

BLACK ART IN COURT AGAIN: HOW RICO LAWS USE RAP LYRICS TO UNCONSTITUTIONALLY IMPLICATE BLACK ARTISTS IN CRIMINAL ORGANIZATIONS

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“Music is one of the oldest forms of human expression.”¹

- Justice Anthony Kennedy

“I always use my music as a form of artistic expression, and I see now that Black artists and rappers don’t have that freedom.”²

- Jeffery Lamar Williams (Rapper Young Thug)

ABSTRACT

In the 1970s, rap music emerged as a tool for Black artists to express their life experiences. Like many forms of Black art, rap quickly received criticism and disapproval because of its graphic depictions of various economic, political, and social issues. As the genre grew, the assault on rap shifted from public condemnation to criminal prosecutions. In the 1990s, prosecutors began using rap lyrics as evidence of criminality against Black artists. Specifically, a defendant’s rap lyrics serve as evidence of a confession, or as a method of establishing an element of a crime, such as intent, knowledge, or motive.

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1. Ward v. Rock Against Racism, 491 U.S. 781, 790 (1989).

2. Spoken from his jail cell, Jeffery Lamar Williams, popularly known as Young Thug, is the latest Black artist to have his song lyrics used against him in court. Mikayla Price, *Legal Expert on Rap Lyrics as Evidence in Young Thug RICO Trial*, CBS NEWS (Nov. 29, 2023, 3:33 PM), <https://www.cbsnews.com/chicago/news/young-thug-trial/> [https://perma.cc/3AF9-RN2N].

The continued criminalization of rap only became more pervasive over time. Now, RICO laws allow prosecutors to use rap lyrics as evidence to implicate a collective of Black rap artists in a criminal organization. The first instance of this occurred in 2022, when Grammy award-winning rap artist Young Thug, along with several artists from his record label, were indicted on RICO charges. Not only does this take the criminalization of rap to boundless heights, but it also violates the First Amendment's freedom of association. As a result, Black rap artists now cannot freely collaborate without the fear of potential criminal liability.

Recognizing the ramifications that Young Thug's indictment has on the future of rap and Black art, this Note argues for a heightened standard of admissibility for creative expressions. Accordingly, this Note builds upon the framework proposed in New York's "Rap Music On Trial" Bill by creating an additional requirement that safeguards against the criminalization of rap collectives.

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INTRODUCTION

In the landmark 1989 decision, *Ward v. Rock Against Racism*, the United States Supreme Court declared that music is protected under the First Amendment “as a form of expression and communication.”³ In that case, Justice Kennedy noted the longstanding history of music censorship, which often arises when those in power feel threatened by music’s ability to appeal to intellect and emotion.⁴ Justice Kennedy proclaimed that the Constitution bars attempts to censor music.⁵ However, despite this ruling and the court’s declaration that musical expression is a protected constitutional right, the criminal justice system has recently taken a different approach.⁶ Worse, this assault on musical expression has been limited to one group of artists: Black rap musicians.⁷ Instead of being treated as a form of art and expression, rap lyrics are treated as evidence of crimes.⁸ Despite the glaring constitutional violations, the specific targeting of Black artists seems to be more racial than legal.⁹ Disturbingly,

3. *Ward*, 491 U.S. at 790; see *Cardtoons, L.C. v. Major League Baseball Players Ass’n*, 95 F.3d 959, 969 (10th Cir. 1996) (“Speech that entertains, like speech that informs, is protected by the First Amendment because ‘the line between the informing and the entertaining is too elusive for the protection of that basic right.’” (quoting *Winters v. New York*, 333 U.S. 507, 510 (1948))).

4. See *Ward*, 491 U.S. at 790 (“From Plato’s discourse in the Republic to the totalitarian state in our own times, rulers have known its capacity to appeal to the intellect and to the emotions, and have censored musical compositions to serve the needs of the state.”).

5. *Id.*

6. See Taifha Natalee Alexander, *Chopped & Screwed: Hip Hop from Cultural Expression to a Means of Criminal Enforcement*, 12 HARV. J. SPORTS & ENT. L. 211, 214 (2021).

7. See Bryse K. Thornwell, *Lyrical Murderers: Why We Should Think Twice Before Admitting Rap Lyrics in Criminal Cases*, 52 SW. L. REV. 330, 332–33 (2023); Ryan J. Bennett, *Rappers’ Rhymes Are Not Admissions to Crimes: Eliminating the Unlawful Use of Rap Lyrics Against Rappers in Criminal Proceedings*, 48 OHIO N.U. L. REV. 1, 11 (2021).

8. See Evette Dionne, *Georgia’s RICO Act Is a Demoralizing, Blatant Attack on Black Expression and Free Speech*, MSNBC, <https://www.msnbc.com/opinion/msnbc-opinion/georgia-s-rico-act-just-facade-restrict-free-speech-black-n1295579> [https://perma.cc/LS7S-KU2N] (May 23, 2022, 2:14 PM).

9. See Thornwell, *supra* note 7, at 332–33; see also Reyna Araibi, “Every Rhyme I Write”: *Rap Music as Evidence in Criminal Trials*, 62 ARIZ. L. REV. 805, 810 (2020) (explaining that “the unconscious understanding of rap music remains underpinned by notions of race and racial stereotypes about who criminals are, what they look like, and where they come from”).

these attacks are nothing new and have been ignored for decades.¹⁰

The rap genre initially emerged in New York dance clubs in the 1970s.¹¹ As of 2024, it is the most popular music genre in the United States and generally serves as a form of Black art and identity.¹² Many Black artists use rap as a creative outlet to rhyme about the frustrations of poverty, police brutality, and racism.¹³ Rappers also reflect on their life experiences and struggles in their music,¹⁴ often with the use of profanity and violence, which causes controversy.¹⁵ However, rather than promoting violence, these songs aim to shed light on the realities of urban America.¹⁶

Despite the positive intentions of rap music, the negative perception of the genre continued.¹⁷ This cleared the way for unconstitutional censorship of rap.¹⁸ In 1988, after releasing the

10. See Thornwell, *supra* note 7, at 332–33.

11. Jeffrey B. Kahan, *Bach, Beethoven and the (Home)Boys: Censoring Violent Rap Music in America*, 66 S. CAL. L. REV. 2583, 2583 (1993).

12. Vidhaath Sripathi, *Bars Behind Bars: Rap Lyrics, Character Evidence, and State v. Skinner*, 24 J. GENDER, RACE & JUST. 207, 208–09, 217 (2021); Paige M. Walker, *Restricting the Use of Rap Lyrics as Evidence in Courts: A Targeted Approach to Tackling Discrimination in Criminal Procedure*, 28 LEWIS & CLARK L. REV. 431, 465 (2024).

13. See, e.g., KENDRICK LAMAR, *good kid, on GOOD KID*, M.A.A.D CITY (Top Dawg Ent., Aftermath Ent. & Interscope Recs. 2012) (“I can never pick out the difference and grade a cop on the bill / Every time you clock in the morning, I feel you just want to kill.”); 2PAC, *Changes*, on GREATEST HITS (Amaru Ent., Death Row Recs. & Interscope Recs. 1998) (“It’s war on the streets and the war in the Middle East / Instead of war on poverty / They got a war on drugs so the police can bother me.”); 2PAC, *Brenda’s Got a Baby*, on 2PACALYPSE NOW (Interscope Recs. 1991) (“No money, no babysitter, she couldn’t keep a job / She tried to sell crack but end up gettin’ robbed.”).

14. See, e.g., JOEY BADA\$\$, *Survivors Guilt*, on 2000 (GoodTalk, Pro Era & Columbia Recs. 2022) (“Then I caught a little wave and headed back to shore / And that’s when he started drowning / And he had no one around him, so, partially, I feel it’s my fault.”); LIL WAYNE, *Let It All Work Out*, on THA CARTER V (Young Money Ent., Universal Music Grp. & Republic Recs. 2018) (“I shot it, and I woke up with blood all around me / It’s mine, I didn’t die, but as I was dying / God came to my side and we talked about it / He sold me another life and he made a prophet.”); 2PAC, *Dear Mama*, on ME AGAINST THE WORLD (Death Row Recs., Interscope Recs., Out Da Gutta Recs. & Atl. Recs. 1995) (“For a woman, it ain’t easy tryin’ to raise a man / You always was committed / A poor single mother on welfare, tell me how you did it.”).

15. See Sripathi, *supra* note 12, at 213; Araibi, *supra* note 9, at 807.

16. Araibi, *supra* note 9, at 815–16.

17. Sripathi, *supra* note 12, at 213.

18. See Araibi, *supra* note 9, at 817–18.

protest song "Fuck Tha Police,"¹⁹ rap group N.W.A. received a letter from the FBI condemning the song, and police refused to provide security for their concerts.²⁰ Another instance of censorship occurred in 1992 when the rap group Body Count released a song titled "Cop Killer."²¹ The song received criticism from the highest levels of government when President George H.W. Bush condemned the song.²² In addition, sixty members of Congress signed a letter requesting that Time Warner halt sales of the song.²³ Pro-police groups also threatened lawsuits.²⁴ This immense public pressure eventually caused the group to end the song's distribution.²⁵ As a whole, the genre received attacks from many prominent politicians, including former President Bill Clinton, former Vice President Dan Quayle, and former House Speaker Newt Gingrich.²⁶

Furthermore, not only is Black art attacked at the professional level, but it is also attacked at the amateur level, evinced in *State v. Skinner*.²⁷ There, Vonte Skinner was convicted of attempted murder after rap lyrics found in his notebook were read to the jury to demonstrate evidence of guilt.²⁸ Fortunately,

19. N.W.A., *Fuck tha Police*, on STRAIGHT OUTTA COMPTON (Ruthless Recs. & Priority Recs. 1988).

20. Araibi, *supra* note 9, at 818. In another instance of censorship, LL Cool J was arrested while performing his music after authorities claimed the performance was "lewd and profane." *Id.* at n.119.

