Making Civil Rico Suave: Congress Must Act to Ensure Consistent Judicial Interpretations of the Racketeer Influenced and Corrupt Organizations Act

Eric Lloyd

Follow this and additional works at: http://digitalcommons.law.scu.edu/lawreview

Part of the Law Commons

Recommended Citation
Available at: http://digitalcommons.law.scu.edu/lawreview/vol47/iss1/4

This Comment is brought to you for free and open access by the Journals at Santa Clara Law Digital Commons. It has been accepted for inclusion in Santa Clara Law Review by an authorized administrator of Santa Clara Law Digital Commons. For more information, please contact sculawlibrarian@gmail.com.
MAKING CIVIL RICO “SUAVE”: CONGRESS MUST ACT TO ENSURE CONSISTENT JUDICIAL INTERPRETATIONS OF THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT

Eric Lloyd*

I. INTRODUCTION

In 1970, Congress passed Title IX of the Organized Crime Control Act, otherwise known as the Racketeer Influenced and Corrupt Organizations Act (RICO).1 RICO arose out of increasing concerns over the influence of organized crime on the American economy,2 which it sought to eliminate through criminal sanctions and civil remedies.3 The civil remedy provision of RICO4 was intended to discourage criminal activity by providing injured persons with an incentive to sue those who engaged in statutorily sanctioned conduct.5

In August of 2005, the Ninth Circuit Court of Appeals

* Editor-in-Chief, Santa Clara Law Review, Volume 47; J.D. Candidate, Santa Clara University School of Law; B.A., History, University of California, Berkeley. The author wishes to thank Natalie Kwan for her seemingly unlimited support and patience.


5. See Goldsmith & Linderman, supra note 3, at 738.
issued a decision granting standing under RICO's civil remedy provision to plaintiff David Diaz in Diaz v. Gates.\(^6\) Diaz alleged that the defendants, the Los Angeles Police Department and employees of the City of Los Angeles, falsely imprisoned him and caused him to lose employment and employment opportunities.\(^7\) The Ninth Circuit's decision ran contrary to prior decisions by the Seventh and Eleventh Circuits, both of which held that RICO's civil remedy provision did not permit the recovery of damages related to pecuniary losses resulting from personal injuries.\(^8\)

The split between the Ninth Circuit and the Seventh and Eleventh Circuits highlights the need for Congress to re-evaluate the civil RICO provision. RICO is "an ill-defined statute,"\(^9\) and courts have thus struggled to ascertain Congress' intent in enacting it.\(^10\) Concerned by what they viewed as inappropriate uses of civil RICO, some federal courts imposed standing restrictions upon civil RICO claims\(^11\) in an attempt to curtail plaintiffs' reliance upon the statute.\(^12\) Such action, however, directly conflicts with congressional\(^13\) and Supreme Court\(^14\) mandates stating that RICO should be interpreted liberally.

Section II of this comment explores the mechanics and purposes behind the RICO statute.\(^15\) It then traces the events\(^16\) leading up to the Supreme Court's decision in Sedima, S.P.R.L. v. Imrex Co.\(^17\) before detailing subsequent attempts by the Seventh and Eleventh Circuits to limit civil

---

7. Id. at 897.
8. Id. at 908 (Gould, J., dissenting); see also Doe v. Roe, 958 F.2d 763, 767 (7th Cir. 1992); Grogan v. Platt, 835 F.2d 844, 848 (11th Cir. 1988).
11. McNeil, supra note 9, at 1242-43.
13. See discussion infra Part II.A.
14. See discussion infra Part II.B.
15. See discussion infra Part II.A.
16. See discussion infra Part II.B.
17. Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479 (1985); see also discussion infra Part II.D.
RICO's scope.\textsuperscript{18} Section II concludes with an examination of the Ninth Circuit's decision in Diaz, which rejected the restrictions set forth by the Seventh and Eleventh Circuits.\textsuperscript{19} Section III identifies the legal problem embodied in the split between the Ninth Circuit and the Seventh and Eleventh Circuits.\textsuperscript{20} Section IV analyzes the RICO statute and critiques its construction before scrutinizing the conflicting approaches of the Ninth Circuit and the Seventh and Eleventh Circuits in interpreting civil RICO.\textsuperscript{21} Section V proposes that Congress amend RICO to eradicate the statute's inherent ambiguity and promote uniformity within the judiciary.\textsuperscript{22} Finally, Section VI concludes that the judiciary will continue to experience difficulties in effectuating the civil RICO provision until Congress rehabilitates the statute through the legislative process.\textsuperscript{23}

II. BACKGROUND

A. The Mechanics of RICO

Prior to RICO's enactment, members of Congress expressed concern that organized crime had shifted its emphasis from its traditional revenue-generating enterprises, such as gambling and prostitution, to legitimate business activities.\textsuperscript{24} Thus, in enacting RICO, Congress hoped to "eradicat[e] . . . organized crime in the United States by strengthening the legal tools in the evidence-gathering process, by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime."\textsuperscript{25}

RICO focuses on punishing either the investment of criminal profits in a legitimate enterprise, or the acquisition of an interest in such an enterprise by extortion or fraud.\textsuperscript{26} It

\textsuperscript{18} See discussion infra Part II.C.
\textsuperscript{19} See discussion infra Part II.D.
\textsuperscript{20} See discussion infra Part III.
\textsuperscript{21} See discussion infra Part IV.
\textsuperscript{22} See discussion infra Part V.
\textsuperscript{23} See discussion infra Part VI.
\textsuperscript{26} Gerard E. Lynch, A Conceptual, Practical, and Political Guide to RICO
does so, as outlined in 18 U.S.C. § 1962, by prohibiting: (1) the use of money obtained through a "pattern of racketeering activity" in acquiring or managing any "enterprise"28 engaged in interstate commerce;29 (2) acquiring such an enterprise through a pattern of racketeering activity;30 (3) operating such an enterprise through a pattern of racketeering activity;31 and (4) conspiring to carry out any of these activities.32 As characterized by 18 U.S.C. § 1961, which defines many of the terms central to the RICO statute, the phrase "pattern of racketeering activity" consists of the commission of at least two acts of racketeering activity that occurred within ten years of one another. Further, § 1961 lists an expansive array of offenses that comprise "racketeering activity." The acts contained within the definition of racketeering activity are often referred to as "predicate acts." Many of these predicate acts are state law crimes.38

The prohibitions of § 1962 are complemented by significant criminal punishments for RICO violations in 18 U.S.C. § 1963. Violators of § 1962 face penalties as severe as life imprisonment depending upon the severity of the predicate acts committed. Furthermore, § 1963 authorizes

---

28. An "enterprise" constitutes "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity" for the purposes of RICO. Id. § 1961(4) (2000).
29. Id. § 1962(a).
30. Id. § 1962(b).
31. Id. § 1962(c).
32. Id. § 1962(d).
34. See generally id.
35. Id. § 1961(5).
36. Id. § 1961(1). These offenses can be divided into three categories: state law crimes that are punishable by imprisonment for more than one year, violations of the United States Code, and offenses involving bankruptcy fraud, security fraud, and drug dealing. Rasmussen, supra note 24, at 625-26 (summarizing 18 U.S.C. § 1961(1)). One writer remarked that the extensive definition of "racketeering activity" was made necessary by the mob's willingness to try anything to make a profit. See Lynch, supra note 26, at 773.
37. McNeil, supra note 9, at 1242.
39. See Rasmussen, supra note 24, at 626.
41. Id. § 1963(a).
the forfeiture of: (1) any interest the defendant obtained by committing a RICO violation; 42 (2) any interest in an enterprise established or operated in violation of RICO; 43 and (3) any proceeds the defendant acquired by committing a RICO violation. 44

In addition to strong criminal penalties, 45 RICO also contains a civil remedy to enforce its basic principles. The civil remedy provision, 18 U.S.C. § 1964(c), provides that “[a]ny person injured in his business or property by reason of a violation of section 1962 . . . 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 . . . .” 46 Thus, a plaintiff must demonstrate an injury to her business or property resulting from a racketeering activity as defined in § 1962 in order to have standing under civil RICO. 47 Furthermore, Congress expressed its desire that the provisions of RICO be interpreted broadly by including a liberal construction clause in the statute, stating that “[t]he provisions of [RICO] shall be liberally construed to effectuate its remedial purposes.” 48

