdensome and uncertain as the MLAT process is, it is entirely unavailable where no treaty is in place. Although there are more than 60 MLATs currently in force, Amy E. Pope, Lawlessness Breeds Lawlessness: A Case for Applying the Fourth Amendment to Extraterritorial Searches, 65 Fla. L. Rev. 1917, 1931 (2013), not all countries have entered into such agreements with the United States. Moreover, Google has reportedly explored the possibility of establishing true "offshore" servers: server farms located at sea beyond the territorial jurisdiction of any nation. Steven R. Swanson, *Google Sets Sail: Ocean-Based Server Farms and International Law, 43 Conn. L. Rev. 709, 716-18 (2011)* **[**27]** . Thus, under Microsoft's understanding, certain information within the control of an American service provider would be completely unavailable to American law enforcement under the SCA.[4]

The practical implications thus make it unlikely that Congress intended to treat a *Section 2703(a)* order as a warrant for the search of premises located where the data is stored.

E. Principles of Extraterrioriality

HN12 The presumption against territorial application

> provides that "[w]hen a statute gives no clear indication of an extraterritorial application, it has none, *Morrison v. National Australia Bank Ltd., 561 U.S. 247, 255, 130 S. Ct. 2869, 2878, 177 L. Ed. 2d 535 (2010)*, and reflect the "presumption that United States law governs domestically but does not rule the world," *Microsoft Corp. v. AT & T Corp., 550 U.S. 437, 454, 127 S. Ct. 1746, 167 L. Ed. 2d 737 (2007)*.

Kiobel v. Royal Dutch Petroleum Co., U.S. , , 133 S. Ct. 1659, 1664, 185 L. Ed. 2d 671 (2013). But the concerns that animate the presumption **[**28]** against extraterritoriality are simply not present here: an SCA Warrant does not criminalize conduct taking place in a foreign country; it does not involve the deployment of American law enforcement personnel abroad; it does not require even the physical presence of service provider employees at the location where data are stored. At least in this **[*476]** instance, it places obligations only on the service provider to act within the United States. Many years ago, in the context of sanctioning a witness who

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[4] Non-content information, opened e-mails, and unopened e-mails stored more than 180 days could be obtained, but only by means of a subpoena with notice to the target; unopened e-mails stored less than 180 days could not be obtained at all.

refused to return from abroad to testify in a criminal proceeding, the Supreme Court observed:

> With respect to such an exercise of authority, there is no question of international law, but solely of the purport of the municipal law which establishes the duty of the citizen in relation to his own government. While the legislation of the Congress, unless the contrary intent appears, is construed to apply only within the territorial jurisdiction of the United States, the question of its application, so far as citizens of the United States are concerned, is one of construction, not of legislative power.

Blackmer v. United States, 284 U.S. 421, 437, 52 S. Ct. 252, 76 L. Ed. 375 (1932) (footnotes omitted). Thus, the nationality **[**29]** principle, one of the well-recognized grounds for extension of American criminal law outside the nation's borders, see *Marc Rich, 707 F.2d at 666* (citing Introductory Comment to Research on International Law, Part II, Draft Convention on Jurisdiction With Respect to Crime, 29 Am. J. Int'l Law 435, 445 (Supp. 1935)), supports the legal requirement that an entity subject to jurisdiction in the United States, like Microsoft, may be required to obtain evidence from abroad in connection with a criminal investigation.

The cases that Microsoft cites for the proposition that there is no authority to issue extraterritorial warrants are inapposite, since these decisions refer to conventional warrants. For example, in *United States v. Odeh, 552 F.3d 157 (2d Cir. 2008)*, the Second Circuit noted that "seven justices of the Supreme Court [in *United States v. Verdugo-Urquidez, 494 U.S. 259, 110 S. Ct. 1056, 108 L. Ed. 2d 222 (1990)]* endorsed the view that U.S. courts are not empowered to issue warrants for foreign searches," *id. at 169*, and found that "it is by no means clear that U.S. judicial officers could be authorized to issue warrants for overseas searches," *id. at 171*. But Odeh involved American law enforcement agents engaging **[**30]** in wiretapping and searching a residence in Kenya. *Id. at 159-60*. The court held that while the *Fourth Amendment's* proscription against unreasonable search and seizure would apply in such circumstances, the requirement of a warrant would not. *Id. at 169-71*. Similarly, in *Verdugo-Urquidez*, the Supreme Court held that a Mexican national could not challenge, on *Fourth Amendment* grounds, the search of his residence in Mexico by American agents acting without a warrant. *494 U.S. at 262-63, 274-75*; *id. at 278* (Kennedy, J., concurring); *id. at 279* (Stevens, J., concurring). Those cases are not applicable here, where the requirement to obtain a *section 2703(a)* order is grounded in the SCA, not in the *Warrant Clause*.

Nor do cases relating to the lack of power to authorize intrusion into a foreign computer support Microsoft's position. In *In re Warrant to Search a Target Computer at Premises Unknown, 958 F. Supp. 2d 753 (S.D. Tex. 2013)*, the court rejected the Government's argument that data surreptitiously seized from a computer at an unknown location would be "located" within the district where the agents would first view it for purposes of conforming to the territorial limitations of *Rule 41*. **[**31]** *Id. at 756-57*. But there the Government was not seeking an SCA Warrant.

> The Government [did] not seek a garden-variety search warrant. Its application request[ed] authorization to surreptitiously install data extraction software on the Target Computer. Once installed, the software [would have] the capacity **[*477]** to search the computer's hard drive, random access memory, and other storage media; to activate the computer's built-in camera; to generate latitude and longitude coordinates for the computer's location; and to transmit the extracted data to FBI agents within this district.

Id. at 755. "In other words, the Government [sought] a warrant to hack a computer suspected of criminal use." Id. Though not "garden-variety," the warrant requested there was conventional: it called for agents to intrude upon the target's property in order to obtain information; it did not call for disclosure of information in the possession of a third party. Likewise, in *United States v. Gorshkov, No. CR 00-550, 2001 U.S. Dist. LEXIS 26306, 2001 WL 1024026 (W.D. Wash. May 23, 2001)*, government agents seized a computer in this country, extracted a password, and used it to access the target computer in Russia. *2001 U.S. Dist. LEXIS 26306, [WL] at *1*. The court characterized **[**32]** this as "extraterritorial access" to the Russian computer, and held that "[u]ntil the copied data was transmitted to the United States, it was outside the territory of this country and not subject to the protections of the *Fourth Amendment*." *2001 U.S. Dist. LEXIS 26306, [WL] at *3*. But this case is of even less assistance to Microsoft since the court did not suggest that it would have been beyond a court's authority to issue a warrant to accomplish the same result.[5]

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[5] Microsoft argues that the Government itself recognized the extraterritorial nature of remote computer searches when it sought

Perhaps **[**33]** the case that comes closest to supporting Microsoft is *Cunzhu Zheng v. Yahoo! Inc., No. C-08-1068, 2009 U.S. Dist. LEXIS 111886, 2009 WL 4430297 (N.D. Cal. Dec. 2, 2009)*, because at least it deals with the ECPA. There, the plaintiffs sought damages against an ISP on the ground that it had provided user information about them to the People's Republic of China (the "PRC") in violation of privacy provisions of the ECPA and particularly of the SCA. *2009 U.S. Dist. LEXIS 111886, [WL] at *1*. The court found that "the alleged interceptions and disclosures occurred in the PRC," *2009 U.S. Dist. LEXIS 111886, [WL] at *4*, and as a result, dismissed the action on the ground that "[p]laintiffs point to no language in the ECPA itself, nor to any statement in the legislative history of the ECPA, indicating Congress intended that the ECPA . . . apply to activities occurring outside the United States," *2009 U.S. Dist. LEXIS 111886, [WL] at *3*. But this language, too, does not advance Microsoft's cause. The fact that protections against "interceptions and disclosures" may not apply where those activities take place abroad hardly indicates that Congress intended to limit the ability of law enforcement agents to obtain account information from domestic service providers who happen to store that information overseas.

Conclusion

Even **[**34]** when applied to information that is stored in servers abroad, an SCA Warrant does not violate the presumption against extraterritorial application of American law. Accordingly, Microsoft's motion to quash in part the warrant at issue is denied.

SO ORDERED

/s/ James C. Francis IV

JAMES C. FRANCIS IV

UNITED STATES MAGISTRATE JUDGE

Dated: New York, New York

April 25, 2014

End of Document

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an amendment to ***Rule 41*** in 2013. See Letter from Mythili Raman, Acting Assistant Attorney General, Criminal Division to Hon. Reena Raggi, Chair, Advisory Committee on Criminal Rules (Sept. 18, 2013) ("Raman Letter") at 4-5, available at *http://uscourts.gov/uscourts/RulesAndPolicies/*. But the proposed amendment had nothing to do with SCA Warrants directed to service providers and, rather, was intended to facilitate the kind of "warrant to hack a computer" that was quashed in In re Warrant to Search a Target Computer at Premises Unknown; indeed, the Government explicitly referred to that case in its proposal. Raman Letter at 2.

RJR Nabisco, Inc. v. European Cmty.

Supreme Court of the United States

March 21, 2016, Argued; June 20, 2016, Decided

No. 15-138

Reporter

136 S. Ct. 2090 *; 195 L. Ed. 2d 476 **; 2016 U.S. LEXIS 3925 ***; 84 U.S.L.W. 4450; 26 Fla. L. Weekly Fed. S 263

RJR NABISCO, INC., et al., Petitioners v . EUROPEAN COMMUNITY, et al.

Notice: The LEXIS pagination of this document is subject to change pending release of the final published version.

Prior History: [***1] ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

European Cmty. v. RJR Nabisco, Inc., 764 F.3d 129, 2014 U.S. App. LEXIS 7593 (2d Cir., 2014)

Disposition: *764 F. 3d 129*, reversed and remanded.

Core Terms

extraterritoriality, predicates, domestic, statutes, injuries, abroad, racketeering, pattern of racketeering activity, applies, courts, prohibitions, activities, private right of action, violations, foreign country, securities, extraterritorial effect, cause of action, requires, racketeering activity, offenses, corporations, enterprises, private plaintiff, clear indication, foreign commerce, injured person, Organizations, occurring, sovereign

Case Summary

Overview

HOLDINGS: [1]-RICO applies to some foreign racketeering activity. A violation of *18 U.S.C.S. § 1962* may be based on a pattern of racketeering that includes predicate offenses committed abroad, provided that each of those offenses violates a predicate statute that is itself extraterritorial; [2]-RICO imposes no domestic enterprise requirement, although the enterprise must engage in or affect commerce involving the U.S.; [3]-The European Community's allegations that a cigarette company engaged in a global money-laundering scheme did not involve an impermissibly extraterritorial application of *§ 1962*; [4]-RICO's private right of action under *18 U.S.C.S. § 1964(c)* did not overcome the presumption against extraterritoriality. It was therefore necessary to allege and prove a domestic injury to business or property, and claims for domestic injuries had been waived in the instant case.

Outcome

Judgment reversed; case remanded. 4-3 Decision; 2 Opinions Concurring in Part, Dissenting in Part, and Dissenting from the Judgment.

LexisNexis® Headnotes

Criminal Law & Procedure > ... > Racketeering > Racketeer Influenced & Corrupt Organizations Act > Elements

Governments > Legislation > Statutory Remedies & Rights

HN1 The Racketeer Influenced and Corrupt Organizations Act (RICO), *18 U.S.C.S. §§ 1961-1968*, created four new criminal offenses involving the activities of organized criminal groups in relation to an enterprise. *18 U.S.C.S. § 1962(a)-(d)*. RICO also created a new civil cause of action for any person injured in his business or property by reason of a violation of those prohibitions. *18 U.S.C.S. § 1964(c)*.

Criminal Law & Procedure > ... > Racketeering > Racketeer Influenced & Corrupt Organizations Act > Elements

HN2 The Racketeer Influenced and Corrupt Organizations Act (RICO), *18 U.S.C.S. §§ 1961-1968*, is founded on the concept of racketeering activity. The statute defines “racketeering activity” to encompass dozens of state and federal offenses, known in RICO parlance as predicates. These predicates include any act “indictable” under specified federal statutes, *18 U.S.C.S. § 1961(1)(B)-(C)*, *(E)-(G)*, as well as certain crimes “chargeable” under state law, *§ 1961(1)(A)*, and any offense involving bankruptcy or securities fraud or drug-related activity that is “punishable” under federal

law, § 1961(1)(D). A predicate offense implicates RICO when it is part of a "pattern of racketeering activity"—a series of related predicates that together demonstrate the existence or threat of continued criminal activity. Section 1961(5) specifies that a "pattern of racketeering activity" requires at least two predicates committed within 10 years of each other.

Criminal Law & Procedure > ... > Racketeering > Racketeer Influenced & Corrupt Organizations Act > Elements

HN3 18 U.S.C.S. § 1962 of the Racketeer Influenced and Corrupt Organizations Act sets forth four specific prohibitions aimed at different ways in which a pattern of racketeering activity may be used to infiltrate, control, or operate an enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. These prohibitions can be summarized as follows. Section 1962(a) makes it unlawful to invest income derived from a pattern of racketeering activity in an enterprise. Section 1962(b) makes it unlawful to acquire or maintain an interest in an enterprise through a pattern of racketeering activity. Section 1962(c) makes it unlawful for a person employed by or associated with an enterprise to conduct the enterprise's affairs through a pattern of racketeering activity. Finally, § 1962(d) makes it unlawful to conspire to violate any of the other three prohibitions.

Criminal Law & Procedure > ... > Racketeering > Racketeer Influenced & Corrupt Organizations Act > Elements

HN4 See 18 U.S.C.S. § 1962.

Criminal Law & Procedure > ... > Racketeering > Racketeer Influenced & Corrupt Organizations Act > Penalties

Governments > Legislation > Statutory Remedies & Rights

HN5 Violations of 18 U.S.C.S. § 1962 are subject to criminal penalties, 18 U.S.C.S. § 1963(a), and civil proceedings to enforce those prohibitions may be brought by the Attorney General, 18 U.S.C.S. § 1964(a)-(b). Separately, the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C.S. §§ 1961-1968, creates a private civil cause of action that allows any person injured in his business or property by reason of a violation of § 1962 to sue in federal district court and recover treble damages, costs, and attorney's fees. § 1964(c).

Governments > Legislation > Statutory Remedies & Rights

Criminal Law & Procedure > Criminal Offenses > Racketeering > Racketeer Influenced & Corrupt Organizations Act

HN6 See 18 U.S.C.S. § 1964(c).

Criminal Law & Procedure > ... > Racketeering > Racketeer Influenced & Corrupt Organizations Act > Elements

HN7 18 U.S.C.S. § 1961(4) defines an enterprise to include any union or group of individuals associated in fact although not a legal entity.

Governments > Legislation > Interpretation

International Law > Authority to Regulate

HN8 It is a basic premise of the United States' legal system that, in general, United States law governs domestically but does not rule the world. This principle finds expression in a canon of statutory construction known as the presumption against extraterritoriality: Absent clearly expressed congressional intent to the contrary, federal laws will be construed to have only domestic application. The question is not whether a court thinks Congress would have wanted a statute to apply to foreign conduct if it had thought of the situation before the court, but whether Congress has affirmatively and unmistakably instructed that the statute will do so. When a statute gives no clear indication of an extraterritorial application, it has none. There are several reasons for this presumption. Most notably, it serves to avoid the international discord that can result when U.S. law is applied to conduct in foreign countries. But it also reflects the more prosaic commonsense notion that Congress generally legislates with domestic concerns in mind. A court therefore applies the presumption across the board, regardless of whether there is a risk of conflict between the American statute and a foreign law.

International Law > Authority to Regulate

Governments > Legislation > Interpretation

HN9 There is a two-step framework for analyzing extraterritoriality issues. At the first step, a court asks whether the presumption against extraterritoriality has been rebutted—that is, whether the statute gives a clear, affirmative indication that it applies extraterritorially. The court must ask this question regardless of whether the statute in question regulates conduct, affords relief, or merely confers jurisdiction. If the statute is not extraterritorial, then at the second step the court determines whether the case involves a domestic application of the statute, and the court does this by looking to the statute's "focus." If the conduct relevant to the statute's focus occurred in the United States, then the case involves a permissible domestic application even if other conduct occurred abroad; but if

the conduct relevant to the focus occurred in a foreign country, then the case involves an impermissible extraterritorial application regardless of any other conduct that occurred in U.S. territory.

Governments > Legislation > Interpretation

International Law > Authority to Regulate

HN10 The scope of an extraterritorial statute turns on the limits Congress has (or has not) imposed on the statute's foreign application, and not on the statute's "focus." Because a finding of extraterritoriality at step one will obviate step two's "focus" inquiry, it will usually be preferable for courts to proceed in that sequence. But the U.S. Supreme Court does not mean to preclude courts from starting at step two in appropriate cases.