21. Sripathi, *supra* note 12, at 214–15; BODY COUNT, *Cop Killer*, on BODY COUNT (Sire Recs. 1992).

22. Sripathi, *supra* note 12, at 215.

23. *Id.* at 215. Time Warner was the parent company of Body Count's record label. *Id.* at 214–15.

24. *Id.* at 215.

25. *Id.*

26. Araibi, *supra* note 9, at 818. Clinton accused Sista Souljah of advocating for "the killing of white people," Quayle accused Tupac of "promoting violence," and Gingrich urged companies to remove advertisements from radio stations that aired rap music. *Id.*

27. See *State v. Skinner*, 95 A.3d 236, 238 (N.J. 2014).

28. *Id.* at 240, 242.

the New Jersey Supreme Court overturned Skinner's conviction and ordered a new trial.²⁹

Rap music was first used as evidence in criminal proceedings in 1990 when the group 2 Live Crew faced obscenity charges stemming from their music.³⁰ Since then, rap music has been used as evidence in over 500 cases.³¹ Prosecutors take advantage of the fact that many jurors either have a negative opinion of rap music or do not understand it at all.³² They often use rap lyrics to connect the accused to a crime despite a lack of more concrete evidence.³³ The lyrics are typically used as evidence of a confession or to demonstrate the defendant's intent, knowledge, or motive.³⁴ Because a jury may convict based on just a single piece of evidence, a rapper can be convicted based on his lyrics alone.³⁵ Rap music has also been used to illustrate that the rapper poses a danger to their community in the sentencing phase.³⁶

The narrow use of only rap lyrics in criminal trials has sparked widespread criticism.³⁷ Significantly, there has been just one documented case of a prosecutor using song lyrics from a genre other than rap as evidence.³⁸ Many scholars have discussed how using rap lyrics as evidence violates the First Amendment's freedom of speech.³⁹ Others have explained that

29. *Id.* at 238 (concluding that admitting Skinner's rap lyrics would be highly prejudicial against him, and that the lyrics offered little, if any, probative value in proving the motive or intent behind the crime charged).

30. Sripathi, *supra* note 12, at 214. The Obscenity ruling was overturned on appeal. *Luke Recs., Inc. v. Navarro*, 960 F.2d 134, 135 (11th Cir. 1992).

31. Bennett, *supra* note 7, at 33. Additionally, the defendant is a black or Latino man in 95% of these cases. *Id.*

32. *See id.* at 9; Briana Carter, *Lyrics for Lockups: Using Rap Lyrics to Prosecute in America*, 69 MERCER L. REV. 917, 924–25 (2018).

33. *See* Jaeah Lee, *This Rap Song Helped Sentence a 17-Year-Old to Prison for Life*, N.Y. TIMES (Mar. 30, 2022), <https://www.nytimes.com/2022/03/30/opinion/rap-music-criminal-trials.html> [<https://perma.cc/3DHM-87AQ>].

34. Araibi, *supra* note 9, at 808.

35. Carter, *supra* note 32, at 941.

36. Araibi, *supra* note 9, at 808.

37. *Id.*

38. *Id.*

39. *Id.* at 809.

its use induces jurors' unconscious racial bias, thus threatening the right to an impartial jury.⁴⁰ However, another constitutional right is potentially implicated by the use of rap lyrics in criminal trials: the freedom of association.⁴¹

Today, more and more rappers are creating their own record labels and operating under their own imprint.⁴² These include some of the biggest names in music, such as Drake, Eminem, Jay-Z, Kanye West, and Nas.⁴³ These independent labels allow for more artistic freedom, creativity, flexibility, and mentorship.⁴⁴ However, artists and their independent labels have become the latest target of the continued efforts to censor rap music and Black art, with the most notable example being Young Thug and his label Young Stoner Life ("YSL").⁴⁵ The Racketeer Influenced and Corrupt Organizations ("RICO") Act allows prosecutors to use rap lyrics to implicate a collective of Black artists in criminal organizations, violating both their right to associate and the holding in *Ward v. Rock Against Racism*.⁴⁶ Accordingly, to resolve the criminalization of rap collectives in violation of the right to associate, this Note proposes that states should pass statutes like New York's "Rap Music on Trial" bill.⁴⁷ However, states should add a fifth element that restricts

40. *Id.*

41. See *Healy v. James*, 408 U.S. 169, 181 (1972) ("Among the rights protected by the First Amendment is the right of individuals to associate to further their personal beliefs. While the freedom of association is not explicitly set out in the Amendment, it has long been held to be implicit in the freedoms of speech, assembly, and petition.").

42. See Scott T. Sterling, *I'm a Business, Man — Six Rapper-Run Record Label Empires*, VIBE (Dec. 13, 2016), <https://www.vibe.com/features/editorial/im-a-business-man-six-rapper-run-record-label-empires-472339/> [<https://perma.cc/L8QE-QGZ7>].

43. *Id.*

44. *Why You Should Start Your Own Record Label*, LABEL ENGINE (July 12, 2023), <https://label-engine.com/news/why-you-should-start-your-own-record-label/> [<https://perma.cc/M7DQ-TNPB>]. For example, through his imprint called Shady, Eminem is able to sign artists he genuinely believes in without having to worry about their commercial success. Ben Westhoff, *Rappers' Labels: Breeding Ground for New Talent or Useless Vanity Projects?*, THE GUARDIAN (Nov. 11, 2015, 8:00 PM), <https://www.theguardian.com/music/2015/nov/11/rappers-labels-breeding-ground-new-talent-useless-vanity-projects> [<https://perma.cc/N9GZ-J4S7>].

45. See Dionne, *supra* note 8.

46. See *id.*; *Ward v. Rock Against Racism*, 491 U.S. 781, 790 (1989).

47. See S. S7527, 2021-22 Leg., Reg. Sess. (N.Y. 2021).

prosecutors from using any admitted evidence against anyone other than the person who made the artistic expression.⁴⁸

This Note seeks to accomplish three objectives. First, it will outline why Black rappers are now creating their own independent labels. Second, it will detail the origins of RICO laws, the freedom of association, and the intersection between the two. Third, it will explain the ramifications of the YSL indictment as it relates to the attack on Black art and what must be done to remedy this problem. Part I of this Note presents the origins and upbringing of Young Thug and the YSL record label. This section further discusses the RICO investigation into the rapper. Part II provides the history of RICO laws while explicitly focusing on Georgia's RICO statute and comparing it to its federal counterpart. Part III describes the First Amendment's protection of the right to assemble and how that right transitioned into the freedom of association. It also reviews multiple instances where Black people saw these rights violated. Part IV argues that using RICO laws to prosecute Black artists working as a collective violates their right to associate freely. Additionally, it explains the long-term ramifications that result from the precedent set by the YSL indictment. Finally, Part V discusses the current judicial and legislative solutions aimed at protecting Black art. This section focuses on New York's legislative proposal while offering an additional requirement to ensure protection in RICO cases. This section applies the proposed framework to the YSL indictment and concludes by addressing any potential skepticism about the proposal.

I. BACKGROUND: FROM ORIGINS TO LEGAL BATTLES

Young Thug is viewed by his contemporaries as an influential figure in the rap world.⁴⁹ Not only did he push musical and

48. In other words, this requirement prohibits a prosecutor from using Person A's song lyrics as evidence against Person B, or as evidence against the group as a whole.

49. See Jordan Darville, *Young Thug's Slime Century*, THE FADER, <https://www.thefader.com/2019/08/21/young-thug-so-much-fun-cover-story>

cultural boundaries, he also fostered growth in the Atlanta rap community through his record label YSL.⁵⁰ However, Young Thug and YSL's artists have become the latest victims of the attack on Black art.⁵¹ Because of RICO laws, not only is Young Thug unable to express his speech through his music, but now he is unable to associate with other rappers in doing so.⁵²

A. *Young Thug & YSL*

Before becoming a Grammy award-winning artist, Young Thug grew up in the Jonesboro South Apartments in Atlanta, Georgia.⁵³ He grew up the second youngest of eleven children in a neighborhood riddled with poverty and violence.⁵⁴ This tough upbringing helped him build a sense of community, which he still carries today.⁵⁵ Young Thug believes his experiences growing up in Jonesboro South allowed him to create the

[<https://perma.cc/SG2Z-GLC2>] (last visited Jan. 3, 2025). For example, Post Malone acknowledged Young Thug's efforts to expand rap's outreach by creating songs in other genres, such as country, pop, and Latin, which appeal to diverse audiences. *Id.* Even Elton John was "blown away" by Young Thug's musical capabilities. Melinda Newman, *Elton John on What Advice He Gave to Young Thug, His Return to the Hot 100 and His Upcoming Hip Surgery*, BILLBOARD (Oct. 4, 2021), <https://www.billboard.com/music/music-news/elton-john-interview-young-thug-hot-100-9640179/> [<https://perma.cc/D4A4-MSSY>].

50. Christina Maxouris, *5 Things to Know About Young Thug and the YSL RICO Case*, CNN, <https://www.cnn.com/2023/11/26/us/young-thug-ysl-rico-trial/index.html> [<https://perma.cc/Y5SL-UFCC>] (Nov. 26, 2023, 9:51 PM); Jewel Wicker, *Young Thug's YSL Label Is the Engine Behind Many of Atlanta's Emerging Stars*, BILLBOARD (Feb. 3, 2021), <https://www.billboard.com/music/rb-hip-hop/young-thugs-ysl-label-is-the-engine-behind-many-of-atlantas-emerging-stars-9517563/> [<https://perma.cc/965P-H2T5>] (discussing the ways in which Young Thug has fostered "budding talent" in Atlanta).

