

## CASE COMMENTS

**Criminal Law**—RICO Enterprise Present Even If Enterprise Members Do Not Share an Express Common Purpose—*United States v. Cianci*, 378 F.3d 71 (1st Cir. 2004)

The Organized Crime Control Act of 1970 added Chapter 96 to Title 18, entitled Racketeer Influenced and Corrupt Organizations (RICO), to address corrupt individuals and the economic organizations they use to further their illegal goals.<sup>1</sup> To establish a crime pursuant to 18 U.S.C. § 1962(c), the government must prove that an enterprise exists and that the enterprise is involved in a general pattern of racketeering activity.<sup>2</sup> The First Circuit Court of Appeals considered in *United States v. Cianci*<sup>3</sup> whether Vincent Cianci (Cianci), Frank Corrente (Corrente), Richard Autiello (Autiello), the City of Providence (City), and various officers, agencies and entities of Providence, formed an enterprise under the RICO statute.<sup>4</sup> The First Circuit upheld the defendants' RICO convictions because it determined that their control over the City of Providence and its agencies and officers sufficiently established that a RICO enterprise existed.<sup>5</sup>

The government charged and convicted Cianci, the City's former mayor, Corrente, the City's administration director, and Autiello, an active funds solicitor for the mayor, of conspiracy to violate the RICO statute, and the government convicted only Corrente of a substantive RICO violation.<sup>6</sup> Cianci,

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1. 18 U.S.C. § 1961 (2000) (codifying Chapter 96 of Title 18); *see also* 18 U.S.C. 1962(c) (2000) (making employment by or association with enterprise engaged in racketeering pattern unlawful); 18 U.S.C. § 1962(d) (2000) (codifying conspiracy to violate any § 1962 provisions as crime); *United States v. Turkette*, 452 U.S. 576, 592 (1981) (explaining RICO's purposes).

2. *United States v. Patrick*, 248 F.3d 11, 19 (1st Cir. 2001) (clarifying government must establish "enterprise" and "pattern of racketeering activity" to prove RICO violation); *see also* 18 U.S.C. § 1961(4) (2000) (defining enterprise as individual, corporation, any group of individuals associated in fact although not legal entity); *United States v. Turkette*, 452 U.S. 576, 583 (1981) (asserting existence of enterprise does not prove pattern of racketeering). *See generally* George K. Chamberlin, Annotation, *What is an "Enterprise," as Defined at 18 U.S.C.A. § 1961(4), for Purposes of the Racketeer Influenced and Corrupt Organizations (RICO) Statute (18 U.S.C.A. § 1961 et seq.)*, 52 A.L.R. FED. 818 (2004) (emphasizing Congress did not intend to restrict enterprise definition).

3. 378 F.3d 71 (1st Cir. 2004).

4. *Id.* at 84-85 (emphasizing alleged enterprise must act as ongoing organization and function as continuing unit to achieve illegal purposes).

5. *Id.* at 84-85 (establishing enterprise element under RICO statute and affirming RICO convictions); *Ryan v. Clemente*, 901 F.2d 177, 180 (1st Cir. 1990) (stating members must share common criminal purpose to establish association-in-fact enterprise pursuant to RICO); *see infra* note 21 (elaborating on common purpose and continuity requirements when proving enterprise exists).

6. *United States v. Cianci*, 210 F. Supp. 2d 71, 72 (D.R.I. 2002), *aff'd*, 378 F.3d 71 (1st Cir. 2004)

Corrente, Autiello, Friends of Cianci organization (Mayor's political funding raising organization), the City, and various departments and agencies of the City comprised the alleged RICO enterprise, which Cianci, Corrente, and Autiello allegedly used to award and dispense job contracts in exchange for bribes and political contributions.<sup>7</sup> Cianci, Corrente, and Autiello challenged the existence of an association-in-fact RICO enterprise in the Rhode Island District Court (District Court) arguing the alleged enterprise, consisting of governmental agencies, lacked a common criminal purpose.<sup>8</sup>

