No. 05-465

In The
Supreme Court of the United States

MOHAWK INDUSTRIES, INC.,

Petitioner,

v.

SHIRLEY WILLIAMS, GALE PELFREY, BONNIE JONES, AND LORA SISSON, Individually and on behalf of a class,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

---

BRIEF OF RESPONDENTS

JOHN E. FLOYD
JOSHUA F. THORPE
RONAN P. DOHERTY
NICOLE G. IANNARONE
BONDURANT, MIXSON & ELMORE, LLP
3900 One Atlantic Station
1201 W. Peachtree Street, N.W.
Atlanta, Georgia 30309
(404) 881-4100

HOWARD W. FOSTER*
JOHNSON & BELL, LTD.
33 West Monroe Street
Suite 2700
Chicago, Illinois 60603
(312) 372-0770

Counsel for Respondents

March 16, 2006

Counsel of Record

[Additional Counsel Listed On Inside Cover]

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

BOBBY LEE COOK
COOK & CONNELLY
9899 Commerce Street
P.O. Box 370
Summerville, Georgia 30747
(706) 857-3421

MATTHEW THAMES
GODDARD, THAMES, HAMMONTREE
& BOLDING
2716 Cleveland Highway
P.O. Box 399
Dalton, Georgia 30722-0399
(706) 278-0464

Additional Counsel for Respondents

TABLE OF CONTENTS

	Page
INTRODUCTION	1
STATEMENT OF THE CASE	3
SUMMARY OF THE ARGUMENT	5
ARGUMENT	7
I. CONGRESS INTENDED LAWSUITS LIKE THIS ONE TO ENFORCE THE IMMIGRATION LAWS	7
A. By Making Illegal Hiring Of Undocumented Aliens A RICO Predicate Offense, Congress Intended Corporations To Face Suits Like This One	8
B. Mohawk's Arguments Would Nullify Congress's Addition Of INA Violations To RICO's Predicate Crimes	11
II. AN ASSOCIATION-IN-FACT ENTERPRISE MAY BE COMPRISED OF CORPORATIONS AND OTHER ENTITIES	12
A. Mohawk Failed To Preserve Its Initial Argument	12
B. The RICO Statute Contemplates Association-in-Fact Enterprises That Include Corporations And Other Entities	14
1. The Circuit Courts Have Unanimously Rejected Mohawk's Argument That A Corporation Cannot Be A Member Of An Association-In-Fact Enterprise Because § 1961(4) Is Illustrative, Not Exhaustive	15

TABLE OF CONTENTS – Continued

Page

2. The Statute Precludes Mohawk's Inference That Congress Excluded Corporations And Other Entities From Association-In-Fact Enterprises 16
   a. *Expressio Unius* Cannot Be Applied To Section 1961(4) 16
   b. Mohawk's Interpretation Improperly Negates The Distinction Between "Includes" And "Means" In RICO's Definition Section 20
3. RICO's Legislative History Does Not Contradict § 1961(4)'s Plain Language.... 23

III. MOHAWK'S VAGUE TEST FOR MEASURING DISTINCTNESS CONTRADICTS THE STATUTE AND WOULD ELIMINATE ASSOCIATION-IN-FACT ENTERPRISES 26
   A. Mohawk Cannot Escape RICO Liability By Inventing Agency Relationships Among The Members Of The Enterprise.............. 28
      1. *Kushner* Requires Nothing More Than Legal Distinctness Between The RICO Person And The Enterprise................. 29
      2. Respondents Have Not Alleged That The Other Members Of The Enterprise Are Mohawk's Employees, Subsidiaries Or Agents 31

TABLE OF CONTENTS – Continued

Page

B. Mohawk's Proposed Test For Determining Whether A Defendant Has Participated In The Affairs Of A Distinct Enterprise Would Eviscerate Association-In-Fact Liability 33