Criminal Law & Procedure > Criminal Offenses > Racketeering > Racketeer Influenced & Corrupt Organizations Act

International Law > Authority to Regulate

HN11 Regarding whether the Racketeer Influenced and Corrupt Organizations Act's, *18 U.S.C.S. §§ 1961-1968*, substantive prohibitions in *18 U.S.C.S. § 1962* may apply to foreign conduct, the presumption against extraterritoriality has been rebutted—but only with respect to certain applications of the statute.

International Law > Authority to Regulate

Criminal Law & Procedure > ... > Racketeering > Racketeer Influenced & Corrupt Organizations Act > Elements

HN12 The Racketeer Influenced and Corrupt Organizations Act, *18 U.S.C.S. §§ 1961-1968*, defines racketeering activity to include a number of predicates that plainly apply to at least some foreign conduct. These predicates include the prohibition against engaging in monetary transactions in criminally derived property, which expressly applies, when the defendant is a United States person, to offenses that take place outside the United States. *18 U.S.C.S. § 1957(d)(2)*. Other examples include the prohibitions against the assassination of Government officials, *18 U.S.C.S. § 351(i)* (there is extraterritorial jurisdiction over the conduct prohibited by this section); *18 U.S.C.S. § 1751(k)* (same), and the prohibition against hostage taking, which applies to conduct that occurred outside the United States if either the hostage or the offender is a U.S. national, if the offender is found in the United States, or if the hostage taking is done to compel action by the U.S. Government, *18 U.S.C.S. § 1203(b)*. At least one predicate—the prohibition against killing a national of the United States, while such national is outside the United States—applies only to conduct occurring outside the United States. *18 U.S.C.S. § 2332(a)*.

Criminal Law & Procedure > ... > Racketeering > Racketeer Influenced & Corrupt Organizations Act > Elements

International Law > Authority to Regulate

HN13 Congress's incorporation of extraterritorial predicates into the Racketeer Influenced and Corrupt Organizations Act (RICO), *18 U.S.C.S. §§ 1961-1968*, gives a clear, affirmative indication that *18 U.S.C.S. § 1962* applies to foreign racketeering activity—but only to the extent that the predicates alleged in a particular case themselves apply extraterritorially. Put another way, a pattern of racketeering activity may include or consist of offenses committed abroad in violation of a predicate statute for which the presumption against extraterritoriality has been overcome. To give a simple (albeit grim) example, a violation of *§ 1962* could be premised on a pattern of killings of Americans abroad in violation of *18 U.S.C.S. § 2332(a)*—a predicate that applies extraterritorially—whether or not any domestic predicates are also alleged. The foreign killings would, of course, still have to satisfy the relatedness and continuity requirements of RICO's pattern element.

International Law > Authority to Regulate

Criminal Law & Procedure > ... > Racketeering > Racketeer Influenced & Corrupt Organizations Act > Elements

HN14 In order for the Racketeer Influenced and Corrupt Organizations Act (RICO), *18 U.S.C.S. §§ 1961-1968*, to apply extraterritorially, foreign conduct must violate a predicate statute that manifests an unmistakable congressional intent to apply extraterritorially. Although a number of RICO predicates have extraterritorial effect, many do not. The inclusion of some extraterritorial predicates does not mean that all RICO predicates extend to foreign conduct. This is apparent for two reasons. First, when a statute provides for some extraterritorial application, the presumption against extraterritoriality operates to limit that provision to its terms. Second, RICO defines as racketeering activity only acts that are "indictable" (or, what amounts to the same thing, "chargeable" or "punishable") under one of the statutes identified in *18 U.S.C.S. § 1961(1)*. If a particular statute does not apply extraterritorially, then conduct committed abroad is not "indictable" under that statute and so cannot qualify as a predicate under RICO's plain terms.

Criminal Law & Procedure > ... > Racketeering > Racketeer Influenced & Corrupt Organizations Act > Elements

International Law > Authority to Regulate

HN15 While the presumption against extraterritoriality can be overcome only by a clear indication of extraterritorial effect, an express statement of extraterritoriality is not essential. Assuredly context can be consulted as well. Context is dispositive with regard to the Racketeer Influenced and Corrupt Organizations Act (RICO), *18 U.S.C.S. §§ 1961-1968*. Congress has not expressly said that *18 U.S.C.S. § 1962(c)* applies to patterns of racketeering activity in foreign countries, but it has defined "racketeering activity"—and by extension a "pattern of racketeering activity"—to encompass violations of predicate statutes that do expressly apply extraterritorially. Short of an explicit declaration, it is hard to imagine how Congress could have more clearly indicated that it intended RICO to have (some) extraterritorial effect. This unique structure makes RICO the rare statute that clearly evidences extraterritorial effect despite lacking an express statement of extraterritoriality.

International Law > Authority to Regulate

Criminal Law & Procedure > ... > Racketeering > Racketeer Influenced & Corrupt Organizations Act > Elements

HN16 The Racketeer Influenced and Corrupt Organizations Act (RICO), *18 U.S.C.S. §§ 1961-1968*, applies to some foreign racketeering activity. A violation of *18 U.S.C.S. § 1962* may be based on a pattern of racketeering that includes predicate offenses committed abroad, provided that each of those offenses violates a predicate statute that is itself extraterritorial. This fact is determinative as to *§ 1962(b)* and *§ 1962(c)*, both of which prohibit the employment of a pattern of racketeering. Although they differ as to the end for which the pattern is employed—to acquire or maintain control of an enterprise under *§ 1962(b)*, or to conduct an enterprise's affairs under *§ 1962(c)*—this difference is immaterial for extraterritoriality purposes.

Criminal Law & Procedure > ... > Racketeering > Racketeer Influenced & Corrupt Organizations Act > Elements

International Law > Authority to Regulate

HN17 Unlike *18 U.S.C.S. § 1962(b)* and *(c)*, *§ 1962(a)* targets certain uses of income derived from a pattern of racketeering, not the use of the pattern itself. While this prohibition applies to income derived from foreign patterns of racketeering (within limits), arguably *§ 1962(a)* extends only to domestic uses of the income.

International Law > Authority to Regulate

Governments > Legislation > Interpretation

HN18 Only at the second step of the extraterritoriality inquiry does a court consider a statute's "focus." However, if is a clear indication at step one that the statute applies extraterritorially, the court does not proceed to the "focus" step.

International Law > Authority to Regulate

Criminal Law & Procedure > ... > Racketeering > Racketeer Influenced & Corrupt Organizations Act > Elements

HN19 The Racketeer Influenced and Corrupt Organizations Act (RICO), *18 U.S.C.S. §§ 1961-1968*—or at least *18 U.S.C.S. § 1962(b)* and *(c)*—applies abroad, and so a court does not need to determine which transnational (or wholly foreign) patterns of racketeering it applies to; it applies to all of them, regardless of whether they are connected to a "foreign" or "domestic" enterprise. This rule is, of course, subject to the important limitation that RICO covers foreign predicate offenses only to the extent that the underlying predicate statutes are extraterritorial. But within those bounds, the location of the affected enterprise does not impose an independent constraint.

Governments > Legislation > Interpretation

International Law > Authority to Regulate

HN20 Congress does not usually exempt foreigners acting in the United States from U.S. legal requirements. Surely the presumption against extraterritorial application of United States laws does not command giving foreigners carte blanche to violate the laws of the United States in the United States.

Criminal Law & Procedure > ... > Racketeering > Racketeer Influenced & Corrupt Organizations Act > Elements

HN21 The nerve center test, developed with ordinary corporate command structures in mind, is ill suited to govern Racketeer Influenced and Corrupt Organizations Act, *18 U.S.C.S. §§ 1961-1968*, association-in-fact enterprises, which need not have a hierarchical structure or a "chain of command."

Criminal Law & Procedure > Criminal Offenses > Racketeering > Racketeer Influenced & Corrupt Organizations Act

International Law > Authority to Regulate

HN22 Congress intended the prohibitions in *18 U.S.C.S. § 1962(b)* and *(c)* to apply extraterritorially in tandem with the underlying predicates, without regard to the locus of the enterprise.

International Law > Authority to Regulate

Criminal Law & Procedure > ... > Racketeering > Racketeer Influenced & Corrupt Organizations Act > Elements

HN23 Although the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C.S. §§ 1961-1968, imposes no domestic enterprise requirement, this does not mean that every foreign enterprise will qualify. Each of RICO's substantive prohibitions requires proof of an enterprise that is engaged in, or the activities of which affect, interstate or foreign commerce. 18 U.S.C.S. § 1962(a), (b), (c). This reference to "foreign commerce" is not taken to mean literally all commerce occurring abroad. Rather, a RICO enterprise must engage in, or affect in some significant way, commerce directly involving the United States—e.g., commerce between the United States and a foreign country. Enterprises whose activities lack that anchor to U.S. commerce cannot sustain a RICO violation.

Criminal Law & Procedure > Criminal Offenses > Racketeering > Racketeer Influenced & Corrupt Organizations Act

Governments > Legislation > Statutory Remedies & Rights

International Law > Authority to Regulate

HN24 18 U.S.C.S. § 1964(c) allows any person injured in his business or property by reason of a violation of 18 U.S.C.S. § 1962 to sue for treble damages, costs, and attorney's fees. Irrespective of any extraterritorial application of § 1962, § 1964(c) does not overcome the presumption against extraterritoriality. A private Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C.S. §§ 1961-1968, plaintiff therefore must allege and prove a domestic injury to its business or property.

International Law > Authority to Regulate

Governments > Legislation > Statutory Remedies & Rights

HN25 For extraterritoriality purposes, the creation of a private right of action raises issues beyond the mere consideration whether underlying primary conduct should be allowed or not, entailing, for example, a decision to permit enforcement without the check imposed by prosecutorial discretion. Thus, providing a private civil remedy for foreign conduct creates a potential for international friction beyond that presented by merely applying U.S. substantive law to that foreign conduct.

Governments > Legislation > Interpretation

International Law > Authority to Regulate

HN26 Although a risk of conflict between an American statute and a foreign law is not a prerequisite for applying the presumption against extraterritoriality, where such a risk is evident, the need to enforce the presumption is at its apex.

International Law > Authority to Regulate

Governments > Legislation > Interpretation

HN27 The U.S. Supreme Court rejects the notion that it should forgo the presumption against extraterritoriality and instead permit extraterritorial suits based on a case-by-case inquiry that turns on or looks to the consent of the affected sovereign. Rather than guess anew in each case, the Court applies the presumption in all cases.

Governments > Legislation > Interpretation

Governments > Legislation > Statutory Remedies & Rights

International Law > Authority to Regulate

Criminal Law & Procedure > Criminal Offenses > Racketeering > Racketeer Influenced & Corrupt Organizations Act

HN28 Nothing in 18 U.S.C.S. § 1964(c) provides a clear indication that Congress intended to create a private right of action for injuries suffered outside of the United States. The statute provides a cause of action to any person injured in his business or property by a violation of 18 U.S.C.S. § 1962. § 1964(c). The word "any" ordinarily connotes breadth, but it is insufficient to displace the presumption against extraterritoriality. The statute's reference to injury to "business or property" also does not indicate extraterritorial application. If anything, by cabining Racketeer Influenced and Corrupt Organizations Act's (RICO's), 18 U.S.C.S. §§ 1961-1968, private cause of action to particular kinds of injury—excluding, for example, personal injuries—Congress signaled that the civil remedy is not coextensive with § 1962's substantive prohibitions. The rest of § 1964(c) places a limit on RICO plaintiffs' ability to rely on securities fraud to make out a claim. This too suggests that § 1964(c) is narrower in its application than § 1962, and in any event does not support extraterritoriality.

Criminal Law & Procedure > Criminal Offenses > Racketeering > Racketeer Influenced & Corrupt Organizations Act

Governments > Legislation > Interpretation

Governments > Legislation > Statutory Remedies & Rights

International Law > Authority to Regulate

HN29 The presumption against extraterritoriality must be applied separately to both the Racketeer Influenced and Corrupt Organizations Act's (RICO's), *18 U.S.C.S. §§ 1961-1968*, substantive prohibitions and its private right of action. It is not enough to say that a private right of action must reach abroad because the underlying law governs conduct in foreign countries. Something more is needed, and under RICO it is absent.

International Law > Authority to Regulate > Anticompetitive Activities

Governments > Legislation > Statutory Remedies & Rights

Criminal Law & Procedure > Criminal Offenses > Racketeering > Racketeer Influenced & Corrupt Organizations Act

Antitrust & Trade Law > Clayton Act > Scope

HN30 The Racketeer Influenced and Corrupt Organizations Act's (RICO's), *18 U.S.C.S. §§ 1961-1968*, private right of action was modeled after § 4 of the Clayton Act, *15 U.S.C.S. § 15*, which allows recovery for injuries suffered abroad as a result of antitrust violations. Although the U.S. Supreme Court has often looked to the Clayton Act for guidance in construing *18 U.S.C.S. § 1964(c)*, the Court has not treated the two statutes as interchangeable. The Court has declined to transplant features of the Clayton Act's cause of action into the RICO context where doing so would be inappropriate.

Criminal Law & Procedure > Criminal Offenses > Racketeering > Racketeer Influenced & Corrupt Organizations Act

Governments > Legislation > Statutory Remedies & Rights

International Law > Authority to Regulate

HN31 *18 U.S.C.S. § 1964(c)* requires a civil Racketeer Influenced and Corrupt Organizations Act, *18 U.S.C.S. §§ 1961-1968*, plaintiff to allege and prove a domestic injury to business or property and does not allow recovery for foreign injuries.

Lawyers' Edition Display

Decision

[476]** Civil action under Racketeer Influenced and Corrupt Organizations Act (RICO) provision (*18 U.S.C.S. § 1964(c)*) by plaintiffs who waived claims for domestic injuries was not maintainable, because RICO did not apply extraterritorially under *§ 1964(c)*.

Summary

Overview: HOLDINGS: [1]-RICO applies to some foreign racketeering activity. A violation of *18 U.S.C.S. § 1962* may be based on a pattern of racketeering that includes predicate offenses committed abroad, provided that each of those offenses violates a predicate statute that is itself extraterritorial; [2]-RICO imposes no domestic enterprise requirement, although the enterprise must engage in or affect commerce involving the U.S.; [3]-The European Community's allegations that a cigarette company engaged in a global money-laundering scheme did not involve an impermissibly extraterritorial application of *§ 1962*; [4]-RICO's private right of action under *18 U.S.C.S. § 1964(c)* did not overcome the presumption against extraterritoriality. It was therefore necessary to allege and prove a domestic injury to business or property, and claims for domestic injuries had been waived in the instant case.

Outcome: Judgment reversed; case remanded. 4-3 Decision; 2 Opinions Concurring in Part, Dissenting in Part, and Dissenting from the Judgment.

Headnotes

EXTORTION, BLACKMAIL, AND RACKETEERING §5 EXTORTION, BLACKMAIL, AND RACKETEERING §6 > RICO -- CRIMES -- CIVIL ACTION > Headnote: ***LEdHN[1]*** [1]

The Racketeer Influenced and Corrupt Organizations Act (RICO), *18 U.S.C.S. §§1961-1968*, created four new criminal offenses involving the activities of organized criminal groups in relation to an enterprise. *18 U.S.C.S. § 1962(a)-(d)*. RICO also created a new civil cause of action for any person injured in his business or property by reason of a violation of those prohibitions. *18 U.S.C.S. § 1964(c)*.

EXTORTION, BLACKMAIL, AND RACKETEERING §4 > RICO -- RACKETEERING ACTIVITY > Headnote: ***LEdHN[2]*** [2]

The Racketeer Influenced and Corrupt Organizations Act (RICO), *18 U.S.C.S. §§1961-1968*, is founded on the concept of racketeering activity. The statute defines "racketeering activity" to encompass dozens of state and federal offenses, known in RICO parlance as predicates. These predicates include any act "indictable" under specified federal statutes, *18 U.S.C.S. § 1961(1)(B)-(C)*, *(E)-(G)*, as well as certain crimes "chargeable" under state law, *§ 1961(1)(A)*, and any offense involving bankruptcy or securities fraud or drug-

related activity that is "punishable" under federal law, § 1961(1)(D). A predicate offense implicates RICO when it is part of a "pattern of racketeering activity"--a series of related predicates that together demonstrate the existence or threat of continued criminal activity. Section 1961(5) specifies that a "pattern of racketeering activity" requires at least two predicates committed within 10 years of each other.