The District Court considered whether the City, its agencies, and officers could form part of the alleged association-in-fact RICO enterprise.<sup>9</sup> The District Court found that a RICO enterprise may include legitimate entities as well as an association-in-fact enterprise, which consists of a group of individuals.<sup>10</sup> Pursuant to precedent, the District Court held adequate the indictment alleging the enterprise consisted of legitimate governmental entities and a group of individuals.<sup>11</sup> On appeal, the First Circuit upheld that Cianci, Corrente, Autiello, the City, and its agencies comprised a RICO enterprise that functioned with common purposes or goals.<sup>12</sup>

Congress intended to facilitate the eradication of organized crime in the United States by strengthening the legal processes used to gather evidence against such organizations, increase penal prohibitions, and enhance sanctions and remedies that address organized crime's unlawful activities.<sup>13</sup> Under the

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(dismissing defendants' motion for acquittal judgment with respect to RICO counts). Corrente also served as the treasurer for the mayor's fundraising organization, Friends of Cianci. *Id.* Autiello operated a towing business that did a substantial amount of work for the city. *Id.*; see 378 F.3d at 77 (noting jury returned eight guilty verdicts against defendants). The court jointly tried the defendants on an indictment charging them with forty-six violations of federal statutes prohibiting public corruption. 378 F.3d at 77.

7. United States v. Cianci, 210 F. Supp. 2d 71, 72 (D.R.I. 2002), *aff'd*, 378 F.3d 71 (1st Cir. 2004) (describing alleged association-in-fact enterprise). The indictment set forth the defendants' alleged racketeering activity pattern consisting of nine schemes. 378 F.3d at 80. In one scheme that allegedly persisted for eight years, Corrente pressured tow companies to contribute to Friends of Cianci in order to remain on the City's police department towing list. *Id.* In another alleged scheme, Cianci arranged for a job opening for a particular individual in exchange for five thousand dollars. *Id.*

8. United States v. Cianci, 210 F. Supp. 2d 71, 73 (D.R.I. 2002), *aff'd*, 378 F.3d 71 (1st Cir. 2004) (pointing to defendants' argument that City, agencies, and officers as legitimate entities lacked criminal objectives).

9. United States v. Cianci, 210 F. Supp. 2d 71, 73 (D.R.I. 2002), *aff'd*, 378 F.3d 71 (1st Cir. 2004) (qualifying issue before court).

10. United States v. Cianci, 210 F. Supp. 2d 71, 74 (D.R.I. 2002), *aff'd*, 378 F.3d 71 (1st Cir. 2004) (recognizing enterprise categories under RICO either legal-entity enterprise or association-in-fact enterprise); see also 18 U.S.C. 1961(4) (2004) (defining "enterprise").

11. United States v. Cianci, 210 F. Supp. 2d 71, 75 (D.R.I. 2002); *aff'd*, 378 F.3d 71 (1st Cir. 2004) (dismissing defendants' motions for acquittal with respect to RICO counts).

12. See *infra* note 30 and accompanying text (noting court upheld defendants' RICO conspiracy convictions).

13. Organized Crime Control Act of 1970, Pub. L. No. 91-450, § 901(A), 84 Stat. 922, 922-923 (1970) (outlining Congress' purpose for enacting RICO statute); see also 18 U.S.C. § 1961 (2000) (defining specifically prohibited activities in RICO statute); 18 U.S.C. § 1962(c)-(d) (2000) (codifying substantive RICO count and conspiracy RICO count); United States v. Turkette, 452 U.S. 576, 588-89 (1981) (summarizing

RICO statute, an individual may be prosecuted for committing a substantive RICO offense, as well as conspiring to commit a substantive RICO offense.<sup>14</sup> Unlike most federal conspiracy statutes, the government does not need to prove a specific or overt act to charge an individual with a RICO conspiracy.<sup>15</sup>

The government must first prove the existence of an enterprise, and second, that the enterprise conducted its affairs through a pattern of racketeering activity, to indict an individual with conspiracy pursuant to the RICO statute.<sup>16</sup> An enterprise may consist of both legal entities and individuals who are associates of a criminal enterprise.<sup>17</sup> An association-in-fact RICO enterprise consisting of corporations does not require intentional or purposeful behavior on the part of the corporation; rather, individuals may use the corporation as a means to economically benefit themselves or the corporation itself.<sup>18</sup>

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Congress' intent to interpret RICO statute broadly); Yvette M. Mastin, *RICO Conspiracy: Dismantles the Mexican Mafia & Disables Procedural Due Process*, 27 WM. MITCHELL L. REV. 2295, 2320-21 (2001) (comparing RICO conspiracy count with other federal conspiracy crimes).

