

3-23-2020

Reinvesting in RICO with Cryptocurrencies: Using Cryptocurrency Networks to Prove RICO's Enterprise Requirement

Andrew Robert Klimek

Washington and Lee University School of Law, klimek.a@law.wlu.edu

Follow this and additional works at: <https://scholarlycommons.law.wlu.edu/wlulr>



Part of the [Computer Law Commons](#), [Criminal Law Commons](#), [Criminal Procedure Commons](#), and the [Science and Technology Law Commons](#)

Recommended Citation

Andrew Robert Klimek, *Reinvesting in RICO with Cryptocurrencies: Using Cryptocurrency Networks to Prove RICO's Enterprise Requirement*, 77 Wash. & Lee L. Rev. 509 (2020), <https://scholarlycommons.law.wlu.edu/wlulr/vol77/iss1/9>

This Note is brought to you for free and open access by the Washington and Lee Law Review at Washington & Lee University School of Law Scholarly Commons. It has been accepted for inclusion in Washington and Lee Law Review by an authorized editor of Washington & Lee University School of Law Scholarly Commons. For more information, please contact christensena@wlu.edu.

Reinvesting in RICO with Cryptocurrencies: Using Cryptocurrency Networks to Prove RICO’s Enterprise Requirement*

Andrew Robert Klimek**

Table of Contents

I. Introduction.....	510
II. Summary of RICO and Cryptocurrencies.....	517
A. The History of RICO.....	517
B. The Elements of a RICO Case.....	521
C. A Primer on Cryptocurrency.....	526
III. The Current Methods of Prosecuting Cryptocurrency Criminals.....	529
A. RICO Prosecution of Alexandre Cazes.....	529
B. RICO Alternatives.....	533
IV. Cryptocurrencies as the “Enterprise”.....	536
A. Criminal Prosecution of Cryptocurrency Criminals under § 1962(a).....	537
1. The Enterprise Requirement.....	537
2. Investment or Use in an Enterprise.....	541
B. Potential Bars to Cryptocurrencies as an Enterprise-in-Fact.....	544
1. Cryptocurrency as the Enterprise Will Likely Not Work Under § 1962(c).....	544

* This Note received the 2019 Roy L. Steinheimer Law Review Award.

** J.D. Candidate May 2020, Washington and Lee University School of Law. In memory of my father, Robert M. Klimek. Thank you to Professor Nora Demleitner and the Washington and Lee Law Review’s editorial board for their help during the writing and editing process, and to my family and girlfriend, Laurie, for their love and support during my time at W&L Law.

2. Prosecutorial Discretion and the Justice Manual	545
3. General Criticism of Novel RICO Cases	548
V. Conclusion.....	549

I. Introduction

In 1965, President Lyndon B. Johnson called on Congress to enact new legislation to combat organized crime and racketeering—a “national industry” which had become a “cancer in the city.”¹ In 1970, Congress responded to the President’s call to action.² The Racketeer Influenced and Corrupt Organizations Act (RICO) provided prosecutors with powerful new tools to deal with organized crime and the Mafia.³ Through RICO, Congress created new criminal penalties and civil actions against individuals engaging in certain criminal activities related to an enterprise.⁴ Although the legislation was initially designed to prevent the infiltration of legitimate businesses,⁵ the Supreme Court eventually ruled that RICO also prohibited the operation of organizations solely engaged in criminal conduct.⁶ Today, the

1. 111 CONG. REC. S4277 (daily ed. Mar. 8, 1965) (message from President Johnson).

2. See Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 922 (1970) (codified at 18 U.S.C. §§ 1961–1968 (2018)) (“It is the purpose of this Act to seek the eradication of organized crime in the United States by strengthening the legal tools in the evidence-gathering process . . . to deal with the unlawful activities of those engaged in organized crime.”); *Nixon Signs Bill to Combat Crime*, N.Y. TIMES (Oct. 16, 1970), <https://perma.cc/H7PY-44N3> (last visited Nov. 5, 2019) (“The new law, Mr. Nixon said, will give the Federal Government the means ‘to launch a total war against organized crime, and we will end this war.’”) (on file with the Washington and Lee Law Review).

3. See Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961–1968 (2018) (prohibiting infiltration of an enterprise with funds obtained through racketeering activities and engaging in racketeering activities through an enterprise).

4. See *id.* §§ 1963–1964 (providing penalties and remedies including imprisonment of twenty years to life, forfeiture of assets, and triple damages).

5. See S. REP. NO. 91-617, at 76–77 (1969) (outlining how racketeers infiltrate business ranging from bowling alleys to stock exchanges).

6. See *United States v. Turkette*, 452 U.S. 576, 580–81 (1981) (“On its face, the definition [of enterprise] appears to include both legitimate and illegitimate enterprises within its scope; it no more excludes criminal enterprises than it does

statute addresses two primary concerns: (1) the infiltration or control of an enterprise by criminals and (2) the operation of an enterprise for a criminal purpose.⁷ In his seminal article *RICO: The Crime of Being a Criminal*, Columbia Law professor and Senior Circuit Court Judge Gerald Lynch referred to 18 U.S.C. § 1962(a) and (b) as the “infiltration” subsections designed to prevent criminals from infiltrating legitimate businesses and characterized § 1962(c) as the “criminally operated” enterprise subsection which concerned participation in an enterprise through criminal activities.⁸

Since the law’s passage, “infiltration” cases have fallen to the wayside,⁹ with “operation” cases being the primary vehicle for the statute’s use.¹⁰ In 1987, Judge Lynch asserted that the infiltration subsections were essentially “dead letters as prosecuting tools.”¹¹ Instead, prosecutors have primarily used the “operation” subsection to go after mob bosses, Ponzi-schemers and gang members,¹² and their focus has expanded beyond mobsters to

legitimate ones.”).

7. H. LOWELL BROWN & WES R. PORTER, *WHITE COLLAR CRIME: RICO* § 1:4 (2019) (“Liability under RICO arises from either: (1) investing or acquiring an interest in; or (2) controlling; or (3) conducting the affairs of an enterprise through a pattern of racketeering activity.”).

8. See Gerard E. Lynch, *RICO: The Crime of Being a Criminal, Parts I & II*, 87 COLUM. L. REV. 661, 731–32 (1987) (categorizing different types of prosecutions brought under § 1962).

9. See DAVID B. SMITH & TERRANCE G. REED, *CIVIL RICO* § 5.02 (2019) (“[S]ection 1962(a) attracted little notice from prosecutors.”).

10. See Lynch, *supra* note 8, at 726–31 (providing an overview of RICO prosecutions since the statute’s enactment and discussing the decrease in use of the infiltration subsections); see also SMITH & REED, *supra* note 9, at § 5.02 n.4 (“In fact there does not seem to be a single case in which a real organized crime figure has been prosecuted under § 1962(a).”).

11. Lynch, *supra* note 8, at 726.

12. See *id.* at 726–27 (“Of the 236 RICO indictments included in the study, only 17 (fewer than eight percent) appear to have included counts charging violations of [the infiltration] sections, or conspiracies to violate them.”); Nathan Koppel, *They Call It RICO, and It Is Sweeping*, WALL ST. J., <https://perma.cc/MC8G-RR3P> (last updated Jan. 20, 2011, 5:14 PM) (last visited Nov. 5, 2019) (“Prosecutors have used RICO to pursue some of the highest-profile organized-crime families, including the Gambinos and Genoveses”) (on file with the Washington and Lee Law Review).

sometimes include corporate executives.¹³ Civil litigants have turned RICO into a tool to take business disputes to federal court with hopes of earning triple damages out of arguably lesser cases.¹⁴

The expansive use of RICO is subject to criticism, with some scholars arguing that prosecutors and litigants have stretched the act's language too far.¹⁵ In response to early criticism, the Department of Justice (DOJ) established guidelines regarding the use of RICO¹⁶ and Congress limited its applicability in the civil context.¹⁷

Now almost fifty years after RICO's passage, criminals are turning to the internet and cryptocurrencies to establish a new frontier for organized crime.¹⁸ RICO's application to cryptocurrencies is the subject of this Note. Cryptocurrencies are digital money—virtual assets intended to serve as an alternative to traditional money using a decentralized system and cryptography to track transactions and prevent fraud.¹⁹

13. See Peter J. Henning, *RICO Charge in Pharmaceutical Case May Signal Tougher Tactics*, N.Y. TIMES (Dec. 12, 2016), <https://perma.cc/H3N4-KV2R> (last visited Nov. 5, 2019) (detailing RICO charges against pharmaceutical executives allegedly employing a kickback scheme with doctors) (on file with the Washington and Lee Law Review).

14. See Peter J. Henning, *RICO Lawsuits Are Tempting, but Tread Lightly*, N.Y. TIMES (Jan. 16, 2018), <https://perma.cc/ZP4P-KBCJ> (last visited Nov. 5, 2019) (“RICO lawsuits are tempting. They allow a plaintiff to sue . . . and seek an award of triple damages, a bonanza in some business disputes that can run into millions of dollars.”) (on file with the Washington and Lee Law Review).

15. See Lynch, *supra* note 8, at 726–63 (discussing federal prosecutors' expansive use of RICO); Craig M. Bradley, *Racketeers, Congress, and the Courts: An Analysis of RICO*, 65 IOWA L. REV. 837, 838 (1980) (suggesting that RICO is overly broad and courts should engage in a narrow judicial construction of the statute).

16. See U.S. DEPT OF JUSTICE, JUSTICE MANUAL § 9-110.200 (“[I]t is the policy of the Criminal Division that RICO be selectively and uniformly used.”).

17. See Private Securities Litigation Reform Act of 1995, Pub. L. 104-67 § 107, 109 Stat. 737, 758 (1995) (codified at 18 U.S.C. § 1964(c) (2018)) (amending RICO to prevent civil actions for securities fraud under RICO unless the individual is first criminally convicted of the fraud).

18. See, e.g., YAYA J. FANUSIE & TOM ROBINSON, FOUND. FOR DEF. OF DEMOCRACIES, CTR. ON SANCTIONS & ILLICIT FIN., BITCOIN LAUNDERING: AN ANALYSIS OF ILLICIT FLOWS INTO DIGITAL CURRENCY SERVICES (Jan. 18, 2018), <https://perma.cc/3SF5-JKWB> (PDF) (“Criminals—often early adopters of new technologies—quickly appreciated that Bitcoin has unique properties that could potentially serve their interest in evading law enforcement.”).

19. See *Cryptocurrency*, INVESTOPEDIA (Nov. 3, 2019), <https://perma.cc/4XZP-JJZU> (last visited Nov. 5, 2019) (“A cryptocurrency is a

Cryptocurrencies and the underlying blockchain technology serve plenty of legitimate uses including online shopping and instantaneous peer-to-peer payments.²⁰ Despite these legitimate uses, cryptocurrencies have acquired an illicit reputation due to their use by criminals.²¹

Champions of cryptocurrencies often tout them as an anonymous way to transfer funds free from oversight.²² This promise of anonymity caused criminals to flock to cryptocurrency.²³ However, cryptocurrencies' anonymous nature is often overstated, with the truth being that cryptocurrencies are generally pseudo-anonymous, obscuring personal information but still allowing tracing of transactions and identification of users by law enforcement officers.²⁴ Nevertheless, criminals continue to use cryptocurrencies to mask their identities in modern digital twists

digital or virtual currency that is secured by cryptography, which makes it nearly impossible to counterfeit or double-spend.”) (on file with the Washington and Lee Law Review).

20. See PRICEWATERHOUSECOOPERS FIN. SERVS. INST., *MONEY IS NO OBJECT: UNDERSTANDING THE EVOLVING CRYPTOCURRENCY MARKET* 8 (2015), <https://perma.cc/LP6J-ZRBR> (PDF) (surveying consumers' cryptocurrency usage).

21. See *id.* at 1 (“[N]ot all media coverage surrounding cryptocurrency has been positive, with several high profile situations noting Bitcoin's use in a variety of illicit contexts.”).

22. See FERGAL REID & MARTIN HARRIGAN, *AN ANALYSIS OF ANONYMITY IN THE BITCOIN SYSTEM* 2 (2012), <https://perma.cc/9GZJ-EEK4> (PDF) (discussing Wikileaks' solicitation of “anonymous” bitcoin donations).

23. See Corinne Ramey, *The Crypto Crime Wave Is Here*, WALL ST. J. (Apr. 26, 2018, 10:36 AM), <https://perma.cc/R8QG-PKPA> (“From stickups and drug deals to white-collar scams, cryptocurrency-related crime is soaring—and law enforcement is scrambling to keep up.”) (on file with the Washington and Lee Law Review).