Congress modeled RICO’s civil remedy provision after federal antitrust laws, 49 which proved to be effective deterreants of criminal conduct. 50 Acting under the presumption that criminal penalties alone would not

42. Id. § 1963(a)(1).
43. Id. § 1963(a)(2).
44. Id. § 1963(a)(3).
45. Though the sentencing provisions are stern, the forfeiture provision may be the “true force of the criminal penalties” of RICO. See Rasmussen, supra note 24, at 627.
46. 18 U.S.C. § 1964(c).
significantly diminish organized criminal activity,\textsuperscript{51} Congress created the civil remedy in order to induce individual plaintiffs to act as private attorneys general who would enforce RICO's prohibitions in civil lawsuits.\textsuperscript{52} RICO proponents believed that the civil remedy's lower burden of proof relative to criminal cases,\textsuperscript{53} as well as its advantageous venue\textsuperscript{54} and civil investigative demand\textsuperscript{55} provisions, would entice plaintiffs to file suit under civil RICO.\textsuperscript{56} Additionally, the inclusion of a civil remedy provided victims of organized criminal activity with a legal remedy.\textsuperscript{57}

Though Congress intended to target organized crime by passing RICO, the text of the statute does not explicitly mention it.\textsuperscript{58} RICO drafters were concerned that such a specific reference could induce constitutional scrutiny,\textsuperscript{59} and noted the practical difficulties in creating a statute so narrow that it did not also encompass offenses committed by persons outside of organized crime.\textsuperscript{60}

Civil RICO supporters note that the statute has proven successful in enabling plaintiffs to bring civil actions against persons involved in criminal activity.\textsuperscript{61} Further, some counter

\textsuperscript{51} McNeil, \textit{supra} note 9, at 1240.
\textsuperscript{52} See \textit{id.; see also} Sedima, S.P.R.L. v. Imrex Co., Inc., 473 U.S. 479, 493 (1985) ("Private attorney general provisions such as § 1964(c) are in part designed to fill prosecutorial gaps.").
\textsuperscript{55} Section 1968 enables the Attorney General to issue civil investigative demands. \textit{Id.} § 1968.
\textsuperscript{56} \textit{See} Koenig, \textit{supra} note 53, at 833.
\textsuperscript{57} Kurzweil, \textit{supra} note 10, at 60-61.
\textsuperscript{59} Rowan, \textit{supra} note 58, at 240. Some were concerned that a specific reference to organized crime in the text of the statute could be misinterpreted as creating a status crime, or as targeting an ethnic group, thereby inviting a constitutional challenge. \textit{See id.}
\textsuperscript{60} Kurzweil, \textit{supra} note 10, at 58-59. Senator McClellan, who sponsored RICO, noted that "[i]t is impossible to draw an effective statute which reaches most of the commercial activities of organized crime, yet does not include offenses commonly committed by persons outside of organized crime as well." 116 CONG. REC. 18, 940 (daily ed. June 9, 1970) (statement of Sen. McCellan).
\textsuperscript{61} Susan Getzendanner, \textit{Judicial "Pruning" of "Garden Variety Fraud" Civil RICO Cases Does Not Work: It's Time for Congress to Act}, 43 VAND. L. REV.
criticisms of the statute's broad reach by maintaining that the serious nature of the conduct that RICO was implemented to combat justifies civil RICO's breadth and lucrative remedies. In addition, advocates point to the dismissal process as an effective safeguard against the potential for frivolous claims created by the statute's breadth. Furthermore, lobbyists argue that RICO provides consumers with protection against corrupt corporate entities.

Critics maintain that civil RICO is inherently flawed. Opponents in Congress believed that the statute would be prone to abuse and could result in the harassment of legitimate businesses by unscrupulous competitors. Former Chief Justice William Rehnquist echoed a common criticism when he noted that plaintiffs used the civil RICO provision in ways Congress never intended, as the majority of cases brought under the statute did not involve organized crime. Critics also contend that civil RICO claims violate principles of federalism by converting areas of state law into federal matters, and that the complicated issues involved in a RICO case burden an already overloaded federal judiciary. Additionally, some question whether civil lawsuits effectively deter crime.

B. The Rise of Civil RICO and Judicial Attempts to Curtail It

Initially, plaintiffs rarely brought claims under civil RICO. In fact, courts published only two decisions

673, 674 (1990).

62. See Lynch, supra note 26, at 793 ("And if extraordinary remedies such as treble damages and attorney's fees are ever appropriate, would they not be particularly appropriate in cases in which the defendant had committed not merely a civil wrong, but a 'pattern of racketeering acts'?").

63. See id. at 796-97.


65. Kurzweil, supra note 10, at 61.


68. Lynch, supra note 26, at 796.

69. Id. at 793 ("If the Godfather threatens to break your legs if you fail to pay your debts to a loanshark, it seems unlikely that your immediate response is to file a lawsuit.").

70. See Koenig, supra note 53, at 823 n.11 (citing Louis C. Long, Treble Damages for Violations of the Securities Laws: A Suggested Analysis and Application of the RICO Civil Cause of Action, 85 DICK. L. REV. 201, 206 n.32
regarding private civil RICO cases between 1970 and 1977.\textsuperscript{71} However, the number of civil RICO actions proliferated considerably starting in 1978.\textsuperscript{72} The increase in the number of civil RICO cases can largely be explained by the convergence of several factors.

To begin with, RICO is an extremely broad statute.\textsuperscript{73} The extensive coverage of § 1962 is drawn from the expansive definitions of the terms “pattern of racketeering activity”\textsuperscript{74} and “enterprise”\textsuperscript{75} contained in § 1961.\textsuperscript{76} Additionally, given the wide range of activities that qualify as “racketeering activity,”\textsuperscript{77} and the fact that two such activities within a ten year span constitute a “pattern of racketeering activity,”\textsuperscript{78} plaintiffs usually do not encounter significant difficulties in alleging and proving such conduct.\textsuperscript{79}

In addition, the advantages gained by a plaintiff filing a civil RICO claim lead to what one writer deemed “theory shopping.”\textsuperscript{80} The majority of civil RICO claims involve ordinary commercial disputes that could be brought under state law.\textsuperscript{81} However, attorneys are often able to re-characterize these claims to conform to the requirements of RICO.\textsuperscript{82} The primary motivation for such action is the prospect of receiving the treble damages and attorney’s fees awarded to a victorious plaintiff.\textsuperscript{83} In addition, federal courts...
have jurisdiction over civil RICO claims,\textsuperscript{84} allowing plaintiffs to bypass the less efficient state courts.\textsuperscript{85} Finally, framing a lawsuit as a civil RICO claim gives the plaintiff leverage in pressuring the defendant to settle.\textsuperscript{86} The substantial benefits available to the plaintiff have led some to remark that it is "virtually malpractice" not to add a civil RICO claim to a complaint when possible.\textsuperscript{87}

