

# Supreme Court Decides Extraterritorial Reach of Civil RICO Claims in Case Involving Foreign Arbitral Award

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In a much-discussed decision, the U.S. Supreme Court on June 22, 2023 permitted a Russian judgment creditor's claims that a U.S. resident had violated the Racketeer Influenced and Corrupt Organizations Act ("RICO") by evading payment of a U.S. judgment enforcing a foreign arbitral award to go forward. While many have lauded the Court's decision in *Yegiazaryan v. Smagin* for opening U.S. courthouse doors to RICO claims seeking treble damages based on foreign awards, successful claims are likely to remain the exception, not the rule. The Court in *Yegiazaryan* held only that the plaintiff, Vitaly Smagin, had sufficiently alleged a domestic injury to allow the suit to proceed. The Court did not alter the substantive elements of a RICO claim, which also require a plaintiff to establish, among other things, that the injury was caused by "a pattern of racketeering activity," defined to include specified state or federal predicate offenses. Successful RICO claims based on foreign judgments or awards will thus generally be limited to egregious attempts to avoid payment where the surrounding circumstances indicate that the injury arose in the United States.

The Court's decision may be more notable for its impact on private RICO claims and the extraterritorial application of U.S. statutes more broadly, though there remains substantial uncertainty as to how *Yegiazaryan* will be applied going forward. The Court adopted a context-specific approach for determining whether a plaintiff asserting a civil RICO claim has sufficiently alleged a domestic injury but explicitly declined to enumerate the factors that lower courts should consider in making that assessment. Whether and to what extent U.S. courts will apply this context-specific analysis to other statutes to determine their extraterritorial reach also remains to be seen.

**Background.** According to Smagin's complaint, the chain of events that ultimately gave rise to his RICO claim began two decades ago in Russia. Ashot Yegiazaryan, a Russian citizen who then resided in Russia, stole Smagin's shares in a joint real estate venture in Moscow via a series of fraudulent transactions in 2003–2009. In 2010, Yegiazaryan was indicted by Russian authorities for that fraud and fled to Los Angeles. Smagin commenced an arbitration against Yegiazaryan in London and was ultimately awarded over \$84 million in 2014 based on Yegiazaryan's misappropriation of the shares (the "London Award").

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When Yegiazaryan refused to pay the award, Smagin filed an enforcement action in the U.S. District Court for the Central District of California under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), as implemented by 9 U.S.C. §§ 201-08. The district court issued a preliminary injunction in February 2015 freezing Yegiazaryan’s assets in California, a judgment enforcing the London Award (in the amount of \$92 million, including interest) in March 2016, and a series of post-judgment orders prohibiting Yegiazaryan from preventing collection of the judgment and holding him in contempt for violating those orders. Smagin claimed that all the while Yegiazaryan sought to avoid paying the London Award and the judgment enforcing it. Among other things, Yegiazaryan sought to conceal \$198 million that he received in connection with an unrelated settlement using a “complex web of offshore entities,” encumbered those funds with sham judgments in foreign jurisdictions, hid his assets in the United States using “shell companies” owned by his family members, submitted a forged doctor’s note to the district court, and used “intimidation [and] threats” to prevent the doctor from testifying in the enforcement action.

In 2020, Smagin filed a civil RICO suit against Yegiazaryan and eleven other defendants, alleging that Yegiazaryan had directed them to thwart Smagin’s efforts to collect the California judgment through a pattern of RICO racketeering predicate acts, including wire fraud and obstruction of justice. Smagin sought “no less than \$130 million” in actual damages, attorneys’ fees, and statutory treble damages. The California District Court dismissed the complaint, holding that Smagin had failed to plead a domestic injury as required by *RJR Nabisco, Inc. v. European Community*, 579 U.S. 325 (2016). The Ninth Circuit reversed, applying a “context-specific inquiry” to determine that Smagin had adequately alleged a domestic injury.