24. See PRICEWATERHOUSECOOPERS, *supra* note 20, at 8 (“[A cryptocurrency] transaction can be traced to the person/entity (if illegal activity is suspected) using a combination of procedures that includes identifying the destination of the transaction through the publically available transaction ledger.”).

on classic organized crimes, including money laundering,²⁵ drug sales,²⁶ and extortion.²⁷

In an early and infamous example of cryptocurrency crime, Ross Ulbricht launched an illicit online drug marketplace known as Silk Road that facilitated 1.2 million Bitcoin transactions worth approximately \$1.2 billion dollars.²⁸ More recently, hackers used malware to seize control of hospital computers and required a ransom in bitcoins before unlocking the computers.²⁹ In late 2018, kidnappers abducted Anne-Elisabeth Falkevik Hagen, wife of a Norwegian utilities and real estate magnate, and left a note requiring a nine million euros ransom be paid in cryptocurrency.³⁰ Many of these crypto-crimes constitute predicate acts under

25. See Nathaniel Popper, *Bitcoin Exchange Was Nexus of Crime, Indictment Says*, N.Y. TIMES (July 27, 2017), <https://perma.cc/YP2A-GG9X> (last visited Nov. 5, 2019) (detailing the arrest of Alexander Vinnik, who ran a Bitcoin exchange that facilitated ransomware fraud, identity theft, drug trafficking, and public corruption) (on file with the Washington and Lee Law Review).

26. See Nathaniel Popper & Rebecca R. Ruiz, *2 Leading Online Black Markets Are Shut Down by Authorities*, N.Y. TIMES (July 20, 2017), <https://perma.cc/G62U-URKK> (last visited Nov. 5, 2019) (reporting on the closure of AlphaBay and Hansa Market, two large dark-net black markets which relied on cryptocurrency) (on file with the Washington and Lee Law Review).

27. See Mark Scott & Nicole Perloth, *With Ransomware, It's Pay and Embolden Perpetrators, or Lose Precious Data*, N.Y. TIMES (May 17, 2017), <https://perma.cc/J4G3-KUAZ> (last visited Nov. 5, 2019) (outlining ransomware attacks that affected more than two hundred thousand computers) (on file with the Washington and Lee Law Review); Nathaniel Popper, *Bitcoin Thieves Threaten Real Violence for Virtual Currencies*, N.Y. TIMES (Feb. 18, 2018), <https://perma.cc/H6UR-TLNG> (last visited Nov. 5, 2019) (reporting on bitcoin owners forced to make an irreversible transfer to thieves through robbery and extortion) (on file with the Washington and Lee Law Review).

28. See Nate Anderson & Cyrus Farivar, *How The Feds Took Down the Dread Pirate Roberts*, ARS TECHNICA (October 3, 2013, 12:00 AM), <https://perma.cc/38KR-S6CU> (last visited Nov. 5, 2019) (detailing the operation of a drug trafficking online marketplace which relied on Bitcoin for its payment system) (on file with the Washington and Lee Law Review).

29. See Samuel Gibbs, *Wannacry: Hackers Withdraw £108,000 of Bitcoin Ransom*, GUARDIAN (Aug. 3, 2017, 9:27 AM), <https://perma.cc/Q3AC-K58X> (last visited Nov. 5, 2019) (reporting on the withdrawal of the successful ransom payments) (on file with the Washington and Lee Law Review).

30. See Henrik Pryser Libell & Richard Martyn-Hemphill, *Cryptocurrency Ransom Demanded for Wife of Norwegian Tycoon*, N.Y. TIMES (Jan. 10, 2019), <https://perma.cc/MP7W-DXPA> (“[T]he police had advised Ms. Hagen’s husband, Tom Hagen, not to pay.”).

RICO,³¹ enabling federal prosecutors and civil litigants to use RICO if the crimes were undertaken as part of an enterprise or if the perpetrator used the predicate crimes to infiltrate an enterprise.³²

At least two cases, one criminal and one civil, have attempted prosecution of cryptocurrency criminals under RICO. In 2017, a grand jury indicted Alexandre Cazes under RICO for his leadership of a criminal enterprise overseeing a massive illegal online marketplace, ten times larger than Silk Road.³³ However, the prosecution ended after Cazes committed suicide.³⁴ In late 2018, Michael Terpin, a cryptocurrency investor, used RICO to sue a hacker for illegally accessing his phone account and subsequently stealing over twenty-three million dollars in cryptocurrency.³⁵ Both of these cases used the operation subsection of the statute.

This Note argues that one of the infiltration subsections of RICO may be better suited to cryptocurrency prosecutions.³⁶ Subsection 1962(a) addresses the infiltration of an enterprise by investing proceeds from racketeering activities and this Note

31. See 18 U.S.C. § 1961(1) (2018) (defining “racketeering activity” with an extensive list of state and federal crimes).

32. See *id.* § 1962 (providing that it is unlawful to: (a) invest income from racketeering activities into an enterprise, (b) acquire or maintain an interest in any enterprise through racketeering activities, (c) use racketeering activities during the business of any enterprise, and (d) conspire to violate the substantive provisions of RICO).

33. See Indictment at ¶¶ 21–23, *United States v. Cazes*, Case No. 1:17-CR-00144 (E.D. Cal. June 1, 2017) (charging Cazes for his part in operating AlphaBay, an enterprise engaged in racketeering activities); see also Thomas Brewster, *Forget Silk Road, Cops Just Scored Their Biggest Victory Against The Dark Web Drug Trade*, FORBES (July 20, 2017, 10:57 AM), <https://perma.cc/SRY9-ANRT> (last visited Nov. 5, 2019) (“[A]s many as \$2 million in trades were being done over AlphaBay every week as of April [2017].”) (on file with the Washington and Lee Law Review).

34. See Wassayos Ngamkham, *Canadian Drug Suspect Found Hanged in Cell*, BANGKOK POST (July 12, 2017), <https://perma.cc/AAV5-PCDU> (last visited Nov. 5, 2019) (reporting that Cazes committed suicide while in Thai custody awaiting extradition to the United States) (on file with the Washington and Lee Law Review).

35. See Complaint at ¶¶ 33–45, *Terpin v. Truglia*, Case No. 18-ST-CV-09875 (Super. Ct. Cal. Dec. 28, 2018) (detailing an enterprise consisting of Truglia and twenty-five unknown individuals).

36. See *infra* Part IV (regarding the uses of cryptocurrency networks as the enterprise required by the statute).

contends that a cryptocurrency network could serve as the “enterprise” required by the statute.³⁷ Instead of having to investigate and prove the relationships in an underlying criminal enterprise, proponents of a RICO case against crypto-criminals could rely on well-documented and publicly available information about the cryptocurrency network to prove the enterprise and the relationships among its members.³⁸ If accepted by courts, prosecutors and plaintiffs could proceed under investing subsection with assurances that the “enterprise” element of the statute would be satisfied.³⁹ In addition to punishing criminals, this proposed method would also benefit legitimate cryptocurrency users by discouraging criminals from infiltrating legitimate cryptocurrency businesses.⁴⁰

In order to provide some background, this Note will first summarize the history of cryptocurrencies and RICO.⁴¹ Next, this Note will explore the elements of a RICO claim and the current methods of prosecuting cryptocurrency criminals.⁴² The discussion will turn to how cryptocurrency networks could be used to satisfy the enterprise element of the RICO statute.⁴³ This Note will then examine some potential criticisms of cryptocurrencies as a RICO enterprise.⁴⁴ The discussion will conclude with some thoughts regarding the prudence of cryptocurrency prosecutions under RICO and what type of cryptocurrency cases should be prosecuted

37. See 18 U.S.C. § 1962(a)–(b) (2018) (prohibiting investment of racketeering proceeds in an enterprise); 18 U.S.C. § 1961(4) (“[E]nterprise’ includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity . . .”).

38. See, e.g., Blockchain Explorer, BLOCKCHAIN LUXEMBOURG S.A., <https://perma.cc/6RN9-L5WB> (last visited Nov. 5, 2019) (cataloging every Bitcoin transaction in existence and the relationships between Bitcoin users) (on file with the Washington and Lee Law Review).

39. See *United States v. Turkette*, 452 U.S. 576, 591 (1981) (concluding that RICO prohibits both the infiltration of legitimate business and enterprises created for solely criminal purposes).

40. See 18 U.S.C. § 1962(a) (regarding the investment or interest in an enterprise through racketeering activities).

41. See *infra* Part II.

42. See *infra* Part III.

43. See *infra* Part IV.A.

44. See *infra* Part IV.B.

under RICO.⁴⁵ In essence, this Note argues that prosecutors should be able to demonstrate that a criminal using cryptocurrencies has infiltrated an enterprise in violation of RICO, but should exercise restraint unless the criminal is engaging in criminal activities on the scale of traditional organized crime.⁴⁶

I. Summary of RICO and Cryptocurrencies

A. The History of RICO

Concerned with the mob's wide-spread criminal activities,⁴⁷ Congress drafted RICO to protect the public from the scourge of organized crime.⁴⁸ To that end, the legislature imbued on prosecutors a "general tool to bring any prosecution that the Justice Department thinks is desirable but that does not fit under any other heading."⁴⁹ The use of RICO as a "general tool" depends on two statutory sources: the expansive definition of enterprise⁵⁰ and the wide range of criminal activities covered by the statute.⁵¹ In order to provide the broad powers required to prosecute organized crime, the bill evolved beyond Congress's initial purpose

45. See *infra* Part V (concluding that the success of a cryptocurrency prosecution under the proposed method will likely depend on how much the underlying situation reflects the original intention of Congress).

46. See *infra* Part IV (analyzing the enterprise requirement and the Department of Justice guidelines regarding the use of RICO).

47. See Lynch, *supra* note 8, at 681–82 (discussing Senator McClellan's introduction of the bill and its subsequent revisions).

48. See Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 922 (1970) (codified at 18 U.S.C. §§ 1961–1968 (2018)) ("It is the purpose of this Act to seek the eradication of organized crime in the United States by strengthening the legal tools in the evidence-gathering process . . . to deal with the unlawful activities of those engaged in organized crime.").

49. Lynch, *supra* note 8, at 724.

50. See 18 U.S.C. § 1961(4) (2018) (defining enterprise as "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity"); see also Lynch, *supra* note 8, at 732 (discussing the requirement that an "enterprise" be a legal association or association in fact).

51. See 18 U.S.C. § 1961(1) (listing the predicate acts eligible for RICO prosecution).

to prevent infiltration of legitimate organizations to include all manners of criminal activities connected with an enterprise.⁵² Some courts initially attempted to limit RICO's broad application.⁵³ However, the Supreme Court soon considered and rejected these limitations on the definition of enterprise.

In *United States v. Turkette*,⁵⁴ the Court reviewed a RICO prosecution of Novia Turkette, Jr. for his alleged leadership of a criminal organization with no apparent legitimate purpose.⁵⁵ Turkette argued—and the Court of Appeals agreed—that RICO exclusively applied to the infiltration of legitimate enterprises and excluded criminal organizations that performed only illegal acts.⁵⁶ The Court dismissed the argument.⁵⁷

The Court considered two potential purposes of RICO and § 1962(c): to prevent infiltration of legitimate businesses by criminal elements⁵⁸ and to allow prosecution of any criminals engaging in an enterprise.⁵⁹ The Court first reviewed the unambiguous language of the statute, observing that the statute itself made no mention of legitimate or criminal concerns in defining “enterprise.”⁶⁰ The Court then rejected the lower court's

52. See Lynch, *supra* note 8, at 713 (“If RICO has evolved into something different from what Congress intended at its creation, it is difficult to escape the conclusion that Congress has looked at what has evolved, and pronounced it good.”).

53. See *United States v. Turkette*, 632 F.2d 896, 899 (1st Cir. 1980) (“A careful reading of sections 1961(4) and 1962(c) convinces us that they cannot be used as tandem springboards to reach any individual or groups of individuals who engage in a pattern of exclusively criminal racketeering activity.”).

54. See 452 U.S. 576, 581 (1981) (providing that RICO covers both infiltration of legitimate business and entirely criminal enterprises).

55. See *id.* at 579 (summarizing the RICO conspiracy charge against Turkette for leading a criminal organization which trafficked narcotics, committed arsons, defrauded insurance companies, bribed police, and corruptly influenced state court proceedings).

56. See *id.* (noting that the Court of Appeals agreed with Turkette's characterization of the statute).

57. See *id.* (reversing the Court of Appeals decision).

58. See *id.* at 591 (“[T]he legislative history forcefully supports the view that the major purpose of Title IX is to address the infiltration of legitimate business by organized crime.”).

59. See *id.* at 581 (“Congress did nothing to indicate that an enterprise consisting of a group of individuals was not covered by RICO if the purpose of the enterprise was exclusively criminal.”).

60. See *id.* at 580–81 (“On its face, the definition appears to include both

conclusion that a broad definition created internal inconsistencies in the statute.⁶¹ Confident that the language of the statute supported the broad definition, the Court examined the legislative history to support its conclusion.⁶² Congress's declared purpose to combat organized crime rendered the narrow definition untenable because "[w]hole areas of organized criminal activity would be placed beyond the substantive reach of the enactment . . . so long as the association did not deviate from the criminal path."⁶³

After *Turkette*, prosecutors—primarily limited by prosecutorial discretion—used RICO's newly broadened powers to prosecute criminals engaging in enterprises.⁶⁴ With the broad definition of enterprise, prosecutorial discretion under RICO goes far beyond typical discretion and authorizes prosecutors to add on a major federal criminal charge to comparatively minor predicate crimes.⁶⁵ Criminal RICO prosecutions soon expanded from traditional organized crime to include white collar crime.⁶⁶

legitimate and illegitimate enterprises within its scope; it no more excludes criminal enterprises than it does legitimate ones.”).