As the number of civil RICO claims increased, some federal district courts expressed concern over what they believed to be inappropriate uses of civil RICO in suits regarding commonplace business disputes.\textsuperscript{88} These courts were reluctant to interpret civil RICO broadly,\textsuperscript{89} despite the instruction of the liberal construction clause,\textsuperscript{90} and imposed standing limitations on civil RICO claims in an attempt to curb the rising number of lawsuits brought under the statute.\textsuperscript{91} Such limitations included an organized crime requirement\textsuperscript{92} and a competitive injury requirement,\textsuperscript{93} both of

\begin{table}
\centering
\begin{tabular}{|c|c|}
\hline
\textbf{Footnote} & \textbf{Description} \\
\hline
\hline
85. & Lynch, supra note 26, at 794. Lawyers in many parts of the country generally prefer to litigate in federal court due to the smaller caseloads, the enhanced reputations of the judges, and the modern rules of procedure. \textit{Id}.
\hline
86. & See id. ("[F]raming the suit as a RICO claim labels the defendant a racketeer—terminology that increases the settlement pressure on defendants worried about the reputational damage of extended and possibly unsuccessful defense of a lawsuit."); see also Rasmussen, supra note 24, at 636 (stating that the prospect of treble damages and attorney's fees gives the plaintiff an advantage in settlement negotiations).
\hline
87. & Lynch, supra note 26, at 794.
\hline
\hline
89. & Kurzweil, supra note 10, at 71. One district court judge wrote in an opinion, "I do not disagree with plaintiff's argument that the congressional intent when enacting this statute was that it be broadly construed, however... section 1964(c) must be interpreted with careful attention to the provision's purposes and [courts must] 'avoid[]' a slavish literalism that would escort into federal court through RICO what traditionally have been civil actions in state courts." Noland v. Gurley, 566 F. Supp. 210, 217-18 (D. Colo. 1983)).
\hline
90. & Kurzweil, supra note 10, at 62.
\hline
91. & Koenig, supra note 53, at 833.
\hline
92. & In order to withstand summary judgment, plaintiffs were required to allege that the defendants were linked to organized crime. Goldsmith & Linderman, supra note 3, at 736 n.2 (citing Plains Res., Inc. v. Gable, 782 F.2d 883, 887 (10th Cir. 1986); Owl Constr. Co. v. Ronald Adams Contractor, Inc., 727 F.2d 540, 542 (5th Cir. 1984)).
\hline
93. & The competitive injury requirement mandated that a plaintiff prove that
which were soon rejected by courts.94 Not all attempts to restrict the number of civil RICO claims were so quickly brushed aside. The two most significant and widely utilized methods of limiting the scope of civil RICO used by the circuit courts were the prior conviction and the racketeering injury requirements.95 The prior conviction requirement mandated that the defendant be convicted of two or more predicate acts96 before civil relief could be granted.97 The racketeering injury requirement was not so clear-cut.98 In the circuits that imposed this requirement, plaintiffs were required to demonstrate "something more than an injury flowing from the predicate acts of racketeering . . . to sustain a civil RICO action."99 For example, "a racketeering injury would be the loss of a business through bankruptcy, caused by the predicate acts of mail fraud and extortion."100

The United States Supreme Court, in Sedima, S.P.R.L. v. Imrex Co.,101 rejected the prior conviction and racketeering injury requirements in a 5-4 decision.102 Sedima, a Belgian corporation, contracted with Imrex, an aviation product...
provider, to supply a NATO subcontractor with component parts. Sedima filed suit in the District Court for the Eastern District of New York when it became suspicious that Imrex was conducting its affairs so as to deny Sedima its portion of the proceeds from the agreement.

The district court dismissed the civil RICO charges against Imrex based on Sedima's failure to allege an injury other than that directly resulting from the predicate acts. The Second Circuit Court of Appeals upheld the racketeering injury requirement, and attempted to clarify the district court's decision by stating that a racketeering injury was "different in kind from that occurring as a result of the predicate acts themselves, or not simply caused by the predicate acts, but also caused by an activity which RICO was designed to deter." In addition, the court of appeals, believing that Congress did not intend for civil defendants to be discredited as criminals without being previously convicted, held that a prior conviction for the predicate acts was required for civil RICO proceedings.

The Supreme Court reversed the Second Circuit's decision. In rejecting the prior conviction requirement, the majority noted that the word "conviction" did not appear in any relevant portion of the RICO statute, and maintained that the statute's requirement of a "violation" of § 1962 did not imply a criminal conviction requirement. The Court derided the vagueness of the Second Circuit's logic in applying the racketeering injury requirement constraint, stating that "the compensable injury necessarily is the harm caused by predicate acts sufficiently related to constitute a

103. Canade, supra note 93, at 1088.
104. Id. Sedima alleged that Imrex overstated purchase prices and various other costs and charges on invoices, purchase orders and credit memoranda. Koenig, supra note 53, at 840.
107. Id. at 496.
108. Id. at 499-502.
109. Id. at 488.
110. Id. at 495 ("There is no room in the statutory language for an additional, amorphous 'racketeering injury' requirement.").
pattern. . . ."113 In effect, the Court held that a civil RICO plaintiff did not need to allege any injury apart from that suffered on account of the predicate acts.114

The Court justified its less restrictive interpretation of civil RICO by emphasizing the liberal construction clause: "[I]f Congress' liberal-construction mandate is to be applied anywhere, it is in § 1964, where RICO's remedial purposes are most evident."115 The Court feared that the Second Circuit's standing restrictions would prevent civil RICO claims from being brought, rather than effectuate the broad purposes Congress had in mind when enacting the statute.116

While sharing the Second Circuit's concern that civil RICO was being used in ways not likely envisioned by Congress,117 the Court asserted that Congress, not the judiciary, was the proper forum in which to remedy any defects in the statute.118 Moreover, the Court stated that the fact that RICO had been applied in ways not anticipated by Congress merely demonstrated the breadth of the statute, not necessarily its misuse.119

Justice Marshall wrote a dissenting opinion, joined by Justices Brennan, Blackmun and Powell, in which he maintained that the statute allowed recovery for an injury from a pattern of racketeering activity, and not from the mere commission of a predicate act.120 In his estimation, RICO was designed to provide a previously unavailable remedy to injured businesspersons;121 therefore, the statute should have been interpreted narrowly to prevent plaintiffs from

113. Id. at 497.
114. Id. at 495.
115. Sedima, 473 U.S. at 491 n.10.
116. See id. at 498-99.
117. Id. at 500 ("We nonetheless recognize that, in its private civil version, RICO is evolving into something quite different from the original conception of its enactors.").
118. Id. at 499-500 ("Yet this defect—if defect it is—is inherent in the statute as written, and its correction must lie with Congress. It is not for the judiciary to eliminate the private action in situations where Congress has provided it simply because plaintiffs are not taking advantage of it in its more difficult applications.").
119. See id. at 499 (quoting Haroco, Inc. v. Am. Nat'l Bank & Trust Co. of Chicago, 747 F.2d 384, 398 (7th Cir. 1984), aff'd, 473 U.S. 606 (1985) ("[T]he fact that RICO has been applied in situations not expressly anticipated by Congress . . . demonstrates breadth.").
120. See id. at 509-10 (Marshall, J., dissenting).
recovering damages in federal courts when state law remedies were available to them.\textsuperscript{122} Justice Marshall believed that the majority's decision "revolutionize[d] private litigation" by validating the federalization of state claims, displacing federal remedies,\textsuperscript{123} and providing plaintiffs with an incentive to invoke civil RICO whenever possible on account of the possibility of winning treble damages.\textsuperscript{124}

C. Post-Sedima Attempts to Limit Civil RICO Standing

Despite the Supreme Court's directive to interpret civil RICO broadly in compliance with the liberal construction clause, the judiciary continued to attempt to retract the scope of the statute.\textsuperscript{125} Courts turned their attention to the requirement contained in § 1964(c) that a plaintiff must suffer injury to her business or property in order to recover damages as a means of limiting standing under civil RICO.\textsuperscript{126}

1. The Eleventh Circuit: Grogan v. Platt\textsuperscript{127}

The Eleventh Circuit Court of Appeals addressed this matter in \textit{Grogan v. Platt}. \textit{Grogan} concerned a civil RICO suit filed by FBI agents and the estates of deceased FBI agents after six were wounded and two killed in a gunfight against the defendants, who committed extortion, robbery, and attempted murder in a scheme to steal large sums of money.\textsuperscript{128} The plaintiffs argued that persons killed or physically injured by RICO predicate acts suffered economic consequences that constituted injuries to business or property.\textsuperscript{129}

The Eleventh Circuit disagreed, and held that civil RICO excluded recovery for personal injuries, including the resulting pecuniary losses, because the requirement of an injury to business or property implied a proprietary type of