51. See Dionne, *supra* note 8.

52. See *id.*

53. Neima Abdulahi, Meredith Sheldon, Mike Nicolas & Erin Peterson, *JEFFERY: The Full Young Thug Story, from Cleveland Avenue and Beyond | Part 1*, 11ALIVE, <https://www.11alive.com/article/news/community/young-thug-the-full-story-jeffery-williams-part-1/85-d0c0c095-d1fd-4c89-b723-657d61a7ef2e> [<https://perma.cc/57RP-T83P>] (Nov. 17, 2022, 11:18 AM). Prior to its demolition in 2009, the Jonesboro South Apartments were a part of the Atlanta Housing Authority. *Id.*

54. *Id.*; see Zak Cheney-Rice, *Why Young Thug? How Prosecutors Made One of the Hottest Rap Stars the Face of Urban Crime.*, N.Y. MAG.: INTELLIGENCER (Feb. 27, 2023), <https://nymag.com/intelligencer/2023/02/young-thug-trial-court-case-rico-charge.html> [<https://perma.cc/V4K5-S9JM>].

55. See Abdulahi et al., *supra* note 53. One Atlanta police officer explained that it is like a "badge of honor" to be from certain housing projects. *Id.*

foundation of his American Dream, which he eventually reached through music.⁵⁶

Growing up, Young Thug bonded with his family through music.⁵⁷ His mother often played songs by Aretha Franklin.⁵⁸ His sisters, Dolly and Dora, listened to a variety of artists ranging from Tupac to Michael Jackson.⁵⁹ As teenagers, Young Thug and his stepbrother Quantavious Grier (Unfoonk)⁶⁰ began to explore their musical capabilities.⁶¹ Young Thug used his connections with the Jonesboro South community to meet fellow Atlanta rapper Gucci Mane.⁶² After hearing positive things about Young Thug, Gucci Mane signed him to his record label in 2013.⁶³

56. *Id.*

57. See Jessica McKinney, *How Young Thug Brought His Own Family into His Rap Empire*, COMPLEX (Oct. 12, 2021) [hereinafter McKinney, *How Young Thug Brought Family into Rap*], <https://www.complex.com/music/a/j-mckinney/young-thug-family-empire> [https://perma.cc/Z5QQ-XMNY]. According to Young Thug's sister Dolly, the whole family was "brought up on music." *Id.*

58. *Id.*

59. *Id.*

60. Trace William Cowen, *Young Thug's Brother Unfoonk Takes Plea Deal in YSL RICO Case, Denies He 'Told on Anybody'*, COMPLEX (Dec. 21, 2022), <https://www.complex.com/music/a/tracewilliamcowen/young-thug-brother-unfoonk-plea-deal-ysl-rico-case> [https://perma.cc/LAZ3-FHDD]; McKinney, *How Young Thug Brought Family into Rap*, *supra* note 57.

61. McKinney, *How Young Thug Brought Family into Rap*, *supra* note 57. Soon after, Dolly and Dora followed their brothers' interest in making music. *Id.*

62. Abdulahi et al., *supra* note 53. Other rappers that grew up near Jonesboro South include Waka Flocka Flame, 2 Chainz, Ludacris, and PeeWee Longway. Mike Ramos, *5 Things You Should Know About Young Thug*, SEATTLE TIMES (Mar. 26, 2015, 12:54 PM), <https://www.seattletimes.com/entertainment/music/5-things-you-should-know-about-young-thug/> [https://perma.cc/Z267-2TYN].

63. Derrick Rossignol, *Gucci Mane on Meeting Young Thug: "I Got \$25,000 Out and I Signed [Him] Right There."*, COMPLEX (Oct. 3, 2016), <https://www.complex.com/pigeons-and-planes/a/derrick-rossignol/gucci-mane-meeting-young-thug> [https://perma.cc/GL7R-EWHY]. Rapper PeeWee Longway lobbied so much for Young Thug that Gucci Mane signed him without listening to a single song. *Id.* ("I had a bag with some money and got \$25,000 out and I signed Thug right there. Never even heard a song from him . . . I value Peewee's opinion so much.").

Young Thug quickly gained recognition after releasing his mixtape, *1017 Thug*.⁶⁴ In 2014, he entered the mainstream after releasing several hit singles, including “Danny Glover,” “Lifestyle,” and “Stoner.”⁶⁵ Young Thug’s success was no surprise to the Atlanta rap community.⁶⁶ Fellow Atlanta rapper T.I., who is considered—along with Gucci Mane—to be a pioneer of the trap subgenre of rap music, believed Young Thug was “[c]ompletely ahead of [his time]” when he rose to fame, and that he is “[s]till ahead of his time today.”⁶⁷ An Atlanta-based music historian described Young Thug’s voice as “distinctive” and his music as a unique style of rap that has not been heard before.⁶⁸ The success continued in 2014 when he signed with 300 Entertainment.⁶⁹ The following year, he released his critically acclaimed mixtape, *Barter 6*.⁷⁰ Today, Young Thug’s success has established him as an influential figure in rap, with artists like Travis Scott and Lil Uzi Vert drawing from his influence.⁷¹

64. Ramos, *supra* note 62. Mixtapes are released by the artist, not the label, and feature an unpolished, often spontaneous compilation of songs, while albums contain a structured collection of songs aimed at commercial success. *Difference Between Mixtape & Album*, UNION RECORDING STUDIO, <https://unionrecstudios.com/blog/difference-between-mixtape-album/> [<https://perma.cc/A85P-DX39>] (last visited Nov. 20, 2024).

65. Jessica McKinney, *Inside the Snake Pit: The Rise of Young Thug’s Young Stoner Life Records*, COMPLEX (Nov. 25, 2020) [hereinafter McKinney, *The Rise of YSL*], <https://www.complex.com/music/a/j-mckinney/young-thug-ysl-label-story-interviews> [<https://perma.cc/54JV-GW9F>]. Billboard magazine listed “Stoner” as one of the songs that defined the decade. Dan Rys, *Songs That Defined the Decade: Young Thug’s ‘Stoner’*, BILLBOARD (Nov. 21, 2019), <https://www.billboard.com/music/music-news/young-thug-stoner-songs-that-defined-the-decade-8544256/> [<https://perma.cc/PTZ7-NZJP>].

66. See Abdulahi et al., *supra* note 53. Atlanta rapper Yung Ralph said, “I already knew that [he] was [going to] be big. I [did not] know he was [going to] be that big. But I knew that [he] was [going to] be big.” *Id.*

67. *Id.*; see Noah Caldwell, Patrick Jarenwattananon, Kat Lonsdorf & Juana Summers, *The Birth of Trap Music and the Rise of Southern Hip-Hop*, NPR (Aug. 10, 2023, 4:15 PM), <https://www.npr.org/2023/08/10/1193297765/the-birth-of-trap-music-and-the-rise-of-southern-hip-hop> [<https://perma.cc/JC2F-4CJE>].

68. Abdulahi et al., *supra* note 53.

69. McKinney, *The Rise of YSL*, *supra* note 65.

70. Walden Green & Raphael Helfand, *A Complete Timeline of Young Thug and Gunna’s YSL RICO Cases*, THE FADER (Sept. 12, 2023), <https://www.thefader.com/2023/09/12/a-complete-timeline-of-young-thug-and-gunnas-ysl-rico-cases> [<https://perma.cc/G246-XH4N>].

71. See Jeff Weiss, *Why Young Thug Is the 21st Century’s Most Influential Rapper*, BBC (Oct. 21, 2019), <https://www.bbc.com/culture/article/20191021-why-young-thug-is-the-21st-century-s->

Even with his sustained success, Young Thug wanted more.⁷² In 2016, he approached Kevin Liles, the co-founder of 300 Entertainment, about starting his own record label under 300 Entertainment.⁷³ His early vision was not just about supporting his family.⁷⁴ Instead, it was about supporting his artists so they could then support their friends and family.⁷⁵ Executives bought into the vision, and Young Stoner Life Records, or YSL, was officially launched as a subsidiary of 300 Entertainment.⁷⁶ The group quickly became regarded by its signees as a family rather than a music label.⁷⁷ Many of the label's signees are Young Thug's longtime friends, such as Gunna and Lil Duke.⁷⁸ Young Thug also signed several of his own family members to the label: his two sisters, Dolly and Dora, and his stepbrother Unfoonk.⁷⁹

Family is the foundation of YSL, but this culture is not created just by signing close friends and family.⁸⁰ It is established

most-influential-rapper [<https://perma.cc/JZG4-H668>]. According to T.I., "Thug is probably one of the most influential artists of this generation. When I say that, the things that he's gone out on a limb and tried, nobody else would've done it that way but him." Jessica McKinney, *T.I. Has a Lot to Say About Politics, Kanye West, Tory Lanez, New Music, and More*, COMPLEX (Sept. 24, 2020), <https://www.complex.com/music/a/j-mckinney/ti-interview-ring>

[<https://perma.cc/JZK4-R86G>]. Young Thug's influence has also extended into the social, political, and cultural realms. See Kyann-Sian Williams, *How Young Thug Became One of the Most Influential Moguls in Modern Rap*, NME (May 14, 2021), <https://www.nme.com/features/how-young-thug-become-one-of-the-most-influential-moguls-in-modern-rap-2940862>

[<https://perma.cc/GS8M-U8EF>] (discussing how Young Thug wore a dress to combat toxic masculinity and homophobia, donated concert proceeds to Planned Parenthood, and paid to bail out low-level offenders in the Fulton County Jail).