61. See *id.* at 587 (“Applying [RICO] also to criminal organizations does not render any portion of the statute superfluous nor does it create any structural incongruities within the framework of the Act.”).

62. See *id.* (“We are also quite sure that nothing in the legislative history of RICO requires a contrary conclusion.”).

63. *Id.* at 589–90.

64. See Gerard E. Lynch, *RICO: The Crime of Being a Criminal, Parts III & IV*, 87 COLUM. L. REV. 920, 921 (1987) (arguing that after *Turkette*, prosecutors invoked RICO in cases resembling simple conspiracy); John Dombrink & James W. Meeker, *Racketeering Prosecution: The Use and Abuse of RICO*, 16 RUTGERS L.J. 633, 640–54 (1985) (concluding that criminal RICO was used in a conservative manner during its first fourteen years); Jeff Atkinson, *Racketeer Influenced and Corrupt Organizations, 18 U.S.C. §§ 1961–68: Broadest of the Federal Criminal Statutes*, 69 J. CRIM. L. & CRIMINOLOGY 1 (1978) (“[Under RICO, t]he only limits of federal domination of enforcement of these traditionally state-prosecuted crimes are the limits of federal resources and prosecutorial discretion.”).

65. See Russell D. Leblang, *Controlling Prosecutorial Discretion Under State RICO*, 24 SUFFOLK U. L. REV. 79, 88 (1990) (“The fact that the crime defined by RICO is so far reaching, and that the disparity of scale between the sanctions available under RICO and those under the predicates is so great, ‘suggests [that] the prosecutor’s ability to unilaterally declare a crime major or minor has dramatically increased.”).

66. See G. Robert Blakey & John Robert Blakey, *Civil and Criminal RICO: An Overview of the Statute and Its Operation*, 64 DEF. COUNS. J. 36, 43 (1997)

Without the difficulty of proving a legitimate enterprise, prosecutors generally abandoned § 1962(a)'s prohibition of investment of racketeering income and § 1962(b)'s proscription against acquisition of control over an enterprise through a pattern of racketeering activity.⁶⁷ Some commentators have argued that the broad definition of "enterprise" grants prosecutors "unfettered freedom to allege the 'enterprise' best suited to its needs in a particular case."⁶⁸ To address concerns about abuses, the DOJ adopted strict guidelines regarding the use of RICO,⁶⁹ and the worries about potential abuses have generally not come to fruition.⁷⁰ Despite continuing criticisms, the Supreme Court reaffirmed its expansive interpretation of the enterprise element in *Boyle v. United States*.⁷¹ *Boyle* and *Turkette* are the two primary cases regarding the enterprise element,⁷² but the statute has several other nuances worth exploring before discussing how the statute might apply to a cryptocurrency network.

("Roughly 39 percent have been in the organized crime area . . . , while 48 percent have been in the white-collar crime area . . . [, and 13] percent fall into other categories, such as violent groups, including terrorists, white-hate, and anti-Semitic."); see also Lucian E. Dervan & Ellen S. Podgor, "White-Collar Crime": *Still Hazy After All These Years*, 50 GA. L. REV. 709, 759–60 (2016) ("Despite RICO's initial focus on these traditional mafia organizations, only about 4% of the RICO cases decided by the Seventh and Eleventh Circuits from 2002 to 2014 involved what might be considered traditional organized crime entities.").

67. See Daniel Murner et al., *Racketeer Influenced and Corrupt Organizations*, 55 AM. CRIM. L. REV. 1619, 1639–40 (2018) ("Relatively few criminal indictments allege a violation of § 1962(a) Like § 1962(a), § 1962(b) rarely forms the basis of a RICO action." (citations omitted)).

68. SMITH & REED, *supra* note 9, at § 3.05.

69. See U.S. DEP'T OF JUSTICE, JUSTICE MANUAL § 9-110.200 ("Despite the broad statutory language of RICO and the legislative intent that the statute ' . . . shall be liberally construed to effectuate its remedial purpose,' it is the policy of the Criminal Division that RICO be selectively and uniformly used.").

70. See Stephen F. Smith, *Proportionality and Federalization*, 91 VA. L. REV. 879, 915 (2005) ("Although faith in prosecutorial discretion has arguably been vindicated by extreme restraint in the use of criminal RICO, the course of action pursued in *Turkette* was, to say the least, dangerous.").

71. 556 U.S. 938, 946 (2009) ("As we succinctly put it in *Turkette*, an association-in-fact enterprise is 'a group of persons associated together for a common purpose of engaging in a course of conduct.'" (quoting *United States v. Turkette*, 452 U.S. 576, 583 (1981))).

72. See SMITH & REED, *supra* note 9, at § 3.02 (stating that *Turkette* resolved the paramount issue of whether RICO encompassed illegitimate enterprises and *Boyle* set the bounds of what constitutes an enterprise).

B. The Elements of a RICO Case

RICO punishes a “person” for engaging in a “pattern of racketeering activities” connected to an “enterprise” which affects interstate or foreign commerce.⁷³ The “person,” the “pattern of racketeering activities,” and the “enterprise” are typically the litigated elements of a violation.⁷⁴ Congress intended for the law to be liberally construed,⁷⁵ which influences courts towards broader interpretations of the statute.⁷⁶

The RICO “person” is the least litigated aspect of the statute.⁷⁷ The statutory definition is not limited to natural persons but rather includes “any individual or entity capable of holding a legal or beneficial interest in property.”⁷⁸ Courts have interpreted this broad definition to include corporations,⁷⁹ unincorporated political committees,⁸⁰ and decedents’ estates.⁸¹ In interpreting the RICO person, courts examine state law to see if the alleged person is capable of holding property.⁸² Unsurprisingly, courts typically

73. See 18 U.S.C. § 1962 (2018) (providing three ways to violate the statute as well as a conspiracy charge).

74. See Blakey & Blakey, *supra* note 66, at 38 (summarizing the essential elements of the statute).

75. See SMITH & REED, *supra* note 9, at § 3.01 (asserting that the Supreme Court cut the heart out of the statute in *Turkette*, and then failed to rectify its mistake in *Boyle*).

76. See generally Note, *Civil RICO: The Temptation and Impropriety of Judicial Restriction*, 95 HARV. L. REV. 1101, 1103–21 (1982) (cataloging judicial restrictions on RICO).

77. See Blakey & Blakey, *supra* note 66, at 38 (“The two basic elements of RICO that have given litigants the most trouble are ‘pattern’ and ‘enterprise.’”).

78. 18 U.S.C. § 1961(3) (2018).

79. See *Fitzgerald v. Chrysler Corp.*, 116 F.3d 225, 226 (7th Cir. 1997) (finding that Chrysler Corporation constituted a “person” under the statute).

80. See *Jund v. Town of Hempstead*, 941 F.2d 1271, 1282 (2d Cir. 1991) (recognizing that New York law allowed an unincorporated political committee to hold property).

81. See *State Farm Fire & Cas. Co. v. Caton’s Estate*, 540 F. Supp. 673, 681–82 (N.D. Ind. 1982), *overruled by* *Ashland Oil, Inc. v. Arnett*, 656 F. Supp. 950 (N.D. Ind. 1987) (finding that RICO liability survives the death of a wrongdoer and approving recovery from his estate).

82. See, e.g., *Jund*, 941 F.2d at 1282 (rejecting an argument that unincorporated entities could not hold property); *State Farm*, 540 F. Supp. at 682 (“A construction of RICO that permits full survival against the estate of an alleged

limit the statute's applicability to governments and government agencies due to governmental immunity, even though they are entities capable of holding property.⁸³

The next element, the “pattern of racketeering activities,” includes a broad range of state and federal crimes—drug trafficking, money laundering, murder, kidnapping, gambling, bribery, extortion, and sexual exploitation of children, among many others.⁸⁴ These offenses are commonly referred to as RICO predicate acts.⁸⁵ A person engages in a pattern of racketeering activities by committing two predicate acts within ten years of each other.⁸⁶ Courts require a relationship between the predicate acts and some continuity between the acts in order to prove the pattern of racketeering activities.⁸⁷ As an alternative to proving a pattern of racketeering activities, a claimant may also prove that the person collected an “unlawful debt”—a gambling debt forbidden under state or federal usury laws.⁸⁸ But this alternative is rarely used.⁸⁹

As discussed above, an “enterprise” is any legal entity or any group of people “associated in fact although not a legal entity.”⁹⁰ A

wrongdoer is ‘neither absurd nor surprising.’” (quoting *United States v. Turkette*, 452 U.S. 576, 587 (1981))).

83. See *Blakey & Blakey*, *supra* note 66, at 38 (“Despite this all-inclusive language, the circuits exclude federal and local governmental agencies from those who may be sued . . . Official immunities still apply.”).

84. See 18 U.S.C. § 1961(1) (cross-referencing other federal criminal statutes as well as providing that certain state crimes constitute racketeering activities).

85. See, e.g., *BROWN & PORTER*, *supra* note 7, at § 3:1 (“[The statute’s] list of predicate offenses is exhaustive as well, and conduct that is not among the enumerated offenses cannot serve as a predicate to a RICO violation.”).

86. See 18 U.S.C. § 1961(5) (“[P]attern of racketeering activity’ requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity.”).

87. See *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 239 (1989) (“[T]he term ‘pattern’ itself requires the showing of a relationship between the predicates and of the threat of continuing activity.” (quoting 116 CONG. REC. 18,940 (1970)) (internal citations and quotations omitted)).

88. See 18 U.S.C. § 1961(6) (regarding debts incurred in both gambling activities and the business of gambling).

89. See *SMITH & REED*, *supra* note 9, at § 4.05 (“Like most other parts of the RICO statute, the definition of unlawful debt is poorly drafted and confusing.”).

90. See 18 U.S.C. § 1961(4) (2018) (“[E]nterprise’ includes any individual,

legal enterprise requires only proof that the entity has a legal existence.⁹¹ The “very existence of a corporation meets the requirement for a separate structure [to prove an enterprise].”⁹² An association-in-fact enterprise is simply a continuing unit that functions with a common purpose.⁹³ In order to show that a group is an association-in-fact enterprise, the group must have the three structural features enumerated by the Supreme Court in *Boyle v. United States*:⁹⁴ “a purpose, relationships among those associated with the enterprise, and longevity sufficient to permit these associates to pursue the enterprise’s purpose.”⁹⁵

The enterprise’s “purpose” does not require an economic motive as long as the enterprise affects interstate or foreign commerce.⁹⁶ For instance, a nonprofit organization sponsoring protests to shut down abortion clinics satisfies the purpose requirement although the organization does not have an economic motivation.⁹⁷ Under the “relationship” test in *Boyle*, an enterprise-in-fact does not need any specific structure or relationship among the parties so long as the individuals are associated in fact for a common purpose of engaging in a course of conduct.⁹⁸ The final feature, “longevity,” is satisfied by “proof that

partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity. . .”).

91. See *In re Ins. Brokerage Antitrust Litig.*, 618 F.3d 300, 364 (3d Cir. 2010) (“[A]ll aspects of the enterprise element are satisfied by the mere proof that the entity does in fact have a legal existence.” (quotations omitted)).

92. See *Webster v. Omnitrition Int’l, Inc.*, 79 F.3d 776, 786 (9th Cir. 1996) (“The participation of a corporation in a racketeering scheme is sufficient, of itself, to give the enterprise a structure separate from the racketeering activity . . .”).

93. See *United States v. Turkette*, 452 U.S. 576, 583 (1981) (“The enterprise is an entity, for present purposes a group of persons associated together for a common purpose of engaging in a course of conduct.”).

94. 556 U.S. 938 (2009).

95. *Id.* at 946.

96. See *Nat’l Org. for Women, Inc. v. Scheidler*, 510 U.S. 249, 261 (1994) (“Congress has not, either in the definitional section or in the operative language, required that an ‘enterprise’ in § 1962(c) have an economic motive.”).

97. See *id.* at 258 (“An enterprise surely can have a detrimental influence on interstate or foreign commerce without having its own profit-seeking motives.”).

98. See *Boyle*, 556 U.S. at 948 (“[An enterprise-in-fact] group need not have a hierarchical structure or a ‘chain of command’; decisions may be made on an ad hoc basis and by any number of methods.”).

the enterprise had ‘affairs’ of sufficient duration to permit an associate to ‘participate’ in those affairs through ‘a pattern of racketeering activity.’”⁹⁹ Judge Posner found sufficient longevity in a case where a group defrauded a charitable foundation over the course of sixteen years.¹⁰⁰ A proponent of a more restrictive reading of the statute,¹⁰¹ he begrudgingly recognized that *Boyle* provides only a slight difference between a RICO enterprise and a regular conspiracy.¹⁰²

The operative section of the statute is divided into four subsections: § 1962(a) which prohibits any person from investing in an enterprise with proceeds derived from racketeering activities;¹⁰³ § 1962(b) which bars any person from acquiring an interest in an enterprise through racketeering activities;¹⁰⁴ § 1962(c) which outlaws operating an enterprise through racketeering activities;¹⁰⁵ and § 1962(d) which provides that it is unlawful to conspire to violate the other subsections.¹⁰⁶

99. *Id.* at 946 (quoting 18 U.S.C. § 1962(c)).