EXTORTION, BLACKMAIL, AND RACKETEERING §5 > RICO -- PROHIBITIONS > Headnote:
LEdHN[3] [3]

18 U.S.C.S. § 1962 of the Racketeer Influenced and Corrupt Organizations Act sets forth four specific prohibitions aimed at different ways in which a pattern of racketeering activity may be used to infiltrate, control, or operate an enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. These prohibitions can be summarized as follows. Section 1962(a) makes it unlawful to invest income derived from a pattern of racketeering activity in an enterprise. Section 1962(b) makes it unlawful to acquire or maintain an interest in an enterprise through a pattern of racketeering activity. Section 1962(c) makes it unlawful for a person employed by or associated with an enterprise to conduct the enterprise's affairs through a pattern of racketeering activity. Finally, § 1962(d) makes it unlawful to conspire to violate any of the other three prohibitions.

EXTORTION, BLACKMAIL, AND RACKETEERING §5 > RICO -- PROHIBITIONS > Headnote:
LEdHN[4] [4]

See 18 U.S.C.S. § 1962, which prohibits various racketeering-related activities.

EXTORTION, BLACKMAIL, AND RACKETEERING §4
EXTORTION, BLACKMAIL, AND RACKETEERING §6 > RICO -- CRIMINAL PENALTIES -- CIVIL ACTION > Headnote:
LEdHN[5] [5]

Violations of 18 U.S.C.S. § 1962 are subject to criminal penalties, 18 U.S.C.S. § 1963(a), and civil proceedings to enforce those prohibitions may be brought by the Attorney General, 18 U.S.C.S. § 1964(a)-(b). Separately, the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C.S. §§1961-1968, creates a private civil cause of action that allows any person injured in his business or property by reason of a violation of § 1962 to sue in Federal District Court and recover treble damages, costs, and attorney's fees. § 1964(c).

EXTORTION, BLACKMAIL, AND RACKETEERING §6 > RICO -- CIVIL ACTION > Headnote:
LEdHN[6] [6]

See 18 U.S.C.S. § 1964(c), which creates a private civil cause of action that allows any person injured in his business or property by reason of a violation of § 1962 to sue in Federal District Court and recover treble damages, costs, and attorney's fees.

EXTORTION, BLACKMAIL, AND RACKETEERING §4 > RICO -- ENTERPRISE > Headnote:
LEdHN[7] [7]

18 U.S.C.S. § 1961(4) defines an enterprise to include any union or group of individuals associated in fact although not a legal entity.

STATUTES §84 > PRESUMPTION AGAINST EXTRATERRITORIALITY > Headnote:
LEdHN[8] [8]

It is a basic premise of the United States' legal system that, in general, United States law governs domestically but does not rule the world. This principle finds expression in a canon of statutory construction known as the presumption against extraterritoriality: Absent clearly expressed congressional intent to the contrary, federal laws will be construed to have only domestic application. The question is not whether a court thinks Congress would have wanted a statute to apply to foreign conduct if it had thought of the situation before the court, but whether Congress has affirmatively and unmistakably instructed that the statute will do so. When a statute gives no clear indication of an extraterritorial application, it has none. There are several reasons for this presumption. Most notably, it serves to avoid the international discord that can result when U.S. law is applied to conduct in foreign countries. But it also reflects the more prosaic commonsense notion that Congress generally legislates with domestic concerns in mind. A court therefore applies the presumption across the board, regardless of whether there is a risk of conflict between the American statute and a foreign law.

STATUTES §84 > EXTRATERRITORIALITY -- ANALYSIS > Headnote:
LEdHN[9] [9]

There is a two-step framework for analyzing extraterritoriality issues. At the first step, a court asks whether the presumption against extraterritoriality has been rebutted--that is, whether the statute gives a clear,

affirmative indication that it applies extraterritorially. The court must ask this question regardless of whether the statute in question regulates conduct, affords relief, or merely confers jurisdiction. If the statute is not extraterritorial, then at the second step the court determines whether the case involves a domestic application of the statute, and the court does this by looking to the statute's "focus." If the conduct relevant to the statute's focus occurred in the United States, then the case involves a permissible domestic application even if other conduct occurred abroad; but if the conduct relevant to the focus occurred in a foreign country, then the case involves an impermissible extraterritorial application regardless of any other conduct that occurred in U.S. territory.

STATUTES §84 > EXTRATERRITORIALITY -- INQUIRY > Headnote:
LEdHN[10] [10]

The scope of an extraterritorial statute turns on the limits Congress has (or has not) imposed on the statute's foreign application, and not on the statute's "focus." Because a finding of extraterritoriality at step one will obviate step two's "focus" inquiry, it will usually be preferable for courts to proceed in that sequence. But the U.S. Supreme Court does not mean to preclude courts from starting at step two in appropriate cases.

EXTORTION, BLACKMAIL, AND RACKETEERING §5 > RICO -- FOREIGN CONDUCT > Headnote:
LEdHN[11] [11]

Regarding whether the Racketeer Influenced and Corrupt Organizations Act's, *18 U.S.C.S. §§1961-1968*, substantive prohibitions in *18 U.S.C.S. § 1962* may apply to foreign conduct, the presumption against extraterritoriality has been rebutted--but only with respect to certain applications of the statute.

EXTORTION, BLACKMAIL, AND RACKETEERING §4 > RICO -- PREDICATE OFFENSES -- FOREIGN CONDUCT > Headnote:
LEdHN[12] [12]

The Racketeer Influenced and Corrupt Organizations Act, *18 U.S.C.S. §§1961-1968*, defines racketeering activity to include a number of predicates that plainly apply to at least some foreign conduct. These predicates include the prohibition against engaging in monetary transactions in criminally derived property, which expressly applies, when the defendant is a United States person, to offenses that take place outside the United States. *18 U.S.C.S. § 1957(d)(2)*. Other examples include the prohibitions against the assassination of government officials, *18 U.S.C.S. § 351(i)* (there is extraterritorial jurisdiction over the conduct prohibited by this section); *18 U.S.C.S. § 1751(k)* (same), and the prohibition against hostage taking, which applies to conduct that occurred outside the United States if either the hostage or the offender is a U.S. national, if the offender is found in the United States, or if the hostage taking is done to compel action by the U.S. Government, *18 U.S.C.S. § 1203(b)*. At least one predicate--the prohibition against killing a national of the United States, while such national is outside the United States--applies only to conduct occurring outside the United States. *18 U.S.C.S. § 2332(a)*.

EXTORTION, BLACKMAIL, AND RACKETEERING §5 > RICO -- FOREIGN ACTIVITY > Headnote:
LEdHN[13] [13]

Congress's incorporation of extraterritorial predicates into the Racketeer Influenced and Corrupt Organizations Act (RICO), *18 U.S.C.S. §§1961-1968*, gives a clear, affirmative indication that *18 U.S.C.S. § 1962* applies to foreign racketeering activity--but only to the extent that the predicates alleged in a particular case themselves apply extraterritorially. Put another way, a pattern of racketeering activity may include or consist of offenses committed abroad in violation of a predicate statute for which the presumption against extraterritoriality has been overcome. To give a simple (albeit grim) example, a violation of *§ 1962* could be premised on a pattern of killings of Americans abroad in violation of *18 U.S.C.S. § 2332(a)*--a predicate that applies extraterritorially--whether or not any domestic predicates are also alleged. The foreign killings would, of course, still have to satisfy the relatedness and continuity requirements of RICO's pattern element.

EXTORTION, BLACKMAIL, AND RACKETEERING §4STATUTES §84 > RICO -- PRESUMPTION AGAINST EXTRATERRITORIALITY > Headnote:
LEdHN[14] [14]

In order for the Racketeer Influenced and Corrupt Organizations Act (RICO), *18 U.S.C.S. §§1961-1968*, to apply extraterritorially, foreign conduct must violate a predicate statute that manifests an unmistakable congressional intent to apply extraterritorially. Although a number of RICO predicates have extraterritorial effect, many do not. The inclusion of some extraterritorial predicates does not mean that all RICO predicates extend to foreign conduct. This is apparent for two reasons. First, when a statute provides for some

extraterritorial application, the presumption against extraterritoriality operates to limit that provision to its terms. Second, RICO defines as racketeering activity only acts that are "indictable" (or, what amounts to the same thing, "chargeable" or "punishable") under one of the statutes identified in *18 U.S.C.S. § 1961(1)*. If a particular statute does not apply extraterritorially, then conduct committed abroad is not "indictable" under that statute and so cannot qualify as a predicate under RICO's plain terms.

EXTORTION, BLACKMAIL, AND RACKETEERING §5STATUTES §84 > RICO -- PRESUMPTION AGAINST EXTRATERRITORIALITY > Headnote:
LEdHN[15] [15]

While the presumption against extraterritoriality can be overcome only by a clear indication of extraterritorial effect, an express statement of extraterritoriality is not essential. Assuredly context can be consulted as well. Context is dispositive with regard to the Racketeer Influenced and Corrupt Organizations Act (RICO), *18 U.S.C.S. §§1961-1968*. Congress has not expressly said that *18 U.S.C.S. § 1962(c)* applies to patterns of racketeering activity in foreign countries, but it has defined "racketeering activity"--and by extension a "pattern of racketeering activity"--to encompass violations of predicate statutes that do expressly apply extraterritorially. Short of an explicit declaration, it is hard to imagine how Congress could have more clearly indicated that it intended RICO to have (some) extraterritorial effect. This unique structure makes RICO the rare statute that clearly evidences extraterritorial effect despite lacking an express statement of extraterritoriality.

EXTORTION, BLACKMAIL, AND RACKETEERING §5 > RICO -- FOREIGN ACTIVITY > Headnote:
LEdHN[16] [16]

The Racketeer Influenced and Corrupt Organizations Act (RICO), *18 U.S.C.S. §§1961-1968*, applies to some foreign racketeering activity. A violation of *18 U.S.C.S. § 1962* may be based on a pattern of racketeering that includes predicate offenses committed abroad, provided that each of those offenses violates a predicate statute that is itself extraterritorial. This fact is determinative as to *§ 1962(b)* and *§ 1962(c)*, both of which prohibit the employment of a pattern of racketeering. Although they differ as to the end for which the pattern is employed--to acquire or maintain control of an enterprise under *§ 1962(b)*, or to conduct an enterprise's affairs under *§ 1962(c)*--this difference is immaterial for extraterritoriality purposes.

EXTORTION, BLACKMAIL, AND RACKETEERING §5 > RICO -- FOREIGN AND DOMESTIC ACTIVITIES > Headnote:
LEdHN[17] [17]

Unlike *18 U.S.C.S. § 1962(b)* and *(c)*, *§ 1962(a)* targets certain uses of income derived from a pattern of racketeering, not the use of the pattern itself. While this prohibition applies to income derived from foreign patterns of racketeering (within limits), arguably *§ 1962(a)* extends only to domestic uses of the income.

STATUTES §84 > EXTRATERRITORIALITY -- INQUIRY > Headnote:
LEdHN[18] [18]

Only at the second step of the extraterritoriality inquiry does a court consider a statute's "focus." However, if is a clear indication at step one that the statute applies extraterritorially, the court does not proceed to the "focus" step.

EXTORTION, BLACKMAIL, AND RACKETEERING §5 > RICO -- EXTRATERRITORIALITY > Headnote:
LEdHN[19] [19]

The Racketeer Influenced and Corrupt Organizations Act (RICO), *18 U.S.C.S. §§1961-1968*--or at least *18 U.S.C.S. § 1962(b)* and *(c)*--applies abroad, and so a court does not need to determine which transnational (or wholly foreign) patterns of racketeering it applies to; it applies to all of them, regardless of whether they are connected to a "foreign" or "domestic" enterprise. This rule is, of course, subject to the important limitation that RICO covers foreign predicate offenses only to the extent that the underlying predicate statutes are extraterritorial. But within those bounds, the location of the affected enterprise does not impose an independent constraint.

STATUTES §84 > EXTRATERRITORIALITY -- FOREIGNER IN UNITED STATES > Headnote:
LEdHN[20] [20]

Congress does not usually exempt foreigners acting in the United States from U.S. legal requirements. Surely the presumption against extraterritorial application of United States laws does not command giving foreigners carte blanche to violate the laws of the United States in the United States.

EXTORTION, BLACKMAIL, AND RACKETEERING §4 > ASSOCIATION-IN-FACT ENTERPRISES > Headnote:
LEdHN[21] [21]

The nerve center test, developed with ordinary corporate command structures in mind, is ill suited to govern Racketeer Influenced and Corrupt Organizations Act, *18 U.S.C.S. §§1961-1968*, association-in-fact enterprises, which need not have a hierarchical structure or a "chain of command." (Alito, J., joined by Roberts, Ch. J., and Kennedy and Thomas, JJ.)

EXTORTION, BLACKMAIL, AND RACKETEERING §5 > RICO -- EXTRATERRITORIALITY > Headnote: ***LEdHN[22]*** [22]

Congress intended the prohibitions in *18 U.S.C.S. § 1962(b)* and *(c)* to apply extraterritorially in tandem with the underlying predicates, without regard to the locus of the enterprise. (Alito, J., joined by Roberts, Ch. J., and Kennedy and Thomas, JJ.)

EXTORTION, BLACKMAIL, AND RACKETEERING §5 > RICO -- FOREIGN ENTERPRISE > Headnote: ***LEdHN[23]*** [23]

Although the Racketeer Influenced and Corrupt Organizations Act (RICO), *18 U.S.C.S. §§1961-1968*, imposes no domestic enterprise requirement, this does not mean that every foreign enterprise will qualify. Each of RICO's substantive prohibitions requires proof of an enterprise that is engaged in, or the activities of which affect, interstate or foreign commerce. *18 U.S.C.S. § 1962(a)*, *(b)*, *(c)*. This reference to "foreign commerce" is not taken to mean literally all commerce occurring abroad. Rather, a RICO enterprise must engage in, or affect in some significant way, commerce directly involving the United States--e.g., commerce between the United States and a foreign country. Enterprises whose activities lack that anchor to U.S. commerce cannot sustain a RICO violation.

EXTORTION, BLACKMAIL, AND RACKETEERING §6 > RICO -- CIVIL SUIT -- EXTRATERRITORIALITY > Headnote: ***LEdHN[24]*** [24]

18 U.S.C.S. § 1964(c) allows any person injured in his business or property by reason of a violation of *18 U.S.C.S. § 1962* to sue for treble damages, costs, and attorney's fees. Irrespective of any extraterritorial application of *§ 1962*, *§ 1964(c)* does not overcome the presumption against extraterritoriality. A private Racketeer Influenced and Corrupt Organizations Act, *18 U.S.C.S. §§1961-1968*, plaintiff therefore must allege and prove a domestic injury to its business or property. (Alito, J., joined by Roberts, Ch. J., and Kennedy and Thomas, JJ.)

ACTIONS §2 > CIVIL REMEDY -- FOREIGN CONDUCT > Headnote: ***LEdHN[25]*** [25]

For extraterritoriality purposes, the creation of a private right of action raises issues beyond the mere consideration whether underlying primary conduct should be allowed or not, entailing, for example, a decision to permit enforcement without the check imposed by prosecutorial discretion. Thus, providing a private civil remedy for foreign conduct creates a potential for international friction beyond that presented by merely applying U.S. substantive law to that foreign conduct. (Alito, J., joined by Roberts, Ch. J., and Kennedy and Thomas, JJ.)

STATUTES §84 > PRESUMPTION AGAINST EXTRATERRITORIALITY > Headnote: ***LEdHN[26]*** [26]

Although a risk of conflict between an American statute and a foreign law is not a prerequisite for applying the presumption against extraterritoriality, where such a risk is evident, the need to enforce the presumption is at its apex. (Alito, J., joined by Roberts, Ch. J., and Kennedy and Thomas, JJ.)

STATUTES §84 > PRESUMPTION AGAINST EXTRATERRITORIALITY > Headnote: ***LEdHN[27]*** [27]

The U.S. Supreme Court rejects the notion that it should forgo the presumption against extraterritoriality and instead permit extraterritorial suits based on a case-by-case inquiry that turns on or looks to the consent of the affected sovereign. Rather than guess anew in each case, the court applies the presumption in all cases. (Alito, J., joined by Roberts, Ch. J., and Kennedy and Thomas, JJ.)

EXTORTION, BLACKMAIL, AND RACKETEERING §6 > RICO -- CIVIL -- EXTRATERRITORIALITY > Headnote: ***LEdHN[28]*** [28]

Nothing in *18 U.S.C.S. § 1964(c)* provides a clear indication that Congress intended to create a private right of action for injuries suffered outside of the United States. The statute provides a cause of action to any person injured in his business or property by a violation of *18 U.S.C.S. § 1962*. *§ 1964(c)*. The word "any" ordinarily connotes breadth, but it is insufficient to displace the presumption against extraterritoriality. The statute's reference to injury to "business or property" also does not indicate extraterritorial application. If anything, by cabining Racketeer Influenced and Corrupt

Organizations Act's (RICO's), 18 U.S.C.S. §§1961-1968, private cause of action to particular kinds of injury--excluding, for example, personal injuries--Congress signaled that the civil remedy is not coextensive with § 1962's substantive prohibitions. The rest of § 1964(c) places a limit on RICO plaintiffs' ability to rely on securities fraud to make out a claim. This too suggests that § 1964(c) is narrower in its application than § 1962, and in any event does not support extraterritoriality. (Alito, J., joined by Roberts, Ch. J., and Kennedy and Thomas, JJ.)