72. See Wicker, *supra* note 50.

73. See McKinney, *The Rise of YSL*, *supra* note 65.

74. See *id.*

75. *Id.* Instead of "I want to put my people on," Young Thug wanted to "put my people on so *they* can put people on." *Id.*

76. *Id.* On November 15, 2016, Young Thug officially announced the launch of Young Stoner Life Records via Snapchat. *Id.*

77. *Id.*

78. *Id.* Gunna was friends with Young Thug for years before telling him he could rap, and Lil Duke grew up on the same street as Young Thug. *Id.*

79. McKinney, *How Young Thug Brought Family into Rap*, *supra* note 57. Young Thug and both sisters released a song together titled "Family." *Id.*

80. See *id.*

by the way Young Thug runs the label.⁸¹ He has provided many YSL artists with homes that include a studio, and he often visits to bond with them.⁸² The main YSL house, known as the “Snake Pit,” contains a massive studio setup featuring multiple booths, allowing the artists to record music individually or together.⁸³ This provides the artists with the opportunity to collaborate and to give and receive feedback.⁸⁴ When they are not recording music, the artists spend time together in other ways, whether it is playing video games or basketball or caring for the pets in the house.⁸⁵

As the head of the YSL family, Young Thug is heavily involved with his artists.⁸⁶ He listens to all of their songs, provides constructive criticism, and helps with the production of their albums.⁸⁷ These collaborative experiences allow the YSL artists to learn from him.⁸⁸ Young Thug also uses his connections to advance the careers of YSL artists, like how he used his Jonesboro South connections to advance his own career.⁸⁹ For example, while touring with Drake in the United Kingdom, Young Thug invited Gunna to join.⁹⁰ The label has also released two collaborative albums, titled *Slime Language* and *Slime Language 2*.⁹¹ These albums, which feature various YSL artists and other big names in rap, showcase the talent of YSL’s artists and provide them with the opportunity to have a breakthrough

81. See McKinney, *The Rise of YSL*, *supra* note 65.

82. *Id.*

83. *Id.*

84. *See id.*

85. *Id.*

86. *See id.*

87. *Id.* Young Thug also gives everyone at YSL “the confidence to think freely, think bigger, and think independently.” *Id.*

88. *See id.*

89. See Abdulahi et al., *supra* note 53; see also McKinney, *The Rise of YSL*, *supra* note 65 (explaining how Young Thug helps YSL artists).

90. McKinney, *The Rise of YSL*, *supra* note 65. Despite not performing, Gunna used this experience to observe and learn. *Id.*

91. Joe Walker, *Young Thug & YSL’s ‘Slime Language 2’ Debuts at No. 1 on Billboard 200*, HIPHOPDX (Apr. 26, 2021, 3:02 AM), <https://hiphopdx.com/news/id.61784/title.young-thug-ysls-slime-language-2-debuts-at-no-1-on-billboard-200> [<https://perma.cc/7QFT-R2BD>].

moment while collaborating with rap's biggest artists.⁹² Both albums were met with commercial success, with *Slime Language* debuting at number eight on the Billboard Top 200 and *Slime Language 2* debuting at number one.⁹³ Further, the release of *Slime Language 2* exemplifies how Young Thug puts the careers of his YSL artists over his own.⁹⁴ Prior to the release of *Slime Language 2*, he recently released *So Much Fun*, his most commercially successful album.⁹⁵ Rather than building off the success of his own album, Young Thug prioritized his artists by releasing a YSL collaboration album instead.⁹⁶

YSL even extends its family-based culture to its competition.⁹⁷ One of YSL's biggest competitors is Quality Control, another Atlanta-based record label.⁹⁸ Rather than being fierce adversaries, the rivalry between the two labels is rooted in family and friendship, with both labels rooting for each other's success.⁹⁹

Outside of music, Young Thug serves as a "big brother" to his artists by giving them life advice.¹⁰⁰ For example, he advised Lil Keed and T-Shayne about how to manage their assets.¹⁰¹ The YSL family also extends to 300 Entertainment, with Young

92. Eric Skelton, Andre Gee & Will Schube, *10 Takeaways from Young Thug and YSL's 'Slime Language 2'*, COMPLEX (Apr. 16, 2021), <https://www.complex.com/music/a/eric-skelton/young-thug-ysl-slime-language-2-takeaways> [<https://perma.cc/J22K-BVLF>]. *Slime Language 2* featured some of rap's biggest names, including Drake, Future, Kid Cudi, Lil Baby, Lil Uzi Vert, and Travis Scott. *Id.*

93. See Walker, *supra* note 91.

94. See Skelton et al., *supra* note 92.

95. *Id.*

96. *Id.* When asked about the risks associated with prioritizing his record label over his own career, Young Thug responded by saying, "I don't think about risk when it comes to family . . . [i]t's not about me anymore, it's about the organization." *Id.*

97. See McKinney, *The Rise of YSL*, *supra* note 65.

98. *Id.*; Eric Diep, *'It's All About Market Share': Behind Quality Control's Plan to Dominate the 4th Quarter*, COMPLEX (Nov. 15, 2018), <https://www.complex.com/music/a/eric-diep/quality-control-plan-dominate-fourth-quarter-coach-k-pee-interview> [<https://perma.cc/2AZX-C4CU>].

99. McKinney, *The Rise of YSL*, *supra* note 65. YSL Executive Geoff Ogunlesi explained that "as Black entrepreneurs and Black CEOs, of course we want them to win. We need them to win, because that paves the way for more." *Id.*

100. *Id.*

101. *Id.*

Thug providing updates to 300 Entertainment's higher-ups, who act as YSL's extended family.¹⁰² Both Dolly and Dora believe that their family-oriented childhood is the driving force behind Young Thug's rationale to run YSL like a family.¹⁰³

B. The Case Against YSL

On May 9, 2022, Young Thug was arrested and charged with conspiring to violate Georgia's RICO Act and participation in criminal street gang activity.¹⁰⁴ These charges were part of a fifty-six-count indictment against Young Thug and twenty-seven other individuals.¹⁰⁵ The indictment alleges that Young Thug and two co-defendants founded the street gang Young Slime Life in 2012.¹⁰⁶ The indictment further alleges that members of the Young Slime Life enterprise committed violent acts, including murder, aggravated assault, and armed robbery, with these actions dating back to 2013.¹⁰⁷ Young Thug has denied all allegations against him and pleaded not guilty on all counts.¹⁰⁸ While the indictment does not mention the YSL record label, it does charge several YSL artists with crimes.¹⁰⁹

102. *Id.*

103. *Id.*

104. Indictment at 1, 3, 5, State v. Adams, No. 22SC182273 (Ga. Super. Ct. May 9, 2022) [hereinafter YSL Indictment]. Additionally, Young Thug's house was raided by police after his arrest, leading to "an additional count of participating in street gang activity, three counts of violating the Georgia Controlled Substances Act, possession of a firearm while committing a felony and possession of a machine gun." Deena Zaru, *Young Thug Faces Trial in RICO Case with Rap Lyrics as Part of Evidence. What You Need to Know*, ABC NEWS (Jan. 9, 2023, 4:58 AM) [hereinafter Zaru, *Young Thug Faces Trial*], <https://abcnews.go.com/US/young-thug-faces-trial-rico-case-rap-lyrics/story?id=96131812> [https://perma.cc/3MHF-SHYT].

105. Tina Burnside, *Young Thug and Gunna Among 28 People Indicted on Gang-related Charges in Atlanta*, CNN (May 10, 2022, 2:27 PM), <https://www.cnn.com/2022/05/10/entertainment/young-thug-indicted/index.html> [https://perma.cc/6R7R-8TG]; see YSL Indictment, *supra* note 104, at 1–5.

106. YSL Indictment, *supra* note 104, at 12. The indictment also alleges that Young Slime Life claims an affiliation with the national Bloods gang. *Id.*

107. Burnside, *supra* note 105; see YSL Indictment, *supra* note 104, at 11, 13.

108. See Zaru, *Young Thug Faces Trial*, *supra* note 104.

109. Deena Zaru, *Rapper Young Thug Hit with Additional Felony Charges in RICO Indictment*, ABC NEWS (Aug. 12, 2022, 4:09 PM), <https://abcnews.go.com/US/rapper-young-thug-hit-additional-felony-charges-rico/story?id=88288305> [https://perma.cc/2B4G-2SXV].

The indictment cites song lyrics from Young Thug and other YSL artists as evidence of “overt acts in furtherance of the conspiracy” to violate Georgia’s RICO law.¹¹⁰ Some lyrics cited in the indictment include, “I never killed anybody but I got something to do with that body,”¹¹¹ “I told them to shoot a hundred rounds,”¹¹² “It’s all mob business,”¹¹³ and, “I killed his man in front of his momma.”¹¹⁴ The indictment also includes lyrics referencing YSL, such as, “Slime or get slimed,”¹¹⁵ and “YSL slimey and shady.”¹¹⁶ The indictment alleges that these lyrics are overt acts to further the gang’s interests by “preserving, protecting, and enhancing the reputation, power, and territory” of the YSL street gang.¹¹⁷ Thus, the indictment uses Georgia’s RICO Act to criminalize rap lyrics.¹¹⁸

II. RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS (“RICO”) ACT

A. Federal RICO Act

The federal Racketeer Influenced and Corrupt Organizations (“RICO”) Act was enacted in 1970 primarily to target

110. Zaru, *Young Thug Faces Trial*, *supra* note 104; *see also* YSL Indictment, *supra* note 104, at 30, 34, 39–42, 46–47 (listing multiple lyrics referenced in the indictment).

111. YSL Indictment, *supra* note 104, at 33; *see also* YOUNG THUG, *Anybody* (feat. Nicki Minaj), on HEAR NO EVIL (300 Ent. & Atl. Recs. 2018) [hereinafter YOUNG THUG, *Anybody*].

112. YSL Indictment, *supra* note 104, at 33; *see also* YOUNG THUG, *Anybody*, *supra* note 111.

113. YSL Indictment, *supra* note 104, at 39; *see also* YOUNG THUG, *Just How It Is*, on SO MUCH FUN (300 Ent. & Atl. Recs. 2019).

114. YSL Indictment, *supra* note 104, at 47; *see also* YOUNG STONER LIFE, *Slatty* (feat. Young Thug, Gunna, Yak Gotti & Lil Duke), on SLIME LANGUAGE 2 (Young Stoner Life Recs. 2021).

115. YSL Indictment, *supra* note 104, at 30; *see also* YOUNG THUG, *Slime Shit* (feat. Lil Duke, Peewee Roscoe & Yak Gotti), on SLIME SEASON 3 (300 Ent. & Atl. Recs. 2016) [hereinafter YOUNG THUG, *Slime Shit*].

116. YSL Indictment, *supra* note 104, at 46. The indictment also alleges that YSL uses a variety of identifiers, such as “Slime” and “SLATT.” *Id.* at 12; *see also* YOUNG STONER LIFE, *Take It to Trial* (feat. Young Thug, Gunna & Yak Gotti), on SLIME LANGUAGE 2 (Young Stoner Life Recs. 2021) [hereinafter YOUNG THUG, *Take It to Trial*].