100. *See* Jay E. Hayden Found. v. First Neighbor Bank, N.A., 610 F.3d 382, 388 (7th Cir. 2010) (“Well, the alleged enterprise in this case had purpose and relationships and it certainly had ‘longevity,’ and if Boyle is taken at face value nothing more is required to make a conspiracy a RICO enterprise.”).

101. *See* G. Robert Blakey, *Time-Bars: RICO-Criminal and Civil-Federal and State*, 88 NOTRE DAME L. REV. 1581, 1783 (2013) (“Surely, Judge Posner was aware that the Supreme Court knew precisely what it did when it rejected the Bledsoe line of case requiring an ‘ascertainable structure’ as a surrogate for an organized crime limitation.”).

102. *See* *Hayden Found.*, 610 F.3d at 388 (arguing that the underlying conduct was simply conspiracy, but *Boyle* required the court to consider it a RICO enterprise).

103. *See* 18 U.S.C. § 1962(a) (2018) (providing that a purchase of securities for purposes of investment without the intention of controlling the issuer is not considered illegal under certain conditions).

104. *See id.* § 1962(b) (“It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.”).

105. *See id.* § 1962(c)

It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity or collection of unlawful debt.

106. *See id.* § 1962(d) (“It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.”).

Subsections 1962(a) and (b) are sometimes referred to as the “infiltration” subsections, and § 1962(c) as the “criminally operated” enterprise subsection.¹⁰⁷ Although the infiltration subsections were the primary concern of the legislature,¹⁰⁸ the criminally operated subsection became the primary vehicle for most RICO prosecutions.¹⁰⁹ Cryptocurrency crime occupies a position between the two most popular uses of RICO—white collar crime and organized crime.¹¹⁰ It resembles white collar crime due to cryptocurrency’s potential uses in money laundering¹¹¹ and resembles organized crime due to cryptocurrency’s use in drug trafficking and sale of illegal goods.¹¹² Prosecutors have already attempted a RICO case against a crypto-criminal under the operation subsection,¹¹³ but whether a crypto-criminal prosecution could rely on the infiltration subsections requires an examination of how the underlying cryptocurrency technology and network function.

107. See Lynch, *supra* note 8, at 731–32 (categorizing different types of prosecutions brought under § 1962).

108. See Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 922 (1970) (“[Organized crime’s] money and power are increasingly used to infiltrate and corrupt legitimate business and labor unions and to subvert and corrupt our democratic processes . . .”).

109. See Murner, *supra* note 67, at 1640 (noting that “§ 1962(a) [and] § 1962(b) rarely forms the basis of a RICO action” and § 1962(c) is “the most commonly used RICO provision”); see also Lynch, *supra* note 8, at 731 (“Of the 236 RICO indictments discussed in the sample reported appellate cases, 228 of them appear to have charged either substantive violations of section 1962(c) or conspiracies to commit such violations.”).

110. See Blakey & Blakey, *supra* note 66, at 43 (noting that organized crime and white collar crime represent the majority of RICO prosecutions).

111. See Edgar G. Sánchez, *Crypto-Currencies: The 21st Century’s Money Laundering and Tax Havens*, 28 U. FLA. J.L. & PUB. POL’Y 167, 169 (2017) (“[T]he newest growing concern with Bitcoin, and crypto-currencies in general, [is] their ability to wash money and conceal taxable income.”).

112. See Press Release, *AlphaBay, the Largest Online ‘Dark Market,’ Shut Down*, DEP’T OF JUSTICE (July 20, 2017), <https://perma.cc/7CD3-24G6> (last visited Nov. 5, 2019) [hereinafter *AlphaBay Shut Down*] (stating that online dark-web marketplaces represent a new form of transnational organized crime) (on file with the Washington and Lee Law Review).

113. See Indictment, *United States v. Cazes*, Case No. 1:17-cr-00144 (E.D. Cal. June 1, 2017) (charging Cazes under RICO’s operation subsection and outlining the network of cohorts Cazes used to run an illegal online marketplace).

C. A Primer on Cryptocurrency

In 2008, an individual or group under the pseudonym Satoshi Nakamoto published a paper that described Bitcoin, a peer-to-peer version of electronic cash.¹¹⁴ Nakamoto's true identity is unknown and subject to constant speculation,¹¹⁵ but it is clear that Nakamoto designed the network to address failures of financial institutions in dealing with internet commerce.¹¹⁶ Bitcoin is a virtual currency which relies on a peer-to-peer ledger protocol to create a record of bitcoin transfers.¹¹⁷ These transfers are documented with pseudo-anonymous identifying information recorded in a decentralized ledger known as the blockchain.¹¹⁸ The blockchain functions as a distributed public record of all Bitcoin transactions, shared with all users of Bitcoin, in order to ensure that no individual is able to double spend or falsify information on the ledger.¹¹⁹

114. See SATOSHI NAKAMOTO, BITCOIN: A PEER-TO-PEER ELECTRONIC CASH SYSTEM 1 (2008), <https://perma.cc/L35Y-PD58> (PDF) (describing a “peer-to-peer version of electronic cash [that] would allow online payments to be sent directly from one party to another without going through a financial institution”).

115. See Paul Vigna, *Is This Satoshi Nakamoto, the Mysterious Creator of Bitcoin?*, WALL ST. J. (Mar. 6, 2014, 9:09 AM), <https://perma.cc/TD4Q-SVSG> (last visited Nov. 5, 2019) (discussing a claim by author Leah McGrath that she had located a Japanese-American named Satoshi Nakamoto) (on file with the Washington and Lee Law Review); Paul Vigna, *Craig Wright Claims He Is Bitcoin Inventor ‘Satoshi Nakamoto’*, WALL ST. J. (May 2, 2016, 11:07 PM), <https://perma.cc/29C3-59CR> (last visited Nov. 5, 2019) (reporting on a claim by an Australian businessman Craig Wright that he is Satoshi Nakamoto) (on file with the Washington and Lee Law Review).

116. See NAKAMOTO, *supra* note 114, at 1 (“While the system [relying on financial institutions] works well enough for most transactions, it still suffers from the inherent weaknesses of the trust based model.”).

117. See *Frequently Asked Questions*, BITCOIN.ORG, <https://perma.cc/6GFT-T94N> (last visited Nov. 5, 2019) (“Bitcoin is a consensus network that enables a new payment system and a completely digital money.”) (on file with the Washington and Lee Law Review).

118. See Nathaniel Popper, *What Is Bitcoin, and How Does It Work?*, N.Y. TIMES (Oct. 1, 2017), <https://perma.cc/WGV3-EV9H> (last visited Nov. 5, 2019) (“Unlike traditional payment networks like Visa, the Bitcoin network is not run by a single company or person. The system is run by a decentralized network of computers around the world”) (on file with the Washington and Lee Law Review).

119. See *Some Bitcoin Words You Might Hear*, BITCOIN.ORG, <https://perma.cc/24ZT-AQCD> (last visited Nov. 5, 2019) [hereinafter *Bitcoin Vocabulary*] (describing the blockchain technology underlying bitcoins and

Each Bitcoin user controls a Bitcoin wallet to maintain their bitcoins.¹²⁰ The blockchain keeps track of how many bitcoins exist and which users are authorized to spend them.¹²¹ Each wallet has a private key which allows the user to authorize transfer of the bitcoins associated with the wallet.¹²² When a user authorizes a new transaction, the information is broadcast to a network of computers, known as miners, which use cryptography to ensure that the user is authorized to transfer those bitcoins.¹²³ If the transfer checks out, it is added to the blockchain.¹²⁴ The network rewards the miner who successfully confirmed the pending transactions with a prize of bitcoins.¹²⁵

Though Bitcoin started as a thought experiment, it soon proved to have real world buying power when a user paid 10,000 bitcoins for two pizzas.¹²⁶ Bitcoin grew in value to a staggering peak of almost twenty thousand dollars per bitcoin in December 2017 before coming back down to earth in the following months.¹²⁷

defining Bitcoin wallet as an application that accepts bitcoin sent to a certain address, similar to email, and contains a private key proving that the user is entitled to spend the bitcoins) (on file with the Washington and Lee Law Review).

120. See *How Does Bitcoin Work?*, BITCOIN.ORG, <https://perma.cc/7ZZV-CGKH> (last visited Nov. 5, 2019) (providing information on how to start using Bitcoin) (on file with the Washington and Lee Law Review).

121. See *id.* (“All confirmed transactions are included in the block chain.”).

122. See *id.* (“Bitcoin wallets keep a secret piece of data called a private key or seed, which is used to sign transactions, providing a mathematical proof that they have come from the owner of the wallet.”).

123. See *id.* (“To be confirmed, transactions must be packed in a block that fits very strict cryptographic rules that will be verified by the network.”).

124. See *id.* (“Mining is a distributed consensus system that is used to confirm pending transactions by including them in the block chain.”).

125. See *Bitcoin Vocabulary*, *supra* note 119 (“As a reward for their services, Bitcoin miners can collect transaction fees for the transactions they confirm, along with newly created bitcoins.”).

126. See Benjamin Wallace, *The Rise and Fall of Bitcoin*, WIRED (Nov. 23, 2011, 2:52 PM), <https://perma.cc/8YSF-59LK> (last visited Nov. 5, 2019) (recounting the first use of bitcoins for a real-world purchase) (on file with the Washington and Lee Law Review).

127. See *Can Bitcoin Become a Dominant Currency?*, WALL ST. J. (Oct. 21, 2018, 10:07 PM), <https://perma.cc/RM3W-F3YT> (last visited Nov. 5, 2019) (“The price gyrations have come as the cryptocurrency is getting increased scrutiny.”) (on file with the Washington and Lee Law Review). At Bitcoin’s peak, the 10,000 bitcoins originally spent on two pizzas would have been worth 197.8 million dollars.

It spawned a new universe of cryptocurrencies, and the entire industry peaked in value at \$829 billion in early 2018.¹²⁸ In order to facilitate cryptocurrency trading, new online exchanges opened that allowed customers to trade cryptocurrencies for other cryptocurrencies or conventional currencies.¹²⁹ As the technology progressed, new cryptocurrencies focused on improving perceived weaknesses in the Bitcoin model. For example, Monero focus on providing fully anonymous transactions.¹³⁰

The underlying blockchain technology behind cryptocurrency may also have a future in other sectors.¹³¹ The technology could be used to update traditional ledger systems in any industry that uses ledgers to keep track of ownership, including real estate.¹³² A Goldman Sachs study suggests that blockchain's use in land titles could save the title insurance industry up to four billion dollars by reducing manual searches and accompanying errors.¹³³ The same

128. See Aaron Hankin, *The Cryptocurrency Market Has Shed More Than \$600 Billion From Its Peak—What Exactly Happened?*, MARKET WATCH (Aug. 15, 2018, 8:27 AM), <https://perma.cc/A3R9-XVTD> (last visited Nov. 5, 2019) (discussing market capitalization losses in the cryptocurrency industry) (on file with the Washington and Lee Law Review).

129. See, e.g., *About Coinbase*, COINBASE, <https://perma.cc/YV6W-TDZP> (last visited Nov. 5, 2019) (“Coinbase is a digital currency wallet and platform where merchants and consumers can transact with new digital currencies like bitcoin, ethereum, and litecoin.”) (on file with the Washington and Lee Law Review).

130. See *Home*, MONERO, <https://perma.cc/S5RN-HT6P> (last visited Nov. 5, 2019) (“Monero uses ring signatures, ring confidential transactions, and stealth addresses to obfuscate the origins, amounts, and destinations of all transactions.”) (on file with the Washington and Lee Law Review).

131. See Reade Ryan & Mayme Donohue, *Securities on Blockchain*, 73 BUS. LAW. 85, 92 (2018) (discussing Overstock.com's use of blockchain technology in offering securities); Maksymilian Ewendt, Note, *Leveraging Blockchain Technology in Property Records: Establishing Trust in A Risk-Filled Market*, 19 N.C. J.L. & TECH. ONLINE 99, 105 (2017) (“Real property is a segment of the economy that holds a tremendous amount of wealth, similar to currency, and similarly could be primed for an influx of technological innovation.”); Stephen J. Obie & Mark W. Rasmussen, *How Regulation Could Help Cryptocurrencies Grow*, HARV. BUS. REV. (July 17, 2018), <https://perma.cc/56E4-FPVS> (last visited Nov. 5, 2019) (discussing how securities law might apply to cryptocurrency) (on file with the Washington and Lee Law Review).