EXTORTION, BLACKMAIL, AND RACKETEERING §4 EXTORTION, BLACKMAIL, AND RACKETEERING §6 > RICO -- EXTRATERRITORIALITY -- PROHIBITIONS -- CIVIL SUIT > Headnote:
LEdHN[29] [29]

The presumption against extraterritoriality must be applied separately to both the Racketeer Influenced and Corrupt Organizations Act's (RICO's), 18 U.S.C.S. §§1961-1968, substantive prohibitions and its private right of action. It is not enough to say that a private right of action must reach abroad because the underlying law governs conduct in foreign countries. Something more is needed, and under RICO it is absent. (Alito, J., joined by Roberts, Ch. J., and Kennedy and Thomas, JJ.)

EXTORTION, BLACKMAIL, AND RACKETEERING §6RESTRAINTS OF TRADE, MONOPOLIES, AND UNFAIR TRADE PRACTICES §63 > CLAYTON ACT -- RICO -- EXTRATERRITORIALITY > Headnote:
LEdHN[30] [30]

The Racketeer Influenced and Corrupt Organizations Act's (RICO's), 18 U.S.C.S. §§1961-1968, private right of action was modeled after § 4 of the Clayton Act, 15 U.S.C.S. § 15, which allows recovery for injuries suffered abroad as a result of antitrust violations. Although the U.S. Supreme Court has often looked to the Clayton Act for guidance in construing 18 U.S.C.S. § 1964(c), the court has not treated the two statutes as interchangeable. The court has declined to transplant features of the Clayton Act's cause of action into the RICO context where doing so would be inappropriate. (Alito, J., joined by Roberts, Ch. J., and Kennedy and Thomas, JJ.)

EXTORTION, BLACKMAIL, AND RACKETEERING §6 > RICO -- CIVIL SUIT -- FOREIGN INJURIES > Headnote:
LEdHN[31] [31]

18 U.S.C.S. § 1964(c) requires a civil Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C.S. §§161-1968, plaintiff to allege and prove a domestic injury to business or property and does not allow recovery for foreign injuries. (Alito, J., joined by Roberts, Ch. J., and Kennedy and Thomas, JJ.)

Syllabus

[484] [*2093]** The Racketeer Influenced and Corrupt Organizations Act (RICO) prohibits certain activities of organized crime groups in relation to an enterprise. RICO makes it a crime to invest income derived from a pattern of racketeering activity in an enterprise "which is engaged in, or the activities of which affect, interstate or foreign commerce," 18 U.S.C. §1962(a); to acquire or maintain an interest in an enterprise through a pattern of racketeering activity, §1962(b); to conduct an enterprise's affairs through a pattern of racketeering activity, §1962(c); and to conspire to violate any of the other three prohibitions, §1962(d). RICO also provides a civil cause of action for "[a]ny person injured in his business or property by reason of a violation" of those prohibitions. §1964(c).

Respondents (the European Community and 26 of its member states) filed suit under RICO, alleging that petitioners (RJR Nabisco and related entities (collectively RJR)) participated in a global money-laundering **[**485]** scheme in association with various organized crime groups. Under the alleged scheme, drug traffickers smuggled narcotics into Europe and sold them for euros **[***2]** that--through transactions involving black-market money brokers, cigarette importers, and wholesalers--were used to pay for large shipments of RJR cigarettes into Europe. The complaint alleged that RJR violated §§1962(a)-(d) by engaging in a pattern of racketeering activity that included numerous predicate acts of money laundering, material support to foreign terrorist organizations, mail fraud, wire fraud, and violations of the Travel Act. The District Court granted RJR's motion to dismiss on the ground that RICO does not apply to racketeering activity occurring outside U.S. territory or to foreign enterprises. The Second Circuit reinstated the claims, however, concluding that RICO applies extraterritorially to the same extent as the predicate acts of racketeering that underlie the alleged RICO violation, and that certain predicates alleged in this case expressly apply extraterritorially. In denying rehearing, the court held further that RICO's civil action does not require a domestic injury, but permits recovery for a foreign injury caused by the violation of a predicate statute that applies extraterritorially.

Held:

1. The law of extraterritoriality provides guidance in determining RICO's reach **[***3]** to events outside the United States. The Court applies a canon of statutory construction known as the presumption against extraterritoriality: Absent clearly expressed congressional intent to the contrary, federal laws will be construed to have only domestic application. *Morrison v. Nat'l Austl. Bank Ltd., 561 U.S. 247, 255, 130 S. Ct. 2869, 177 L. Ed. 2d 535*. *Morrison* and *Kiobel v. Royal Dutch Petroleum Co., 133 S. Ct. 1659, 185 L. Ed. 2d 671*, reflect a two-step framework for analyzing extraterritoriality issues. First, the Court asks whether the presumption against extraterritoriality has been rebutted--*i.e.*, whether the statute **[*2094]** gives a clear, affirmative indication that it applies extraterritorially. This question is asked regardless of whether the particular statute regulates conduct, affords relief, or merely confers jurisdiction. If, and only if, the statute is not found extraterritorial at step one, the Court moves to step two, where it examines the statute's "focus" to determine whether the case involves a domestic application of the statute. If the conduct relevant to the statute's focus occurred in the United States, then the case involves a permissible domestic application even if other conduct occurred abroad; but if the relevant conduct occurred in a foreign country, then the case involves an impermissible extraterritorial application regardless **[***4]** of whether other conduct occurred in U.S. territory. In the event the statute is found to have clear extraterritorial effect at step one, then the statute's scope turns on the limits Congress has or has not imposed on the statute's foreign application, and not on the statute's "focus." *Pp. ___ - ___, 195 L. Ed. 2d, at 491-493*.

2. The presumption against extraterritoriality has been rebutted with respect to certain applications of RICO's substantive prohibitions in *§1962*. *Pp. ___ - ___, 195 L. Ed. 2d, at 493-498*.

(a) RICO defines racketeering activity to include a number of predicates **[**486]** that plainly apply to at least some foreign conduct, such as the prohibition against engaging in monetary transactions in criminally derived property, *§1957(d)(2)*, the prohibitions against the assassination of Government officials, *§§351(i)*, *1751(k)*, and the prohibition against hostage taking, *§1203(b)*. Congress has thus given a clear, affirmative indication that *§1962* applies to foreign racketeering activity--but only to the extent that the predicates alleged in a particular case themselves apply extraterritorially. This fact is determinative as to *§§1962(b)* and *(c)*, which both prohibit the employment of a pattern of racketeering. But *§1962(a)*, which targets certain uses of income derived from a pattern of racketeering, arguably **[***5]** extends only to domestic uses of that income. Because the parties have not focused on this issue, and because its resolution does not affect this case, it is assumed that respondents have pleaded a domestic investment of racketeering income in violation of *§1962(a)*. It is also assumed that the extraterritoriality of a violation of RICO's conspiracy provision, *§1962(d)*, tracks that of the RICO provision underlying the alleged conspiracy. *Pp. ___ - ___, 195 L. Ed. 2d, at 493-496*.

(b) RJR contends that RICO's "focus" is its enterprise element, which gives no clear indication of extraterritorial effect. But focus is considered only when it is necessary to proceed to the inquiry's second step. See *Morrison, supra, at 267, n. 9, 130 S. Ct. 2869, 177 L. Ed. 2d 535*. Here, however, there is a clear indication at step one that at least *§§1962(b)* and *(c)* apply to all transnational patterns of racketeering, subject to the stated limitation. A domestic enterprise requirement would lead to difficult line-drawing problems and counterintuitive results, such as excluding from RICO's reach foreign enterprises that operate within the United States. Such troubling consequences reinforce the conclusion that Congress intended the *§§1962(b)* and *(c)* prohibitions to apply extraterritorially in tandem with the underlying predicates, **[***6]** without regard to the locus of the enterprise. Of course, foreign enterprises will qualify only if they engage in, or significantly affect, commerce directly involving the United States. *Pp. ___ - ___, 195 L. Ed. 2d, at 496-498*.

(c) Applying these principles here, respondents' allegations that RJR violated *§§1962(b)* and *(c)* do not involve an impermissibly extraterritorial application of RICO. The Court assumes that the alleged pattern of racketeering activity consists entirely of predicate offenses that were **[*2095]** either committed in the United States or committed in a foreign country in violation of a predicate statute that applies extraterritorially. The alleged enterprise also has a sufficient tie to U.S. commerce, as its members include U.S. companies and its activities depend on sales of RJR's cigarettes conducted through "the U.S. mails and wires," among other things. *Pp. ___ - ___, 195 L. Ed. 2d, at 498*.

3. Irrespective of any extraterritoriality of *§1962*s substantive provisions, *§1964(c)*'s private right of action does not overcome the presumption against extraterritoriality, and thus a private RICO plaintiff must allege and prove a domestic injury. *Pp. ___ - ___, 195 L. Ed. 2d, at 498-504*.

(a) The Second Circuit reasoned **[**487]** that the presumption against extraterritoriality did not apply to §1964(c) independently **[***7]** of its application to §1962s substantive provisions because §1964(c) does not regulate conduct. But this view was rejected in Kiobel, 569 U.S., at ___, 133 S. Ct. 1659, 185 L. Ed. 2d 671 , and the logic of that decision requires that the presumption be applied separately to RICO's cause of action even though it has been overcome with respect to RICO's substantive prohibitions. As in other contexts, allowing recovery for foreign injuries in a civil RICO action creates a danger of international friction that militates against recognizing foreign-injury claims without clear direction from Congress. Respondents, in arguing that such concerns are inapplicable here because the plaintiffs are not foreign citizens seeking to bypass their home countries' less generous remedies but are foreign countries themselves, forget that this Court's interpretation of §1964(c)'s injury requirement will necessarily govern suits by nongovernmental plaintiffs. The Court will not forgo the presumption against extraterritoriality to permit extraterritorial suits based on a case-by-case inquiry that turns on or looks to the affected sovereign's consent. Nor will the Court adopt a double standard that would treat suits by foreign sovereigns more favorably than other suits. Pp. ___ - ___, 195 L. Ed. 2d, at 498-501.

(b) Section 1964(c) **[***8]** does not provide a clear indication that Congress intended to provide a private right of action for injuries suffered outside of the United States. It provides a cause of action to "[a]ny person injured in his business or property" by a violation of §1962, but neither the word "any" nor the reference to injury to "business or property" indicates extraterritorial application. Respondents' arguments to the contrary are unpersuasive. In particular, while they are correct that RICO's private right of action was modeled after §4 of the Clayton Act, which allows recovery for injuries suffered abroad as a result of antitrust violations, see Pfizer Inc. v. Government of India, 434 U.S. 308, 314-315, 98 S. Ct. 584, 54 L. Ed. 2d 563, this Court has declined to transplant features of the Clayton Act's cause of action into the RICO context where doing so would be inappropriate. Cf. Sedima, S. P. R. L. v. Imrex Co., 473 U.S. 479, 485, 495, 105 S. Ct. 3275, 87 L. Ed. 2d 346. There is good reason not to do so here. Most importantly, RICO lacks the very language that the Court found critical to its decision in *Pfizer*, namely, the Clayton Act's definition of a "person" who may sue, which "explicitly includes 'corporations and associations existing under or authorized by . . . the laws of any foreign country,' " 434 U.S., at 313, 98 S. Ct. 584, 54 L. Ed. 2d 563. Congress's more recent decision to exclude from the antitrust laws' reach most conduct that "causes only foreign injury," F. Hoffmann-La Roche Ltd v. Empagran S. A., 542 U.S. 155, 158, 124 S. Ct. 2359, 159 L. Ed. 2d 226, also counsels against importing into RICO those Clayton Act principles that are at odds with the **[*2096]** Court's current extraterritoriality doctrine. Pp. ___ - ___, 195 L. Ed. 2d, at 501-504.

(c) Section 1964(c) requires a civil RICO plaintiff to allege and prove a domestic injury to business or property and does not allow recovery for foreign injuries. Respondents waived their domestic injury damages claims, **[**488]** so the District Court dismissed them with prejudice. Their remaining RICO damages claims therefore rest entirely on injury suffered abroad and must be dismissed. P. ___, 195 L. Ed. 2d, at 504.

764 F. 3d 129, reversed and remanded.

Counsel: Gregory G. Katsas argued the cause for petitioner.

Elaine J. Goldenberg argued the cause for the United States, as *amicus curiae*, by special leave of court, supporting vacatur.

David C. Frederick argued the cause for respondent.

Judges: Alito, J., delivered the opinion of the Court, in which Roberts, C. J., and Kennedy and Thomas, JJ., joined, and in which Ginsburg, Breyer, and Kagan, JJ., joined as to Parts I, II, and III. Ginsburg, J., filed an opinion concurring in part, dissenting in part, and dissenting from the judgment, in which Breyer and Kagan, JJ., joined. Breyer, J., filed an opinion concurring in part, dissenting in part, and dissenting from the judgment. Sotomayor, J., took **[***9]** no part in the consideration or decision of the case.

Opinion by: Alito; Breyer

Opinion

Justice Alito delivered the opinion of the Court.

HN1 ***LEdHN[1]*** [1] The Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§1961-1968, created four new criminal offenses involving the activities of organized criminal groups in relation to an enterprise. §§1962(a)-(d). RICO also created a new civil cause of action for "[a]ny person injured in his business or property by reason of a violation" of those prohibitions. §1964(c). We are asked to decide whether RICO applies extraterritorially—that is, to events

occurring and injuries suffered outside the United States.

I

A

HN2 LEdHN[2] [2] RICO is founded on the concept of racketeering activity. The statute defines "racketeering activity" to encompass dozens of state and federal offenses, known in RICO parlance as predicates. These predicates include any act "indictable" under specified federal statutes, §§1961(1)(B)-(C), (E)-(G), as well as certain crimes "chargeable" under state law, §1961(1)(A), and any offense involving bankruptcy or securities fraud or drug-related activity that is "punishable" under federal law, §1961(1)(D). A predicate offense implicates RICO when it is part of a "pattern of racketeering activity"—a series **[*2097]** of related predicates that together demonstrate the existence **[***10]** or threat of continued criminal activity. H. J. Inc. v. Northwestern Bell Telephone Co., 492 U.S. 229, 239, 109 S. Ct. 2893, 106 L. Ed. 2d 195 (1989); see §1961(5) (specifying that a "pattern of racketeering activity" requires at least two predicates committed within 10 years of each other).

HN3 LEdHN[3] [3] RICO's §1962 sets forth four specific prohibitions aimed at different ways in which a pattern of racketeering activity may be used to infiltrate, control, or operate "a[n] enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce." These prohibitions can be summarized as follows. Section 1962(a) makes it unlawful to invest income derived from a pattern of racketeering activity in an enterprise. Section 1962(b) makes it unlawful to acquire or maintain an interest in an enterprise through a pattern of racketeering activity. Section 1962(c) makes it unlawful for a person employed by or associated **[**489]** with an enterprise to conduct the enterprise's affairs through a pattern of racketeering activity. Finally, §1962(d) makes it unlawful to conspire to violate any of the other three prohibitions. [1]

HN5 LEdHN[5] [5] Violations of §1962 are subject to criminal penalties, §1963(a), and civil proceedings to enforce those prohibitions may be brought by the Attorney General, §§1964(a)-(b). Separately, RICO creates a private civil cause of action that allows "[a]ny person injured in his business or property by reason of a violation of section 1962" to sue in federal district court and recover treble damages, costs, and attorney's fees. §1964(c). [2]

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[1] In full, **18 U.S.C. §1962** provides:

HN4 LEdHN[4] [4] "(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal **[***11]** within the meaning of **section 2, title 18, United States Code**, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

"(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities **[***12]** of which affect, interstate or foreign commerce.

"(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

"(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section."

The attentive reader will notice that these prohibitions concern not only patterns of racketeering activity but also the collection of unlawful debt. As is typical in our RICO cases, we have no occasion here to address this aspect of the statute.

