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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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RJR NABISCO, INC., ET AL. *v.* EUROPEAN COMMUNITY ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 15–138. Argued March 21, 2016—Decided June 20, 2016

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 scheme in association with various organized crime groups. Under the alleged scheme, drug traffickers smuggled narcotics into Europe and sold them for euros 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

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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 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. *National Australia Bank Ltd.*, 561 U. S. 247, 255. *Morrison* and *Kiobel* v. *Royal Dutch Petroleum Co.*, 569 U. S. ___, 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 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 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. 7–10.

2. The presumption against extraterritoriality has been rebutted with respect to certain applications of RICO's substantive prohibitions in §1962. Pp. 10–18.

(a) RICO defines racketeering activity to include a number of predicates 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 racketeer-

ing 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 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. 10–14.

(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. 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, 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. 14–17.

(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 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. 17–18.

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. 18–27.

(a) The Second Circuit reasoned that the presumption against extraterritoriality did not apply to §1964(c) independently of its application to §1962's substantive provisions because §1964(c) does not

regulate conduct. But this view was rejected in *Kiobel*, 569 U. S., at ___, 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. 18–22.

(b) Section 1964(c) 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, 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. 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. 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, also counsels against importing into RICO those Clayton Act principles that are at odds with the Court's current extraterritoriality doctrine. Pp. 22–27.

(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

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damages claims, 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. 27.

764 F. 3d 129, reversed and remanded.

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 no part in the consideration or decision of the case.

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