\textsuperscript{122} See id. at 501-04.
\textsuperscript{123} Id. at 501.
\textsuperscript{124} Id. at 504.
\textsuperscript{126} Kurzweil, \textit{supra} note 10, at 76.
\textsuperscript{127} Grogan v. Platt, 835 F.2d 844 (11th Cir. 1988).
\textsuperscript{128} Id. at 845.
\textsuperscript{129} Id. at 846.
damage.\textsuperscript{130} In the opinion of the court, the words "business or property" contained within § 1964(c) acted as words of limitation that restricted the types of injuries that persons harmed by predicate acts could recover damages for.\textsuperscript{131} Also, while the court held open the possibility of plaintiffs recovering damages for the loss of employment opportunities under civil RICO, it affirmed that pecuniary losses best understood as part of a personal injury claim were not recoverable under civil RICO.\textsuperscript{132}

2. \textit{The Seventh Circuit: Doe v. Roe}\textsuperscript{133}

The Seventh Circuit Court of Appeals set forth its interpretation of the injury to business or property requirement in \textit{Doe v. Roe}. The plaintiff brought a civil RICO suit alleging that her divorce attorney defrauded her into having sexual relations with him in lieu of payment for his services.\textsuperscript{134} The Seventh Circuit denied her standing because she failed to allege a business or property injury within the meaning of § 1964(c).\textsuperscript{135}

The court initiated its analysis by stating that the words "business or property" as stated in civil RICO were "words of limitation which preclude recovery for personal injuries and the pecuniary losses incurred therefrom."\textsuperscript{136} Noting that the question of whether a particular interest amounted to property was one of state law,\textsuperscript{137} the court struck down the plaintiff's claim that her sexual favors to the defendant had an intrinsic value commensurate with a property interest, since sexual labor had no legal value in Illinois.\textsuperscript{138} In addition, the plaintiff attempted to recover financial losses incurred as a result of her relationship with the defendant, including loss of earnings, and fees stemming from her employment of a new attorney.\textsuperscript{139} The court also rejected this claim, holding that these expenditures were derivatives of the

\begin{tabular}{l}
\textsuperscript{130} Id. at 847. \\
\textsuperscript{131} Id. at 846. \\
\textsuperscript{132} Id. at 848. \\
\textsuperscript{133} Doe v. Roe, 958 F.2d 763 (7th Cir. 1992). \\
\textsuperscript{134} Id. at 765. \\
\textsuperscript{135} Id. at 770. \\
\textsuperscript{136} Id. at 767. \\
\textsuperscript{137} Id. at 768. \\
\textsuperscript{138} Id. \\
\textsuperscript{139} Doe, 958 F.2d at 769-70. 
\end{tabular}
plaintiff's emotional distress, and therefore, constituted personal injuries not compensable under RICO.\textsuperscript{140}

\textbf{D. The Ninth Circuit Adopts a New Approach in Diaz v. Gates}\textsuperscript{141}

The Ninth Circuit confronted the injury to business or property requirement in \textit{Diaz v. Gates}. The plaintiff, David Diaz, was convicted of attempted murder, among other crimes, in 1999.\textsuperscript{142} Diaz claimed that he was falsely imprisoned as a result of the "Rampart scandal,"\textsuperscript{4} which rocked the Los Angeles Police Department in 1999.\textsuperscript{144} Consequently, he initiated a civil RICO claim against two hundred people affiliated with either the Los Angeles Police Department or the Los Angeles city government.\textsuperscript{145} Diaz alleged that officers fabricated evidence and conspired to secure a false conviction against him.\textsuperscript{146} As a result, he claimed to have lost "employment, employment opportunities, and the wages and other compensation associated with said business, employment and opportunities, in that [he] was rendered unable to pursue gainful employment . . . ."\textsuperscript{147}

The defendants moved to dismiss Diaz's claim, arguing that he lacked standing because he did not allege an injury to business or property as required by § 1964(c).\textsuperscript{148} The district

\begin{itemize}
\item \textsuperscript{140} \textit{Id.} at 770.
\item \textsuperscript{141} \textit{Diaz v. Gates}, 420 F.3d 897 (9th Cir. 2005) (per curiam).
\item \textsuperscript{142} \textit{Id.} at 907 n.1 (Gould, J., dissenting). Diaz was also convicted of aggravated mayhem, assault by means likely to produce great bodily injury, and assault with a semiautomatic weapon, with enhancements for discharging a firearm causing great bodily injury, firearm use and infliction of great bodily injury. \textit{Id.}
\item \textsuperscript{143} \textit{Id.} at 898 (majority opinion). The "Rampart scandal" refers to a pattern of systematic misconduct on the part of officers in the Los Angeles Police Department's Rampart Division. Ragland, \textit{supra} note 47, at 142-43. Rampart officers allegedly stole illegal narcotics from police storage, planted evidence, framed suspects, and committed perjury to conceal their scheme. \textit{Id.} at 142. Approximately seventy police officers were implicated for their involvement, and over one hundred sentences were overturned after news of the scandal broke. \textit{Rowan}, \textit{supra} note 58, at 234 (citing \textit{Frontline: LAPD Blues} (PBS television broadcast May 15, 2001) (transcript), \textit{available at http://www.pbs.org/wgbh/pages/frontline/shows/lapd/etc/script.html} (last visited Oct. 13, 2006)).
\item \textsuperscript{144} Ragland, \textit{supra} note 47, at 142.
\item \textsuperscript{145} \textit{Diaz}, 420 F.3d at 898.
\item \textsuperscript{146} \textit{Id.}
\item \textsuperscript{147} \textit{Id.}
\item \textsuperscript{148} \textit{Id.}
\end{itemize}
court granted the defendants’ motion, and dismissed Diaz’s action without prejudice and with leave to amend.\textsuperscript{149} The district judge later dismissed the complaint with prejudice when Diaz failed to amend it.\textsuperscript{150} A divided panel of the Ninth Circuit Court of Appeals subsequently affirmed the district court’s dismissal\textsuperscript{151} before the judges agreed to rehear the case en banc.\textsuperscript{152}

1. The Majority Opinion

The Ninth Circuit Court of Appeals reversed the district court’s dismissal, holding that Diaz properly alleged an injury to business or property within the meaning of civil RICO.\textsuperscript{153} The court of appeals noted the district court’s reliance on \textit{Oscar v. University Students Co-Operative Ass’n},\textsuperscript{154} which held that RICO only provided a cause of action for injuries to property interests resulting in concrete financial losses,\textsuperscript{155} and that personal injuries did not constitute injuries to business or property.\textsuperscript{156} \textit{Oscar}, however, was clarified by \textit{Mendoza v. Zirkle Fruit Co.},\textsuperscript{157} which the Ninth Circuit decided one month after the district court dismissed Diaz’s claim.\textsuperscript{158} In \textit{Mendoza}, a class of agricultural workers claimed that their employers illegally suppressed their wages by hiring undocumented workers at below-market rates.\textsuperscript{159} There, the circuit court held that the workers alleged a sufficient injury to a property interest to obtain standing under RICO—the “legal entitlement to business relations unhampered by schemes prohibited by the RICO predicate statutes.”\textsuperscript{160} Diaz, the Ninth Circuit opined, alleged the same injury as the

\textsuperscript{149} Id.
\textsuperscript{150} Id.
\textsuperscript{151} Diaz v. Gates, 380 F.3d 480 (9th Cir. 2004).
\textsuperscript{152} Diaz v. Gates, 389 F.3d 869 (9th Cir. 2004).
\textsuperscript{153} Diaz, 420 F.3d at 902-03.
\textsuperscript{154} Oscar v. Univ. Students Coop. Ass’n, 965 F.2d 783 (9th Cir. 1992).
\textsuperscript{155} Diaz, 420 F.3d at 898 (construing \textit{Oscar}, 965 F.2d at 785).
\textsuperscript{156} Id. at 898-99 (construing \textit{Oscar}, 965 F.2d at 787).
\textsuperscript{157} Mendoza v. Zirkle Fruit Co., 301 F.3d 1163 (9th Cir. 2002).
\textsuperscript{158} Diaz, 420 F.3d at 899.
\textsuperscript{159} Id. (construing \textit{Mendoza}, 301 F.3d at 1166).
\textsuperscript{160} Id. (quoting \textit{Mendoza}, 301 F.3d at 1168 n.4).
agricultural workers in *Mendoza*.161