[2] In full, §1964(c) provides:

HN6 LEdHN[6] [6] "Any person injured in his business or property by reason **[***13]** 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, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of **section 1962**. The exception contained in the preceding sentence does not apply to an action against any person that

[*2098] B

This case arises from allegations that petitioners—RJR Nabisco and numerous related entities (collectively RJR)—participated in a global money-laundering scheme in association with various organized crime groups. Respondents—the European Community and 26 of its member states—first sued RJR in the Eastern District of New York in 2000, alleging that RJR had violated RICO. Over the past 16 years, the resulting litigation (spread over at least three separate **[**490]** actions, with this case the lone survivor) has seen multiple complaints and multiple trips up and down **[***14]** the federal court system. See *2011 U.S. Dist. LEXIS 23538, 2011 WL 843957, *1-*2 (EDNY, Mar. 8, 2011)* (tracing the procedural history through the District Court's dismissal of the present complaint). In the interest of brevity, we confine our discussion to the operative complaint and its journey to this Court.

Greatly simplified, the complaint alleges a scheme in which Colombian and Russian drug traffickers smuggled narcotics into Europe and sold the drugs for euros that—through a series of transactions involving black-market money brokers, cigarette importers, and wholesalers—were used to pay for large shipments of RJR cigarettes into Europe. In other variations of this scheme, RJR allegedly dealt directly with drug traffickers and money launderers in South America and sold cigarettes to Iraq in violation of international sanctions. RJR is also said to have acquired Brown & Williamson Tobacco Corporation for the purpose of expanding these illegal activities.

The complaint alleges that RJR engaged in a pattern of racketeering activity consisting of numerous acts of money laundering, material support to foreign terrorist organizations, mail fraud, wire fraud, and violations of the Travel Act. RJR, in concert with the other participants in the scheme, allegedly **[***15]** formed an association in fact that was engaged in interstate and foreign commerce, and therefore constituted a RICO enterprise that the complaint dubs the "RJR Money-Laundering Enterprise." App. to Pet. for Cert. 238a, Complaint ¶158; see ***HN7*** ***LEdHN[7]*** [7]*§1961(4)* (defining an enterprise to include "any union or group of individuals associated in fact although not a legal entity").

Putting these pieces together, the complaint alleges that RJR violated each of RICO's prohibitions. RJR allegedly used income derived from the pattern of racketeering to invest in, acquire an interest in, and operate the RJR Money-Laundering Enterprise in violation of *§1962(a)*; acquired and maintained control of the enterprise through the pattern of racketeering in violation of *§1962(b)*; operated the enterprise through the pattern of racketeering in violation of *§1962(c)*; and conspired with other participants in the scheme in violation of *§1962(d)*. [3] These violations allegedly harmed respondents in various ways, including through competitive harm to their state-owned cigarette businesses, lost tax revenue from black-market cigarette sales, harm to European financial institutions, currency instability, and increased law enforcement costs. [4]

[*2099] RJR moved to dismiss the complaint, arguing that RICO does not apply to racketeering activity occurring outside U.S. territory or to foreign **[**491]** enterprises. The District Court agreed and dismissed the RICO claims as impermissibly extraterritorial. *2011 U.S. Dist. LEXIS 23538, 2011 WL 843957, at *7*.

The Second Circuit reinstated the RICO claims. It concluded that, "with respect to a number of offenses that constitute predicates for RICO liability and are alleged in this case, Congress has clearly manifested an intent that they apply extraterritorially." *764 F. 3d 129, 133 (2014)*. "By incorporating these statutes into RICO as predicate racketeering acts," the court reasoned, "Congress has **[***17]** clearly communicated its intention that RICO apply to extraterritorial conduct to the extent that extraterritorial violations of these statutes serve as the basis for RICO liability." *Id., at 137*. Turning to the predicates alleged in the complaint, the Second Circuit found that they passed muster. The court concluded that the money laundering and material support of

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is criminally convicted in connection with the fraud, in which case the statute of limitations shall start to run on the date on which the conviction becomes final."

[3] The complaint also alleges **[***16]** that RJR committed a variety of state-law torts. Those claims are not before us.

[4] At an earlier stage of respondents' litigation against RJR, the Second Circuit "held that the revenue rule barred the foreign sovereigns' civil claims for recovery of lost tax revenue and law enforcement costs." *European Community v. RJR Nabisco, Inc., 424 F. 3d 175, 178 (2005)* (Sotomayor, J.), cert. denied, ***546 U.S. 1092 (2006), 126 S. Ct. 1045, 163 L. Ed. 2d 858***. It is unclear why respondents subsequently included these alleged injuries in their present complaint; they do not ask us to disturb or distinguish the Second Circuit's holding that such injuries are not cognizable. We express no opinion on the matter. Cf. *Pasquantino v. United States, 544 U.S. 349, 355, n. 1, 125 S. Ct. 1766, 161 L. Ed. 2d 619 (2005)*.

terrorism statutes expressly apply extraterritorially in the circumstances alleged in the complaint. *Id., at 139-140*. The court held that the mail fraud, wire fraud, and Travel Act statutes do *not* apply extraterritorially. *Id., at 141*. But it concluded that the complaint states *domestic* violations of those predicates because it "allege[s] conduct in the United States that satisfies every essential element" of those offenses. *Id., at 142*.

RJR sought rehearing, arguing (among other things) that RICO's civil cause of action requires a plaintiff to allege a domestic *injury*, even if a domestic pattern of racketeering or a domestic enterprise is not necessary to make out a violation of RICO's substantive prohibitions. The panel denied rehearing and issued a supplemental opinion holding that RICO does not require a domestic injury. *764 F. 3d 149 (CA2 2014)* (*per curiam*). If a foreign injury was **[***18]** caused by the violation of a predicate statute that applies extraterritorially, the court concluded, then the plaintiff may seek recovery for that injury under RICO. *Id., at 151*. The Second Circuit later denied rehearing en banc, with five judges dissenting. *783 F. 3d 123 (2015)*.

The lower courts have come to different conclusions regarding RICO's extraterritorial application. Compare *764 F. 3d 129* (case below) (holding that RICO may apply extraterritorially) with *United States v. Chao Fan Xu, 706 F. 3d 965, 974-975 (CA9 2013)* (holding that RICO does not apply extraterritorially; collecting cases). Because of this conflict and the importance of the issue, we granted certiorari. *576 U.S. ___, 136 S. Ct. 28, 192 L. Ed. 2d 998 (2015)*.

II

The question of RICO's extraterritorial application really involves two questions. First, do RICO's substantive prohibitions, contained in *§1962*, apply to conduct that occurs in foreign countries? Second, does RICO's private right of action, contained in *§1964(c)*, apply to injuries that are suffered in foreign countries? We consider **[*2100]** each of these questions in turn. To guide our inquiry, we begin by reviewing the law of extraterritoriality.

HN8 ***LEdHN[8]*** [8] It is a basic premise of our legal system that, in general, "United **[**492]** States law governs domestically but does not rule the world." *Microsoft Corp. v. AT&T Corp., 550 U.S. 437, 454, 127 S. Ct. 1746, 167 L. Ed. 2d 737 (2007)*. This principle finds expression in a canon of statutory **[***19]** construction known as the presumption against extraterritoriality: Absent clearly expressed congressional intent to the contrary, federal laws will be construed to have only domestic application. *Morrison v. Nat'l Austl. Bank Ltd., 561 U.S. 247, 255, 130 S. Ct. 2869, 177 L. Ed. 2d 535 (2010)*. The question is not whether we think "Congress would have wanted" a statute to apply to foreign conduct "if it had thought of the situation before the court," but whether Congress has affirmatively and unmistakably instructed that the statute will do so. *Id., at 261, 130 S. Ct. 2869, 177 L. Ed. 2d 535*. "When a statute gives no clear indication of an extraterritorial application, it has none." *Id., at 255, 130 S. Ct. 2869, 177 L. Ed. 2d 535*.

There are several reasons for this presumption. Most notably, it serves to avoid the international discord that can result when U.S. law is applied to conduct in foreign countries. See, *e.g.*, *Kiobel v. Royal Dutch Petroleum Co., 569 U.S. ___, 133 S. Ct. 1659, 185 L. Ed. 2d 671 (2013)*; *EEOC v. Arabian American Oil Co., 499 U.S. 244, 248, 111 S. Ct. 1227, 113 L. Ed. 2d 274 (1991)* (*Aramco*); *Benz v. Compania Naviera Hidalgo, S. A., 353 U.S. 138, 147, 77 S. Ct. 699, 1 L. Ed. 2d 709 (1957)*. But it also reflects the more prosaic "commonsense notion that Congress generally legislates with domestic concerns in mind." *Smith v. United States, 507 U.S. 197, 204, n. 5, 113 S. Ct. 1178, 122 L. Ed. 2d 548 (1993)*. We therefore apply the presumption across the board, "regardless of whether there is a risk of conflict between the American statute and a foreign law." *Morrison, supra, at 255, 130 S. Ct. 2869, 177 L. Ed. 2d 535*.

Twice in the past six years we have considered whether a federal statute applies extraterritorially. In *Morrison*, we addressed the question whether **[***20]** *§10(b)* of the Securities Exchange Act of 1934 applies to misrepresentations made in connection with the purchase or sale of securities traded only on foreign exchanges. We first examined whether *§10(b)* gives any clear indication of extraterritorial effect, and found that it does not. *561 U.S., at 262-265, 130 S. Ct. 2869, 177 L. Ed. 2d 535*. We then engaged in a separate inquiry to determine whether the complaint before us involved a permissible *domestic* application of *§10(b)* because it alleged that some of the relevant misrepresentations were made in the United States. At this second step, we considered the "'focus' of congressional concern," asking whether *§10(b)*'s focus is "the place where the deception originated" or rather "purchases and sale of securities in the United States." *Id., at 266, 130 S. Ct. 2869, 177 L. Ed. 2d 535*. We concluded that the statute's focus is on domestic securities transactions, and we therefore held that the statute does not apply to frauds in connection with foreign securities transactions, even if those frauds involve domestic

misrepresentations.

In *Kiobel,* we considered whether the Alien Tort Statute (ATS) confers federal-court jurisdiction over causes of action alleging international-law violations committed overseas. We acknowledged that the presumption against extraterritoriality **[***21]** is "typically" **[**493]** applied to statutes "regulating conduct," but we concluded that the principles supporting the presumption should "similarly constrain courts considering causes of action that may be brought under the ATS." *569 U.S., at ___, 133 S. Ct. 1659, 185 L. Ed. 2d 671*. **[*2101]** We applied the presumption and held that the ATS lacks any clear indication that it extended to the foreign violations alleged in that case. *Id., at ___-___, 133 S. Ct. 1659, 185 L. Ed. 2d 671*. Because "all the relevant conduct" regarding those violations "took place outside the United States," *id., at ___, 133 S. Ct. 1659, 185 L. Ed. 2d 671*, we did not need to determine, as we did in *Morrison*, the statute's "focus."

HN9 LEdHN[9] [9] *Morrison*and *Kiobel*reflect a two-step framework for analyzing extraterritoriality issues. At the first step, we ask whether the presumption against extraterritoriality has been rebutted—that is, whether the statute gives a clear, affirmative indication that it applies extraterritorially. We must ask this question regardless of whether the statute in question regulates conduct, affords relief, or merely confers jurisdiction. If the statute is not extraterritorial, then at the second step we determine whether the case involves a domestic application of the statute, and we do this by looking to the statute's "focus." If the conduct relevant **[***22]** to the statute's focus occurred in the United States, then the case involves a permissible domestic application even if other conduct occurred abroad; but if the conduct relevant to the focus occurred in a foreign country, then the case involves an impermissible extraterritorial application regardless of any other conduct that occurred in U.S. territory.

What if we find at step one that a statute clearly *does* have extraterritorial effect? Neither *Morrison* nor *Kiobel* involved such a finding. But we addressed this issue in *Morrison*, explaining that it was necessary to consider *§10(b)*'s "focus" only because we found that the statute does not apply extraterritorially: "If *§10(b)* did apply abroad, we would not need to determine which transnational frauds it applied to; it would apply to all of them (barring some other limitation)." *561 U.S., at 267, n. 9, 130 S. Ct. 2869, 177 L. Ed. 2d 535*. ***HN10 LEdHN[10]*** [10] The scope of an extraterritorial statute thus turns on the limits Congress has (or has not) imposed on the statute's foreign application, and not on the statute's "focus." [5]

III

With these guiding principles in mind, we first consider ***HN11 LEdHN[11]*** [11] whether RICO's substantive prohibitions in *§1962* may apply to foreign conduct. Unlike in *Morrison*and *Kiobel*, we find that the presumption against extraterritoriality has been rebutted—but only with respect to certain applications of the statute.

A

The most obvious textual clue is that ***HN12 LEdHN[12]*** [12] RICO defines racketeering activity to include a number of predicates that plainly apply to at least some foreign conduct. These predicates **[**494]** include the prohibition against engaging in monetary transactions in criminally derived property, which expressly applies, when "the defendant is a United States person," to offenses that "tak[e] place outside the United States." *18 U.S.C. §1957(d)(2)*. Other examples include the prohibitions against the assassination of Government officials, *§351(i)* ("There is extraterritorial jurisdiction over the conduct prohibited by this section"); *§1751(k)* (same), and the prohibition against hostage taking, which applies to conduct that "occurred outside the United States" if either the hostage or the offender is a U.S. national, if the offender is **[*2102]** found in the United States, or if the hostage **[***24]** taking is done to compel action by the U.S. Government, *§1203(b)*. At least one predicate—the prohibition against "kill[ing] a national of the United States, while such national is outside the United States"—applies *only* to conduct occurring outside the United States. *§2332(a)*.

We agree with the Second Circuit that ***HN13 LEdHN[13]*** [13] Congress's incorporation of these (and other) extraterritorial predicates into RICO gives a clear, affirmative indication that *§1962* applies to foreign racketeering activity—but only to the extent that the predicates alleged in a particular case themselves apply extraterritorially. Put another way, a pattern of racketeering activity may include or consist of offenses committed abroad in violation of a predicate statute for which the presumption against extraterritoriality has

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[5] Because a finding of extraterritoriality at step one will obviate step two's "focus" inquiry, it will usually be preferable for courts to proceed in the sequence that we have set forth. But we do not **[***23]** mean to preclude courts from starting at step two in appropriate cases. Cf. *Pearson v. Callahan, 555 U.S. 223, 236-243, 129 S. Ct. 808, 172 L. Ed. 2d 565 (2009)*.

been overcome. To give a simple (albeit grim) example, a violation of §1962 could be premised on a pattern of killings of Americans abroad in violation of §2332(a)—a predicate that all agree applies extraterritorially—whether or not any domestic predicates are also alleged. [6]

We emphasize the important limitation **[***25]** that **HN14 LEdHN[14]** [14] foreign conduct must violate "a predicate statute that manifests an unmistakable congressional intent to apply extraterritorially." 764 F. 3d, at 136. Although a number of RICO predicates have extraterritorial effect, many do not. The inclusion of *some* extraterritorial predicates does not mean that *all* RICO predicates extend to foreign conduct. This is apparent for two reasons. First, "when a statute provides for some extraterritorial application, the presumption against extraterritoriality operates to limit that provision to its terms." Morrison, 561 U.S., at 265, 130 S. Ct. 2869, 177 L. Ed. 2d 535. Second, RICO defines as racketeering activity only acts that are "indictable" (or, what amounts to the same thing, "chargeable" or "punishable") under one of the statutes identified in §1961(1). If a particular statute does not apply extraterritorially, then conduct committed abroad is not "indictable" under that statute and so cannot qualify as a predicate under RICO's plain terms.

RJR resists the conclusion that RICO's incorporation of extraterritorial predicates gives RICO commensurate extraterritorial effect. It points out that "RICO itself" does not refer to extraterritorial application; only the underlying predicate statutes do. Brief for Petitioners 42. RJR thus **[***26]** argues that Congress could have intended **[**495]** to capture only *domestic* applications of extraterritorial predicates, and that any predicates that apply only abroad could have been "incorporated . . . solely for when such offenses are part of a broader pattern whose overall locus is domestic." *Id.*, at 43.

The presumption against extraterritoriality does not require us to adopt such a constricted interpretation. **HN15 LEdHN[15]** [15] While the presumption can be overcome only by a clear indication of extraterritorial effect, an express statement of extraterritoriality is not essential. "Assuredly context can be consulted as well." Morrison, supra, at 265, 130 S. Ct. 2869, 177 L. Ed. 2d 535. Context is dispositive here. Congress has not expressly said that §1962(c) applies to patterns of racketeering activity in foreign countries, but it has defined "racketeering activity"—and by extension a "pattern of racketeering activity"—to encompass violations of predicate statutes that *do* expressly apply extraterritorially. Short of an explicit declaration, **[*2103]** it is hard to imagine how Congress could have more clearly indicated that it intended RICO to have (some) extraterritorial effect. This unique structure makes RICO the rare statute that clearly evidences extraterritorial effect despite **[***27]** lacking an express statement of extraterritoriality.