14. 18 U.S.C. § 1962(c)-(d) (2000) (detailing substantive and conspiracy provisions in RICO statute); see also *United States v. Connolly*, 341 F.3d 16, 21 (1st Cir. 2003) (charging FBI agent violated substantive and conspiracy RICO provisions); Jason D. Reichelt, Note, *Stalking the Enterprise Criminal: State RICO and the Liberal Interpretation of the Enterprise Element*, 81 CORNELL L. REV. 224, 227-28 (1995) (defining RICO crimes and elements).

15. See *Salinas v. United States*, 522 U.S. 52, 63 (1997) (clarifying conspirator need not agree to commit all substantive elements for court to find conspiracy); *United States v. Boylan*, 898 F.2d 230, 242 (1st Cir. 1990) (maintaining co-conspirators need not know of or participate in all conspiracy aspects of RICO conspiracy). See generally David Kurzweil, Note, *Criminal and Civil RICO: Traditional Canons of Statutory Interpretation and the Liberal Construction Clause*, 30 COLUM. J.L. & SOC. PROBS. 41 (1996) (discussing rule of lenity and RICO statute).

16. 18 U.S.C. § 1962(c) (2000) (codifying enterprise and pattern of racketeering elements of RICO); see also *United States v. Turkette*, 452 U.S. 576, 583 (1981) (asserting pattern of racketeering activity does not prove enterprise element); *United States v. Connolly*, 341 F.3d 16, 21-22 (1st Cir. 2003) (reviewing defendant's argument alleging RICO's two essential elements not proven by evidence). See generally Gail A. Feichtinger, Note, *RICO's Enterprise Element: Redefining or Paraphrasing to Death?*, 22 WM. MITCHELL L. REV. 1027 (1996) (discussing debate among jurisdictions regarding enterprise and pattern of racketeering elements).

17. See *United States v. Patrick*, 248 F.3d 11, 19 (1st Cir. 2001) (rejecting *Bledsoe* test because Congress intended to include legal and criminal organizations in enterprise element). The *Bledsoe* court held that an alleged enterprise must be shown to have an ascertainable structure, making it difficult to allege a criminal organization as an enterprise pursuant to the RICO statute. *Id.*; *United States v. London*, 66 F.3d 1227, 1244 (1st Cir. 1995) (rejecting argument that association-in-fact RICO enterprise may not be comprised of legal entities). But see *United States v. Bledsoe*, 674 F.2d 647, 665 (8th Cir. 1982) (requiring government to establish ascertainable structure of enterprise). The Eighth Circuit was concerned with the slippery slope between any two wrongdoers who commit two or more crimes and share a common purpose, and an actual enterprise with criminal objectives. *Id.* at 665; see also Thomas S. O'Neill, Note, *Functions of the RICO Enterprise Concept*, 64 NOTRE DAME L. REV. 646, 664 (1989) (elaborating on *Turkette's* substantive requirements for association-in-fact enterprise).

18. See *United States v. Feldman*, 853 F.2d 648, 658 (9th Cir. 1988) (explaining government need not show corporation charged as member of association-in-fact possessed purposeful, unlawful behavior). Compare *United States v. London*, 66 F.3d 1227, 1244 (1st Cir. 1995) (accepting association-in-fact enterprise may include legal entities), with *Lancaster Cmty. Hosp. v. Antelope Valley Hosp. Dist.*, 940 F.2d 397, 404 (9th Cir. 1991) (holding government entities not part of RICO enterprise because cannot form malicious intent).