1. Mohawk's Proposal Contradicts The Purpose Of The RICO Statute 35

2. Mohawk's Test For Participation In The Affairs Of An Enterprise Is Fatally Inconsistent With *Reves* 36

a. Because *Reves* Concerns "Outsiders," Not Members Of Association-In-Fact Enterprises, It Does Not Support Mohawk's Proposed Test ... 37

b. Mohawk's Proposed Participation Test Would Contradict *Reves* By Allowing Upper Rung Defendants To Escape RICO Liability 39

3. Mohawk's Suggestion That Illegal Hiring Cannot Be Conducted Through The Affairs Of A Distinct Enterprise Contradicts Congress' Decision To Add Violations Of The INA To The RICO Statute 41

C. Mohawk's Additional Distinctness Requirements Cannot Be Reconciled With The Statute Or *Turkette* 42

1. Mohawk's Test For Distinctness Contradicts *Turkette* 43

TABLE OF CONTENTS – Continued

Page

2. Mohawk's Proposals Find No Support In The Cases That Reject Enterprises Consisting Of A Corporation And Its Employees Or Subsidiaries: *Copperweld* Does Not Apply To RICO 44

3. *Baker v. IBP, Inc.* Was Wrongly Decided 48

CONCLUSION 50

TABLE OF AUTHORITIES

Page

CASES

Abels v. Farmers Commodities Corp., 259 F.3d 910 (8th Cir. 2001) 37, 40

Am. Nat'l Bank & Trust Co. v. Haroco, Inc., 473 U.S. 606 (1985) 12

Ashland Oil, Inc. v. Arnett, 875 F.2d 1271 (7th Cir. 1989) 45-46, 48

Atlas Pile Driving Co. v. DiCon Fin. Co., 886 F.2d 986 (8th Cir. 1989) 15, 25, 30

Bachman v. Bear Stearns & Co., 178 F.3d 930 (7th Cir. 1999) 45-46

Baker v. IBP, Inc., 357 F.3d 685 (7th Cir.), *cert. denied*, 543 U.S. 959 (2004) 48, 49

Barnhart v. Peabody Coal Co., 537 U.S. 149 (2003) 17-18

BedRoc Ltd., LLC v. United States, 541 U.S. 176 (2004) 23

Bessette v. Avco Fin. Servs., 230 F.3d 439 (1st Cir. 2000) 47

Bragdon v. Abbott, 524 U.S. 624 (1998) 12

Brannon v. Boatmen's First Nat'l Bank, 153 F.3d 1144 (10th Cir. 1998) 46

Brittingham v. Mobil Corp., 943 F.2d 297 (3rd Cir. 1991) 46

Board of County Comm'rs v. Liberty Group, 965 F.2d 879 (10th Cir. 1992) 47

Bucklew v. Hawkins, Ash, Baptie & Co., 329 F.3d 923 (7th Cir. 2003) 45-46

Caminetti v. United States, 242 U.S. 470 (1917) 16

TABLE OF AUTHORITIES – Continued

Page

Cannon v. Univ. of Chicago, 441 U.S. 677 (1979) 10

Cedric Kushner Promotions, Ltd. v. King, 533 U.S. 158 (2001) .... *passim*

Chen v. Mayflower Transit, Inc., 315 F. Supp.2d 886 (N.D. Ill. 2004) 42

Chevron U.S.A., Inc. v. Echazabal, 536 U.S. 73 (2002) 17-18

City of Chicago v. Environmental Defense Fund, 511 U.S. 328 (1994) 23-24

Colautti v. Franklin, 439 U.S. 379 (1979) 20

Commercial Cleaning Servs., LLC v. Colin Services Sys., Inc., 271 F.3d 374 (2d Cir. 2001) 11

Copperweld Corp. v. Independence Tube Corp., 467 U.S. 752 (1984) 45-46, 48

Cullen v. Margiotta, 11 F.2d 698 (2d Cir. 1987) 30

Dana Corp. v. Blue Cross & Blue Shield, 900 F.2d 882 (6th Cir. 1990) 25

Davis v. Mutual Life Insurance Co., 6 F.3d 367 (6th Cir. 1993) 40

DeCanas v. Bica, 424 U.S. 351 (1976) 8

Discon, Inc. v. NYNEX Corp., 93 F.3d 1055 (2d Cir. 1996), *rev'd*, 525 U.S. 128 (1998) 46, 48