The Supreme Court granted certiorari to resolve a Circuit split on the proper test for determining whether an injury is domestic for purposes of RICO’s private cause of action. The Seventh Circuit had adopted a bright-line rule that injuries to intangible property occur at the location of a party’s residence,<sup>1</sup> while both the Third and Ninth Circuits employed context-specific, multi-factor analyses.<sup>2</sup>

**The Supreme Court Decision.** The Supreme Court rejected the bright-line approach to determining the place of injury, holding that a “plaintiff has alleged a domestic injury for purposes of” RICO’s private right of action, Section 1964(c), “when the circumstances surrounding the injury indicate it arose in the United States.” Justice Sotomayor, writing for a majority of six Justices, concluded that a context-specific approach was more consistent with the Court’s prior decision in *RJR Nabisco*, which

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<sup>1</sup> *Armada (Singapore) PTE Ltd. v. Amcol Int’l Corp.*, 885 F.3d 1090 (7th Cir. 2018).

<sup>2</sup> *Humphrey v. GlaxoSmithKline PLC*, 905 F.3d 694 (3d Cir. 2018); *Smagin v. Yegiazaryan*, 37 F.4th 562 (9th Cir. 2022).

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acknowledged that the domestic injury requirement did not prevent foreign plaintiffs from suing under RICO and that application of the requirement “will not always be self-evident.” The Court also cited the origin of the domestic injury requirement in the presumption against extraterritoriality, which requires courts to assess whether the statute’s “focus” occurred within the United States. Because the focus of Section 1964 is “on the injury, not in isolation, but as the product of racketeering activity,” the Court concluded that a case-specific analysis that accounts for the circumstances surrounding the injury was most appropriate.

The Court determined that in *Yegiazaryan*, this contextual test required looking to “the nature of the alleged injury, the racketeering activity that directly caused it, and the injurious aims and effects of that activity.” Applying that analysis, the Court concluded that Smagin’s injury, *i.e.*, his inability to collect on the California District Court’s judgment, arose in the United States. The Court explained that much of Yegiazaryan’s racketeering activity—including the creation of shell companies, filing a forged doctor’s note, and intimidating the doctor—took place in the United States. Moreover, the racketeering activity outside the United States was directed from and aimed at California, the injurious effects “largely manifested in California” because Smagin had hoped to collect the judgment there, and the judgment granted Smagin rights “only in California.”

**Takeaways and Practical Implications.** Following *Yegiazaryan*, there remains substantial uncertainty as to how courts should apply RICO’s domestic injury requirement. As argued in Justice Alito’s dissent, while the Court resolved a Circuit split in holding that a “context-specific” test comprising an undefinable array of factors governs whether an injury is domestic, it did not provide guidance to lower courts seeking to apply that test in other cases. Moreover, the Court did not expressly address whether its analysis applies only to injuries to intangible property like Smagin’s U.S. judgment, or to tangible property as well, suggesting that this distinction may just be one of the factors to be considered under the context-specific test. The dissent attempts to preserve the bright-line rule applied by the Second Circuit “that RICO injuries to *tangible* property are sited at the location of the property” by arguing that holding was “not implicated” in the Circuit split that the Court granted certiorari to resolve, but future plaintiffs may construe the majority opinion’s silence on that issue as an invitation to extend the context-specific domestic injury test to cases involving damage to foreign tangible property.

For current or potential foreign award or judgment creditors, *Yegiazaryan* demonstrates that RICO and its provision for treble damages may be a powerful tool for enforcement in the United States insofar as the award debtor’s efforts to avoid satisfaction of an award rise to the level of a RICO violation. However, to state a claim under RICO’s private cause of action, an award creditor must allege not just domestic injury, but,

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among other things, that the injury was directly caused by “a pattern of racketeering activity,” which requires showing multiple violations of certain serious state or federal criminal statutes as part of a continuous enterprise. Accordingly, an enforcement action that gives rise to a viable RICO claim will likely be the exception and not the rule in the United States. Even so, the theoretical possibility of treble damages raises the stakes for award debtors actively seeking to evade enforcement after an arbitration award has been reduced to judgment in the United States.

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Please do not hesitate to contact us with any questions.

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