In *United States v. Turkette*,<sup>19</sup> the Supreme Court stated that an association-in-fact RICO enterprise exists if “a group of persons associate together for a ‘common purpose’ of engaging in a course of conduct.”<sup>20</sup> In order to show individuals and entities of an association-in-fact enterprise shared a common purpose, the government must present evidence of a formal or informal “ongoing organization” and evidence that the various associates function as a “continuing unit.”<sup>21</sup> Unlike a criminal organization (group formed for an illegal purpose), the court held that an entity having a legal status (such as a legally formed corporation) does not prevent it from pursuing an illegal course of conduct.<sup>22</sup> Therefore, an association-in-fact enterprise may be comprised of corporations, legal entities, and individual actors.<sup>23</sup>

Finding that Cianci, Corrente, and Autiello exercised sufficient control over the City, the City’s agencies, and the City’s employees to achieve the City’s illegal purposes, the First Circuit held in *United States v. Cianci*<sup>24</sup> that an association-in-fact enterprise existed.<sup>25</sup> Although the government had to show that Cianci, Corrente, Autiello, the City, its employees and its agencies shared a common purpose in order to establish an enterprise, the court reiterated that the government did not need to prove that the City had intended to commit bribes

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19. 452 U.S. 576 (1981).

20. *United States v. Turkette*, 452 U.S. 576, 581-82 (1981) (explaining association-in-fact enterprise requirements); *see also* *United States v. Feldman*, 853 F.2d 648, 657 (9th Cir. 1988) (elaborating on legal entities as part of an association-in-fact RICO enterprise). *See generally* 31A AM. JUR. 2D *Extortion, Blackmail, and Threats* § 127 (2004) (stating RICO enterprise’s three distinguishing characteristics).

21. *United States v. Turkette*, 452 U.S. 576, 583 (1981) (explaining necessary proof of enterprise’s common purpose). To prove that an enterprise had a common purpose, the government must prove that some type of cohesiveness or continuity, formal or informal, among the actors in the enterprise existed. *Id.*; *see also* *H.J. Inc. v. N.W. Bell Tel. Co.*, 492 U.S. 229, 241-42 (1989) (qualifying “continuity” requirement as requiring repeated conduct or past conduct with threat of repetition); Christopher W. Madel, *The Modern RICO Enterprise: The Inoperation and Mismanagement of Reves v. Ernst & Young*, 71 TUL. L. REV. 1133, 1205-09 (1997) (summarizing courts’ use of *Reves* standard to limit liability pursuant to § 1962(c)). The *Reves* standard requires any RICO defendant to have either operated or managed the alleged enterprise, which has resulted in considerable criticism because of the number of innocent defendants brought into an indictment. *Id.* at 1139-40. Rather than limit those persons who are indicted, *Reves* test also includes those defendants who are under the direction of the of the enterprise’s upper management. *Id.* at 1171. This holding casts a broader net when alleging a RICO enterprise because leaders of an enterprise or those who advise them will always satisfy the *Reves* test. *Id.* at 1171-72. *Contra* *Lancaster Cmty. Hosp. v. Antelope Valley Hosp. Dist.*, 940 F.2d 397, 404 (9th Cir. 1991) (barring municipalities from inclusion in association-in-fact because no proof of continuity to show common purpose).

22. *United States v. Turkette*, 452 U.S. 576, 582 n.4 (1981) (reiterating legitimate purpose not characteristic of all enterprises listed in § 1961(4)). The RICO act defined “enterprise” to include “any individual, partnership, corporation, association, or toher legal entity . . . or group of individuals associated in fact.” 18 U.S.C. § 1961(4) (2000); *see also* *United States v. Patrick*, 248 F.3d 11, 19 (1st Cir. 2001) (calling issue of structure and ascertainability of enterprise slippery slope).

23. *United States v. Feldman*, 853 F.2d 648, 657-58 (9th Cir. 1988) (considering interconnections between individuals and corporations to determine existence of enterprise).

24. 378 F.3d 71 (1st Cir. 2004).