117. YSL Indictment, *supra* note 104, at 11–12. The Indictment also alleges that the lyrics “demonstrat[e] allegiance to the enterprise and a willingness to engage in violence on its behalf.” *Id.* at 11.

118. *See* Dionne, *supra* note 8.

organized crime.¹¹⁹ It was originally used to target the mafia by allowing for the prosecution of people in positions of authority in criminal organizations, even if they were not the ones actually committing the criminal act.¹²⁰ The RICO Act achieves this by using enterprise theory, which allows for the conduct of anyone in a group to be admissible as evidence against everyone in the group.¹²¹ This enables the prosecutor to use all aspects of a group's criminal history, not just the actions of certain defendants, as evidence.¹²²

An "enterprise" under the RICO Act "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."¹²³ Because "enterprise" is defined with the non-exclusive term "includes," there may be types of RICO enterprises not specifically listed in the Act.¹²⁴ The United States Supreme Court discussed this definition in *United States v. Turkette*, explaining that an "enterprise" is "a group of persons associated together for a common purpose of engaging in a course of conduct" and is proven "by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit."¹²⁵ Further, the RICO Act was not necessarily intended to be limited only to

119. Nicholas Berg & Christopher Kelly, *Racketeer Influenced and Corrupt Organizations*, 41 AM. CRIM. L. REV. 1027, 1028 (2004). While the RICO Act was enacted to target organized crime, the statute contains a liberal construction clause, allowing for its application in cases beyond the organized crime context. *Id.*; Pub. L. No. 91-452, § 904(a), 84 Stat. 922, 947 (1970).

120. Jeff Wagner, *What Is the RICO Act, and How Does It Impact Organized Crime?*, CBS (Aug. 22, 2023, 10:38 PM), <https://www.cbsnews.com/minnesota/news/rico-act-explainer/> [https://perma.cc/G8CE-FSRF].

121. Lucy Litt, *RICO: Rethinking Interpretations of Criminal Organizations*, 26 BERKELEY J. CRIM. L. 71, 85 (2021).

122. Jordan Blair Woods, *Systemic Racial Bias and RICO's Application to Criminal Street and Prison Gangs*, 17 MICH. J. RACE & L. 303, 305 (2012).

123. 18 U.S.C. § 1961(4).

124. *Id.*; Thomas S. O'Neill, *Functions of the RICO Enterprise Concept*, 64 NOTRE DAME L. REV. 646, 654-55 (1989).

125. *United States v. Turkette*, 452 U.S. 576, 583 (1981).

organized crime.¹²⁶ In 1989, the Supreme Court held that Congress drafted the RICO Act “broadly enough to encompass a wide range of criminal activity.”¹²⁷

B. Georgia RICO Act

Since the passage of the federal RICO Act, over thirty states have passed their own versions.¹²⁸ Georgia adopted its RICO Act (“Georgia’s Act,” “Georgia’s RICO Act,” or “Act”) in 1980 to address the “severe problem . . . posed in [Georgia] by the increasing sophistication of various criminal elements and the increasing extent to which the state and its citizens are harmed as a result of the activities of these elements.”¹²⁹ Georgia’s RICO Act makes it “unlawful for any person, through a pattern of racketeering activity or proceeds derived therefrom, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise, real property, or personal property of any nature, including money.”¹³⁰ It also prohibits anyone associated with an enterprise from participating in the enterprise through a pattern of racketeering activity.¹³¹ Further, conspiring to violate these provisions is unlawful under the Act.¹³² Such a conspiracy occurs when multiple individuals work together and at least one commits an overt act in furtherance of the

126. See *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 248 (1989) (“The occasion for Congress’ action was the perceived need to combat organized crime. But Congress for cogent reasons chose to enact a more general statute, one which, although it had organized crime as its focus, was not limited in application to organized crime.”); see also *Turkette*, 452 U.S. at 580–81 (“On its face, the definition appears to include both legitimate and illegitimate enterprises . . . it no more excludes criminal enterprises than it does legitimate ones.”).

127. *Nw. Bell*, 492 U.S. at 248–49 (“Congress drafted RICO broadly enough to encompass a wide range of criminal activity, taking many different forms and likely to attract a broad array of perpetrators operating in many different ways.”).

128. Jaylen Minefield, *The Line Between Justice and Abuse: A Critical Review of State RICO Statutes in Drug Prosecutions*, 57 U. ILL. CHI. L. REV. 829, 841 (2024).

129. GA. CODE ANN. § 16-14-2(a) (West 2024).

130. § 16-14-4(a).

131. § 16-14-4(b) (“It shall be unlawful for any person employed by or associated with any enterprise to conduct or participate in, directly or indirectly, such enterprise through a pattern of racketeering activity.”).

132. § 16-14-4(c) (“It shall be unlawful for any person to conspire or endeavor to violate any of the provisions of subsection (a) or (b) of this Code section.”).

conspiracy.¹³³ Georgia's Act defines an "enterprise" as any legal entity, individual, or group of individuals associating together.¹³⁴ "Racketeering activity" encompasses the acts of committing or attempting to commit a crime, as well as soliciting, coercing, or intimating another individual to commit a crime.¹³⁵ Further, a "pattern of racketeering activity" requires at least two instances of racketeering activity that act in furtherance of some common scheme that has the same intent or result.¹³⁶ Georgia courts have determined that there must be "a connection or nexus between the enterprise and the racketeering activity."¹³⁷ However, there is no requirement "that each defendant in an enterprise have full knowledge of all facets and elements of the enterprise and all its members or actors."¹³⁸

Despite being modeled after the federal RICO Act, Georgia's Supreme Court has acknowledged that Georgia's RICO Act is "significantly broader than its federal counterpart."¹³⁹ One difference is that Georgia's Act does not require an enterprise.¹⁴⁰ Instead, an individual can violate the Act if, "through a pattern of racketeering activity or proceeds derived therefrom," they "acquire or maintain . . . property."¹⁴¹ The Georgia Act also includes more offenses that qualify as "predicate acts" of

133. § 16-14-4(c)(1)–(2) ("A person violates this subsection when: (1) He or she together with one or more persons conspires to violate any of the provisions of subsection (a) or (b) of this Code section and any one or more of such persons commits any overt act to effect the object of the conspiracy; or (2) He or she endeavors to violate any of the provisions of subsection (a) or (b) of this Code section and commits any overt act to effect the object of the endeavor.").

134. § 16-14-3(3).

135. § 16-14-3(5)(A).

136. § 16-14-3(4)(A). Additionally, the statute provides another definition of a pattern of racketeering activity: "Engaging in any one or more acts of domestic terrorism . . . or any criminal attempt, criminal solicitation, or criminal conspiracy related thereto." § 16-14-3(4)(B).

137. *Kimbrough v. State*, 799 S.E.2d 229, 233 (Ga. 2017) (citing *Dorsey v. State*, 615 S.E.2d 512, 519 (Ga. 2005)).

138. *Thompson v. State*, 440 S.E.2d 670, 673 (Ga. Ct. App. 1994). The "pattern of racketeering" is illegal, not the enterprise itself. *Id.*

139. *Chancey v. State*, 349 S.E.2d 717, 722 (Ga. 1986); see *Dover v. State*, 385 S.E.2d 417, 430 ("Georgia's RICO act, while it has similarities to the federal RICO statute, has a number of significant differences.").

140. Michael P. Kenny & H. Suzanne Smith, *A Comprehensive Analysis of Georgia RICO*, 9 GA. ST. U. L. REV. 537, 544 (1993).

141. § 16-14-4(a); *Dover*, 385 S.E.2d at 431.

“racketeering activity” than the federal act.¹⁴² Predicate acts under Georgia’s RICO Act include the violent offenses typically associated with organized crime, such as homicide, assault, kidnapping, theft, arson, and more.¹⁴³ However, unlike the federal act, Georgia’s Act also includes the inchoate crimes of attempt and solicitation.¹⁴⁴

The most significant difference between the two statutes is Georgia’s lack of a continuity requirement.¹⁴⁵ Under the federal act, continuity is an element of the “pattern” of racketeering activity.¹⁴⁶ The “pattern” of racketeering activity requires both a relationship between the predicate acts and a threat of continuing criminal activity.¹⁴⁷ Taken together, the relationship and continuity form the pattern.¹⁴⁸ In *Sedima, S.P.R.L. v. Imrex Co.*, the United States Supreme Court explained that two predicate acts of racketeering activity are insufficient to demonstrate a pattern of racketeering activity without showing relationship and continuity.¹⁴⁹ This led to a circuit split, and the Supreme Court revisited the issue in *H.J. Inc. v. Northwestern Bell Telephone Co.*¹⁵⁰ Rather than creating a test for continuity, the court explained that “[c]ontinuity” is both a closed- and open-ended concept, referring either to a closed period of repeated conduct, or to past conduct that by its nature projects into the future with a threat of repetition.¹⁵¹ Closed-ended continuity is demonstrated “by proving a series of related predicates extending over a substantial period of time.”¹⁵² Predicate acts that extend “over a few weeks or months” without threatening future criminal

142. Kenny & Smith, *supra* note 140, at 554.

143. *Id.*

144. *Id.*

145. *See id.* at 550–51.

146. *See H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 239 (1989).

147. *Id.*

148. *Id.*

149. *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 n.14 (1981). In its analysis, the court examined the statutory text and legislative history of the RICO Act. *Id.* at 488–90.

150. Kenny & Smith, *supra* note 140, at 549; *see Nw. Bell*, 492 U.S. at 236.

151. *Nw. Bell*, 492 U.S. at 241.