Exxon Mobil Corp. v. Allapattah Services, Inc., 125 S. Ct. 2611 (2005) 23

Federal Land Bank v. Bismarck Lumber Co., 314 U.S. 95 (1941) 21

Fitzgerald v. Chrysler Corp., 116 F.3d 225 (7th Cir. 1997) 45-47, 48

TABLE OF AUTHORITIES – Continued

Page

Fogie v. THORN Ams., Inc., 190 F.3d 889 (8th Cir. 1999) 46

Freedom Labor Contractors v. State Div. of Unemployment Compensation, 779 So.2d 663 (Fl. App. 2001) 33

Gasoline Sales, Inc. v. Aero Oil, 39 F.3d 70 (3rd Cir. 1990) 46

Graham v. LaCrosse M.R. Co., 102 U.S. 148 (1880) 30

Groman v. Commissioner, 302 U.S. 82 (1937) 20

Helvering v. Morgan's, Inc., 293 U.S. 121 (1934) 20-21

Hishon v. King & Spalding, 467 U.S. 69 (1984) 31-32

H.J., Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229 (1989) ..... *passim*

Hoffman Plastic Compounds, Inc. v. N.L.R.B., 535 U.S. 137 (2002) 8

Holly Farms Corp. v. NLRB, 517 U.S. 392 (1996) 12

Ianelli v. United States, 420 U.S. 775 (1975) 35

INS v. Elias-Zacarias, 502 U.S. 478 (1992) 23

Jaguar Cars, Inc. v. Royal Oaks Motor Car Co., 46 F.3d 258 (3rd Cir. 1995) 27, 44, 46

Kirwin v. Price Communications Corp., 391 F.3d 1323 (11th Cir. 2004) 46

Libertad v. Welch, 3 F.3d 428 (1st Cir. 1995) 25

MCM Partners, Inc. v. Andrews Bartlett & Assocs., Inc., 62 F.3d 967 (7th Cir. 1995) 37, 40

Mendoza v. Zirkle Fruit Co., 301 F.3d 1163 (9th Cir. 2002) 10

TABLE OF AUTHORITIES – Continued

Page

Napoli v. United States, 32 F.3d 31 (2d Cir. 1994)............ 40

Nationwide Mut. Ins. Co. v. Darden, 503 U.S. 323 (1992) 33

NLRB v. A.P.R.A. Fuel Oil Buyers Group, Inc., 134 F.3d 50 (2d Cir. 1997) 8

NOW v. Scheidler, 510 U.S. 249 (1994)......................*passim*

Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75 (1998) 24

Owasso Independent School District No. 1-011 v. Falvo, 534 U.S. 426 (2002).. 12

Papasan v. Allain, 478 U.S. 265 (1986)............................ 31

Parker & Parsley Petr. Co. v. Dresser, 972 F.2d 580 (5th Cir. 1992).. 47

Reves v. Ernst & Young, LLP, 507 U.S. 170 (1993).....*passim*

Richards v. United States, 369 U.S. 1 (1962)................... 23

Riverwoods Chappaqua Corp. v. Marine Midland Bank, N.A., 30 F.3d 339 (2d Cir. 1994)............. 46, 47, 48