25. *Id.* at 84-85 (accepting evidence sufficient for jury to conclude existence of association-in-fact).

and extortion.<sup>26</sup> The court reasoned that the unlawful common purpose of Cianci, Corrente, and Autiello could be imputed to the City and its agencies because of their control, manipulation and influence over the City, its agencies and employees.<sup>27</sup> The court determined that the illegal enterprise could not function and carry out its illegal purposes without the close relationship between Cianci, Corrente, Autiello, the City that they managed, and Cianci's political organization.<sup>28</sup> The *Cianci* court recognized that Cianci, Corrente, and Autiello were not always successful in their endeavors with the municipal departments and employees, but held that this fact did not defeat the existence of an enterprise because they could not possess and exercise considerable control over the City even if they lacked success.<sup>29</sup> By imputing Cianci, Corrente, and Autiello's common illegal purpose to the City and its agencies, the court found an association-in-fact enterprise and affirmed the defendants' RICO convictions.<sup>30</sup>

The First Circuit made significant inferences to reach its conclusion that an association-in-fact enterprise existed to affirm the defendants' RICO convictions.<sup>31</sup> Rather than compel the government to prove that the City shared an illegal common purpose, the First Circuit imputed the unlawful purpose to the City via the defendants' control over the City, its employees, and its agencies.<sup>32</sup> The majority adopted the Ninth Circuit's theory that municipal entities may be part of an association-in-fact enterprise so long as the

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26. *Id.* at 84 (stating no mens rea requirement for City). Compare *Lancaster Cmty. Hosp. v. Antelope Valley Hosp. Dist.*, 940 F.2d 397, 404 (9th Cir. 1991) (holding government entities incapable of forming malicious intent therefore no common purpose), with *United States v. London*, 66 F.3d 1227, 1244 (1st Cir. 1995) (determining companies shared common purpose of illegality with individuals in enterprise).

27. 378 F.3d at 84 (imputing defendants' unlawful purpose to City and its agencies); see also *United States v. Feldman*, 853 F.2d 648, 657 (9th Cir. 1988) (stating legitimate legal entities of illegal enterprise need not act purposefully). See generally Jason D. Reichelt, Note, *Stalking the Enterprise Criminal: State RICO and the Liberal Interpretation of the Enterprise Element*, 81 CORNELL L. REV. 224 (1995) (explaining states' varying definitions of association-in-fact).

28. See 378 F.3d at 85 (reiterating enterprise's common purpose aimed to exploit City's resources). But see *supra* note 8 (arguing defendants' control not enough to impute common criminal purpose to City and its agents).

29. 378 F.3d at 87 (emphasizing Cianci and others exercised more control over some parts of City than others).

30. 378 F.3d at 82-83 (dismissing argument enterprise named too broad and non-culpable parties implicated).

31. See 378 F.3d at 85 (holding City part of association-in-fact enterprise because defendants exercised substantial control over City); see also *supra* note 27 (imputing defendants' common purpose of illegality to City).

32. See 378 F.3d at 85 (affirming defendants' convictions for conspiracy and substantive RICO charges); see also *supra* note 27 (holding defendants' common purpose imputed to City). But see, 378 F.3d at 110 (Howard, J., dissenting) (asserting Cianci and others did not dominate affairs of City and agencies sufficiently to impute illegal purpose to City); *United States v. Feldman*, 853 F.2d 648, 657 (9th Cir. 1988) (pointing out *Turkette's* common purpose requirement for association-in-fact enterprise); *United States v. Bledsoe*, 674 F.2d 647, 665 (8th Cir. 1982) (contending common purpose does not always distinguish enterprises from ad hoc criminal ventures).

controlling members share in the enterprise's unlawful purposes.<sup>33</sup>

This case received an exorbitant amount of public attention, which may have motivated the majority to make thinly-supported inferences and conclusions in order to ensure the punishment of the public figures involved for their abuse of power over the City and its agencies.<sup>34</sup> The majority discussed the split among the circuit courts regarding the burden of proof for a RICO association-in-fact enterprise and held that all that the government must show to establish such an enterprise is "that those associated in fact 'function as an ongoing unit and constitute an ongoing organization'."<sup>35</sup> The dissent accurately identified the problems that arise in applying a broad interpretation of the RICO statute to parties and entities that lack culpable intent.<sup>36</sup> Rather than affirm the defendants' RICO convictions, the majority should have accepted their argument that the indictment alleged a RICO association-in-fact enterprise that was too untenable and should therefore have overturned their RICO convictions.<sup>37</sup>