152. *Id.* at 242.

conduct do not demonstrate continuity.¹⁵³ Open-ended continuity requires that the predicate acts “establish a *threat* of long-term racketeering activity.”¹⁵⁴ The threat of continuity is shown when the predicate acts “can be attributed to a defendant operating as part of a long-term association that exists for criminal purposes.”¹⁵⁵ Continuity is also established when “it is shown that the predicates are a regular way of conducting defendant’s ongoing legitimate business[.]”¹⁵⁶

To the contrary, Georgia’s courts have held that the Georgia RICO Act has no continuity requirement.¹⁵⁷ In *Dover v. State*, the Court of Appeals of Georgia distinguished the Georgia RICO Act’s definition of “pattern of racketeering activity” from the federal definition.¹⁵⁸ The court noted that, unlike the federal statute, Georgia’s definition requires that the two instances of racketeering activity are interconnected.¹⁵⁹ Specifically, a “pattern of racketeering” under the federal act “requires at least two acts of racketeering activity.”¹⁶⁰ Under Georgia’s RICO Act, a “pattern of racketeering” requires “at least two acts of racketeering activity . . . that have the same or similar intents, results, accomplices, victims, or methods of commission or otherwise are interrelated by distinguishing characteristics and are not isolated incidents[.]”¹⁶¹ The *Dover* court concluded that by requiring an “interconnectedness” between the predicate acts, the Georgia legislature intended to include coverage under the statute for two predicate acts that are a part of the same scheme, “without the added burden of showing that [a] defendant would continue the conduct or had been guilty of like conduct

153. *Id.*

154. *Id.* at 230.

155. *Id.* at 242–43. These associations extend beyond “those traditionally grouped under the phrase ‘organized crime.’” *Id.* at 243.

156. *Id.* at 243.

157. See *Dover v. State*, 385 S.E.2d 417, 420–21 (Ga. Ct. App. 1989); *Larson v. Smith*, 391 S.E.2d 686, 688 (Ga. Ct. App. 1990) (quoting *Dover*, 385 S.E.2d at 420–21).

158. *Dover*, 385 S.E.2d at 420–21.

159. *Id.* at 420.

160. 18 U.S.C. § 1961(5).

161. GA. CODE ANN. § 16-14-3(4)(A) (West 2024).

before the incidents charged as a RICO violation.”¹⁶² Without having to prove that a defendant would continue the conduct, there is no continuity requirement.¹⁶³ In *Dorsey v. State*, the Georgia Supreme Court followed *Dover* by not requiring proof of continuity.¹⁶⁴ The *Dorsey* court held that “[e]vidence of two predicate acts will sustain [a] RICO conviction” and that any additional predicate acts charged need not be considered.¹⁶⁵ By not considering the remaining predicate acts, Georgia’s highest court held that continuity is not required, thereby broadening the scope of the Georgia RICO Act.¹⁶⁶

As a result, Georgia’s RICO Act has been used in several high-profile cases.¹⁶⁷ In 2015, eleven public school educators were convicted of violating the statute in a cheating scandal involving altered student test scores.¹⁶⁸ What initially began as an investigation into suspicious improvements on standardized test scores unveiled instances of cheating occurring in over half of the school district’s elementary and middle schools.¹⁶⁹ Teachers were instructed to alter answers and “cheated out of pride, hoping to earn bonuses, to enhance their careers or to keep their jobs.”¹⁷⁰ Thirty-five educators were indicted, with more than twenty taking plea deals.¹⁷¹ Three administrators, a principal,

162. *Dover*, 385 S.E.2d at 420–21.

163. *See id.*

164. *See Dorsey v. State*, 615 S.E.2d 512, 518 (Ga. 2005) (“[I]f two remaining predicate offenses were proven beyond a reasonable doubt, the proof was sufficient to support a RICO conviction.”).

165. *Id.* (quoting *Jones v. State*, 556 S.E.2d 238, 240 (Ga. Ct. App. 2001)).

166. *Kenny & Smith*, *supra* note 140, at 551 (discussing how Georgia courts have held that the Georgia Code does not have a continuity requirement for a RICO conviction); *see Dorsey*, 615 S.E.2d at 518.

167. *See Tamar Hallerman, What to Know About Georgia’s RICO Law*, AJC, <https://www.ajc.com/politics/what-to-know-about-georgias-rico-law/3Y2PBKHLHWFDMLKYFEURTHLBVZY/> [<https://perma.cc/4YQL-TDDB>] (Sept. 6, 2023).

168. Steve Almasy, *Atlanta Schools Cheating Scandal: 11 of 12 Defendants Convicted*, CNN, <https://www.cnn.com/2015/04/01/us/atlanta-schools-cheating-scandal/index.html> [<https://perma.cc/YXC4-CR5C>] (Apr. 14, 2015, 3:23 PM).

169. *Id.*

170. *Id.*

171. *Id.*

an assistant principal, four teachers, and two testing coordinators were convicted.¹⁷²

Perhaps the most famous use of Georgia's RICO Act is the indictment of former President Donald Trump.¹⁷³ The forty-fifth President is accused of "being part of a broad conspiracy to attempt to overturn the 2020 election result" in Georgia.¹⁷⁴ The indictment states that Trump and his associates "functioned as a continuing unit for a common purpose of achieving the objectives of the enterprise" and that the enterprise operated in Georgia along with other states.¹⁷⁵ Having established a broad scope of coverage for Georgia's RICO Act, the statute is now being used as a weapon to criminalize Black artists who associate together through their music.¹⁷⁶

III. THE FIRST AMENDMENT AND FREEDOM OF ASSOCIATION

The First Amendment of the Constitution protects many fundamental rights and liberties.¹⁷⁷ Among these protections are the rights to peacefully assemble and to freely associate.¹⁷⁸ Further, the Fourteenth Amendment ensures these rights are protected against state intrusion.¹⁷⁹ While the freedom to

172. *Id.*

173. Devan Cole, *What is RICO, the Law at the Heart of Trump's Georgia Criminal Case?*, CNN, <https://www.cnn.com/2023/08/15/politics/rico-explainer-georgia-trump-indictment/index.html> [<https://perma.cc/3ZFF-B373>] (Sept. 6, 2023, 10:38 AM).

174. *Id.*

175. *See id.*

176. *See* Jennifer Zhan, *Here Are the Rap Lyrics Being Used in the YSL Trial*, VULTURE, <https://www.vulture.com/2022/05/young-thug-lyrics-ysl-indictment.html> [<https://perma.cc/352M-KNFC>] (Nov. 27, 2023) (listing lyrics used as evidence against Young Thug).

177. *See* U.S. CONST. amend. I; *see also* Chaplinsky v. New Hampshire, 315 U.S. 568, 570 (1942) ("It is now clear that 'Freedom of speech and freedom of the press . . . are protected by the First Amendment . . .'" (quoting *Lovell v. City of Griffin, Ga.*, 303 U.S. 444, 450 (1938))).

178. U.S. CONST. amend. I; *NAACP v. Ala. ex rel. Patterson*, 357 U.S. 449, 460 (1958).

179. U.S. CONST. amend. XIV; *Patterson*, 357 U.S. at 460 ("It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech."); *De Jonge v. State of Oregon*, 299 U.S. 353, 364 (1937) ("Freedom of speech

associate is not explicitly mentioned in the Constitution, it is rooted in the First Amendment's assembly protections.¹⁸⁰ These protections are afforded to most, but unfortunately, Black Americans are not being given the same rights.¹⁸¹

A. *The Right to Peacefully Assemble*

The Supreme Court has long held that the right of the people to peacefully assemble is inherent in a republican form of government and predates the Constitution.¹⁸² One famous instance of peaceful assembly involved William Penn,¹⁸³ who was arrested in 1670 for violating a British law that prohibited Non-conformists from assembling together for religious purposes.¹⁸⁴ Penn was arrested after he preached to fellow Quakers on a public street.¹⁸⁵ However, despite violating the law, a jury acquitted Penn and his co-defendant, William Meade, on the unlawful assembly charge.¹⁸⁶ The aftermath of Penn's trial spread

and of the press are fundamental rights which are safeguarded by the due process clause of the Fourteenth Amendment of the Federal Constitution. The right of peaceable assembly is a right cognate to those of free speech and free press and is equally fundamental.") (citations omitted).

180. See *Healy v. James*, 408 U.S. 169, 181 (1972) ("While the freedom of association is not explicitly set out in the [First] Amendment, it has long been held to be implicit in the freedoms of speech, assembly, and petition."); *Griswold v. Connecticut*, 381 U.S. 479, 482 (1965) ("The association of people is not mentioned in the Constitution nor in the Bill of Rights.... Nor is the right to study any particular subject or any foreign language. Yet the First Amendment has been construed to include certain of those rights.").

181. See Justin Hansford, *The First Amendment Freedom of Assembly as a Racial Project*, 127 YALE L.J. F. 685, 692 (2018) (discussing ways the freedom of assembly was restricted for Black people); *United States v. Lemon*, 723 F.2d 922, 931–32 (D.C. Cir. 1983) (discussing the sentencing judge's improper reliance on the defendant's association with the Black Hebrews).

182. *United States v. Cruikshank*, 92 U.S. 542, 551–52 (1875) ("The right of the people peaceably to assemble for lawful purposes existed long before the adoption of the Constitution of the United States. In fact, it is, and always has been, one of the attributes of citizenship under a free government. . . . The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances.").

183. William Penn would later receive a land grant that became the state of Pennsylvania. Ruthann Robson, *Why Don't We All Just Wear Robes?*, 34 J. CIV. RTS. & ECON. DEV. 179, 189 (2021).

184. Specifically, they were prohibited from assembling in groups larger than five. John D. Inazu, *The Forgotten Freedom of Assembly*, 84 TUL. L. REV. 565, 575 (2010) [hereinafter Inazu, *Freedom of Assembly*].