Since the *Mendoza* court declined to describe the source of the plaintiffs' "legal entitlement to business relations,"162 the *Diaz* court adopted the logic of the Seventh Circuit in *Doe* by looking to state law to determine whether Diaz's allegedly injured interest amounted to property.163 Since California law protected against intentional interference with contracts and interference with prospective business relations, the court held that Diaz alleged an injury to his property.164 Furthermore, Diaz claimed a financial injury to this property interest in that he was unable to fulfill his employment contract or pursue employment opportunities because he was in jail.165 Thus, the Ninth Circuit concluded that Diaz alleged an injury to his property sufficient to grant him standing in a civil RICO case.166

The court then turned its attention to refuting the dissent's criticisms of its analysis.167 Recognizing that Diaz did not allege that he lost actual employment as a result of his imprisonment, the court stated that such a classification was inconsequential, as California law protected the legal entitlement to current and prospective contractual relations.168 While conceding that it would have been easier to prove causation or calculate damages for Diaz had he lost actual employment, the court declared that such an analysis was not relevant in determining whether he had standing to pursue a civil RICO claim.169

The court also derided any notion that Diaz lacked standing because his alleged injury was a derivative effect of his supposed false imprisonment.170 The lone standing

---

161. *Id.*
162. *Id.* (quoting *Mendoza*, 301 F.3d at 1168 n.4).
163. *Id.* (citing *Doe v. Roe*, 958 F.2d 763, 768 (7th Cir. 1992)).
165. *Id.*
166. *See id.*
167. *Id.* at 900-01. See *infra* Part II.D.3 for a discussion of the dissent in *Diaz*.
168. *Diaz*, 420 F.3d at 900.
169. *Id.* at 900-01.
170. *See id.* at 900. While supporting the notion that Diaz had standing under civil RICO, the court explicitly refused to comment on whether or not his
requirement contained in § 1964(c) was that a person be injured in his business or property "by reason of a violation of section 1962." Further, the Supreme Court clarified this requirement in *Holmes v. Securities Investor Protection Corp.* by holding that the words "by reason of" incorporated a proximate cause standard into civil RICO that allowed claims arising out of the foreseeable consequences of RICO predicate acts, such as Diaz's, to proceed. While acknowledging that this interpretation of RICO would allow more claims to go forward, the court cited Sedima's mandate that RICO was to be interpreted broadly as support for its contention that no additional standing requirement mandated that one's injury be the direct result of a RICO predicate act.

2. The Concurring Opinions

Judge Reinhardt wrote a short concurring opinion in which he expressed concern that RICO was being utilized in ways beyond those intended by Congress. In his estimation, lawmakers did not intend to provide treble damages for conduct unrelated to the racketeering activity that Congress targeted by enacting RICO. He urged Congress to "take another look at RICO and consider amending the statute so as to limit it to its original purpose." Judge Kleinfeld concurred in the result, but utilized a different approach than the majority in his analysis. He
emphasized that RICO did not exclude personal injuries from actionable civil RICO conduct because some of the predicate acts listed in the statute were traditional personal injuries, such as murder and kidnapping. In addition, he argued that § 1964(c) was unclear as to whether the remedy for an injury to business applied only to those who owned a business, or to those who sought to be employed by another. Thus, Judge Kleinfeld maintained that Diaz was injured in his business, and saw no need to distinguish injury to employment from injury to business.

3. The Dissent

In his dissenting opinion, Judge Gould argued that Diaz did not allege an injury to business or property within the meaning of civil RICO. He claimed that the majority’s reliance on Mendoza was misplaced because in that case, the conduct challenged under RICO was “aimed directly at suppressing the wages of farm workers,” whereas Diaz’s alleged loss of employment was “merely an indirect and secondary effect of a non-compensable personal injury, [his] alleged [false] imprisonment.” Diaz, Judge Gould contended, did not allege that his false imprisonment was directed at his business or property. Moreover, Judge Gould noted that Mendoza, a panel decision, did not bind the court when it sat en banc in Diaz.

Judge Gould noted that neither Oscar nor Mendoza addressed the issue of whether an injury to business or property sufficient for the purpose of civil RICO standing could be derived from a non-compensable personal injury. As a result, he looked to the Eleventh Circuit’s decision in Grogan and the Seventh Circuit’s decision in Doe for guidance. He concluded that the majority’s opinion created a circuit split with the Seventh and Eleventh Circuits.

183. Diaz, 420 F.3d at 904-05 (Kleinfeld, J., concurring).
184. Id. at 905-06.
185. Id.
186. Id. at 907 (Gould, J., dissenting).
187. Id.
188. Id. at 911
189. Diaz, 420 F.3d at 908 (Gould, J., dissenting).
190. Id. at 910.
191. Id. at 910.
192. Id. at 908.
Judge Gould criticized the majority’s “selective and incorrect” interpretation of Doe$^{193}$ because in his estimation, the plaintiffs in Doe and Diaz both attempted to claim damages for lost employment wages stemming from a personal injury.$^{194}$ Nonetheless, Judge Gould maintained, the majority deemed Diaz’s lost wages an injury to his business or property, thereby contradicting its purported reliance on the Doe court, which denied standing for the same injury.$^{195}$

Furthermore, Judge Gould disparaged the majority’s method of distinguishing Diaz from Grogan.$^{196}$ The majority stated that Grogan did not necessarily conflict with its decision because there, the plaintiffs may not have claimed a right to employment that was recognized by state law as a property interest, as Diaz did.$^{197}$ Judge Gould believed that the same critique could be made of Diaz, since his complaint did not specify what employment he lost as a result of his alleged false imprisonment.$^{198}$

In closing, Judge Gould stated his concern that the majority’s decision opened up the possibility for plaintiffs to invoke RICO whenever any sort of wrong against them led to any degree of lost employment.$^{199}$ This was undesirable, in his opinion, because it could force courts to engage in speculation regarding the propriety of damages.$^{200}$ Moreover, he asserted that the majority’s opinion unnecessarily stretched civil RICO beyond the boundaries envisioned by Congress because Diaz already had a remedy under 42 U.S.C. § 1983$^{201}$ for the alleged violation of his civil rights.$^{202}$ He also raised the notion that Diaz may not have sufficiently alleged causation in his complaint, and criticized the majority for not addressing this issue.$^{203}$

---

193. Id. at 912.
194. Id. at 913.
195. Diaz, 420 F.3d at 913 (Gould, J., dissenting).
196. Id.
197. Id. at 902 n.2 (majority opinion).
198. Id. at 913 (Gould, J., dissenting).
199. Id. at 914.
200. See id..
202. Diaz, 420 F.3d at 914 (Gould, J., dissenting).
203. Id. at 914 n.9.
III. IDENTIFICATION OF THE PROBLEM

The split between the Ninth and the Seventh and Eleventh Circuits exemplifies a major problem with litigation brought under civil RICO. Over the years, the judiciary has proven incapable of applying civil RICO in a uniform manner. In particular, courts have struggled to interpret civil RICO’s standing requirements.

A primary source of this inconsistency appears to be the construction of the RICO statute. The following analysis evaluates this problem by examining the construction of the RICO statute and the ambiguities that lie therein, and by considering the propriety of the differing interpretations of civil RICO standing requirements that caused the rift between the Ninth Circuit and the Seventh and Eleventh Circuits.

IV. ANALYSIS

A. The Ambiguity of Civil RICO

RICO is an extremely broad piece of legislation. Its far-reaching structure attacks the types of activities in which organized criminals engage, rather than maintaining a narrow focus on affiliation with organized crime itself. In addition, the large number of predicate acts that constitute "racketeering activity" contributes to RICO’s breadth. Consequently, RICO provisions encompass a vast range of conduct.

The liberal construction clause augments the expansive language of RICO. Congress’ “highly unusual instruction to interpret RICO’s language liberally to effectuate its purposes” directs the judiciary to “give form to [RICO’s]
basic ideas.  