132. See Joshua A.T. Fairfield, *Bitproperty*, 88 S. CAL. L. REV. 805, 873–74 (2015) (“[Blockchain networks] offer the possibility of decentralized and secure ledgers to maintain digital property, currency, county land records, mortgage interests, security interests, stock ownership, and much more.”).

133. See GOLDMAN SACHS, *PROFILES IN INNOVATION: BLOCKCHAIN—PUTTING THEORY INTO PRACTICE* 5 (May 24, 2016), <https://perma.cc/5GUM-2VBX> (PDF) (“In

study suggested sizable cost savings for other industries if they adopt blockchain technology, including the electricity industry, the sharing economy, cash securities, and anti-money laundering and know-your-customer compliance.¹³⁴ The cryptocurrency industry's success in dealing with its criminal element could affect other industries' adoption of the technology.¹³⁵ With these rapid developments as a backdrop, prosecutors did not wait for the industry to self-regulate and have already turned their focus on cryptocurrency.

III. The Current Methods of Prosecuting Cryptocurrency Criminals

A. RICO Prosecution of Alexandre Cazes

On June 1, 2017, a grand jury from the Eastern District of California indicted Alexandre Cazes on charges stemming from his creation and operation of AlphaBay, a dark-web marketplace for illegal goods, controlled substances, and illegal services.¹³⁶ The indictment charged Cazes with conspiracy to engage in a RICO violation, as well as fifteen other counts.¹³⁷ On July 4, 2017, authorities seized control of AlphaBay and shut down traffic to the

emerging markets, land registration systems could help reduce transaction and financing costs.”).

134. *See id.* at 4–5 (“When we consider these applications in real-world scenarios, the dollar benefits start to become apparent.”).

135. Matthew B. Hoy, *An Introduction to the Blockchain and Its Implications for Libraries and Medicine*, MED. REFERENCE SERVS. Q., 2017, Vol. 36, No. 3, 273–79 (“Whether the blockchain can overcome this outlaw image and develop to its full potential as an information storage and verification system remains to be seen.”).

136. *See* Indictment at ¶¶ 1–8, United States v. Cazes, Case No. 1:17-cr-00144 (E.D. Cal. June 1, 2017) (charging Cazes for his part in operating AlphaBay).

137. *See id.* at 10–22 (charging RICO conspiracy, narcotics conspiracy, six counts of distribution of a controlled substance, conspiracy to commit identity theft and fraud related to identification documents, four counts of unlawful transfer of a false identification document, conspiracy to commit access device fraud, trafficking in device making equipment, and money laundering conspiracy).

website.¹³⁸ Soon after, authorities arrested Cazes in Thailand.¹³⁹ A week later, Cazes killed himself in an apparent suicide while in the custody of officers from the Narcotics Suppression Bureau in Thailand.¹⁴⁰ Due to Cazes's suicide, the case never progressed to trial and prosecutors dismissed the indictment.¹⁴¹ The judge presiding over the ensuing civil forfeiture case granted a default judgment and found the government alleged sufficient facts to prove a link between Cazes's assets and racketeering activities.¹⁴²

The indictment's outline of AlphaBay's operation shows an online version of traditional organized crime organization, including numerous subordinate associates engaging in drug trafficking, forging documents, and money laundering through Cazes's platform.¹⁴³ A large portion of Cazes's proceeds from the

138. See *AlphaBay Shut Down*, *supra* note 112 (announcing the seizure of AlphaBay and the arrest of Alexandre Cazes); AlphaBay Seizure Notice, DEPT OF JUSTICE (July 4, 2017), <https://perma.cc/KK7X-3XT4> (last visited Nov. 5, 2019) (“[This hidden site has been seized] [s]ince July 4, 2017 as part of a law enforcement operation by the Federal Bureau of Investigation, the Drug Enforcement Administration and European law enforcement agencies acting through Europol”) (on file with the Washington and Lee Law Review).

139. See *AlphaBay Shut Down*, *supra* note 112 (describing Thai authorities' cooperation in the arrest).

140. See Ngamkham, *supra* note 34 (reporting that an officer found Cazes hanged in his cell with no signs of struggle).

141. See Order To Dismiss Indictment, *United States v. Cazes*, Case No. 1:17-cr-00144 (E.D. Cal. Apr. 27, 2018) (dismissing Cazes indictment); see also William Sassani, *Court Rules in Favor of Federal Government in Forfeiture of Assets Related to Darknet Website*, N. CAL. RECORD (Aug. 15, 2018), <https://perma.cc/8ZBT-6LNW> (last visited Nov. 5, 2019) (discussing the following civil forfeiture action against Cazes's estate) (on file with the Washington and Lee Law Review).

142. See *United States v. 2013 Lamborghini Aventador LP700-4*, No. 117-CV-00967 LJO SKO, 2018 WL 3752131, at *12 (E.D. Cal. Aug. 8, 2018) (granting default judgment and forfeiture of Cazes's assets, including several cryptocurrency wallets, bank accounts, real estate, and a 2013 Lamborghini Aventador).

143. See Indictment at ¶ 12, *United States v. Cazes*, Case No. 1:17-cr-00144 (E.D. Cal. June 1, 2017)

Members and associates of [AlphaBay] distributed, and facilitated the distribution of, controlled substances, . . . distributed, and facilitated the distribution of, counterfeit and stolen identification documents, . . . [and] laundered money . . . by maintaining and controlling digital currency addresses through which customers paid vendors on the AlphaBay website.

website were held in various cryptocurrencies¹⁴⁴ and AlphaBay's operation relied entirely on cryptocurrencies for payment.¹⁴⁵ The RICO conspiracy charge was predicated on fraud in connection with identification documents,¹⁴⁶ fraud in connection with access devices,¹⁴⁷ money laundering,¹⁴⁸ and narcotics trafficking.¹⁴⁹

In cases involving cryptocurrency, investigators face difficulties in overcoming the anonymous nature of cryptocurrencies to pinpoint the identity of a suspect.¹⁵⁰ In Cazes's case, reports indicate that investigators capitalized on a small window of opportunity to identify Cazes and capture control of AlphaBay and his cryptocurrencies.¹⁵¹ In either a mistake or oversight, Cazes used his own personal Hotmail account at one point during the operation of the marketplace, providing the initial

144. See Verified Complaint for Forfeiture *In Rem*, United States v. Cazes, Case No. 1:17-at-00557 (E.D. Cal. July 19, 2017) (listing Cazes's assets including large sums of bitcoin, etherium, zcash and monero).

145. See Indictment at ¶ 3, United States v. Cazes, Case No. 1:17-cr-00144 (E.D. Cal. June 1, 2017) ("AlphaBay required its users to transact in digital currencies, including Bitcoin, Morrero, and Ethereum. The site did not allow for transactions in official, government-backed currencies.").

146. See 18 U.S.C. § 1028 (2018) (prohibiting knowing transfer or possession of fraudulent identification documents).

147. See 18 U.S.C. § 1029 (prohibiting fraud in connection with access devices, i.e. credit and debit cards).

148. See 18 U.S.C. §§ 1956–1957 (prohibiting concealment or disguising "the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity").

149. See 21 U.S.C. §§ 841, 843, and 846 (prohibiting manufacture, distribution, dispensation, or possession of controlled substances; use of a communication facility in furtherance thereof; and conspiracy to commit the same).

150. See Thomas Brewster, *FBI Has 130 Cryptocurrency-Related Investigations, Agent Says*, BLOOMBERG (June 27, 2018), <https://perma.cc/6GG8-WBF6> (last visited Nov. 5, 2019) (citing statements by Kyle Armstrong, a supervisory special agent of the FBI, regarding the pros and cons of investigating cryptocurrency criminals) (on file with the Washington and Lee Law Review).

151. See Thomas Brewster, *How the Cops Took Down an Alleged \$23 Million Dark Web Drug Kingpin*, FORBES (July 20, 2017, 02:30 PM), <https://perma.cc/F2BR-F5PA> (last visited Nov. 5, 2019) (reporting on the raid that captured Alexandre Cazes and his open laptop, with access to AlphaBay's administrative functions) (on file with the Washington and Lee Law Review).

link to his identity.¹⁵² This seemingly minor slip-up demonstrates the difficulty of prosecuting cryptocurrency criminals: investigators must catch a cryptocurrency criminal by finding instances of human error.¹⁵³ Even with such an error, an investigator needs extensive knowledge of the cryptocurrency network and identification of a user can be nearly impossible without outside information, such as an associated email or information from service providers.¹⁵⁴

In order to help identify the enterprise behind AlphaBay, investigators shut down AlphaBay shortly before the raid in order to ensure that Cazes was logged in as an administrator at the time officials seized his computer.¹⁵⁵ Had this seizure technique failed and left prosecutors unable to access AlphaBay's network administrator functions, this Note's proposed alternative would enable prosecutors to rely on Cazes's infiltration of the various cryptocurrency networks with ill-gotten gains to prove the enterprise element of a RICO prosecution.¹⁵⁶ Still, RICO cases regarding cryptocurrencies are rare and RICO is not the exclusive tool for prosecuting cryptocurrency criminals engaged in enterprises.

152. See *id.* (speculating that Cazes's email address—Pimp_Alex_91@hotmail.com—was compromised during data breaches involving MySpace and LinkedIn).

153. See generally NICK FURNEAUX, INVESTIGATING CRYPTOCURRENCIES: UNDERSTANDING, EXTRACTING, AND ANALYZING BLOCKCHAIN EVIDENCE 119–267 (2018) (discussing investigative methods used to prosecute cryptocurrency criminals).

154. See *id.* at 244 (“Finding a suspect in the real world from blockchain transactions can be very challenging, and unless you are able to make legal requests for information from service providers, it can be almost impossible.”); see also Nina Marino et al., *The Dark Side of Bitcoin*, L.A. LAW., Sept. 2018, at 36, 40 (regarding the use of confidential informants and undercover investigations in cryptocurrency investigations).

155. See BREWSTER, *supra* note 151 (“Just before they swooped on . . . Cazes . . . , the cops forced the site to go down, leading the suspect to login to the market's server and start communicating with the AlphaBay data centers . . .”).

156. See *infra* Part IV (discussing prosecution of cryptocurrency criminals using the cryptocurrency network as the enterprise).

B. RICO Alternatives

Ross Ulbricht operated Silk Road, an online marketplace that preceded AlphaBay and sold drugs and other illegal goods using bitcoins as its exclusive payment system.¹⁵⁷ Instead of prosecuting under RICO, prosecutors employed the Continuing Criminal Enterprise (CCE) statute.¹⁵⁸ The CCE statute shares a similar structure with RICO and enables prosecution if the accused occupied a supervisory position over at least five other individuals and obtained substantial income or resources.¹⁵⁹ However, prosecutions under CCE are limited to prosecutions of federal drug offenses against drug kingpins.¹⁶⁰ By comparison, RICO retains a much more flexible application due to the statute's broad language and inclusive definition of racketeering activities.¹⁶¹ While CCE prosecutions may suit online drug kingpins, employing RICO against cryptocurrency criminals as this Note suggests will result in a streamlining of the investigation methods against cryptocurrency criminals because the enterprise element can be the same in each case.¹⁶²

Prosecutors may also choose to ignore any potential RICO concerns, exercise prosecutorial discretion, and charge only the underlying predicate crimes. In 2014, a New York grand jury charged Bitcoin entrepreneurs Charlie Shrem and Robert Faiella with operating an unlicensed money transmitting business and

157. See *United States v. Ulbricht*, 858 F.3d 71, 82–83 (2d Cir. 2017) (summarizing Ulbricht's conviction for drug trafficking associated with his website, Silk Road), *cert. denied*, 138 S. Ct. 2708 (2018).

158. See Indictment, *United States v. Ulbricht*, Case No. 1:14-cr-00068 (S.D.N.Y. Feb. 4, 2014) (charging Ross with crimes stemming from his operation of Silk Road).

159. See 21 U.S.C. § 848 (2018) (providing higher penalties for committing two or more violations of controlled substances statutes in a position of management over five or more other persons).

160. See Susan W. Brenner, *S.C.A.R.F.A.C.E.: A Speculation on Double Jeopardy and Compound Criminal Liability*, 27 *NEW ENG. L. REV.* 915, 936 (1993) (“Given these limitations, CCE might properly be termed a ‘minor RICO statute.’”).

161. See *id.* (“RICO can be used against anyone who commits, facilitates or agrees to the commission of ‘racketeering activity.’”).

162. See *infra* Part IV (discussing how investigation of bitcoin usage can prove the investments of proceeds and the enterprise required for a RICO violation).

conspiring to commit money laundering in connection with drug purchases on Silk Road.¹⁶³ Both charged crimes are RICO predicate crimes.¹⁶⁴ Faiella operated a Bitcoin exchange on Silk Road, and Schrem used his position at another Bitcoin exchange to anonymously provide the bitcoins for Faiella's exchange.¹⁶⁵ The indictment also indicated that both Faiella and Schrem operated the scheme as a business, which might have satisfied the RICO enterprise requirement.¹⁶⁶ Three years later, a California grand jury indicted another bitcoin entrepreneur, Alexander Vinnik, on nineteen counts under the same statutes and two counts of engaging in unlawful monetary transactions.¹⁶⁷ Vinnik oversaw BTC-e, a cryptocurrency exchange which allowed users to anonymously exchange cryptocurrencies for conventional currencies and failed to comply with anti-money-laundering and know-your-customer laws.¹⁶⁸ Despite the potential applicability of RICO, prosecutors did not secure an indictment under the statute for either case.