Securitron Magnalock Corp. v. Schnabolk, 65 F.3d 256 (2d Cir. 1995) 25

Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479 (1985)......*passim*

Smith v. Berg, 247 F.3d 532 (3rd Cir. 2001)............... 37, 40

Sure-Tan, Inc. v. N.L.R.B., 467 U.S. 883 (1984) 8

Taylor v. Feeland & Kronz, 503 US 638 (1992)................ 12

Trollinger v. Tyson Foods, 370 F.3d 602 (6th Cir. 2004)... 10

United States v. Aimone, 715 F.2d 822 (3d Cir. 1983)... 25

TABLE OF AUTHORITIES – Continued

Page

United States v. Allen, 155 F.3d 35 (2d Cir. 1998) 38

United States v. Blinder, 10 F.3d 1468 (9th Cir. 1993) 15

United States v. Cianci, 378 F.3d 71 (1st Cir. 2004) 22

United States v. Console, 13 F.3d 641 (3d Cir. 1993) .. 15, 25

United States v. Elliott, 571 F.2d 880 (5th Cir. 1978) 35

United States v. Feldman, 53 F.2d 648 (9th Cir. 1988) 25, 30

United States v. Fisher, 6 U.S. (2 Cranch) 358 (1805) 23

United States v. Goldin, 219 F.3d 1271 (11th Cir. 2000) 25, 30, 38

United States v. Huber, 603 F.2d 387 (2d Cir. 1979) 13, 15, 25

United States v. Hughes, 895 F.2d 1135 (6th Cir. 1990) 25

United States v. London, 66 F.3d 1227 (1st Cir. 1995) 13, 15, 25, 34

United States v. Masters, 924 F.2d 1362 (7th Cir. 1991) 15, 18

United States v. Oreto, 37 F.3d 739 (1st Cir. 1994) 37

United States v. Parise, 159 F.3d 790 (3d Cir. 1998) 40

United States v. Perholtz, 842 F.2d 343 (D.C.Cir. 1998) 15

United States v. Porcelli, 865 F.2d 1352 (2d Cir. 1989) 25

TABLE OF AUTHORITIES – Continued

Page

United States v. Posada-Rios, 158 F.3d 832 (5th Cir. 1998) 39

United States v. Rogers, 89 F.3d 1326 (7th Cir. 1996) 39

United States v. Russello, 464 U.S. 16 (1983) 22

United States v. Salerno, 108 F.3d 730 (7th Cir. 1997) 36

United States v. Shifman, 124 F.3d 31 (1st Cir. 1997) 36

United States v. Starrett, 55 F.3d 1525 (11th Cir. 1995) 41

United States v. Thevis, 665 F.2d 616 (5th Cir. 1982) 15, 25

United States v. Turkette, 452 U.S. 576 (1981) ..... *passim*

Webster v. Omnitron Int'l, Inc., 79 F.3d 776 (9th Cir. 1996) 46

Willheim v. Murchison, 342 F.2d 33 (2nd Cir. 1965) 18

Williams v. Grimes Aerospace Co., 988 F. Supp. 925 (D.S.C. 1997) 33

Williams v. Mohawk Industries, Inc., 411 F.3d 1252 (11th Cir. 2005) 10

STATUTES, RULES AND REGULATIONS

Immigration Reform and Control Act, Pub. L. No. 99-603, 100 Stat. 3360 ..... 8, 9

Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 922-923 7

TABLE OF AUTHORITIES – Continued

Page

Private Securities Litigation Reform Act, Pub. L. No. 104-67, § 107, 109 Stat. 737, 758 (Dec. 22, 1995) 10

The Antiterrorism and Effective Death Penalty Act, § 433, Pub. L. No. 104-132, 110 Stat. 1274 (1996) 9

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996, § 203, Pub. L. No. 104-208, Division C, 110 Stat. 3009-546 (Sept. 30, 1996) 9

The Immigration and Nationality Act, 8 U.S.C. § 1101, *et seq.* 4

The Racketeer Influenced and Corrupt Organizations Act, Pub. L. No. 91-452, Title IX, 84 Stat. 941, at 18 U.S.C. §§ 1961-1968 .... *passim*