We therefore conclude that **HN16 LEdHN[16]** [16] RICO applies to some foreign racketeering activity. A violation of §1962 may be based on a pattern of racketeering that includes predicate offenses committed abroad, provided that each of those offenses violates a predicate statute that is itself extraterritorial. This fact is determinative as to §1962(b) and §1962(c), both of which prohibit the employment of a pattern of racketeering. Although they differ as to the end for which the pattern is employed—to acquire or maintain control of an enterprise under subsection (b), or to conduct an enterprise's affairs under subsection (c)—this difference is immaterial for extraterritoriality purposes.

Section 1962(a) presents a thornier question. **HN17 LEdHN[17]** [17] Unlike subsections (b) and (c), subsection (a) targets certain uses of *income* derived from a pattern of racketeering, not the use of the pattern itself. Cf. Anza v. Ideal Steel Supply Corp., 547 U.S. 451, 461-462, 126 S. Ct. 1991, 164 L. Ed. 2d 720 (2006). While we have no difficulty concluding that this prohibition applies to income derived from foreign patterns of racketeering (within the limits we have discussed), arguably §1962(a) extends only to domestic uses of the income. The Second Circuit did not decide this question because it found that respondents have alleged "a domestic investment of racketeering proceeds **[***28]** in the form of RJR's merger in the United States with Brown & Williamson and investments in other U.S. operations." 764 F. 3d, at 138, n. 5. RJR does not dispute the basic soundness of the Second Circuit's reasoning, but it does contest the court's reading of the complaint. See Brief for Petitioners 57-58. Because the parties have not focused on this issue, and because it makes no difference to our resolution of this case, see infra, at ___, 195 L. Ed. 2d, at 504, we assume without deciding that respondents have pleaded a domestic investment of racketeering income in violation of §1962(a).

Finally, although respondents' complaint alleges a violation of RICO's conspiracy provision, §1962(d), the

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[6] The foreign killings would, of course, still have to satisfy the relatedness and continuity requirements of RICO's pattern element. See H.J. Inc. v. Northwestern Bell Telephone Co., 492 U.S. 229, 109 S. Ct. 2893, 106 L. Ed. 2d 195 (1989).

parties' briefs do not address whether this provision should be treated differently **[**496]** from the provision (§1962(a), (b), or (c)) that a defendant allegedly conspired to violate. We therefore decline to reach this issue, and assume without deciding that §1962(d)'s extraterritoriality tracks that of the provision underlying the alleged conspiracy.

B

RJR contends that, even if RICO may apply to foreign patterns of racketeering, the statute does not apply to foreign *enterprises*. Invoking *Morrison*'s discussion of the Exchange Act's "focus," RJR says that the "focus" of RICO is the enterprise being **[***29]** corrupted—not the pattern of racketeering—and that RICO's enterprise element gives no clear indication of extraterritorial effect. Accordingly, RJR reasons, RICO requires a domestic enterprise.

This argument misunderstands *Morrison*. As explained above, *supra, at ___ - ___, 195 L. Ed. 2d, at 493*, ***HN18 LEdHN[18]*** [18] only at the second step of the inquiry do we consider a statute's "focus." Here, however, there is a clear indication at step one that RICO applies extraterritorially. We therefore do not proceed to the "focus" step. The *Morrison* Court's discussion of the statutory "focus" made this clear, stating that "[i]f §10(b) did apply abroad, we would not need to determine which transnational frauds it applied to; it would apply **[*2104]** to all of them (barring some other limitation)." *561 U.S., at 267, n. 9, 130 S. Ct. 2869, 177 L. Ed. 2d 535*. The same is true here.***HN19 LEdHN[19]*** [19] RICO—or at least §§1962(b) and (c)—applies abroad, and so we do not need to determine which transnational (or wholly foreign) patterns of racketeering it applies to; it applies to all of them, regardless of whether they are connected to a "foreign" or "domestic" enterprise. This rule is, of course, subject to the important limitation that RICO covers foreign predicate offenses only to the extent that the underlying predicate statutes are extraterritorial. But within **[***30]** those bounds, the location of the affected enterprise does not impose an independent constraint.

It is easy to see why Congress did not limit RICO to domestic enterprises. A domestic enterprise requirement would lead to difficult line-drawing problems and counterintuitive results. It would exclude from RICO's reach foreign enterprises—whether corporations, crime rings, other associations, or individuals—that operate within the United States. Imagine, for example, that a foreign corporation has operations in the United States and that one of the corporation's managers in the United States conducts its U.S. affairs through a pattern of extortion and mail fraud. Such domestic conduct would seem to fall well within what Congress meant to capture in enacting RICO. ***HN20 LEdHN[20]*** [20] Congress, after all, does not usually exempt foreigners acting in the United States from U.S. legal requirements. See *764 F. 3d, at 138* ("Surely the presumption against extraterritorial application of United States laws does not command giving foreigners carte blanche to violate the laws of the United States in the United States"). Yet RJR's theory would insulate this scheme from RICO liability—both civil and criminal—because the enterprise at **[***31]** issue is a foreign, not domestic, corporation.

Seeking to avoid this result, RJR offers that any "'emissaries'" a foreign enterprise sends to the United States—such as our hypothetical U. **[**497]** S.-based corporate manager—could be carved off and considered a "distinct domestic enterprise" under an association-in-fact theory. Brief for Petitioners 40. RJR's willingness to gerrymander the enterprise to get around its proposed domestic enterprise requirement is telling. It suggests that RJR is not really concerned about whether an enterprise is foreign or domestic, but whether the relevant conduct occurred here or abroad. And if that is the concern, then it is the pattern of racketeering activity that matters, not the enterprise. Even spotting RJR its "domestic emissary" theory, this approach would lead to strange gaps in RICO's coverage. If a foreign enterprise sent only a single "emissary" to engage in racketeering in the United States, there could be no RICO liability because a single person cannot be both the RICO enterprise and the RICO defendant. *Cedric Kushner Promotions, Ltd. v. King, 533 U.S. 158, 162, 121 S. Ct. 2087, 150 L. Ed. 2d 198 (2001)*.

RJR also offers no satisfactory way of determining whether an enterprise is foreign or domestic. Like the District Court, RJR maintains that **[***32]** courts can apply the "nerve center" test that we use to determine a corporation's principal place of business for purposes of federal diversity jurisdiction. See *Hertz Corp. v. Friend, 559 U.S. 77, 130 S. Ct. 1181, 175 L. Ed. 2d 1029 (2010)*; *28 U.S.C. §1332(c)(1)*; *2011 U.S. Dist. LEXIS 23538, 2011 WL 843957, at *5-*6*. But this test quickly becomes meaningless if, as RJR suggests, a corporation with a foreign nerve center can, if necessary, be pruned into an association-in-fact enterprise with a domestic nerve center. ***HN21 LEdHN[21]*** [21] The nerve center test, developed with ordinary corporate command structures in mind, is also ill **[*2105]** suited to govern RICO association-in-fact enterprises, which "need not have a hierarchical

structure or a 'chain of command.'" Boyle v. United States, 556 U.S. 938, 948, 129 S. Ct. 2237, 173 L. Ed. 2d 1265 (2009). These difficulties are largely avoided if, as we conclude today, RICO's extraterritorial effect is pegged to the extraterritoriality judgments Congress has made in the predicate statutes, often by providing precise instructions as to when those statutes apply to foreign conduct.

The practical problems we have identified with RJR's proposed domestic enterprise requirement are not, by themselves, cause to reject it. Our point in reciting these troubling consequences of RJR's theory is simply to reinforce our conclusion, based on RICO's text and context, that ***HN22*** ***LEdHN[22]*** [22] Congress intended the prohibitions in 18 U.S.C. §§1962(b) and **[***33]** (c) to apply extraterritorially in tandem with the underlying predicates, without regard to the locus of the enterprise.

HN23 ***LEdHN[23]*** [23] Although we find that RICO imposes no domestic enterprise requirement, this does not mean that every foreign enterprise will qualify. Each of RICO's substantive prohibitions requires proof of an enterprise that is "engaged in, or the activities of which affect, interstate or foreign commerce." §§1962(a), (b), (c). We do not take this reference to "foreign commerce" to mean literally all commerce occurring abroad. Rather, a RICO enterprise must engage in, or affect in some significant way, commerce directly involving the United States—*e.g.*, commerce between the United States and a foreign country. **[**498]** Enterprises whose activities lack that anchor to U.S. commerce cannot sustain a RICO violation.

C

Applying these principles, we agree with the Second Circuit that the complaint does not allege impermissibly extraterritorial violations of §§1962(b) and (c). [7]

The alleged pattern of racketeering activity consists of five basic predicates: (1) money laundering, (2) material support of foreign terrorist organizations, (3) mail fraud, (4) wire fraud, and (5) violations of the Travel Act. The **[***34]** Second Circuit observed that the relevant provisions of the money laundering and material support of terrorism statutes expressly provide for extraterritorial application in certain circumstances, and it concluded that those circumstances are alleged to be present here. 764 F. 3d, at 139-140. The court found that the fraud statutes and the Travel Act do not contain the clear indication needed to overcome the presumption against extraterritoriality. But it held that the complaint alleges *domestic* violations of those statutes because it "allege[s] conduct in the United States that satisfies every essential element of the mail fraud, wire fraud, and Travel Act claims." Id., at 142.

RJR does not dispute these characterizations of the alleged predicates. We therefore assume without deciding that the alleged pattern of racketeering activity consists entirely of predicate offenses that were either committed in the United States or committed in a foreign country in violation of a predicate statute that applies extraterritorially. The alleged enterprise also has a sufficient tie to U.S. commerce, as its members include U.S. companies, and its activities depend on sales of RJR's cigarettes conducted through "the U.S. mails and **[***35]** wires," among other things. App. to Pet. for Cert. 186a, Complaint **[*2106]** ¶96. On these premises, respondents' allegations that RJR violated §§1962(b) and (c) do not involve an impermissibly extraterritorial application of RICO. [8]

IV

We now turn to RICO's private right of action, on which respondents' lawsuit rests. ***HN24*** ***LEdHN[24]*** [24] Section 1964(c) allows "[a]ny person injured in his business or property by reason of a violation of section 1962" to sue for treble damages, costs, and attorney's fees. Irrespective of any extraterritorial application of §1962, we conclude that §1964(c) does not overcome the presumption against extraterritoriality. A private RICO plaintiff therefore must allege and prove a *domestic* injury to its business or property.

A

The Second Circuit thought that the presumption against extraterritoriality did not apply to §1964(c) independently of its application to §1962, reasoning that the presumption "is primarily concerned with the question of what *conduct* falls within a statute's **[***36]** purview." 764 F. 3d, at 151. **[**499]** We rejected that view in *Kiobel*, holding that the presumption "constrain[s] courts considering causes of action" under the ATS, a "'strictly jurisdictional'" statute that "does not directly regulate conduct or afford relief."

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[7] As to ***§§1962(a)*** and ***(d)***, see supra, at ___ - ___, 195 L. Ed. 2d, at 495-496.

[8] We stress that we are addressing only the extraterritoriality question. We have not been asked to decide, and therefore do not decide, whether the complaint satisfies any other requirements of RICO, or whether the complaint in fact makes out violations of the relevant predicate statutes.

569 U.S., at ___, 133 S. Ct. 1659, 185 L. Ed. 2d 671, 680. We reached this conclusion even though the underlying substantive law consisted of well-established norms of international law, which by definition apply beyond this country's borders. See id., at ___-___, 133 S. Ct. 1659, 185 L. Ed. 2d 671, 680 .

The same logic requires that we separately apply the presumption against extraterritoriality to RICO's cause of action despite our conclusion that the presumption has been overcome with respect to RICO's substantive prohibitions. ***HN25*** ***LEdHN[25]*** [25] "The creation of a private right of action raises issues beyond the mere consideration whether underlying primary conduct should be allowed or not, entailing, for example, a decision to permit enforcement without the check imposed by prosecutorial discretion." Sosa v. Alvarez-Machain, 542 U.S. 692, 727, 124 S. Ct. 2739, 159 L. Ed. 2d 718 (2004). Thus, as we have observed in other contexts, providing a private civil remedy for foreign conduct creates a potential for international friction beyond that presented by merely applying U.S. substantive law to that foreign conduct. See, *e.g.*, Kiobel, supra, at ___, 133 S. Ct. 1659, 185 L. Ed. 2d 671, 681 ("Each of th[e] decisions" involved **[***37]** in defining a cause of action based on "conduct within the territory of another sovereign" "carries with it significant foreign policy implications").

Consider antitrust. In that context, we have observed that "[t]he application . . . of American private treble-damages remedies to anticompetitive conduct taking place abroad has generated considerable controversy" in other nations, even when those nations agree with U.S. substantive law on such things as banning price fixing. F. Hoffmann-La Roche Ltd v. Empagran S. A., 542 U.S. 155, 167, 124 S. Ct. 2359, 159 L. Ed. 2d 226 (2004). Numerous foreign countries—including some respondents in this case—advised us in *Empagran* that "to apply [U. S.] remedies would unjustifiably permit their citizens to bypass their own less generous remedial schemes, thereby upsetting a balance of competing **[*2107]** considerations that their own domestic antitrust laws embody." *Ibid.* [9]

We received similar warnings in *Morrison*, where France, a respondent **[**500]** here, informed us that "most foreign countries proscribe securities fraud" but "have made very different choices with respect to the best way to implement that proscription," such as "prefer[ring] 'state actions, not private ones' for the enforcement of law." Brief for Republic of France as *Amicus Curiae*, O. T. 2009, No. 08-1191, p. 20; see *id.*, at 23 ("Even when foreign countries permit private rights of action for securities fraud, they often have different schemes" for litigating them and "may approve of different measures of damages"). Allowing foreign investors to pursue private suits in the United States, we were told, "would upset that delicate balance and offend the sovereign interests of foreign nations." *Id.*, at 26.

Allowing recovery for foreign injuries in a civil RICO action, including treble damages, presents the **[***40]** same danger of international friction. See Brief for United States as *Amicus Curiae* 31-34. This is not to say that friction would necessarily result in every case, or that Congress would violate international law by permitting such suits. It is to say only that there is a potential for international controversy that militates against recognizing foreign-injury claims without clear direction from Congress. ***HN26*** ***LEdHN[26]*** [26] Although "a risk of conflict between the American statute and a foreign law" is not a prerequisite for applying the

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[9] See Brief for Governments of Federal Republic of Germany et al. as *Amici Curiae*, O. T. 2003, No. 03-724, p. 11 (identifying "controversial features of the U.S. legal system," including treble damages, extensive discovery, jury trials, class actions, contingency fees, and punitive damages); *id.*, at 15 ("Private plaintiffs rarely exercise the type of self-restraint or demonstrate the requisite sensitivity **[***38]** to the concerns of foreign governments that mark actions brought by the United States government"); Brief for United Kingdom et al. as *Amici Curiae*, O. T. 2003, No. 03-724, p. 13 ("No other country has adopted the United States' unique 'bounty hunter' approach that permits a private plaintiff to 'recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.' . . . Expanding the jurisdiction of this generous United States private claim system could skew enforcement and increase international business risks. It makes United States courts the forum of choice without regard to whose laws are applied, where the injuries occurred or even if there is any connection to the court except the ability to get *in personam* jurisdiction over the defendants"); see also Brief for Government of Canada as *Amicus Curiae*, O. T. 2003, No. 03-724, p. 14 ("[T]he attractiveness of the [U. S.] treble damages remedy would supersede the national policy decision by Canada that civil recovery by Canadian citizens for injuries resulting from anti-competitive behavior in Canada should be limited to actual damages"). *Empagran* concerned not the presumption against extraterritoriality **[***39]** *per se*, but the related rule that we construe statutes to avoid unreasonable interference with other nations' sovereign authority where possible. See F. Hoffmann-La Roche Ltd v. Empagran S. A., 542 U.S. 155, 164, 124 S. Ct. 2359, 159 L. Ed. 2d 226 (2004); see also Hartford Fire Ins. Co. v. California, 509 U.S. 764, 814-815, 113 S. Ct. 2891, 125 L. Ed. 2d 612 (1993) (Scalia, J., dissenting) (discussing the two canons). As the foregoing discussion makes clear, considerations relevant to one rule are often relevant to the other.

presumption against extraterritoriality, *Morrison, 561 U.S., at 255, 130 S. Ct. 2869, 177 L. Ed. 2d 535*, where such a risk is evident, the need to enforce the presumption is at its apex.