In light of the broad applicability of RICO, the DOJ created requirements for authorizing the use of RICO that limit its use.

163. See Indictment, *United States v. Faiella*, Case No. 1:14-cr-00243-JSR (S.D.N.Y. Apr. 10, 2014), ECF No. 17 (charging violations of 18 U.S.C. §§ 1956 and 1960); see also Press Release, *Bitcoin Exchangers Plead Guilty in Manhattan Federal Court in Connection with the Sale of Approximately \$1 Million in Bitcoins for Use on the Silk Road Website*, U.S. ATTORNEY'S OFFICE, S. DIST. OF N.Y. (Sept. 4, 2014), <https://perma.cc/4HVL-S9L2> (last visited Nov. 5, 2019) (discussing the resulting guilty pleas of Robert Faiella and Charlie Shrem) (on file with the Washington and Lee Law Review).

164. See 18 U.S.C. § 1961(1) (2018) (“[R]acketeering activities means . . . any act which is indictable under . . . section 1956 (relating to the laundering of monetary instruments) . . . [and] section 1960 (relating to illegal money transmitters) . . .”).

165. See Indictment, *United States v. Faiella*, Case No. 1:14-cr-00243-JSR (S.D.N.Y. Apr. 10, 2014), ECF No. 17 (alleging that Faiella operated the exchange under the username “BTCKing,” and that Shrem knew he was facilitating Silk Road transactions).

166. See *id.* (alleging that Faiella and Schrem operated a money transmitting business affecting interstate commerce).

167. See Superseding Indictment, *United States v. BTC-E*, Case No. CR 16-00227 SI(N.D. Cal. Jan. 17, 2017) (discussing Alexander Vinnik's operation of a digital currency exchange and his alleged involvement in ransomware attacks, drug trafficking, identity theft, fraud, and money laundering).

168. See *id.* at ¶¶ 32–43.

Any prosecution of cryptocurrency criminals must satisfy these requirements:

[A] government attorney should seek approval for a RICO charge only if one or more of the following requirements is present:

1. RICO is necessary to ensure that the indictment adequately reflects the nature and extent of the criminal conduct involved in a way that prosecution only on the underlying charges would not;
2. A RICO prosecution would provide the basis for an appropriate sentence under all the circumstances of the case in a way that prosecution only on the underlying charges would not;
3. A RICO charge could combine related offenses which would otherwise have to be prosecuted separately in different jurisdictions;
4. RICO is necessary for a successful prosecution of the government's case against the defendant or a codefendant;
5. Use of RICO would provide a reasonable expectation of forfeiture which is proportionate to the underlying criminal conduct;
6. The case consists of violations of State law, but local law enforcement officials are unlikely or unable to successfully prosecute the case, in which the federal government has a significant interest;
7. The case consists of violations of State law, but involves prosecution of significant or government individuals, which may pose special problems for the local prosecutor.¹⁶⁹

These factors address the DOJ's concerns regarding potential prosecutorial overreach through RICO and ensure that RICO is only used when necessary.¹⁷⁰ It is possible that the activities of

169. U.S. Dep't of Justice, Justice Manual § 9-110.310 (2020).

170. *See id.* at § 9-110.200 ("Despite the broad statutory language of RICO and the legislative intent that the statute '. . . shall be liberally construed to effectuate its remedial purpose,' it is the policy of the Criminal Division that RICO be selectively and uniformly used.").

Faiella, Schrem, and Vinnik simply did not meet these requirements.

IV. Cryptocurrencies as the “Enterprise”

Cryptocurrency criminals have infiltrated a legitimate enterprise: the Bitcoin network. This Note proposes protecting legitimate enterprises like Bitcoin with a novel alternative for prosecuting cryptocurrency criminals. Prosecutors should use the cryptocurrency network relationship to support prosecution under § 1962(a), which bars infiltration of an enterprise through racketeering activities.¹⁷¹ In this scenario, the cryptocurrency and its users are “the victim of the activity” of criminals considered by § 1962(a) of the RICO statute.¹⁷² Under this proposal, the prosecutor’s investigation of a criminal’s use of cryptocurrency will satisfy both the investment requirements and the enterprise requirement of § 1962(a).¹⁷³ This approach reinvigorates RICO’s initial purpose stated in the statute’s legislative history: to prevent the infiltration of legitimate enterprises.¹⁷⁴ It also lowers the investigatory resources required to demonstrate the “enterprise.” Instead of having to investigate the relationships among the associates of the criminal enterprise,¹⁷⁵ prosecutors will be able to

171. See 18 U.S.C. § 1962(a) (2018)

It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity . . . to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

172. See *Nat’l Org. for Women, Inc. v. Scheidler*, 510 U.S. 249, 259 (1994) (“The ‘enterprise’ referred to in subsections (a) and (b) is thus something acquired through the use of illegal activities or by money obtained from illegal activities. The enterprise in these subsections is the victim of unlawful activity . . .”).

173. See 18 U.S.C. § 1962(a) (2018) (regarding investment in enterprises with racketeering proceeds).

174. See, e.g., 116 CONG. REC. 591 (1970) (remarks of Sen. McClellan) (“[T]itle IX is aimed at removing organized crime from our legitimate organizations.”).

175. See *Boyle v. United States*, 556 U.S. 938, 946 (2009) (requiring prosecutors to show group members are “associated together for a common purpose of engaging in a course of conduct” in order to prove an association-in-fact enterprise).

rely on publicly available information in order to prove the enterprise.¹⁷⁶

A. Criminal Prosecution of Cryptocurrency Criminals Under § 1962(a)

The government can prove a criminal violation of § 1962(a) by showing “the existence of an enterprise, the defendant’s derivation of income from a pattern of racketeering activity, and the use of any part of that income in acquiring an interest in or operating the enterprise.”¹⁷⁷ A civil plaintiff must also show causation between the investment and an injury in order to have standing.¹⁷⁸

1. The Enterprise Requirement

The enterprise requirement should be satisfied by the cryptocurrency and its network of users.¹⁷⁹ Cryptocurrencies are not legal entities. The status of an enterprise as a legal association depends on its legal existence as a corporation, partnership, or other legal entity.¹⁸⁰ Bitcoin, the original cryptocurrency, does not

176. See *infra* Section IV.A.1 (discussing the association requirements for cryptocurrencies).

177. United States v. Cauble, 706 F.2d 1322, 1331 (5th Cir. 1983).

178. See 18 U.S.C. § 1964(c) (2018) (“Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court”); see also *N. Cypress Med. Ctr. Operating Co. v. Cigna Healthcare*, 781 F.3d 182, 202 (5th Cir. 2015) (quoting *St. Paul Mercury Ins. Co. v. Williamson*, 224 F.3d 425, 441 (5th Cir. 2000))

To state a claim under § 1962(a), North Cypress had to plead: “(1) the existence of an enterprise, (2) the defendant’s derivation of income from a pattern of racketeering activity, and (3) the use of any part of that income in acquiring an interest in or operating the enterprise.” Additionally, North Cypress had to show a nexus between the claimed violations and injury.

179. See 556 U.S. at 946 (“[A]n association-in-fact enterprise must have at least three structural features: a purpose, relationships among those associated with the enterprise, and longevity sufficient to permit these associates to pursue the enterprise’s purpose.”).

180. See *In re Ins. Brokerage Antitrust Litig.*, 618 F.3d 300, 364 (3d Cir. 2010) (providing the standard of proof for the legal existence of a corporation, partnership, or other legal entities).

exist as a legal entity in any form, but rather exists simply as an open source protocol¹⁸¹ with individual bitcoins considered a commodity.¹⁸² With other cryptocurrencies relying on similar blockchain protocols,¹⁸³ each cryptocurrency network itself is typically not a legal entity even if some cryptocurrencies are associated with legal entities.¹⁸⁴

Cryptocurrencies should constitute an association-in-fact enterprise under *Boyle* because they have the “three [required] structural features: a purpose, relationships among those associated with the enterprise, and longevity sufficient to permit these associates to pursue the enterprise’s purpose.”¹⁸⁵ First, the purpose of cryptocurrencies is to function as an alternative form of currency.¹⁸⁶ They provide several benefits over traditional currencies including lower costs, easier transferability, and less risk by eliminating double spending.¹⁸⁷ All users, legitimate and illegitimate, work together towards the common purpose of keeping track of Bitcoin transactions.¹⁸⁸

181. See *Who Owns Bitcoin.org?*, *About Bitcoin.org*, BITCOIN.ORG, <https://perma.cc/WK8W-YUT9> (last visited Nov. 5, 2019) (providing that no one owns Bitcoin because it is a protocol and that the network requires consensus between all the platform’s users) (on file with the Washington and Lee Law Review).

182. See *Commodity Futures Trading Comm’n v. McDonnell*, 287 F. Supp. 3d 213, 228 (E.D.N.Y. 2018) (“Virtual currencies can be regulated by CFTC as a commodity.”).

183. See, e.g., TETHER LTD., *TETHER: FIAT CURRENCIES ON THE BITCOIN BLOCKCHAIN* (2016), <https://perma.cc/A4AW-SWSZ> (PDF) (describing Tether, a cryptocurrency-fiat currency hybrid which “exist[s] on the Bitcoin blockchain”).

184. See, e.g., *Contact Us*, TETHER, <https://perma.cc/HTE8-GNT5> (last visited Nov. 5, 2019) (noting Tether Limited, the legal entity that controls Tether cryptocurrency, “is incorporated in Hong Kong”) (on file with the Washington and Lee Law Review).

185. *Boyle*, 556 U.S. at 946.

186. See NAKAMOTO, *supra* note 114, at 1 (describing a bitcoin as electronic cash).

187. See Kevin V. Tu & Michael W. Meredith, *Rethinking Virtual Currency Regulation in the Bitcoin Age*, 90 WASH. L. REV. 271, 282 (2015) (“The most commonly cited benefits of bitcoin are: (1) lower costs and fees, (2) fewer risks for merchants, (3) increased anonymity for users, (4) increased speed and ease of transfer/payment, and (5) less susceptibility to government manipulation and inflationary pressures.”).

188. See NAKAMOTO, *supra* note 114, at 3 (setting out the Bitcoin network and how transactions will be verified).

Second, the relationship among those associated with a cryptocurrency enterprise occurs naturally as a result of the creation of the blockchain and consensus network of cryptocurrency.¹⁸⁹ Each transaction between Bitcoin users is registered in the blockchain, a “record of all the debits, credits and balances associated with each unique bitcoin address.”¹⁹⁰ Each transfer is broadcasted to the Bitcoin network, where it is examined by miners—computers which gather the information from the transaction and ensure that it matches the previous transactions before adding it to the blockchain.¹⁹¹ Upon successfully adding the new transaction to the blockchain, the miner is rewarded with a small amount of bitcoin.¹⁹² Thus, each Bitcoin transaction represents a relationship between at least three users: the sender of the bitcoin, the recipient of the bitcoin, and the miner.¹⁹³ Each transaction requires this relationship, constantly deepening the web of relationships amongst the users of the Bitcoin enterprise.¹⁹⁴

Finally, cryptocurrency networks show longevity because they are intended as a long-term alternative to currency.¹⁹⁵ The last Bitcoin prize for mining will not be issued until approximately 2140.¹⁹⁶ Bitcoin is designed to serve as an alternative to traditional

189. See PAUL VIGNA & MICHAEL J. CASEY, *THE AGE OF CRYPTOCURRENCY* 121–37 (2015) (describing an interconnected network of users and the public ledger system that underlies cryptocurrencies).

190. *Id.*

191. See *id.* at 129 (“The miner’s software client takes the hash of the first transaction—with the pool of underlying data contained within it—and combines it with the raw data of the next unhashed transaction to form a new hash.”).

192. See *id.* (discussing the reasons for bitcoin miners to expend computing power to assist with the maintenance of the network).

193. See *id.* at 130 (discussing the requirement of consensus between the information provided by the sender and the information found on the blockchain by the miner before the payment to the recipient is confirmed).

194. See *id.* at 131 (“[T]he latest block is now mathematically linked to the blockchain, as if to form the latest in an ever growing line of trailer hitches.”).

195. See Eric Lam & Lauren Leatherby, *From Pizza to Lambos: Charting Bitcoin’s First Decade*, BLOOMBERG (Oct. 3, 2018), <https://perma.cc/R56G-MBE4> (last visited Nov. 5, 2019) (charting the use of bitcoins from 2008 through 2018) (on file with the Washington and Lee Law Review).