8 U.S.C. § 1324 .... *passim*

18 U.S.C. § 841 21

18 U.S.C. § 1546 32

18 U.S.C. § 3333(f) 21

18 U.S.C. § 6001 21

LEGISLATIVE HISTORY

S. 1623 § 2, 91st Cong. (1969) 22

S. 1861 § 2, 91st Cong. (1969) 22

S. 2187 § 3, 89th Cong. (1965) 22

H.R. 10312, 91st Cong. (1969) 22

H.R. Rep. 82-1365 (1952) *as reprinted in* 1952 U.S.C.C.A.N. 1653, 1662 8

TABLE OF AUTHORITIES – Continued

Page

H.R. Rep. 99-682(I) (1986) *as reprinted in* 1968 U.S.C.C.A.N. 5649, 5649-50 8

S. Rep. No. 104-249 (1996) 9

RULES

Sup. Ct. R. 14(1)(a) 12

Sup. Ct. R. 24(1)(a) 12

MISCELLANEOUS AUTHORITIES

Brief of United States as *Amicus Curiae* in *Cedric Kushner Promotions, Ltd. v. King,* 2000 WL 85159, at *19-21 (Jan. 25, 2001) 30

C. Robert Blakey and Kevin Roddy, *Reflections on* Reves v. Ernst & Young 33 Am. Crim. L. Rev. 1369, 1666-68 (1996) 22

Christopher W. Madel, *The Modern RICO Enterprise: The Inoperation and Mismanagement of* Reves v. Ernst & Young, 71 Tul. L. Rev. 1133, 1171-71 (1997) 40

Federal Court Management Statistics, District Courts (2005) (U.S. District Court Judicial Caseload Profile) (listing approximately between 650 and 680 district judges from 2000 to 2005) available at http://www.uscourts.gov/cgi-bin/cmsd2005.pl 2

TABLE OF AUTHORITIES – Continued

Page

Federal Judicial Caseload Statistics, Table 2.2 (Civil Cases Filed By Nature of Suit, Fiscal Years 1988-2004) (972 RICO cases filed in FY 1990 compared to 743 filed in FY 2003 and 777 filed in FY 2004) available at http://www.uscourts.gov/judicialfactsfigures/table2.02.pdf 1

J. Rakoff & H. Goldstein, *RICO: Civil and Criminal Law and Strategy* § 1.06[3](2005)................................ 42

Memorandum of the President, 60 Fed. Reg. 7885 at 7886 8

Merriam-Webster's Collegiate Dictionary 1292 (10th ed. 1999).. 19

Restatement (Third) of the Law of Agency § 1.01 cmt. c (Tentative Draft No. 2, March 14, 2001) 30

2A Norman J. Singer, *Sutherland's Statutes and Statutory Construction* § 47.7 (6th ed. 2005)................ 20

Supplemental Statement of Aaron M. Kohn, Managing Director, Metropolitan Crime Commission of New Orleans, Inc., Member, Advisory Panel on Crime Prevention and Control of the U.S. Chamber of Commerce, Organized Crime Control: Hearings on S.30 before Subcommittee No. 5 of the Committee of the Judiciary, 91st Cong. 112, at 433 (1970)... 25

INTRODUCTION

Mohawk Industries, Inc.'s opening brief asks this Court to legislate amendments to the federal RICO statute[1] to (1) exclude corporations from association-in-fact enterprises and (2) immunize corporations from liability for conducting the affairs of such enterprises. In support, Mohawk repeatedly argues that Congress cannot possibly have intended to subject corporations engaged in "routine business activity" to RICO liability and that the Eleventh Circuit's opinion will cast open the floodgates of litigation against "legitimate businesses" like Mohawk.

These arguments should have a familiar ring because this Court has had repeated occasion to consider proposals to artificially restrict RICO to avoid the purportedly dire consequences of the statute's broad reach. The Court, however, has properly declined previous invitations to rewrite the RICO statute in the guise of interpretation. Although the Court has twice observed that Congress could narrow the statute's exceptionally broad reach, the legislature instead has expanded RICO by adding predicate acts, including the illegal hiring and harboring crimes at issue here. Nevertheless, the number of civil RICO actions filed in the federal district courts has declined substantially.[2] Indeed, the recent statistics indicate that only one civil RICO case is filed per district judge per

---

[1] The Racketeer Influenced and Corrupt Organizations Act, Pub. L. 91-452, Title IX, 84 Stat. 941, at 18 U.S.C. §§ 1961-1968 ("RICO").