185. Michael W. McConnell, *Freedom of Association: Campus Religious Groups*, 97 WASH. U. L. REV. 1641, 1641–42 (2020).

186. Inazu, *Freedom of Assembly*, *supra* note 184, at 575–76.

throughout England and eventually reached the American colonies.¹⁸⁷ Subsequently, in 1774, the First Continental Congress declared the colonists' right to peacefully assemble.¹⁸⁸

While the right to peacefully assemble was freely exercised by many Americans in the early years of the republic, not everyone was fortunate enough to enjoy this freedom.¹⁸⁹ Many southern states passed laws prohibiting enslaved and freed Blacks from exercising their right to assemble.¹⁹⁰ Georgia enacted a law prohibiting enslaved people from assembling to eat together.¹⁹¹ A South Carolina law barred enslaved people and freed Blacks from assembling for religious worship.¹⁹² Virginia passed laws banning enslaved people from meeting at night and declaring it unlawful for freed Blacks to meet in schools or churches.¹⁹³ Slave rebellions led to even more states passing similar laws targeting Blacks.¹⁹⁴ By 1835, most southern states prohibited free Blacks from exercising their right to assemble.¹⁹⁵ These laws, known as "slave codes," impeded the rights of Black people to freely assemble for hundreds of years.¹⁹⁶ The slave codes predated the Constitution, with Virginia enacting such laws as early as 1680.¹⁹⁷ The continued infringement of Black assembly rights persisted even after the Civil War, largely due to attacks from the Ku Klux Klan.¹⁹⁸ These infringements

187. *See id.* at 576.

188. *Declaration and Resolves of the First Continental Congress*, THE AVALON PROJECT, https://avalon.law.yale.edu/18th_century/resolves.asp [<https://perma.cc/RL6H-MZ3R>] (last visited Jan. 6, 2024).

189. *See* Hansford, *supra* note 181 at 692 ("[T]he drafters of the Constitution did not view Black Americans as part of 'We the People' at the time of the First Amendment's drafting. So it is not surprising that prior to the Civil War, the assembly of Blacks was highly regulated, if not completely restricted.").

190. Inazu, *Freedom of Assembly*, *supra* note 184, at 583.

191. *Id.* at 582–83.

192. *Id.* at 583.

193. *Id.*

194. *Id.* at 583–84.

195. *Id.* at 584.

196. Hansford, *supra* note 181, at 692–93.

197. *Id.* at 692.

198. *See id.* at 693.

transpired by attacking civil rights laws, burning schools, and blocking Black people from voting.¹⁹⁹

B. The Freedom to Associate

Today, the freedom to associate is well-established in constitutional jurisprudence.²⁰⁰ This right was first recognized in *NAACP v. Alabama ex rel. Patterson*.²⁰¹ In the wake of the Red Scare, Alabama required foreign corporations to list the names of its members publicly.²⁰² Rather than focusing on the freedom of assembly, Justice Harlan's majority opinion recognized "the freedom to engage in association for the advancement of beliefs and ideas."²⁰³ Justice Harlan added that individuals have the right to pursue their lawful interests privately and to freely associate with others in pursuing them.²⁰⁴

After *Patterson*, First Amendment litigation focused on the freedom of association instead of the freedom of assembly.²⁰⁵ Consequently, over thirty years have passed since the Supreme Court last addressed a freedom of assembly claim.²⁰⁶ In freedom of association cases, the Supreme Court applies the strict

199. See James Gray Pope, *Snubbed Landmark: Why United States v. Cruikshank (1876) Belongs at the Heart of the American Constitutional Canon*, 49 HARV. C.R.-C.L. L. REV. 385, 399–400 (2014).

200. See Inazu, *Freedom of Assembly*, *supra* note 184, at 568.

201. Emmanuel Hiram Arnaud, Note, *The Dismantling of Dissent: Militarization and the Right to Peacefully Assemble*, 101 CORNELL L. REV. 777, 797–98 (2016); see *NAACP v. Ala. ex rel. Patterson*, 357 U.S. 449, 460 (1958) (recognizing the freedom to associate).

202. See Arnaud, *supra* note 201, at 797–98.

203. Inazu, *Freedom of Assembly*, *supra* note 184, at 609; see *Patterson*, 357 U.S. at 460 ("It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech.").

204. *Patterson*, 357 U.S. at 466.

205. See Arnaud, *supra* note 201, at 797–98. Scholars hold a variety of views as to the cause of this shift. See, e.g., Benjamin W. Cramer, *Envirodemic: Unconstitutional Restrictions on Environmental Protests from the Attacks of 2001 to the Struggles of 2020*, 14 L.J. SOC. JUST. 79, 98–99 (2021) (viewing the freedom of association as an extension of the freedom of assembly that applies to the organization's preparatory activities); Inazu, *Freedom of Assembly*, *supra* note 184, at 611 (discussing the view that the broad freedom of association was a response to the narrowing right to assemble).

206. See Arnaud, *supra* note 201, at 798 n.140.

scrutiny standard used in freedom of assembly cases.²⁰⁷ This has caused the freedom of assembly to essentially convert into the freedom of association.²⁰⁸

In *Roberts v. United States Jaycees*, the Supreme Court reconciled its freedom of association jurisprudence by creating two constitutionally protected categories of association.²⁰⁹ Intimate associations refer to the “choices to enter into and maintain certain intimate human relationships,” while expressive associations refer to the “right to associate for the purpose of engaging in those activities protected by the First Amendment.”²¹⁰ However, the protections provided in both types of associations may, at times, coincide.²¹¹ For example, both kinds of associations may be implicated when the government interferes with a group’s ability to choose who to associate with in a common venture.²¹² Thus, the “degree of constitutional protection afforded” to the freedom to associate varies “depending on the extent to which one or the other aspect of the constitutionally protected liberty is at stake in a given case.”²¹³

Intimate associations are generally limited to family-like relationships and receive greater constitutional protection than expressive associations.²¹⁴ These intimate relationships involve

207. See *id.* at 800 n.153; see also *Legacy Church, Inc. v. Kunkel*, 472 F. Supp. 3d 926, 1048 (D.N.M. 2020) (“To satisfy strict scrutiny, [the Government] must demonstrate that the [action] is narrowly tailored to further a compelling government interest.”), *aff’d*, *Legacy Church, Inc. v. Collins*, 853 F. App’x 316 (10th Cir. 2021).

208. See Timothy Zick, *Recovering the Assembly Clause*, 91 TEX. L. REV. 375, 377 (2012) (reviewing JOHN D. INAZU, *LIBERTY’S REFUGE: THE FORGOTTEN FREEDOM OF ASSEMBLY* (2012)); *Legacy Church*, 472 F. Supp. 3d at 1019 (explaining that the Supreme Court and the Tenth Circuit’s analysis of freedom-of-association claims “has largely subsumed” its analysis of freedom-of-assembly claims).

209. See John D. Inazu, *The Unsettling ‘Well-Settled’ Law of Freedom of Association*, 43 CONN. L. REV. 149, 155 (2010) [hereinafter Inazu, *Freedom of Association*]; *Roberts v. United States Jaycees*, 468 U.S. 609, 617 (1984).

210. Further, intimate associations “receive[] protection as a fundamental element of personal liberty,” and expressive associations receive protection “as an indispensable means of preserving other individual liberties.” *Roberts*, 468 U.S. at 617–18.

211. *Id.* at 618.

212. See *id.*

213. *Id.*

214. Tabatha Abu El-Haj, *Friends, Associates, and Associations: Theoretically and Empirically Grounding the Freedom of Association*, 56 ARIZ. L. REV. 53, 69–70 (2014).

“deep attachments and commitments,” shared thoughts and experiences, and “are distinguished by such attributes as relative smallness, a high degree of selectivity in decisions to begin and maintain the affiliation, and seclusion from others”²¹⁵ A relationship lacking these qualities, such as a large business enterprise, does not receive the same protection as an intimate association.²¹⁶ However, other relationships exist on the spectrum between a family and a large business enterprise.²¹⁷ Determining the level of constitutional protection for these relationships requires a cautious evaluation of where the relationship’s characteristics land on the spectrum from “most intimate” to “most attenuated” personal attachments.²¹⁸ Courts consider the association’s “size, selectivity, purpose, policies, congeniality,” and any other potentially relevant characteristics.²¹⁹ While the Supreme Court has not outlined specific boundaries regarding which relationships may constitute intimate associations, it has held that they are not exclusive to family relationships.²²⁰ It has also found that organizations regularly involving strangers that emphasize growth over exclusivity do not constitute intimate relationships.²²¹

To receive protection as an expressive association, a group must engage in some form of public or private expression.²²²

215. *Roberts*, 468 U.S. at 619–20.

216. *See id.* at 620.

217. *See id.*

218. *Id.*

219. *Id.*

220. *Bd. of Dirs. of Rotary Int’l v. Rotary Club of Duarte*, 481 U.S. 537, 545 (1987) (“We have not attempted to mark the precise boundaries of this type of constitutional protection. . . . Of course, we have not held that constitutional protection is restricted to relationships among family members.”); *see Pac.-Union Club v. Superior Court*, 283 Cal. Rptr. 287, 294 (Ct. App. 1991) (providing intimate protection to a social organization that existed solely for the pleasure of social interaction among its carefully selected members); *see also N.Y. State Club Ass’n, Inc. v. City of New York*, 487 U.S. 1, 19 (1988) (O’Connor, J., concurring) (“[I]n such a large city a club with over 400 members may still be relatively intimate in nature, so that a constitutional right to control membership takes precedence.”).

221. *See, e.g., N.Y. State Club Ass’n*, 487 U.S. at 12 (declining intimate protection to an organization featuring regular participation by strangers); *Rotary Club of Duarte*, 481 U.S. at 546–47 (declining intimate protection to an organization that promoted inclusive membership).

222. *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 648 (2000).

Such expression is not limited to political or religious beliefs.²²³ Central to the freedom of expressive association is the preservation of political and cultural diversity and the protection of dissent from suppression by the majority.²²⁴ However, the right to expressive association is not absolute.²²⁵ In the *Roberts* decision, Justice Brennan outlined the test to determine when infringements to the right of expressive association are warranted.²²⁶ Such infringements “may be justified by regulations adopted to serve compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms.”²²⁷ Thus, courts utilize a strict scrutiny standard when assessing regulation of expressive associations.²²⁸

The *Roberts* opinion also discussed prior instances of unconstitutional intrusions on the freedom of expressive association.²²⁹ In *Healy v. James*, a state college refused to officially recognize a group of students that sought to form a local chapter of Students for a Democratic Society.²³⁰ *Brown v. Socialist Workers '74 Campaign Committee* featured an Ohio law that required candidates for public office to submit a form listing every campaign contributor and recipient of campaign funds.²³¹ In *Cousins v. Wigoda*, an injunction was issued to prevent petitioners from serving as delegates at the Democratic National Convention.²³²

223. *NAACP v. Ala. ex rel. Patterson*, 357 U.S. 449, 460–61 (1958); *Tacyne v. City of Philadelphia*, 687 F.2d 793, 799 (3d Cir. 1982) (holding that cultural expression is protected by the freedom of association).