196. See Evelyn Cheng, *There Are Now 17 Million Bitcoins in Existence—Only 4 Million Left to Mine*, CNBC (Apr. 26, 2018, 2:26 PM),

currency¹⁹⁷ and the network has already existed for over ten years.¹⁹⁸ The network's long-term focus on serving as an alternative to traditional financial institutions demonstrates longevity sufficient to pursue its purpose.¹⁹⁹

The Seventh Circuit Court of Appeals noted that the statute's broad applicability should not extend to absurd results.²⁰⁰ In order to distinguish absurd results from a proper application of the statute, Chief Judge Posner analyzed how closely an alleged enterprise resembled a "prototypical" RICO enterprise.²⁰¹ First, the court defined a prototypical case: where a criminal seizes control of a legitimate firm and uses the firm to engage in criminal acts.²⁰² Cryptocurrency criminals do not satisfy this prototypical case because they do not control the entire cryptocurrency network.²⁰³ The court describes the next closest case as one where the criminal uses the enterprise to conduct criminal activities, but the enterprise continues its legitimate operations.²⁰⁴ Judge Posner noted that such a situation is close to the prototypical case and falls

<https://perma.cc/LN2Q-ENMS> (last updated Apr. 30, 2018, 2:33 P.M.) (last visited Nov. 5, 2019) ("The remaining 4 million coins aren't expected to be mined completely for another 122 years.") (on file with the Washington and Lee Law Review).

197. See NAKAMOTO, *supra* note 114, at 1 (proposing peer-to-peer electronic cash to avoid using financial institutions).

198. See Lam & Leatherby, *supra* note 195 (reporting on Bitcoin's creation in 2008 and the first transaction for two pizzas in 2010).

199. See *Boyle v. United States*, 556 U.S. 938, 946 (2009) (requiring "longevity sufficient to permit [the] associates to pursue the enterprise's purpose").

200. See *Fitzgerald v. Chrysler Corp.*, 116 F.3d 225, 226 (7th Cir. 1997) ("When a statute is broadly worded in order to prevent loopholes from being drilled in it by ingenious lawyers, there is a danger of its being applied to situations absurdly remote from the concerns of the statute's framers.").

201. *Id.* at 227.

202. See *id.* (discussing how a criminal could "uses the firm's resources, contacts, facilities, and appearance of legitimacy to perpetrate more, and less easily discovered, criminal acts than he could do in his own person").

203. See Camila Russo, *Bitcoin Speculators, Not Drug Dealers, Dominate Crypto Use Now*, BLOOMBERG (August 7, 2018, 7:15 AM), <https://perma.cc/YR68-8DDH> (last visited Nov. 5, 2019) (interviewing Drug Enforcement Administration Agent Lilita Infante who reported that illegal activity constitutes approximately ten percent of cryptocurrency transactions) (on file with the Washington and Lee Law Review).

204. See *Fitzgerald*, 116 F.3d at 227 ("[M]any of the employees of the business may be unaware that it is controlled and being used by a criminal.").

under the auspices of the statute.²⁰⁵ Cryptocurrency crime fits squarely into this category, with criminals representing a sizable, but not overwhelming, portion of the cryptocurrency network.²⁰⁶

Further concerns about including cryptocurrency networks under an expansive reading of the statute can be dispelled by examining the guidance of *Boyle*, which provided:

Such a[n enterprise] need not have a hierarchical structure or a “chain of command”; decisions may be made on an ad hoc basis and by any number of methods—by majority vote, *consensus*, a show of strength, etc. Members of the group need not have fixed roles; different members may perform different roles at different times. The group need not have a name, regular meetings, dues, established rules and regulations, disciplinary procedures, or induction or initiation ceremonies. While the group must function as a continuing unit and remain in existence long enough to pursue a course of conduct, nothing in RICO exempts an enterprise whose associates engage in spurts of activity punctuated by periods of quiescence.²⁰⁷

Given the Court’s endorsement of consensus decision-making and exhaustive list of inessential features, the relationships among cryptocurrency users should be sufficient to demonstrate that the network is “a group of persons associated together for a common purpose of engaging in a course of conduct.”²⁰⁸

2. Investment or Use in an Enterprise

Keeping with RICO’s broad construction requirement,²⁰⁹ the Fourth Circuit Court of Appeals found that “[t]he key operative

205. *See id.* (“The second step is to determine how close to the prototype the case before the court is—how close, in other words, the family resemblance is between the prototypical case and the case at hand.”).

206. *See* Sean Foley et. al., *Sex, Drugs, and Bitcoin: How Much Illegal Activity is Financed Through Cryptocurrencies?*, 32 REV. OF FIN. STUD. 1798, 1800 (2019) (“[A]pproximately one-quarter of all users (26%) and close to one-half of bitcoin transactions (46%) are associated with illegal activity.”).

207. *Boyle*, 556 U.S. at 948 (emphasis added).

208. *Id.* at 946 (quoting *United States v. Turkette*, 452 U.S. 576, 583 (1981)).

209. *See United States v. Vogt*, 910 F.2d 1184, 1194 (4th Cir. 1990) (finding that there is no rigorous amount of proof required to tie together the crime, the proceeds and the use or investment).

terms of the section [regarding investment of proceeds] are expansive, not restrictive ones: ‘use or invest,’ ‘any part,’ ‘income . . . or . . . proceeds,’ ‘directly or indirectly,’ ‘establishment or operation.’”²¹⁰ This same sentiment is echoed in a later Second Circuit opinion, which stated that “the numerous disjuncts in § 1962(a) create a broad prohibition.”²¹¹ To illustrate how the statute might apply: Alexandre Cazes “used” the “proceeds” of the drug sales and other “racketeering activities” on AlphaBay directly in the “operation” of the Bitcoin network—the “enterprise”—by requiring AlphaBay users to pay in bitcoins, making the Bitcoin network track and verify each transaction, and storing the proceeds of the transactions in bitcoins.²¹² Typically, the reason not to proceed under § 1962(a) is that it is difficult to track and prove the investment.²¹³ The same concern does not apply to Bitcoin transactions because the network stores a public record of every prior transaction.²¹⁴ In order to connect a Bitcoin wallet to an individual, an investigator must tie a private Bitcoin user’s private information to a public transaction record.²¹⁵ But once the connection is made, the investigator will have an easier time proving that the bitcoins were used in an illicit transaction and that the proceeds of the transaction were used in the Bitcoin network enterprise.²¹⁶

Despite apparently being allowed under *Turkette*, association-in-fact enterprises thus far do not appear in § 1962(a) cases.²¹⁷ This may be because § 1962(a) cases are rare.²¹⁸ Some

210. *Id.*

211. *Ideal Steel Supply Corp. v. Anza*, 652 F.3d 310, 322 (2d Cir. 2011).

212. 18 U.S.C. § 1962(a) (2018).

213. *See Lynch*, *supra* note 8, at 691 (asserting that it is usually difficult and burdensome to prove the connection between the racketeering activities and the investment).

214. *See Blockchain Explorer*, *supra* note 38 (showing the entire blockchain history of Bitcoin).

215. *See generally FURNEAUX*, *supra* note 153 (discussing investigative methods used to prosecute cryptocurrency criminals).

216. *See Marino*, *supra* note 154, 40–41 (discussing the government’s tracing methods once an investigator has identified illicit usage of cryptocurrency).

217. *See SMITH & REED*, *supra* note 9, at § 3.02 (asserting that the Court’s argument in *Turkette* is so obviously incorrect that federal prosecutors have not tested its bounds).

218. *See id.* at § 5.02 (“[S]ection 1962(a) attracted little notice from

commentators argue that the *Turkette* decision is absurd when applied to § 1962(a) and (b) because RICO would punish racketeers for investing racketeer proceeds back into their own illegal association-in-fact enterprises.²¹⁹ Three reasons reduce this concern when applying the statute to cryptocurrency criminals.

First, the statute contains a single definition for enterprise, which includes both legal and association-in-fact enterprises.²²⁰ It is difficult to see how the “enterprise” under one subsection is somehow different than the “enterprise” under a different subsection, when both subsections rely on the exact same definition.²²¹ Second, a crypto-criminal is using a legitimate enterprise, the cryptocurrency network.²²² One district court recognized that proving a legitimate association-in-fact enterprise is theoretically possible and seemingly fits within the language and purpose of the statute.²²³ Finally, *Boyle* reaffirmed the Supreme Court’s commitment to broadly construe RICO to effectuate its remedial purposes.²²⁴ If applied to cryptocurrencies under § 1962(a), the statute is still being used to eliminate criminal influences on legitimate enterprises in harmony with its purpose.²²⁵

prosecutors.”).

219. *See id.* at § 3.02 (“The Court did not deign to explain what possible purpose could be served by prohibiting racketeers from investing ill-gotten income in their illegal businesses”)

220. *See* 18 U.S.C. § 1961(4) (2018) (“[E]nterprise’ includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity”).

221. *See* *United States v. Turkette*, 452 U.S. 576, 585 (1981) (rejecting the argument that each subsection of the statute addresses a different type of enterprise, legitimate or illegitimate).

222. *See supra* Part II.C (concerning the legitimate uses of cryptocurrency).

223. *See* *Rodriguez v. Banco Cent.*, 777 F. Supp. 1043, 1055 (D.P.R. 1991), *aff’d sub nom. Rodriguez v. Banco Cent. Corp.*, 990 F.2d 7 (1st Cir. 1993) (“A plaintiff could conceivably prove an association-in-fact that is completely legitimate except for the fact that one of its associates is using the entity, even perhaps without the knowledge of any of the other associates, for the purpose of engaging in the RICO predicate act pattern”).

224. *See* *Boyle v. United States*, 556 U.S. 938, 944 (2009) (“[T]he very concept of an association in fact is expansive.”).

225. *See* *Turkette*, 452 U.S. at 591 (“[T]he legislative history forcefully supports the view that the major purpose of Title IX is to address the infiltration of legitimate business by organized crime.”).

If criminal RICO works under this concept, civil complainants face yet another barrier to using cryptocurrencies to support their RICO cases. In order to establish standing, civil RICO plaintiffs in a majority of circuits must allege that they suffered an “investment injury” resulting from the investment or use of the proceeds in the enterprise.²²⁶ Given the fluctuating markets of cryptocurrencies,²²⁷ plaintiffs may have difficulties showing the connection between a criminal’s use of a cryptocurrency and an injury that is concrete and particularized enough to allow standing.²²⁸

B. Potential Bars to Cryptocurrencies as an Enterprise-in-Fact

1. Cryptocurrency as the Enterprise Will Likely Not Work Under § 1962(c)

Although RICO has been liberally construed,²²⁹ the Supreme Court instituted a requirement for how much control an individual must have over a criminally operated enterprise in *Reves v. Ernst & Young*.²³⁰ Subsection 1962(c) prohibits any person from participating in an enterprise’s affairs through a pattern of racketeering activity.²³¹ In interpreting the statute in *Reves*, the

226. See SMITH & REED, *supra* note 9, at § 6.04(6)(a) (“The First, Second, Third, Fifth, Sixth, Ninth, Tenth, and District of Columbia Circuits have held that an investment injury is required under section 1962(a). The Fourth Circuit has held otherwise.” (citations omitted)).

227. See Jeremy Swinfen Green, *Understanding Cryptocurrency Market Fluctuations*, TELEGRAPH (July 19, 2018, 4:00 PM), <https://perma.cc/4TPC-89UC> (last visited Nov. 5, 2019) (“Volatility, recent hacks and the threat of taxation all add to the uncertainties surrounding [cryptocurrencies].”) (on file with the Washington and Lee Law Review).

228. See *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1548 (2016) (requiring an injury that is “concrete and particularized”).

229. See *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 498 (1985) (discussing the legislative history of the statute and Congress’s “self-consciously expansive language and overall approach”).

230. 507 U.S. 170, 185 (1993) (holding that “to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs, [under] § 1962(c), one must participate in the operation or management of the enterprise itself”).

231. See 18 U.S.C. § 1962(c) (2018)

It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or

Court approved of an “operation or management” test requiring a RICO target to “participate in the operation or management of the enterprise itself.”²³² The required degree of control over the operation or management of the enterprise is currently unclear, with courts finding participation when a company exercised “some direction over” the members of an enterprise²³³ but not when a maintenance worker “transported some stolen beer and lamps to buyers and returned most of the proceeds from the sales to [a drug dealer].”²³⁴ This lack of clarity may discourage the proposed prosecution, which can be remedied by instead using § 1962(a) for prosecution of cryptocurrency criminals.²³⁵

In *Reves*, the Court distinguished subsection (c) of the statute from subsections (a) and (b) on the grounds that (c) governed individuals with some level of control in the enterprise, while (a) and (b) governed individuals outside of the enterprise.²³⁶ Thus, the operation or management test is not a bar to the proposed prosecution if employed in a § 1962(a) claim.

2. Prosecutorial Discretion and the Justice Manual

Given RICO’s broad statutory language, the DOJ recognizes that every case that meets the statute’s technical requirements

foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity or collection of unlawful debt.

232. *Reves*, 507 U.S. at 184 (“[I]t is clear that Congress did not intend to extend RICO liability under § 1962(c) beyond those who participate in the operation or management of an enterprise through a pattern of racketeering activity.”).