Indeed, the Supreme Court's reliance on the liberal construction clause in *Sedima* reinforced this notion by holding that courts should refrain from limiting civil RICO.  

However, RICO remains a poorly defined statute. The drafters went to great lengths to define such key terms as "racketeering activity" and "enterprise" in § 1961, but, as one writer noted, "it is impossible for Congress to predict all of the issues that may arise under [a] statute." Thus, the drafters of RICO neglected to define the terms "business" and "property" contained in § 1964(c). Accordingly, courts have little statutory guidance within the text of RICO as to how they are to construe these terms when determining whether a plaintiff has standing under civil RICO.  

Nevertheless, the judiciary is not entirely without direction regarding the interpretation of the injury to business or property requirement of civil RICO. As the *Sedima* majority stated, the liberal construction clause is particularly relevant within the context of interpreting civil RICO, as it arguably requires that any ambiguities in the civil RICO provision "be liberally interpreted in a way that would best effectuate the statute's remedial purposes." As a result, courts adjudicating civil RICO cases should read the injury to business or property requirement fully cognizant of Congress' directive to do so in a broad fashion.

**B. Differing Judicial Approaches to Interpreting Civil RICO**

Both the Seventh and the Eleventh Circuits appear to have strayed from the directive of the *Sedima* decision to construe civil RICO broadly. The *Grogan* and *Doe* cases...

---

215. See Kurzweil, supra note 10, at 43.
216. See supra text accompanying notes 120-22.
217. See *Sedima*, S.P.R.L. v. Imrex Co., 473 U.S. 479, 497-498 (1985) ("RICO is to be read broadly. This is the lesson not only of Congress' self-consciously expansive language and overall approach . . . but also of [the liberal construction clause].").
218. See McNeil, supra note 9, at 1240.
219. See supra notes 33-38 and accompanying text.
220. Kurzweil, supra note 10, at 88.
223. Kurzweil, supra note 10, at 89.
224. See supra text accompanying notes 120-22.
decisions "strain RICO's statutory language"\textsuperscript{227} and ultimately fail to comply with \textit{Sedima}. In \textit{Diaz}, however, the Ninth Circuit justified its expansive interpretation of civil RICO standing requirements\textsuperscript{228} through its express reliance on \textit{Sedima}.\textsuperscript{229}

1. \textit{Doe}

The \textit{Diaz} majority suggested that the \textit{Doe} court did not address the question of whether the loss of the right to earn wages could be deemed an injury to a property interest because the Seventh Circuit did not indicate that the plaintiff alleged the loss of such a right.\textsuperscript{230} However, the \textit{Doe} court's analysis reveals that the Seventh Circuit would have likely aligned itself with Judge Gould's dissenting opinion in \textit{Diaz}\textsuperscript{231} had the plaintiff raised the issue. Though the court purported to "interpret [civil RICO] according to its plain language,"\textsuperscript{232} the \textit{Doe} opinion spoke to the confines of civil RICO's scope as opposed to its breadth.\textsuperscript{233}

The \textit{Doe} court rejected the plaintiff's claims for fraudulent inducement of sexual relations and payment of fees inflated by said sexual relations on the grounds that sexual labor was not a property interest under state law.\textsuperscript{234} The \textit{Diaz} majority adopted this approach of consulting state law to determine whether a specific interest amounted to a property interest.\textsuperscript{235}

However, the manner in which the \textit{Doe} court dismissed the plaintiff's claim for lost earnings exposes the rift between

\textsuperscript{225} See supra Part II.C.1.
\textsuperscript{226} See supra Part II.C.2.
\textsuperscript{227} Diaz v. Gates, 420 F.3d 897, 903 (9th Cir. 2005) (Kleinfeld, J., concurring).
\textsuperscript{228} See supra Part II.D.1.
\textsuperscript{229} See \textit{Diaz}, 420 F.3d at 901.
\textsuperscript{230} Id. at 900 n.1.
\textsuperscript{231} See supra Part II.D.3.
\textsuperscript{232} Doe v. Roe, 958 F.2d 763, 770 (7th Cir. 1992).
\textsuperscript{233} See generally id. at 767-70 (affirming the district court's dismissal of the plaintiff's claim on the grounds that she did not allege an injury to business or property within the meaning of civil RICO).
\textsuperscript{234} See id. at 767-69.
\textsuperscript{235} See \textit{Diaz}, 420 F.3d at 900 ("We agree with the Seventh Circuit. Without a harm to a specific business or property interest—a categorical inquiry typically determined by reference to state law—there is no injury to business or property within the meaning of RICO.").
the Seventh Circuit and the Ninth Circuit. The Seventh Circuit began its analysis by classifying civil RICO's injury to business or property requirement as a limitation precluding recovery for personal injuries and the resulting pecuniary losses. The court designated the plaintiff's loss of wages a personal injury, and summarily criticized the plaintiff for "blur[ring] the distinction between proprietary and personal injuries." In the court's opinion, the plaintiff's lost earnings were a consequence of her emotional distress, reflecting personal injuries for which civil RICO did not provide a remedy.

In attempting to apply civil RICO in accordance with congressional intent, the Seventh Circuit failed to appreciate the expansiveness of the statute. While the court correctly observed that civil RICO was primarily intended to lessen organized crime's influence on legitimate businesses, it ignored Congress' instruction to construe the statute broadly. For this reason, even if the plaintiff in Doe alleged that her right to earn wages constituted a property interest, it seems unlikely that the Seventh Circuit would have ruled in her favor. The court mocked the "metaphysical speculation" it considered necessary to view "the economic aspects of [the plaintiff's lost wages] . . . as injuries to 'business or property,'" thereby expressing a commitment to construing RICO narrowly in contravention of the liberal construction clause and the Sedima decision. Furthermore, this

236. See Doe, 958 F.2d at 770 (holding that the plaintiff's loss of earnings did not constitute an injury to business or property).
237. Id. at 767 (citing Rylewicz v. Beaton Services, 888 F.2d 1175, 1180 (7th Cir. 1989)) ("The terms 'business or property' are, of course, words of limitation which preclude recovery for personal injuries and the pecuniary losses incurred therefrom.").
238. Id. at 770.
239. Id.
240. See id.
241. Id. at 768.
242. See generally Doe, 958 F.2d at 767-70.
243. Id. at 770.
244. Compare id. at 770 ("Perhaps the economic aspects of [the plaintiff's lost wages] could, as a theoretical matter, be viewed as injuries to 'business or property,' but engaging in such metaphysical speculation is a task best left to philosophers, not the federal judiciary.") with Sedima, S.P.R.L. v. Imrex Co., Inc., 473 U.S. 479, 497-98 (1985) ("RICO is to be read broadly. This is the lesson . . . of Congress' self-consciously expansive language and overall approach . . . ").
methodology arguably laid the foundation for Judge Gould’s dissenting opinion in *Diaz*, demonstrating that the Seventh Circuit would not likely concur with the Ninth Circuit’s reliance on *Sedima* in reaching the conclusion that the right to earn wages is a property interest.

2. Grogan

In *Grogan*, the Eleventh Circuit acknowledged the flexible nature of civil RICO, only to place limitations on the application of the statute. The court cited the Supreme Court’s abolition of several restrictions on civil RICO in *Sedima* before misconstruing open-ended language in the decision to justify its own restriction. In interpreting the injury to business or property requirement according to its “ordinary meaning,” the court surmised that plaintiffs could not recover for personal injuries or their resulting pecuniary consequences under civil RICO. As a result, the court denied the plaintiffs’ apparent claim for lost employment because it was “most properly understood as part of a personal injury claim.”

In the *Diaz* majority opinion, the Ninth Circuit remarked that the Eleventh Circuit did not detail whether the plaintiffs in *Grogan* alleged a right to employment that was recognized as a property interest under state law, and that the two decisions did not necessarily conflict with one another as a result. Indeed, the *Grogan* court left open the possibility

---

245. See *Diaz v. Gates*, 420 F.3d 897, 912-13 (9th Cir. 2005) (Gould, J., dissenting) (“Thus, although the majority fails to recognize it, in *Doe* the Seventh Circuit addressed the same situation we face here—an allegation of lost employment wages stemming from a non-compensable personal injury.”).