[2] *See* Federal Judicial Caseload Statistics, Table 2.2 (Civil Cases Filed By Nature of Suit, Fiscal Years 1988-2004) (972 RICO cases filed in FY 1990 compared to 743 filed in FY 2003 and 777 filed in FY 2004), *available at* http://www.uscourts.gov/judicialfactsfigures/table2.02.pdf.

year.[3] Mohawk's brief, therefore, asks this Court to exceed its constitutional role, ignore Congress's decision to add an illegal hiring predicate to RICO and contradict its own precedents – all to fix a problem that does not exist.

Nor does the Eleventh Circuit's decision criminalize "ordinary business activity," as Mohawk and its *amici* repeatedly claim. Whether criminal or civil, a RICO claim requires an allegation that the defendant engaged in a pattern of serious criminal misconduct. Respondents here allege that Mohawk – in connection with other, distinct third parties – has engaged in widespread violations of the immigration laws for profit. In 1996, Congress enacted statutes that (1) criminalized the employment of undocumented aliens and (2) added illegal hiring to the list of predicate crimes subject to RICO prosecution and treble damage actions. These legislative decisions conclusively demonstrate that Congress intended to permit prosecutors and plaintiffs to use RICO to combat the illegal conduct alleged in the complaint. By arguing that "legitimate" corporations should not face RICO prosecution for hiring undocumented aliens, even when they associate with others in the manner that RICO proscribes, Mohawk asks this Court for nothing less than a judicial veto of these statutes.

[3] *Compare id. with* Federal Court Management Statistics, District Courts (2005) (U.S. District Court Judicial Caseload Profile) (listing between 650 and 680 district judges from 2000 to 2005), *available at* http://www.uscourts.gov/cgi-bin/cmsd2005.pl.

When law enforcement personnel have raided Mohawk's facilities, illegal workers have fled or attempted to hide to evade arrest.[10] Furthermore, Mohawk has taken steps to conceal this criminal conduct by destroying eligibility documents and helping illegal workers evade law enforcement personnel.[11] Accordingly, respondents allege that Mohawk has committed hundreds, if not thousands, of felonies over several years.[12]

Respondents do not allege that Mohawk committed this conduct alone. Rather, they allege that Mohawk participated in the affairs of an association-in-fact RICO enterprise that includes independent temporary employment agencies, such as Temporary Placement Services, Inc. ("TPS"), and other individual recruiters who are not Mohawk employees.[13] Respondents allege that Mohawk conducts the affairs of this separate enterprise by (1) using the services of the enterprise to procure illegal workers, whom Mohawk unlawfully hires and harbors; (2) using the enterprise to "borrow" additional illegal workers, employed by other members of the enterprise; (3) relying on the other members of the enterprise to provide its illegal workers with housing and false documents;

---

[10] *Id.* at 12-13 (Compl. ¶ 27).

[11] *Id.* at 11, 13 (Compl. ¶¶ 20, 28).

[12] Specifically, respondents allege that Mohawk has violated § 274 of the Immigration and Nationality Act, 8 U.S.C. § 1101, *et seq.* ("INA"), by (1) knowingly employing undocumented workers in violation of 8 U.S.C. § 1324(a)(3); (2) harboring illegal aliens in violation of § 1324(a)(1)(A)(iii); and (3) encouraging illegal aliens to enter the United States in violation of § 1324(a)(1)(A)(iv). *See* JA 19-20 (Compl. ¶¶ 58-61).