Respondents urge that concerns about international friction are inapplicable in this case because here the plaintiffs are not foreign citizens seeking to bypass their home countries' less generous remedies but rather the foreign countries themselves. Brief for Respondents 52-53. Respondents assure us that they "are satisfied that the[ir] complaint . . . comports **[*2108]** with limitations on prescriptive jurisdiction under international law and respects the dignity of foreign sovereigns." *Ibid.* Even assuming that this is true, however, our interpretation of *§1964(c)*'s injury **[***41]** requirement will necessarily govern suits by nongovernmental plaintiffs that are not so sensitive to foreign sovereigns' dignity. ***HN27 LEdHN[27]*** [27] We reject the notion that we should forgo the presumption against extraterritoriality and instead permit extraterritorial suits based on a case-by-case inquiry that turns on or looks to the consent of the affected sovereign. See *Morrison, supra, at 261, 130 S. Ct. 2869, 177 L. Ed. 2d 535* ("Rather than guess anew in each case, we apply the presumption in all cases"); cf. *Empagran, 542 U.S., at 168, 124 S. Ct. 2359, 159 L. Ed. 2d 226*. Respondents suggest that we should be reluctant to permit a foreign corporation to be sued in the courts of this country for events occurring **[**501]** abroad if the nation of incorporation objects, but that we should discard those reservations when a foreign state sues a U.S. entity in this country under U.S. law—instead of in its own courts and under its own laws—for conduct committed on its own soil. We refuse to adopt this double standard. "After all, in the law, what is sauce for the goose is normally sauce for the gander." *Heffernan v. City of Paterson, 578 U.S. ___, ___, 136 S. Ct. 1412 194 L. Ed. 2d 508, 514 (2016)*.

B

HN28 LEdHN[28] [28] Nothing in *§1964(c)* provides a clear indication that Congress intended to create a private right of action for injuries suffered outside of the United States. The statute provides a cause of action to "[a]ny person injured in **[***42]** his business or property" by a violation of *§1962*. *§1964(c)*. The word "any" ordinarily connotes breadth, but it is insufficient to displace the presumption against extraterritoriality. See *Kiobel, 569 U.S., at ___, 133 S. Ct. 1659, 185 L. Ed. 2d 671, 681*. The statute's reference to injury to "business or property" also does not indicate extraterritorial application. If anything, by cabining RICO's private cause of action to particular kinds of injury—excluding, for example, personal injuries—Congress signaled that the civil remedy is not coextensive with *§1962*'s substantive prohibitions. The rest of *§1964(c)* places a limit on RICO plaintiffs' ability to rely on securities fraud to make out a claim. This too suggests that *§1964(c)* is narrower in its application than *§1962*, and in any event does not support extraterritoriality.

The Second Circuit did not identify anything in *§1964(c)* that shows that the statute reaches foreign injuries. Instead, the court reasoned that *§1964(c)*'s extraterritorial effect flows directly from that of *§1962*. Citing our holding in *Sedima, S. P. R. L. v. Imrex Co., 473 U.S. 479, 105 S. Ct. 3275, 87 L. Ed. 2d 346 (1985)*, that the "compensable injury" addressed by *§1964(c)* "necessarily is the harm caused by predicate acts sufficiently related to constitute a pattern," *id., at 497, 105 S. Ct. 3275, 87 L. Ed. 2d 346*, the Court of Appeals held that a RICO plaintiff may sue for foreign injury that was caused by the violation **[***43]** of a predicate statute that applies extraterritorially, just as a substantive RICO violation may be based on extraterritorial predicates. *764 F. 3d, at 151*. Justice Ginsburg advances the same theory. See *post, at ___ - ___, 195 L. Ed. 2d, at 506-507* (opinion concurring in part and dissenting in part). This reasoning has surface appeal, but it fails to appreciate that ***HN29 LEdHN[29]*** [29] the presumption against extraterritoriality must be applied separately to both RICO's substantive prohibitions and its private right of action. See *supra, at ___ - ___, 195 L. Ed. 2d, at 498-501*. It is not enough to say that a private right of action must reach abroad because the underlying law governs conduct in foreign countries. Something more is needed, and here it is absent. [10]

[*2109] Respondents contend that background legal principles allow them to sue for foreign injuries, invoking what **[**502]** they call the "'traditional rule' that 'a plaintiff injured in a foreign country' could bring suit 'in American courts.'" Brief for Respondents 41 (quoting *Sosa, 542 U.S., at 706-707, 124 S. Ct. 2739, 159 L. Ed. 2d 718*). But **[***44]** the rule respondents invoke actually provides that a court will ordinarily "apply *foreign* law to determine the tortfeasor's liability" to "a plaintiff injured in a foreign country." *Id., at 706, 124 S. Ct. 2739, 159 L.*

[10] Respondents note that *Sedima* itself involved an injury suffered by a Belgian corporation in Belgium. Brief for Respondents 45-46; see *Sedima, S. P. R. L. v. Imrex Co., 473 U.S. 479, 483-484, 105 S. Ct. 3275, 87 L. Ed. 2d 346 (1985)*. Respondents correctly do not contend that this fact is controlling here, as the *Sedima* Court did not address the foreign-injury issue.

Ed. 2d 718 (emphasis added). Respondents' argument might have force if they sought to sue RJR for violations of *their own laws* and to invoke federal diversity jurisdiction as a basis for proceeding in U.S. courts. See U. S. Const., Art. III, §2, cl. 1 ("The judicial Power [of the United States] shall extend . . . to Controversies . . . between a State, or the Citizens thereof, and foreign States"); 28 U.S.C. §1332(a)(4) ("The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000 . . . and is between . . . a foreign state . . . as plaintiff and citizens of a State or of different States"). The question here, however, is not "whether a federal court has jurisdiction to entertain a cause of action provided by foreign or even international law. The question is instead whether the court has authority to recognize a cause of action *under U.S. law*" for injury suffered overseas. Kiobel, supra, at ___, 133 S. Ct. 1659, 185 L. Ed. 2d 671, 682 (emphasis added). As to that question, the relevant background principle is the presumption against extraterritoriality, **[***45]** not the "traditional rule" respondents cite.

Respondents and Justice Ginsburg point out that ***HN30 LEdHN[30]*** [30] RICO's private right of action was modeled after §4 of the Clayton Act, 15 U.S.C. §15; see Holmes v. Securities Investor Protection Corporation, 503 U.S. 258, 267-268, 112 S. Ct. 1311, 117 L. Ed. 2d 532 (1992), which we have held allows recovery for injuries suffered abroad as a result of antitrust violations, see Pfizer Inc. v. Government of India, 434 U.S. 308, 314-315, 98 S. Ct. 584, 54 L. Ed. 2d 563 (1978). It follows, respondents and Justice Ginsburg contend, that §1964(c) likewise allows plaintiffs to sue for injuries suffered in foreign countries. We disagree. Although we have often looked to the Clayton Act for guidance in construing §1964(c), we have not treated the two statutes as interchangeable. We have declined to transplant features of the Clayton Act's cause of action into the RICO context where doing so would be inappropriate. For example, in *Sedima* we held that a RICO plaintiff need not allege a special "racketeering injury," rejecting a requirement that some lower courts had adopted by "[a]nalog[y]" to the "antitrust injury" required under the Clayton Act. 473 U.S., at 485, 495, 105 S. Ct. 3275, 87 L. Ed. 2d 346.

There is good reason not to interpret §1964(c) to cover foreign injuries just because the Clayton Act does so. When we held in *Pfizer* that the Clayton Act allows recovery for foreign injuries, we relied first and foremost on the fact that the Clayton Act's definition of "person"—which in turn **[***46]** defines who may sue under that Act—"explicitly includes 'corporations and associations existing under or authorized by . . . the laws of any foreign country.'" **[*2110]** 434 U.S., at 313, 98 S. Ct. [**503] 584, 54 L. Ed. 2d 563; see 15 U.S.C. §12. [11] RICO lacks the language that the *Pfizer* Court found critical. See 18 U.S.C. §1961(3). [12] To the extent that the *Pfizer* Court cited other factors that might apply to §1964(c), they were not sufficient in themselves to show that the provision has extraterritorial effect. For example, the *Pfizer* Court, writing before we honed our extraterritoriality jurisprudence in *Morrison* and *Kiobel*, reasoned that Congress "[c]learly . . . did not intend to make the [Clayton Act's] treble-damages remedy available only to consumers in our own country" because "the antitrust laws extend to trade 'with foreign nations' as well as among the several States of the Union." 434 U.S., at 313-314, 98 S. Ct. 584, 54 L. Ed. 2d 563. But we have emphatically rejected reliance on such language, holding that "'even statutes . . . that expressly refer to "*foreign* commerce" do not apply abroad.'" Morrison, 561 U.S., at 262-263, 130 S. Ct. 2869, 177 L. Ed. 2d 535. This reasoning also fails to distinguish between extending *substantive antitrust law* to foreign conduct and extending a *private right of action* to foreign injuries, two separate issues that, as we have explained, raise distinct extraterritoriality **[***47]** problems. See supra, at ___-___, 195 L. Ed. 2d, at 498-501. Finally, the *Pfizer* Court expressed concern that it would "defeat th[e] purposes" of the antitrust laws if a defendant could "escape full

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[11] *Pfizer* most directly concerned whether a foreign government is a "person" that may be a Clayton Act plaintiff. But it is clear that the Court's decision more broadly concerned recovery for foreign injuries, see 434 U.S., at 315, 98 S. Ct. 584, 54 L. Ed. 2d 563 (expressing concern that "persons doing business both in this country and abroad might be tempted to enter into anticompetitive conspiracies affecting American consumers in the expectation that the illegal profits they could safely extort abroad would offset any liability to plaintiffs at home"), as respondents themselves contend, see Brief for Respondents 44 ("[T]his Court clearly recognized in *Pfizer* that Section 4 extends to foreign **[***48]** injuries"). The Court also permitted an antitrust plaintiff to sue for foreign injuries in Continental Ore Co. v. Union Carbide & Carbon Corp., 370 U.S. 690, 82 S. Ct. 1404, 8 L. Ed. 2d 777 (1962), but the Court's discussion in that case focused on the extraterritoriality of the underlying antitrust prohibitions, not the Clayton Act's private right of action, see id., at 704-705, 82 S. Ct. 1404, 8 L. Ed. 2d 777, and so sheds little light on the interpretive question now before us.

[12] This does not mean that foreign plaintiffs may not sue under RICO. The point is that RICO does not include the explicit foreign-oriented language that the *Pfizer* Court found to support foreign-injury suits under the Clayton Act.

liability for his illegal actions." *434 U.S., at 314, 98 S. Ct. 584, 54 L. Ed. 2d 563*. But this justification was merely an attempt to "divin[e] what Congress would have wanted" had it considered the question of extraterritoriality—an approach we eschewed in *Morrison. 561 U.S., at 261, 130 S. Ct. 2869, 177 L. Ed. 2d 535*. Given all this, and in particular the fact that RICO lacks the language that *Pfizer* found integral to its decision, we decline to extend this aspect of our Clayton Act jurisprudence to RICO's cause of action.

Underscoring our reluctance to read *§1964(c)* as broadly as we have read the Clayton Act is Congress's more recent decision to define precisely the antitrust laws' extraterritorial effect and to exclude from their reach most conduct that "causes only foreign injury." *Empagran, 542 U.S., at 158, 124 S. Ct. 2359, 159 L. Ed. 2d 226* (describing Foreign Trade Antitrust Improvements Act of 1982); see also *id., at 169-171, 173-174, 124 S. [**504] Ct. 2359, 159 L. Ed. 2d 226* (discussing how the applicability of the antitrust laws to foreign injuries may depend on whether suit is brought by the Government or by private plaintiffs). Although this later enactment obviously does not limit *§1964(c)*'s scope by its own force, it does counsel against **[*2111]** importing into RICO those Clayton Act principles **[***49]** that are at odds with our current extraterritoriality doctrine.

C

HN31 ***LEdHN[31]*** [31] *Section 1964(c)* requires a civil RICO plaintiff to allege and prove a domestic injury to business or property and does not allow recovery for foreign injuries. The application of this rule in any given case will not always be self-evident, as disputes may arise as to whether a particular alleged injury is "foreign" or "domestic." But we need not concern ourselves with that question in this case. As this case was being briefed before this Court, respondents filed a stipulation in the District Court waiving their damages claims for domestic injuries. The District Court accepted this waiver and dismissed those claims with prejudice. Respondents' remaining RICO damages claims therefore rest entirely on injury suffered abroad and must be dismissed. [13]

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The judgment of the United States Court of Appeals for the Second Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

So ordered.

Justice Sotomayor took no part in the consideration **[***51]** or decision of this case.

Concur by: Ginsburg(In Part)

Dissent by: Ginsburg(In Part)

Dissent

Justice Ginsburg, with whom Justice Breyer and Justice Kagan join, concurring in Parts I, II, and III and dissenting from Part IV and from the judgment.

In enacting the Racketeer Influenced and Corrupt Organizations Act (RICO), *18 U.S.C. §1961 et seq.*, Congress sought to provide a new tool to combat "organized crime and its economic roots." *Russello v. United States, 464 U.S. 16, 26, 104 S. Ct. 296, 78 L. Ed. 2d 17 (1983)*. RICO accordingly proscribes various ways in **[**505]** which an "enterprise," *§1961(4)*, might be controlled, operated, or funded by a "pattern of racketeering activity," *§1961(1)*, *(5)*. See *§1962*. [1] RICO

[13] In respondents' letter notifying this Court of the waiver of their domestic-injury damages claims, respondents state that "[n]othing in the stipulation will affect respondents' claims for equitable relief, including claims for equitable relief under state common law that are not at issue in this case before this Court." Letter from David C. Frederick, Counsel for Respondents, to Scott S. Harris, Clerk of **[***50]** Court (Feb. 29, 2016). Although the letter mentions only state-law claims for equitable relief, Count 5 of respondents' complaint seeks equitable relief under RICO. App. to Pet. for Cert. 260a-262a, Complaint ¶¶181-188. This Court has never decided whether equitable relief is available to private RICO plaintiffs, the parties have not litigated that question here, and we express no opinion on the issue today. We note, however, that any claim for equitable relief under RICO based on foreign injuries is necessarily foreclosed by our holding that *§1964(c)*'s cause of action requires a domestic injury to business or property. It is unclear whether respondents intend to seek equitable relief under RICO based on domestic injuries, and it may prove unnecessary to decide whether *§1964(c)* (or respondents' stipulation) permits such relief in light of respondents' state-law claims. We leave it to the lower courts to determine, if necessary, the status and availability of any such claims.

[1] The Racketeer Influenced and Corrupt Organizations Act (RICO), *18 U.S.C. §1961 et seq.*, makes it unlawful "to . . . invest" in an enterprise income derived from a pattern of racketeering activity, ***§1962(a)***, "to acquire or maintain" an interest in an enterprise **[***52]** through a pattern of racketeering activity, ***§1962(b)***, "to conduct or participate . . . in the conduct" of an enterprise through a pattern of racketeering activity, ***§1962(c)***, or "to conspire" to violate any of those

builds on predicate statutes, many of them applicable extraterritorially. App. to Brief for United States **[*2112]** as *Amicus Curiae* 27a-33a. Congress not only armed the United States with authority to initiate criminal and civil proceedings to enforce RICO, §§1963, 1964(b), Congress also created in §1964(c) a private right of action for "[a]ny person injured in his business or property by reason of a violation of [RICO's substantive provision]."

Invoking this right, respondents, the European Community and 26 member states, filed suit against petitioners, RJR Nabisco, Inc., and related entities. Alleging that petitioners orchestrated from their U.S. headquarters a complex money-laundering scheme in violation of RICO, respondents sought to recover for various injuries, including losses sustained by financial institutions and lost opportunities to collect duties. See *ante, at ___ - ___, 195 L. Ed. 2d, at 489-491*. Denying respondents a remedy under RICO, the Court today reads into §1964(c) a domestic-injury requirement for suits by private plaintiffs nowhere indicated in the statute's text. Correctly, the Court imposes no such restriction on the United States when it initiates a civil suit under §1964(b). Unsupported by RICO's text, inconsistent with its purposes, and unnecessary to protect the comity interests the Court emphasizes, the domestic-injury requirement for private suits replaces Congress' prescription with one of the Court's own invention. Because the Court **[***53]** has no authority so to amend RICO, I dissent.