246. See *id.* at 901-02 (majority opinion).


248. *Id.* at 845-46.

249. The Eleventh Circuit quoted the following text from *Sedima*: “Any recoverable damages occurring by reason of a violation of § 1962(c) will flow from the commission of the predicate acts.” *Id.* at 846 (quoting *Sedima*, 473 U.S. at 497). The court construed this language to mean that “some limits on civil RICO still exist, for only recoverable damages will flow from the commission of the predicate acts.” *Id.*

250. *Id.* at 847.

251. In the *Grogan* opinion, the Eleventh Circuit does not reveal how the claim for lost employment opportunities was raised. *Diaz*, 420 F.3d at 902 n.2 (construing *Grogan*, 835 F.2d 844).

252. *Grogan*, 835 F.2d at 848.

253. *Diaz*, 420 F.3d at 902 n.2.
that a plaintiff could recover damages under civil RICO for lost employment opportunities.\(^{254}\)

However, the Eleventh Circuit, like the Seventh Circuit in *Doe*, is more aligned with Judge Gould's dissent than with the majority opinion in *Diaz*.\(^{255}\) *Grogan*’s selective reliance on *Sedima* ignored one of the central holdings of the Supreme Court—that civil RICO was to be read broadly.\(^{256}\) The court instead focused on methods of restricting civil RICO that were not eliminated by *Sedima*.\(^{257}\) The Eleventh Circuit stated that its decision was consistent with congressional intent because RICO contained language restricting recovery to those plaintiffs who could demonstrate an injury to business or property.\(^{258}\) The court failed, however, to incorporate other aspects of the congressional intent behind civil RICO into its decision. The Eleventh Circuit did not address the liberal construction clause in *Grogan*,\(^{259}\) but rather, contradicted it by adopting a narrow interpretation of civil RICO.

The defendants in *Grogan* were intertwined in a series of extortions, robberies and attempted murders.\(^{260}\) Such criminal activity surely embodied the type of organized crime Congress intended to combat by enacting RICO.\(^{261}\) In holding that the plaintiffs’ claims were “most properly understood as part of a personal injury claim,”\(^{262}\) the Eleventh Circuit’s decision directly contradicted the central purpose behind RICO.

3. *Diaz*

The *Diaz* majority utilized a very logical methodology in reaching its conclusion that Diaz had standing to sue under civil RICO. The Ninth Circuit determined that Diaz’s “legal entitlement to business relations” constituted a property

\(^{254}\) *Grogan*, 835 F.2d at 848 (“We do not hold that plaintiffs may never recover under RICO for the loss of employment opportunities.”).

\(^{255}\) See *Diaz*, 420 F.3d at 902 (“The dissent's flawed approach is similar to that of [Grogan].”).


\(^{257}\) See *Grogan*, 835 F.2d at 845-46.

\(^{258}\) *Id*. at 846-47.

\(^{259}\) See generally *id*. at 844-48.

\(^{260}\) *Id*. at 845.

\(^{261}\) See supra Part II.A.

\(^{262}\) *Grogan*, 835 F.2d at 848.
interest under state law, and that Diaz alleged an injury to this property interest by virtue of his supposed false imprisonment. Furthermore, since Diaz alleged that this injury occurred “by reason of a violation of section 1962,” there was nothing to prevent him from suing under civil RICO. Additionally, the majority discounted the dissent’s contention that Diaz’s property interest had to be the direct target of a RICO predicate act because the Supreme Court previously held in Holmes that the phrase “by reason of” incorporated a proximate cause standard.

The Diaz majority understood that its holding would confer civil RICO standing on a larger number of plaintiffs than would the dissent’s model, but justified this result through a strict adherence to Sedima. Just as the Supreme Court prohibited the use of nebulous standing requirements to limit the number of civil RICO claims in Sedima, the Diaz court refused to allow the imposition of an “additional, amorphous requirement that, for an injury to be to business or property, the business or property interest have been the ‘direct target’ of the predicate act.” The court made an implied concession that this result may not have suited the tastes of some, but reiterated that it was faithful to the broad language of the statute. Although Diaz did not directly speak to the liberal construction clause, the Ninth Circuit arguably upheld its mandate through its reliance on Sedima.

C. Why Diaz is the Correct Interpretation of Civil RICO

The Ninth Circuit’s conclusion that Diaz’s “legal

---

263. Diaz v. Gates, 420 F.3d 897, 900 (9th Cir. 2005) (per curiam).
264. Id.
265. Id. at 902.
266. See supra text accompanying notes 172-73.
267. Diaz, 420 F.3d at 901-02.
268. Id. at 901.
269. See id.
270. See id. at 901-02 (construing Sedima, S.P.R.L. v. Imrex Co., Inc., 473 U.S. 479, 499 (1985)).
271. Id. at 901.
272. See id. ("The statute is broad, but that is the statute we have.").
273. See generally Diaz, 420 F.3d at 897-903 (liberal construction clause is not addressed).
274. See id. at 901-02 (relying on Sedima's broad interpretation of section 1964(c)).
entitlement to business relations” constituted a property interest further demonstrates its adherence to the congressional intent espoused by the liberal construction clause, particularly when contrasted with the approaches of the Doe and Grogan decisions. The Eleventh Circuit, in Grogan, purported to effectuate the ordinary meaning of the word “property” in § 1964(c) by requiring that plaintiffs suffer a proprietary type of harm in the nature of damage to a building. However, the “ordinary meaning” utilized by the Grogan court restricted the classification of property within the civil RICO standing provision to real property or financial wealth, thereby excluding rights protected as intangible property interests under state law. Similarly, the Seventh Circuit in Doe refused to engage in the “metaphysical speculation” it deemed necessary to define property as anything but a proprietary interest.

Both the Seventh and Eleventh Circuits stated that their decisions stemmed from their desire to interpret civil RICO in line with the congressional intent behind the statute. However, § 1961 does not define the term “property,” leaving the liberal construction clause as the only expression of congressional intent pertaining to § 1964(c). Thus, courts should give effect to Congress’ statement that RICO should be construed liberally by interpreting civil RICO standing requirements broadly. The Ninth Circuit’s decision in Diaz is therefore more faithful to Congress’ purpose behind civil RICO because it reflects a broad interpretation of the statute’s standing provisions rather than

275. See id. at 900.
277. See id. The Eleventh Circuit fortified its interpretation of “property” for the purpose of civil RICO standing by referring to the dictionary definition of the term: “[S]omething that is or may be owned or possessed: wealth, goods . . . something to which a person has legal title.” Id. (quoting WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1818 (1986)).
278. See Doe v. Roe, 958 F.2d 763, 770 (7th Cir. 1992).
279. See id. at 770 (discussing the Seventh Circuit’s assertion that its interpretation of civil RICO is in accord with congressional intent); see also Grogan, 835 F.2d at 846-47 (discussing a similar assertion by the Eleventh Circuit).
280. See supra text accompanying note 221.
281. See Kurzweil, supra note 10, at 88-89.
282. See id. at 89.
an attempt to define them narrowly.\footnote{283}

Judge Gould’s dissenting opinion in \textit{Diaz} adopted the logic of \textit{Grogan} and \textit{Doe} by holding that Diaz’s claims constituted non-compensable consequences of personal injuries.\footnote{284} As a result, his argument is vulnerable to the same criticisms that apply to the Seventh and Eleventh Circuit’s decisions.\footnote{285}

Nevertheless, this does not obscure the fact that Judge Gould raised valid concerns about the use of civil RICO in his dissenting opinion.\footnote{286} Judge Gould voiced his alarm at the prospect of plaintiff’s lawyers “savvy enough to include an allegation that other wrongs lead to any degree of lost employment,”\footnote{287} echoing the unease of critics who charge that civil RICO leads to theory shopping.\footnote{288} In addition, his contention that granting Diaz standing under RICO displaced an existing remedy for the alleged violation of his civil rights\footnote{289} captured the sentiments of those who claim that civil RICO actions violate principles of federalism.\footnote{289}