[13] *Id.* at 23 (Compl. ¶ 76).

and (4) knowingly accepting false documentation provided by other members of the enterprise.[14]

On February 9, 2004, Mohawk moved to dismiss the complaint. In a thorough 53-page opinion, the district court denied Mohawk's motion to dismiss the respondents' federal RICO claim on April 12, 2004.[15] The district court subsequently granted Mohawk's petition for leave to seek an interlocutory appeal and stayed all further proceedings pending that appeal.[16]

The Eleventh Circuit accepted Mohawk's interlocutory appeal and affirmed the district court's decision to uphold respondents' RICO claim.[17] The Eleventh Circuit subsequently denied Mohawk's petition for rehearing *en banc*,[18] but the district court continued its stay pending this Court's review.[19] As a result, the parties have taken no discovery and made no progress towards class certification.

SUMMARY OF THE ARGUMENT

The thrust of Mohawk's argument is that Congress cannot have intended RICO to apply to corporations hiring their own employees, regardless of whether the defendant corporation violates the immigration laws or whether the defendant corporation associates with distinct third parties and entities to commit those crimes. These arguments

[14] *Id.* at 22-23 (Compl. ¶¶ 75-76).

[15] *See* Pet. App. 61a.

[16] *Id.* at 68a-72a.

[17] *Id.* at 67a; *id.* at 1a-23a.

[18] *Id.* at 73a.

[19] *Id.* at 62a-66a.

simply ignore Congress's 1996 decision to add the illegal hiring of undocumented aliens to the list of predicate crimes that may be prosecuted under RICO. That decision confirms that Congress believed that employers could commit illegal hiring through a distinct RICO enterprise and intended prosecutors and civil plaintiffs to use RICO against corporations that did so.

After obtaining *certiorari* for this Court to review whether a defendant corporation can form an association-in-fact enterprise with its agents, Mohawk's opening brief all but abandons that question. Instead, Mohawk asks the Court to hold that corporations can never be part of an association-in-fact enterprise. That argument has been rejected by every circuit to consider it, and Mohawk affirmatively conceded it in the lower courts.

Mohawk's second argument similarly ignores the agency issue posed in the Question Presented and petitions the Court to limit association-in-fact enterprises to "combination[s] . . . with an existence and activities that are clearly distinct" from its member entities.[20] This new rule has no grounding in the text of the RICO statute or the case law that interprets it. In fact, Mohawk's rule contradicts this Court's seminal precedents in *United States v. Turkette*, *Reves v. Ernst & Young*, and *Cedric Kushner Promotions, Inc. v. King*, and it would require the lower courts to re-examine RICO principles that have been settled for decades. More important, Mohawk's immodest proposal would effectively eliminate association-in-fact enterprises and all 18 U.S.C. § 1962(c) actions by allowing any RICO defendant to escape criminal or civil liability by

[20] Mhk Br. at 27 & n.15.

arguing that it had merely conducted its own affairs rather than the affairs of a larger enterprise. That is not the law, nor should it be.

ARGUMENT

I. Congress Intended Lawsuits Like This One to Enforce the Immigration Laws.

Mohawk argues that Congress cannot possibly have intended to subject "legitimate" corporations conducting their own affairs, "legal ***or otherwise***," to suits like this one.[21] To that end, Mohawk cites selectively from RICO's legislative history and emphasizes that Congress was primarily concerned with individual criminals infiltrating legitimate businesses. But nothing in the legislative history of RICO or the broader Organized Crime Control Act of 1970 ("OCCA"),[22] supports Mohawk's claim that Congress intended corporations engaged in racketeering to be immune from RICO prosecution. And this Court has long recognized that Congress enacted a statute that extends beyond the infiltration concerns that Mohawk emphasizes.[23] Moreover, Mohawk simply ignores subsequent legislative developments that confirm Congress affirmatively intended to impose RICO liability on corporations that associate with others to employ undocumented aliens.

---

[21] *Id.* at 37-38 (emphasis added).

[22] Pub. L. No. 91-452, 84 Stat. 941.

[23] *See, e.g., United States v. Turkette*, 452 U.S. 576, 590 (1981) ("we are unpersuaded that Congress . . . confined the reach of the law to only narrow aspects of organized crime, and, in particular, under RICO, only the infiltration of legitimate business").