By circumventing the "common purpose" element of a RICO enterprise and allowing a common illegal purpose to be imputed to the City, the majority broadened the scope for prosecutors to allege the existence of an association-in-fact enterprise.<sup>38</sup> Rather than limit the enterprise definition with the common purpose element, the majority expanded the definition of an association-in-fact enterprise with its holding.<sup>39</sup> As a result, the First Circuit will likely see a

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33. See 378 F. 3d at 83 (quoting *Feldman* as reasoning RICO does not require corporate association-in-fact members share in purposeful criminal behavior).

34. See 378 F.3d at 111-12 (Howard, J., dissenting) (condemning majority's avoidance of fact government did not prove City and agencies shared common purpose).

35. See 378 F.3d at 82 (rejecting *Bledsoe* holding, which required association-in-fact enterprise function through ascertainable structure distinct from racketeering pattern). The majority's approach still requires proof that members of an association-in-fact enterprise share a common purpose. 378 F.3d at 82. *But see supra* note 26 and accompanying text (discussing alleged municipalities as part of enterprises and establishment of common purpose). The majority cited *Lancaster Community Hospital v. Antelope Valley Hospital District* as authority relieving the government from any burden of proving municipalities shared a common illegal purpose; in *Lancaster Community Hospital*, however, the court held that the RICO claims failed because government entities could not form the malicious intent required. 378 F.3d at 84. The majority then made the considerable inference that the unlawful common purpose element may be imputed to a government entity based on the parties' control and influence over the City. *Id.* at 84.

36. See 378 F.3d at 112 (Howard, J., dissenting) (arguing majority failed to establish necessary culpability of City); see also *Ryan v. Clemente*, 901 F.2d 177, 180-81 (1st Cir. 1990) (arguing common purpose element restricts limitless scope of "enterprise").

37. Compare *supra* note 7 (outlining defendants' alleged schemes), with *supra* note 32 (noting dissent argued defendants failed to sufficiently control City through schemes for imputation of common purpose). Rather than expanding the reach of the RICO statute, the court should have required the government to prove culpability before naming an individual or entity as part of an association-in-fact enterprise. 378 F.3d at 112. This requirement would ensure that the government would not automatically charge parties involved in political corruption under the RICO statute. *Id.*

38. See 378 F.3d at 109 (Howard, J., dissenting) (highlighting majority's concession that decision must address common purpose jury instruction). *But see supra* note 30 (rejecting argument that enterprise named in indictment vague and implicates non-culpable parties).

39. See *supra* note 37 and accompanying text (expanding, rather than limiting, scope of enterprise concept

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significant increase in indictments alleging association-in-fact enterprises.<sup>40</sup> Further, other circuits searching for a basis to expand the RICO statute's breadth may follow the First Circuit's analysis.<sup>41</sup>

The First Circuit considered whether the association-in-fact enterprise alleged in the indictment existed pursuant to the RICO statute. The court held that Cianci, Corrente, Autiello, the City, and City agencies constituted an enterprise because they shared a common purpose and acted as a continuing unit. The majority failed to consider the government's inability to prove that the City and its agencies shared in the individuals' illegal criminal objectives. The majority seemed more concerned with punishing the defendants who used their positions to abuse the system, rather than with adhering to precedent and deciding the case based on its merits.

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with common purpose requirement).

40. *See supra* note 21 and accompanying text (considering Congressional intent behind common purpose element of enterprise concept); *see also supra* note 32 (setting forth hurdles facing courts distinguishing criminal enterprises from ad hoc criminal ventures). The easier it is for the government to invoke the RICO statute, especially in the political context, the more often the government will make a broad sweep when naming defendants in an indictment. 378 F.3d at 112.

41. 378 F.3d at 112-13.