Judge Gould and other critics of civil RICO argue that the statute is prone to abuse, and that it is being utilized in ways not envisioned by Congress.\footnote{290} Indeed, plaintiffs have utilized civil RICO to combat more than just organized crime.\footnote{292} However, the expansion of RICO into areas beyond organized crime has been facilitated through adherence to the language of the statute.\footnote{293} Though the statute was designed

\footnote{283. See Diaz v. Gates, 420 F.3d 897, 901-902 (9th Cir. 2005) (per curiam), for the Ninth Circuit’s justification of its broad interpretation of civil RICO. Incidentally, University of Notre Dame Professor Robert G. Blakely, the drafter of the original RICO statute, believes that the Ninth Circuit decided \textit{Diaz} correctly. Pamela A. MacLean, \textit{Civil RICO Keeps Marching On: Circuits See Narrow Use, Justices Broad}, NAT’L L.J., Sept. 12, 2005, at 1.}
\footnote{284. Diaz, 420 F.3d at 921 (Gould, J., dissenting).}
\footnote{285. See supra Part IV.B-C.}
\footnote{286. See Diaz, 420 F.3d at 913-14 (Gould, J., dissenting).}
\footnote{287. \textit{Id.} at 914.}
\footnote{288. See supra text accompanying notes 80-87.}
\footnote{289. Diaz, 420 F.3d at 914 (Gould, J., dissenting).}
\footnote{291. See supra text accompanying notes 66-70; see also supra Part II.D.3.}
\footnote{292. See Hughes, \textit{supra} note 66, at 644-45 (quoting William Rehnquist, \textit{Reforming Diversity Jurisdiction and Civil RICO}, 21 ST. MARY’S L.J. 5, 9 (1989)) (“Most of the civil suits filed under [§ 1964(c)] have nothing to do with organized crime. They are garden-variety civil fraud cases of the type traditionally litigated in state courts.”).}
\footnote{293. See Lynch, \textit{supra} note 26, at 774-75 (“It is simply wrong to blame the
to fight organized crime, its language is sufficiently ambiguous to enable plaintiffs to pursue damages from entities and persons not affiliated with criminal enterprises. The liberal construction clause supports the wide reach of the statute as well. Thus, courts should embrace a broad reading of civil RICO unless and until Congress chooses to restrict the scope of the statute via the legislative process.

V. PROPOSAL

Courts have failed to consistently apply the provisions of RICO in compliance with congressional directives. A central reason for this irregularity is RICO's ambiguity, which is enhanced by the liberal construction clause. In effect, RICO demonstrates that Congress must provide courts with clear criteria for interpreting the laws it passes in order to achieve uniform results within the judiciary.

Though § 1961 defines many of the terms central to RICO's construction, the statute does not provide the same level of specificity regarding terms contained in the civil RICO provision. Thus, courts are left with the unenviable task of attempting to effectuate the congressional intent behind civil RICO without the benefit of its precise expression. This comment proposes that Congress implement the following amendments to § 1961 of RICO to eliminate the vagueness engulfing civil RICO standing requirements and to ensure that courts uniformly interpret the statute's provisions in line with congressional intent.

A. Amend § 1961 by Defining “Property”

Congress should amend § 1961 of RICO by inserting a definition for the term “property” contained within the civil
RICO provision. The lack of a definition renders the term amorphous, leaving open the possibility for courts to promulgate differing interpretations of it. As a result, the Ninth Circuit held that "property" under civil RICO encompassed intangible property interests, while the Seventh and Eleventh Circuits rejected such a notion in *Doe* and *Grogan*, respectively.

Congress can prevent future ambiguity by defining "property" as it pertains to civil RICO standing. The liberal construction clause is the only expression of congressional intent that the judiciary may rely on, indicating that Congress intended for the courts to interpret RICO broadly. Hence, Congress should incorporate a broad definition of "property" into § 1961 that encompasses both proprietary and nonpossessory property interests, such as Diaz's legal entitlement to business relations, into the statute. On the contrary, if Congress wishes for courts to implement an interpretation of the term similar to the Eleventh Circuit's analogy of damage to a building, it should amend § 1961 to include a definition that restricts "property" to real property and financial assets. The former proposal would likely increase the number of civil RICO claims. The latter proposal, however, would induce an increased number of dismissals for lack of standing and likely reduce the number of civil RICO suits initiated. In either case, the judiciary would benefit from a clear directive outlining Congress' intent.

B. Amend § 1961 by Defining "Business"

The term "business," as it pertains to the civil RICO standing requirements, is not defined by § 1961. Thus, there exists the potential for a split amongst the circuits regarding the meaning of this term similar to the current divide over the definition of the term "property." In his concurring opinion in *Diaz*, Judge Kleinfeld noted the

301. See Kurzweil, *supra* note 10, at 76.
302. See *supra* Part II.D.1.
303. See *supra* Part II.C.1-2.
304. See *supra* Part IV.A.
305. See *Diaz v. Gates*, 420 F.3d 897, 900 (9th Cir. 2005) (per curiam).
ambiguity inherent in the word "business" by stating that it was unclear whether Congress intended to restrict the availability of civil RICO remedies for injuries to businesses owned by sole proprietors.\textsuperscript{308}

In order to prevent a future circuit split, Congress should amend § 1961 of RICO by defining "business" as it applies to the civil RICO standing requirements. In order to effectuate a broad interpretation of the term consistent with the liberal construction clause,\textsuperscript{309} Congress should specify that "business" encompasses employees as well as business owners. This approach, however, must be undertaken with caution. In his dissenting opinion in \textit{Diaz}, Judge Gould attacked what he viewed as the majority's hypocrisy in granting Diaz standing under civil RICO when it was not clear that Diaz was employed at all.\textsuperscript{310} Judge Gould's declaration highlights the possibility of courts denying standing to civil RICO litigants alleging an injury to business on the basis that they are unemployed. Therefore, Congress must also define "business" in a manner that clearly delineates whether civil RICO standing under the injury to business provision is reserved for those persons able to demonstrate an injury to their existing employment.

Conversely, if Congress wishes to preclude those who do not own businesses from filing civil RICO lawsuits, any amendment should unambigously restrict the definition of the term to the ownership stakes of proprietors. In effect, such an amendment would restrict relief under RICO to a smaller class of plaintiffs.

\textbf{VI. CONCLUSION}

In January 2006, the United States Supreme Court denied the City of Los Angeles' appeal of the Ninth Circuit's decision in \textit{Diaz}.\textsuperscript{311} In effect, the Court asserted that Congress, not the judiciary, was best situated to correct any issues with civil RICO.\textsuperscript{312}

\textsuperscript{308} See id. at 905-06 (Kleinfeld, J., concurring) ("I cannot see what purpose Congress could have intended to serve by limiting 'person injured in his business' to some forms of earning a living but not others.").

\textsuperscript{309} See supra Part IV.A.

\textsuperscript{310} Diaz, 420 F.3d at 913 (Gould, J., dissenting).


\textsuperscript{312} See supra Part II.B.
However, even if the Court granted certiorari in *Diaz*, civil RICO would have remained a problematic issue for the judiciary. This comment’s approach of examining RICO and the conflicting interpretations of its civil remedy provision exposed RICO’s construction as the root cause of judicial dissension. In analyzing the ambiguous nature of civil RICO and evaluating the *Doe, Grogan,* and *Diaz* decisions, this comment demonstrated that the Ninth Circuit faithfully effectuated the purposes of the statute and that the legislative process is the proper means by which to address concerns about civil RICO’s use and scope. Moreover, it proposed that Congress clarify its intent behind civil RICO by amending the statute.

The judicial branch can not correct civil RICO’s inherent imperfections, and therefore, Congress must step in to remedy the situation. Sustained congressional inaction ensures perpetual confusion within the judiciary and increases the potential for courts to continue to interpret the statute’s provisions incorrectly.

313. *See supra* Part II.A.
314. *See supra* Part II.B-D.
315. *See supra* Part III.
316. *See supra* Part IV.A.
320. *See supra* Part IV.C.
321. *See supra* Part IV.C.
322. *See supra* Part V.A-B.