233. *See Williams v. Mohawk Indus., Inc.*, 465 F.3d 1277, 1285 (11th Cir. 2006) (ruling on violations of RICO stemming from a pattern of Immigration and Nationality Act violations).

234. *United States v. Viola*, 35 F.3d 37, 43 (2d Cir. 1994) (considering a violation of RICO resulting from a drug and stolen property importation and distribution crime network).

235. *See supra* Part IV.A; 18 U.S.C. § 1962(a) (2018) (prohibiting investment of proceeds from racketeering patterns in an enterprise).

236. *See Reves*, 507 U.S. at 185 (“Infiltration of legitimate organizations by ‘outsiders’ is clearly addressed in subsections (a) and (b), and the ‘operation or management’ test that applies under subsection (c) in no way limits the application of subsections (a) and (b) to ‘outsiders.’”).

should not be prosecuted.²³⁷ Instead of leaving the decision to individual prosecutors, the Organized Crime and Gang Section within the Criminal Division of the DOJ oversees and approves the commencement of prosecutions under RICO.²³⁸ A government attorney should only seek approval of a RICO prosecution if the case satisfies one or more of the requirements contained in the DOJ's Justice Manual.²³⁹ Moreover, the Justice Manual provides that "the Criminal Division will not approve 'imaginative' prosecutions under RICO which are far afield from the congressional purpose of the RICO statute."²⁴⁰ Two of the seven requirements for approval are particularly applicable to cryptocurrency criminals.

Due in part to the widespread availability of the internet, cryptocurrency crimes often transcend state and international borders.²⁴¹ This international usage makes it difficult to charge "related offenses which would otherwise have to be prosecuted separately in different jurisdictions."²⁴² For example, in the investigation of Cazes, the DOJ had to contend with an individual with two foreign citizenships, residing in Thailand, selling drugs throughout the United States.²⁴³ In Ulbricht's case, the prosecution accused Ulbricht of facilitating drug sales to over one hundred thousand purchasers worldwide.²⁴⁴

237. See U.S. DEP'T OF JUSTICE, JUSTICE MANUAL § 9-110.200 (2016) ("Despite the broad statutory language of RICO and the legislative intent that the statute ' . . . shall be liberally construed to effectuate its remedial purpose,' it is the policy of the Criminal Division that RICO be selectively and uniformly used.").

238. See *id.* at §§ 9-110.101, 9-110.210 ("No RICO criminal indictment or information or civil complaint shall be filed, and no civil investigative demand shall be issued, without the prior approval of the Criminal Division.").

239. See *id.* at § 9-110.310 (requiring potential RICO cases to satisfy one of seven prerequisites for RICO prosecution).

240. *Id.* at § 9-110.200.

241. See Lawrence Trautman, *Virtual Currencies; Bitcoin & What Now After Liberty Reserve, Silk Road, and Mt. Gox?*, 20 RICH. J.L. & TECH., no. 4, 2014, at 1, 38 ("Virtual currencies present particularly difficult law enforcement challenges because of their ability to transcend national borders in the fraction of a second, unique jurisdictional issues and anonymity due to encryption.").

242. U.S. DEP'T OF JUSTICE, JUSTICE MANUAL § 9-110.310 (2020).

243. See, e.g., Indictment, *United States v. Cazes*, Case No. 1:17-cr-00144 (E.D. Cal. June 1, 2017) (charging predicate crimes originating in both New York and California against a Canadian citizen by birth with citizenship in Antigua and Barbuda residing in Bangkok, Thailand).

244. See Indictment, *United States v. Ulbricht*, Case No. 1:14-cr-00068

RICO is sometimes “necessary to ensure that the indictment adequately reflects the nature and extent of the criminal conduct” in cryptocurrency crimes.²⁴⁵ RICO was designed to protect innocent individuals.²⁴⁶ The cryptocurrency marketplace is sensitive to criminal activities. Government seizures and criminal prosecutions may result in violent swings in the value of a cryptocurrency, through no fault of the innocent user.²⁴⁷ For example, after the closure of Silk Road, bitcoins lost approximately a quarter of their value.²⁴⁸ Cryptocurrency networks support a wide range of economic activities, including holding cryptocurrencies as an investment.²⁴⁹ Yet continued criminal use of cryptocurrencies limits how much industrial investors are willing to participate in the market.²⁵⁰ The “nature and extent” of Silk Road’s effect on innocent Bitcoin users was not adequately reflected by the prosecution of just the underlying predicate acts because innocent Bitcoin users suffered personal losses as a result of Ulbricht’s actions, which affected the viability of the Bitcoin enterprise.²⁵¹

A final potential bar in the DOJ guidelines is that the Criminal Division will not approve “imaginative” prosecutions not

(S.D.N.Y. Feb. 4, 2014) (“The website was used by several thousand drug dealers and other unlawful vendors to distribute hundreds of kilograms of illegal drugs and other illegal goods and services to well over a hundred thousand buyers worldwide . . .”).

245. U.S. DEP’T OF JUSTICE, JUSTICE MANUAL § 9-110.310 (2020).

246. See 115 CONG. REC. 6993 (1969) (“In addition to this criminal prohibition, the bill also creates civil remedies for the honest businessman who has been damaged by unfair competition from the racketeer businessman.”).

247. See Alex Hern, *Bitcoin Price Plummets After Silk Road Closure*, GUARDIAN (Oct. 3, 2013), <https://perma.cc/Z94A-PAZF> (last visited Nov. 5, 2019) (discussing Bitcoin’s price drop following the arrest of Ross Ulbricht and the closure of Silk Road) (on file with the Washington and Lee Law Review).

248. See *id.* (documenting Bitcoin’s price drop from \$145.70 down to \$109.76).

249. See generally CHRIS BURNISKE & JACK TATAR, CRYPTOASSETS: THE INNOVATIVE INVESTOR’S GUIDE TO BITCOIN AND BEYOND (2017) (summarizing investment strategies for cryptocurrency).

250. See PRICEWATERHOUSECOOPERS, *supra* note 20, at 1, 6 (stating that Bitcoin’s illicit usage raises concerns among stakeholders and that the industry will have to undergo several “credentialing moments” on the path to legitimacy).

251. See *id.* at 13 (discussing regulatory steps that governments are taking in light of the illegal use of cryptocurrency).

in line with Congress's original focus on organized crime.²⁵² This Note does not suggest that every single crypto-crime should be prosecuted under RICO, but rather only those crimes that reflect the same fears of Congress that motivated the statute.²⁵³ The law's passage was predicated on findings that organized crime money was being used to "infiltrate and corrupt legitimate business" and that organized crime activities "harm innocent investors."²⁵⁴ A Senate report stated that the law's purpose was the "elimination of the infiltration of organized crime and racketeering into legitimate organizations operating in interstate commerce."²⁵⁵ Cryptocurrencies networks are an inventive organization of people working together to do business through a new innovation worthy of protection.²⁵⁶

3. General Criticism of Novel RICO Cases

Peter J. Henning, a professor at Wayne State University and New York Times author, wrote that judges often take "a dim view of efforts to turn what look like ordinary state law claims into federal cases by claiming a RICO violation."²⁵⁷ Criticisms of the expansive use of RICO have continued since it exploded in usage in the 1970s.²⁵⁸ G. Robert Blakey—an author of the statute, vociferous defender of RICO, and former Notre Dame Law professor—responded to some these criticism in a law review article.²⁵⁹ In response to criticisms that RICO was subject to

252. U.S. DEP'T OF JUSTICE, JUSTICE MANUAL § 9-110.200 (2016).

253. See *supra* Part II.A (regarding the original motivation for passing RICO).

254. Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 922 (1970) (codified at 18 U.S.C. §§ 1961–1968 (2018)).

255. S. REP. NO. 91-617, at 76 (1969).

256. See NAKAMOTO, *supra* note 114, at 8 ("We have proposed a system for electronic transactions without relying on trust.").

257. Henning, *supra* note 14; see also G. Robert Blakey & Thomas A. Perry, *An Analysis of the Myths That Bolster Efforts to Rewrite RICO and the Various Proposals for Reform: "Mother of God—Is This the End of RICO?"*, 43 VAND. L. REV. 851, 987 (1990) ("When the private bar began to bring RICO suits, the district courts reacted with hostility and undertook judicially to redraft the statute in an effort to dismiss civil suits in all possible ways.").

258. See Blakey, *supra* note 257, at 857–59 (analyzing myths regarding the overuse of RICO and supporting its continued viability).

259. See *id.* at 859 ("If these efforts [to rewrite RICO] succeed, victims of

abusive lawsuits, Blakey analyzed a list of cases labeled “abusive” by the Business/Labor Coalition for Civil RICO Reform.²⁶⁰ He noted that even in these abusive civil cases, the system weeded out the egregious examples quickly and courts dismissed the cases.²⁶¹ RICO was enacted to provide a “gap filler” to allow prosecution of organized crime.²⁶² Cryptocurrency crimes likely fall into the broad net purposefully cast by Congress in enacting RICO and should not be considered an abusive use of the statute.²⁶³ In fact, Professor Lynch argued that imaginative prosecutions have the tacit endorsement of Congress in light of legislative inaction after broad interpretations of the statute by the Supreme Court.²⁶⁴

V. Conclusion

RICO is an incredibly broad statute.²⁶⁵ Conversations regarding the law are typically not concerned with what it can do, but what it should do.²⁶⁶ Judges look favorably upon criminal

sophisticated forms of crime everywhere will be harmed.”).

260. *See id.* at 877 (“The charge that the right to file civil RICO suits is being abused was, until recently, just that: a charge.”).

261. *See id.* (noting that this is the system working correctly to eliminate frivolous cases).

262. *See* Dan M. Kahan, *Lenity and Federal Common Law Crimes*, 1994 SUP. CT. REV. 345, 381 (1994) (“In many of these settings, RICO, much like the criminal fraud statutes, operates as a ‘gap filler,’ permitting extension of federal criminal law to species of misconduct that Congress has failed to address through specific legislation.”).

263. *See supra* Part IV (outlining how cryptocurrency networks might satisfy the association-in-fact enterprise).

264. *See* Lynch, *supra* note 8, at 713 (“If RICO has evolved into something different from what Congress intended at its creation, it is difficult to escape the conclusion that Congress has looked at what has evolved, and pronounced it good.”).

265. *See* BROWN & PORTER, *supra* note 7, at § 1:1 (“RICO was intentionally written broadly . . .”).

266. *Compare* Nora Freeman Engstrom, *Retaliatory RICO and the Puzzle of Fraudulent Claiming*, 115 MICH. L. REV. 639, 699 (2017) (arguing that RICO might have application in egregious cases of attorney fraud but suggesting that it should not be used when concerning routine litigation activities), *with* Briana Lynn Rosenbaum, *The RICO Trend in Class Action Warfare*, 102 IOWA L. REV. 165, 220 (2016) (“Even if frivolous litigation is a genuine problem in aggregate litigation, this Article demonstrates why the RICO reprisal must be rejected as a

RICO prosecutions while turning up their noses to civil cases using the same operative sections.²⁶⁷ Perhaps the true question of whether to employ RICO should be based on whether a particular case reflects Congress's original concern with organized crime.²⁶⁸ Cryptocurrency is a young industry which has become a target for criminals.²⁶⁹ Cryptocurrency networks are groups of users working together to provide legitimate alternatives to traditional financial institutions.²⁷⁰ When criminals use cryptocurrency, they are interfering with the legitimate business of the cryptocurrency network and its users.²⁷¹ Although this Note proposes a novel RICO application, the argument is predicated on addressing the situation where criminals have infiltrated a legitimate cryptocurrency business and their activities substantially affect its operations, in accordance with the purpose of the statute described in *Turkette*.²⁷² Keeping that purpose in mind, small instances of cryptocurrency crime should not be prosecuted under the statute. However, RICO can be put to good use to protect the cryptocurrency industry when someone engages in an organized and systematic criminal effort to abuse and infiltrate a cryptocurrency network.

remedy.”).

267. See SMITH & REED, *supra* note 9, at § 1.02 (asserting that judges inappropriately extend the law to catch criminals).

268. See U.S. DEP'T OF JUSTICE, JUSTICE MANUAL § 9-110.200 (2016) (“[T]he Criminal Division will not approve ‘imaginative’ prosecutions under RICO which are far afield from the congressional purpose of the RICO statute.”).

269. See Edgar G. Sánchez, Note, *Crypto-Currencies: The 21st Century's Money Laundering and Tax Havens*, 28 U. FLA. J.L. & PUB. POL'Y 167, 189 (2017) (proposing solutions to cryptocurrencies' use in money laundering and tax evasion).

270. See NAKAMOTO, *supra* note 114, at 1–8 (suggesting a peer-to-peer system to foster trust among Bitcoin users).

271. See *supra* Part ILC (regarding investors hesitation to invest in cryptocurrency).

272. See *United States v. Turkette*, 452 U.S. 576, 591 (1981) (“[T]he legislative history forcefully supports the view that the major purpose of Title IX is to address the infiltration of legitimate business by organized crime.”).