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

SUPREME COURT OF THE UNITED STATES

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CEDRIC KUSHNER PROMOTIONS, LTD. *v.* KING ET AL.

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

No. 00–549. Argued April 18, 2001– Decided June 11, 2001

Petitioner, a corporate promoter of boxing matches, sued Don King, the president and sole shareholder of a rival corporation, alleging that King had conducted his corporation's affairs in violation of the Racketeer Influenced and Corrupt Organizations Act, which makes it "unlawful for any person employed by or associated with any enterprise . . . to conduct or participate . . . in the conduct of such enterprise's affairs through a pattern of racketeering activity," 18 U. S. C. §1962(c). The District Court, citing Circuit precedent, dismissed the complaint. In affirming, the Second Circuit expressed its view that §1962(c) applies only where a plaintiff shows the existence of two separate entities, a "person" and a distinct "enterprise," the affairs of which that "person" improperly conducts. In this instance, the court noted, it was undisputed that King was an employee of his corporation and also acting within the scope of his authority. Under the court's analysis, King, in a legal sense, was part of the corporation, not a "person," distinct from the "enterprise," who allegedly improperly conducted the "enterprise's affairs."

Held: In the circumstances of this case, §1962(c) requires no more than the formal legal distinction between "person" and "enterprise" (namely, incorporation); hence, the provision applies when a corporate employee unlawfully conducts the affairs of the corporation of which he is the sole owner– whether he conducts those affairs within the scope, or beyond the scope, of corporate authority. This Court does not quarrel with the basic principle that to establish liability under §1962(c) one must allege and prove the existence of two distinct entities: (1) a "person"; and (2) an "enterprise" that is not simply the same "person" referred to by a different name. Nonetheless, the

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Court disagrees with the appellate court's application of that "distinctness" principle to the present circumstances, in which a corporate employee, acting within the scope of his authority, allegedly conducts the corporation's affairs in a RICO-forbidden way. The corporate owner/employee, a natural person, is distinct from the corporation itself, a legally different entity with different rights and responsibilities due to its different legal status. The Court can find nothing in RICO that requires more "separateness" than that. Linguistically speaking, an employee who conducts his corporation's affairs through illegal acts comes within §1962(c)'s terms forbidding any "person" unlawfully to conduct an "enterprise," particularly when RICO explicitly defines "person" to include "any individual . . . capable of holding a legal or beneficial interest in property," and defines "enterprise" to include a "corporation," §§1961(3), (4). And, linguistically speaking, the employee and the corporation are different "persons," even where the employee is the corporation's sole owner. Incorporation's basic purpose is to create a legal entity distinct from those natural individuals who created the corporation, who own it, or whom it employs. See, *e.g., United States* v. *Bestfoods,* 524 U. S. 51, 61–62. The precedent on which the Second Circuit relied involved significantly different circumstances from those here at issue. Further, to apply RICO in these circumstances is consistent with the statute's basic purposes of protecting both a legitimate "enterprise" from those who would use unlawful acts to victimize it, *United States* v. *Turkette,* 452 U. S. 576, 591, and the public from those who would unlawfully use an "enterprise" (whether legitimate or illegitimate) as a "vehicle" through which unlawful activity is committed, *National Organization for Women, Inc.* v. *Scheidler,* 510 U. S. 249, 259. Conversely, the appellate court's critical legal distinction– between employees acting within and without the scope of corporate authority– would immunize from RICO liability many of those at whom this Court has said RICO directly aims, *e.g.*, high-ranking individuals in an illegitimate criminal enterprise, who, seeking to further the enterprise's purposes, act within the scope of their authority, cf. *Turkette*, *supra*, at 581. Finally, nothing in the statute's history significantly favors an alternative interpretation. This Court's rule is no less consistent than is the lower court's rule with the following principles cited by King: (1) the principle that a corporation acts only through its directors, officers, and agents; (2) the principle that a corporation should not be liable for its employees' criminal acts where Congress so intends; and (3) antitrust law's intracorporate conspiracy doctrine. Pp. 2–8.

219 F. 3d 115, reversed and remanded.

BREYER, J., delivered the opinion for a unanimous Court.