I

As the Court recounts, *ante, at ___, 195 L. Ed. 2d, at 491*, "Congress ordinarily legislates with respect to domestic, not foreign, matters." *Morrison v. Nat'l Austl. Bank Ltd., 561 U.S. 247, 255, 130 S. Ct. 2869, 177 L. Ed. 2d 535, 130 S. Ct. 2869, 177 L. Ed. 2d 535 (2010)*. So recognizing, the Court employs a presumption that "'legislation . . . is meant to apply only within the territorial jurisdiction of the United States.'" *Ibid.* (quoting *EEOC v. Arabian American Oil Co., 499 U.S. 244, 248, 111 S. Ct. 1227, 113 L. Ed. 2d 274 (1991)* (*Aramco*)). But when a statute demonstrates Congress' "affirmative inten[t]" that the law should apply beyond the borders of the United States, as numerous RICO predicate statutes do, the presumption is rebutted, and the law applies extraterritorially to the extent Congress prescribed. See *Morrison, 561 U.S., at 255, 130 S. Ct. 2869, 177 L. Ed. 2d 535* (quoting *Aramco, 499 U.S., at 248, 111 S. Ct. 1227, 113 L. Ed. 2d 274*). The presumption, in short, aims to distinguish instances in which Congress consciously designed a statute to reach beyond U.S. borders, from those in which nothing plainly signals that Congress directed extraterritorial application.

[506]** In this case, the Court properly holds that Congress signaled its "affirmative inten[t]," *Morrison, 561 U.S., at 255, 130 S. Ct. 2869, 177 L. Ed. 2d 535*, that RICO, in many instances, should apply extraterritorially. See *ante, at ___ - ___, 195 L. Ed. 2d, at 493-498*; App. to Brief for United States as *Amicus Curiae* 27a-33a. As the Court relates, see *ante, at ___ - ___, 195 L. Ed. 2d, at 493-495*, Congress deliberately included within RICO's compass predicate federal **[***54]** offenses that manifestly reach conduct occurring abroad. See, *e.g.*, §§1956-1957 (money laundering); §2339B (material support to foreign terrorist organizations). Accordingly, the Court concludes, when the predicate crimes underlying invocation of §1962 thrust extraterritorially, so too does §1962. I agree with that conclusion.

I disagree, however, that the private right of action authorized by §1964(c) requires a domestic injury to a person's business or property and does not allow recovery for foreign injuries. One cannot extract such a limitation from the text of §1964(c), which affords a right of action to "[a]ny person injured in his business or property by reason of a violation of **[*2113]** section 1962." Section 1962, at least subsections (b) and (c), all agree, encompasses foreign injuries. How can §1964(c) exclude them when, by its express terms, §1964(c) is triggered by "a violation of section 1962"? To the extent RICO reaches injury abroad when the Government is the suitor pursuant to §1962 (specifying prohibited activities) and §1963 (criminal penalties) or §1964(b) (civil remedies), to that same extent, I would hold, RICO reaches extraterritorial injury when, pursuant to §1964(c), the suitor is a private plaintiff.

II

A

I would not distinguish, as the Court does, between the extraterritorial compass of a private right of action **[***55]** and that of the underlying proscribed conduct. See *ante, at ___ - ___, 195 L. Ed. 2d, at 498-501*. Instead, I would adhere to precedent addressing RICO, linking, not separating, prohibited activities and authorized remedies. See *Sedima, S. P. R. L. v. Imrex Co., 473 U.S. 479, 495, 105 S. Ct. 3275, 87 L. Ed. 2d 346 (1985)* ("If the defendant engages in a pattern of racketeering activity in a manner forbidden by [§1962],

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provisions, ***§1962(d)***.

and the racketeering activities injure the plaintiff in his business or property, the plaintiff has a claim under §1964(c)."); *ibid.* (refusing to require a "distinct 'racketeering injury'" for private RICO actions under §1964(c) where §1962 imposes no such requirement). [2]

To reiterate, a §1964(c) right of action may be maintained by "[a]ny person injured in his business or property by reason of a violation of **[**507]** section 1962" (emphasis added). "[I]ncorporating one statute . . . into another," the Court has long understood, "serves to bring into the latter all that is fairly covered by the reference." Panama R. Co. v. Johnson, 264 U.S. 375, 392, 44 S. Ct. 391, 68 L. Ed. 748 (1924). RICO's private right of action, it cannot be gainsaid, expressly incorporates §1962, whose extraterritoriality, the Court recognizes, is coextensive with the underlying predicate offenses charged. See ante, at ___ - ___, 195 L. Ed. 2d, at 493-498. See also ante, at ___, 195 L. Ed. 2d, at 494 ("[I]t is hard to imagine how Congress could have more clearly indicated that it intended RICO to have (some) extraterritorial effect."). The sole additional condition §1964(c) imposes on access to relief is an injury to one's "business or property." Nothing in that condition should change the extraterritoriality assessment. In agreement with the Second Circuit, I would hold that "[i]f an injury abroad was proximately caused by the violation of a statute which Congress intended should apply to injurious conduct performed abroad, [there is] no reason to import a domestic injury requirement simply because the victim sought redress through the RICO statute." 764 F. 3d 149, 151 (2014).

What §1964(c)'s **[***57]** text conveys is confirmed by its history. As this Court has repeatedly observed, Congress modeled §1964(c) on §4 of the Clayton Act, 15 U.S.C. §15, **[*2114]** the private civil-action provision of the federal antitrust laws, which employs nearly identical language: "[A]ny person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor." See Klehr v. A. O. Smith Corp., 521 U.S. 179, 189-190, 117 S. Ct. 1984, 138 L. Ed. 2d 373 (1997); Holmes v. Securities Investor Protection Corporation, 503 U.S. 258, 267-268, 112 S. Ct. 1311, 117 L. Ed. 2d 532 (1992); Sedima, 473 U.S., at 485, 489, 105 S. Ct. 3275, 87 L. Ed. 2d 346. Clayton Act §4, the Court has held, provides a remedy for injuries both foreign and domestic. Pfizer Inc. v. Government of India, 434 U.S. 308, 313-314, 98 S. Ct. 584, 54 L. Ed. 2d 563 (1978) ("Congress did not intend to make the [Clayton Act's] treble-damages remedy available only to consumers in our own country."); Continental Ore Co. v. Union Carbide & Carbon Corp., 370 U.S. 690, 707-708, 82 S. Ct. 1404, 8 L. Ed. 2d 777 (1962) (allowing recovery in Clayton Act §4 suit for injuries in Canada).

"The similarity of language in [the two statutes] is, of course, a strong indication that [they] should be interpreted *pari passu*," Northcross v. Board of Ed. of Memphis City Schools, 412 U.S. 427, 428, 93 S. Ct. 2201, 37 L. Ed. 2d 48 (1973) (*per curiam*), and I see no contradictory indication here. [3] Indeed, when the Court has addressed gaps in §1964(c), it has aligned the RICO private right of action **[**508]** with the private right afforded by Clayton Act §4. See, *e.g.*, Klehr, 521 U.S., at 188-189, 117 S. Ct. 1984, 138 L. Ed. 2d 373 (adopting for private RICO actions Clayton Act §4's accrual rule—that a claim accrues when a defendant commits an act that injures a plaintiff's business—rather

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[2] Insisting that the presumption against extraterritoriality should "apply to §1964(c) independently of its application to §1962," ante, at ___ - ___, 195 L. Ed. 2d, at 498-499, the Court cites Kiobel v. Royal Dutch Petroleum Co., 569 U.S. ___, 133 S. Ct. 1659, 185 L. Ed. 2d 671 (2013). That decision will not bear the weight the Court would place on it. As the Court comprehends, the statute there at issue, the Alien Tort Statute, 28 U.S.C. §1350, is a spare jurisdictional grant that itself does not "regulate conduct or afford relief." Kiobel, 569 U.S., at ___, 133 S. Ct. 1659, 185 L. Ed. 2d 671, 680. With no grounding for extraterritorial application in the statute, *Kiobel* held, courts have no warrant to fashion, on their own initiative, claims for relief that operate extraterritorially. See *ibid.* ("[T]he question is not what Congress has done but instead what **[***56]** courts may do.").

[3] The Court asserts that "[t]here is good reason not to interpret §1964(c) to cover foreign injuries just because the Clayton Act does." Ante, at ___, 195 L. Ed. 2d, at 502. The Clayton Act's definition of "person," 15 U.S.C. §12, the Court observes, "explicitly includes 'corporations and associations existing under or authorized by . . . the laws of any foreign country.'" Ante, at ___, 195 L. Ed. 2d, at 502 (some internal quotation marks omitted). RICO, the Court stresses, lacks this "critical" language. *Ibid.* The Court's point is underwhelming. RICO's definition of "persons" is hardly confining: "any individual or entity capable of holding a legal or beneficial interest in property." 18 U.S.C. §1961(3). Moreover, there is little doubt that Congress anticipated §1964(c) plaintiffs like the suitors here. See 147 Cong. Rec. 20676, 20710 (2001) (remarks of Sen. Kerry) ("Since some of the money-laundering conducted in the world today also defrauds foreign governments, it would be hostile to the intent **[***59]** of [the USA PATRIOT Act, which added as RICO predicates additional money laundering offenses,] for us to interject into the statute any rule of construction of legislative language which would in any way limit our foreign allies access to our courts to battle against money laundering.").

than criminal RICO's "most recent, **[***58]** predicate act" rule); *Holmes, 503 U.S., at 268, 112 S. Ct. 1311, 117 L. Ed. 2d 532* (requiring private plaintiffs under *§1964(c)*, like private plaintiffs under *Clayton Act §4*, to show proximate cause); *Agency Holding Corp. v. Malley-Duff & Associates, Inc., 483 U.S. 143, 155-156, 107 S. Ct. 2759, 97 L. Ed. 2d 121 (1987)* (applying to *§1964(c)* actions Clayton Act §4's shorter statute of limitations instead of "catchall" federal statute of limitations applicable to RICO criminal prosecutions).

This very case illustrates why pinning a domestic-injury requirement onto *§1964(c)* makes little sense. All defendants are U.S. corporations, headquartered in the United States, charged with a pattern of racketeering activity directed and managed from the United States, involving conduct occurring in the United States. In particular, according to the complaint, defendants received in the United States funds known to them to have been generated by illegal narcotics trafficking and terrorist activity, conduct violative **[*2115]** of *§1956(a)(2)*; traveled using the facilities of interstate commerce in furtherance of unlawful activity, in violation of *§1952*; provided material support to foreign terrorist organizations "in the United States and elsewhere," in violation of *§2339B*; and used U.S. mails and wires in furtherance of a "scheme or artifice to defraud," in violation of *§§1341* and *1343*. App. to Pet. for Cert. 238a-250a. In short, this case has the **[***60]** United States written all over it.

B

The Court nevertheless deems a domestic-injury requirement for private RICO plaintiffs necessary to avoid international friction. See *ante, at ___ - ___, 195 L. Ed. 2d, at 499-501*. When the United States considers whether to initiate a prosecution or civil suit, the Court observes, it will take foreign-policy considerations into account, but private parties will not. It is far from clear, however, that the Court's blanket rule would ordinarily work to ward off international discord. Invoking the presumption against extraterritoriality as a bar to *any* private suit for injuries to business or property abroad, this case suggests, might spark, rather than quell, international strife. Making such litigation available to domestic but not foreign plaintiffs is hardly solicitous of international comity or respectful of foreign interests. Cf. *Pfizer, 434 U.S., at 318-319, 98 S. Ct. 584, 54 L. Ed. 2d 563* ("[A] foreign nation is generally entitled to prosecute any civil claim in the courts of the United States upon the same basis as a domestic corporation or individual might do. To deny him this privilege would manifest a want of **[**509]** comity and friendly feeling." (internal quotation marks omitted)).

RICO's definitional provisions exclude "[e]ntirely foreign activity." **[***61]** *783 F. 3d 123, 143* (Lynch, J., dissenting from denial of rehearing en banc). Thus no suit under RICO would lie for injuries resulting from "[a] pattern of murders of Italian citizens committed by members of an Italian organized crime group in Italy." *Ibid.* That is so because "murder is a RICO predicate only when it is 'chargeable under state law' or indictable under specific federal statutes." *Ibid.* (citing *§1961(1)(A)*, *(G)*).

To the extent extraterritorial application of RICO could give rise to comity concerns not present in this case, those concerns can be met through doctrines that serve to block litigation in U.S. courts of cases more appropriately brought elsewhere. Where an alternative, more appropriate forum is available, the doctrine of *forum non conveniens* enables U.S. courts to refuse jurisdiction. See *Piper Aircraft Co. v. Reyno, 454 U.S. 235, 102 S. Ct. 252, 70 L. Ed. 2d 419 (1981)* (dismissing wrongful-death action arising out of air crash in Scotland involving only Scottish victims); *Restatement (Second) of Conflict of Laws §84* (1969). Due process constraints on the exercise of general personal jurisdiction shelter foreign corporations from suit in the United States based on conduct abroad unless the corporation's "affiliations with the [forum] in which suit is brought are so constant and pervasive 'as to render it essentially **[***62]** at home [there].'" *Daimler AG v. Bauman, 571 U.S. ___, ___-___, 134 S. Ct. 746, 187 L. Ed. 2d 624, 625 (2014)* (quoting *Goodyear Dunlop Tires Operations, S. A. v. Brown, 564 U.S. 915, 919, 131 S. Ct. 2846, 180 L. Ed. 2d 796 (2011)*; alterations omitted). These controls provide a check against civil RICO litigation with little or no connection to the United States.

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The Court hems in RICO out of concern about establishing a "double standard." *Ante, at ___, 195 L. Ed. 2d, at 501*. But today's decision does exactly that. U.S. defendants commercially engaged here and abroad would be answerable **[*2116]** civilly to U.S. victims of their criminal activities, but foreign parties similarly injured would have no RICO remedy. "'Sauce for the goose'" should indeed serve the gander as well. See *ibid.* (quoting *Heffernan v. City of Paterson, 578 U.S. ___, ___, 136 S. Ct. 1412 194 L. Ed. 2d 508, 514 (2016)*). I would resist reading into *§1964(c)* a domestic-injury requirement Congress did not prescribe. Instead, I would affirm the Second Circuit's sound judgment:

> "To establish a compensable injury under *§1964(c)*, a private plaintiff must show that (1) the defendant

'engage[d] in a pattern of racketeering activity in a manner forbidden by' §1962, and (2) that these 'racketeering activities' were the proximate cause of some injury to the plaintiff's business or property." 764 F. 3d, at 151 (quoting Sedima, 473 U.S., at 495, 105 S. Ct. 3275, 87 L. Ed. 2d 346; Holmes, 503 U.S., at 268, 112 S. Ct. 1311, 117 L. Ed. 2d 532)).

Because the Court overturns that judgment, I dissent.

Justice Breyer, concurring in part, dissenting in part, and dissenting from the judgment.

I join Parts I through III of **[***63]** the Court's opinion. But I do not join Part **[**510]** IV. The Court there holds that the private right of action provision in the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §1964(c), has no extraterritorial application. Like Justice Ginsburg, I believe that it does.

In saying this, I note that this case does not involve the kind of purely foreign facts that create what we have sometimes called "foreign-cubed" litigation (*i.e.*, cases where the plaintiffs are foreign, the defendants are foreign, and all the relevant conduct occurred abroad). See, *e.g.*, Morrison v. National Australia Bank Ltd., 561 U.S. 247, 283, n. 11, 130 S. Ct. 2869, 177 L. Ed. 2d 535 (2010) (Stevens, J., concurring in judgment). Rather, it has been argued that the statute at issue does not extend to such a case. See 18 U.S.C. §1961(1) (limiting qualifying RICO predicates to those that are, *e.g.*, "chargeable" under state law, or "indictable" or "punishable" under federal law); Tr. of Oral Arg. 32, 33-34 (respondents conceding that all of the relevant RICO predicates require some kind of connection to the United States). And, as Justice Ginsburg points out, "this case has the United States written all over it." *Ante*, at ___, 195 L. Ed. 2d, at 508 (opinion concurring in part, dissenting in part, and dissenting from judgment).

Unlike the Court, I cannot accept as controlling **[***64]** the Government's argument as *amicus curiae* that "[a]llowing recovery for foreign injuries in a civil RICO action . . . presents the . . . danger of international friction." *Ante*, at ___, 195 L. Ed. 2d, at 500. The Government does not provide examples, nor apparently has it consulted with foreign governments on the matter. See Tr. of Oral Arg. 26 ("[T]o my knowledge, [the Government] didn't have those consultations" with foreign states concerning this case). By way of contrast, the European Community and 26 of its member states tell us "that the complaint in this case, which alleges that American corporations engaged in a pattern of racketeering activity that caused injury to respondents' businesses and property, comports with limitations on prescriptive jurisdiction under international law and respects the dignity of foreign sovereigns." Brief for Respondents 52-53; see also Tr. of Oral Arg. 31 (calling the European Union's "vett[ing] exercise" concerning this case "comprehensiv[e]"). In these circumstances, and for the reasons given by Justice Ginsburg, see *ante*, at ___-___, 195 L. Ed. 2d, at 508-509, I would not place controlling weight on the Government's contrary view.

[*2117] Consequently, I join Justice Ginsburg's opinion.

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