224. *Dale*, 530 U.S. at 647–48 (citing *Roberts v. United States Jaycees*, 468 U.S. 609, 622 (1984)).

225. *Roberts*, 468 U.S. at 623.

226. *Inazu*, *Freedom of Association*, *supra* note 209, at 175–76; *Roberts*, 468 U.S. at 623.

227. *Roberts*, 468 U.S. at 623.

228. Jason Mazzone, *Freedom's Associations*, 77 WASH. L. REV. 639, 663 (2002). *But see Inazu*, *Freedom of Association*, *supra* note 209, at 176 (noting that “some courts have construed [the *Roberts* test] as intending something less than strict scrutiny”).

229. *Roberts*, 468 U.S. at 622–23.

230. *Healy v. James*, 408 U.S. 169, 170, 179 (1972). The college refused to recognize the chapter because the President believed the group would be a “disruptive influence” whose recognition would be “contrary to the orderly process of change.” *Id.* at 179.

231. *Brown v. Socialist Workers '74 Campaign Comm.* (Ohio), 459 U.S. 87, 89 (1982).

232. *Cousins v. Wigoda*, 419 U.S. 477, 480, 488 (1975).

In all three cases, the Supreme Court found a violation of the freedom of expressive association.²³³ The issue in *Roberts* resembled that in *Cousins*: interference with the organization of a group.²³⁴ The statute in question in *Roberts*, the Minnesota Human Rights Act, prohibits sex discrimination, while the United States Jaycees' bylaws mandated the exclusion of women as full voting members.²³⁵ According to the court, a regulation forcing a group to accept members it does not want is the clearest example of an interference with an association.²³⁶ This kind of regulation hinders the group's ability to "express only those views that brought them together."²³⁷ However, unlike the cases it cited, the *Roberts* court upheld the law in question.²³⁸ The court was persuaded by Minnesota's compelling interest in eliminating discrimination against females because the act did not restrict the Jaycees' ability to promote the interests of young men or its ability to exclude members with different ideologies.²³⁹ Thus, the act addressed a legitimate state concern without infringing more associational freedoms than necessary to address that concern.²⁴⁰

Unfortunately, the freedom of association is also being restricted for Black Americans.²⁴¹ *United States v. Lemon* illustrates one such instance in the D.C. Circuit.²⁴² In *Lemon*, the defendant

233. See *Roberts*, 468 U.S. at 622–23 (discussing the holdings in *Healy*, *Brown*, and *Cousins*).

234. *Id.* at 623.

235. *Id.* at 613–15. The Jaycees are a nonprofit group whose goal is the facilitation of "the growth and development of young men's civic organizations" *Id.* at 612. "Regular membership is limited to young men between the ages of 18 and 35," and associate membership is available to men outside this age group as well as women. *Id.* at 613. Per the Minnesota Human Rights Act, "[i]t is an unfair discriminatory practice . . . [t]o deny any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation because of . . . sex." *Id.* at 614–15.

236. *Id.* at 623. Thus, the court held that the freedom to associate also includes the freedom not to associate. *Id.*

237. *Id.*

238. See *id.* at 612.

239. *Id.* at 623, 627.

240. *Id.* at 628–29.

241. See, e.g., *United States v. Lemon*, 723 F.2d 922, 931–32 (D.C. Cir. 1983) (discussing the sentencing judge's improper reliance on the defendant's association with the Black Hebrews).

242. See *id.*

pleaded guilty to the interstate transportation of stolen securities, in violation of federal law, and was sentenced to sixteen months to four years in prison.²⁴³ The defendant appealed and asserted that the sentencing judge's improper reliance on his affiliation with the Black Hebrews violated his freedom to associate.²⁴⁴ Without explanation, the sentencing judge relied on the prosecution's unsubstantiated claim that the defendant committed the crime to benefit the Black Hebrews.²⁴⁵ Generally, a defendant's group affiliation can only be considered in sentencing if the defendant intended to advance the organization's unlawful objectives.²⁴⁶ Without a causal link, an individual's innocent association with a group cannot infer knowledge of a group's illegal activities.²⁴⁷ Similarly, an individual's illegal intent cannot be inferred solely by association with a group.²⁴⁸ Fortunately, the *Lemon* court vacated the defendant's sentence and remanded the case.²⁴⁹ Without any direct link between the defendant and the group's illegal activity, the *Lemon* court declared the government's assertions as nothing more "than an attempt to establish guilt by association."²⁵⁰

In a more recent case, Black Lives Matter members sued the town of Clarkstown, New York, along with its Chief of Police and Police Sergeant.²⁵¹ They alleged that, because of their association with Black Lives Matter, the defendants unlawfully

243. *Id.* at 924.

244. *Id.* The court describes the Black Hebrews as a group that claims to be a religious or quasi-religious organization that believes "its members are descendants . . . from one of the original tribes of Israel." *Id.*

245. *Id.* at 929–30, 932.

246. *Id.* at 937, 939 ("Thus, the government cannot punish an individual for mere membership in a religious or political organization that embraces both illegal and legal aims unless the individual specifically intends to further the group's illegal aims.").

247. *Id.* at 937, 939. In *Lemon*, the court did consider the defendant's association with the group because his association could determine whether he had knowledge of the group's illegal activities, thus subjecting him to liability for not cooperating in the government's investigation. *Id.* at 936.

248. *Id.* at 940.

249. *Id.* at 942.

250. *Id.* at 941.

251. *Black Lives Matter v. Town of Clarkstown*, 354 F. Supp. 3d 313, 313 (S.D.N.Y. 2018).

surveilled them during a rally and pointed the red dot of a sniper rifle at one of the participants, thereby violating their rights to free speech and association.²⁵² The court found that the plaintiffs had a plausible First Amendment claim and denied the defendants' motion to dismiss the First Amendment action.²⁵³ The case eventually settled for \$45,000.²⁵⁴ The facts of this case, which occurred over thirty years after *Lemon*, illustrate a continued attack on the rights of Black Americans to associate freely.²⁵⁵

IV. THE CASE STUDY: CONSTITUTIONAL ISSUES IN THE YSL RICO CASE

The YSL RICO case creates an intersection between the censorship of Black art and the rights of Black people to associate together. Both of these First Amendment protections have been separately attacked for decades.²⁵⁶ Now, RICO laws allow prosecutors to target both rights in the same case by implicating Black artists in criminal organizations.²⁵⁷ This creates a new set of problems in addition to those that already exist when Black art is censored and when the right to associate is violated.

A. *RICO Infringes the Right to Associate*

The use of RICO statutes to implicate Black artists in criminal organizations violates the freedom to associate. This holds true regardless of where YSL falls on the intimate versus

252. *Id.* at 323, 325.

253. *Id.* at 325, 328.

254. *Clarkstown to Pay in Suit Involving Surveillance of Black Lives Matter Members*, NEWS 12 WESTCHESTER, <https://westchester.news12.com/clarkstown-to-pay-in-suit-involving-surveillance-of-black-lives-matter-members-39920785> [<https://perma.cc/3P5D-Q9DQ>] (Feb. 6, 2019, 8:08 PM).

255. *See Black Lives Matter*, 354 F. Supp. 3d at 325; *Lemon*, 723 F.2d at 931–32.

256. *See* Sripathi, *supra* note 12, at 214–15, 218 (discussing instances of Black art being censored); *see also Lemon*, 723 F.2d at 931–32 (discussing the sentencing judge's improper reliance on the defendant's association with the Black Hebrews); *Black Lives Matter*, 354 F. Supp. 3d at 325, 328 (discussing plaintiffs' allegation of unlawful surveillance because of their association with Black Lives Matter).

257. *See* Dionne, *supra* note 8.

expressive associations scale. However, given the current jurisprudence on the subject, the YSL label falls closer to the intimate side of the spectrum.²⁵⁸ In considering the intimacy of an association, courts consider the group's "size, purpose, policies, selectivity, and congeniality."²⁵⁹ Intimate associations are distinguished by their small size, high selectivity, and seclusion from others.²⁶⁰ As of 2024, fifteen artists were signed to the YSL record label, which is based in Atlanta.²⁶¹ Young Thug's stated purpose for creating the label was to help his friends succeed through music so they could then support their friends and family.²⁶² In addition, the label adheres to a policy of maintaining a family environment, which allows artists to create and maintain close relationships inside and outside of the studio.²⁶³ The label is also highly selective and recruitment involves a collaborative process.²⁶⁴ Finally, the label's family environment creates a strong level of congeniality among the artists, allowing them to collaborate and give each other feedback and criticism.²⁶⁵ Therefore, a court would likely find that the relevant factors weigh in favor of a finding of intimacy, thus entitling YSL and its artists to constitutional protection as an intimate association.

Even if one argues that YSL and its artists do not receive protection as an intimate association, they are still entitled to protection as an expressive association. Expressive associations may engage in activities secured by the First Amendment, including those that pursue various political, social, and cultural goals.²⁶⁶ This is precisely what YSL and its artists do through

258. See *Roberts v. United States Jaycees*, 468 U.S. 609, 617–20 (1984) (discussing the spectrum of intimate and expressive associations).

259. *Id.* at 620.

260. *Id.*

261. See *The Biggest Family*, YOUNG STONER LIFE RECORDS, <https://www.youngstonerliferecords.com/artist.php> [<https://perma.cc/M4RU-6TFR>] (last visited Jan. 6, 2025).

262. See McKinney, *The Rise of YSL*, *supra* note 65.

263. See *id.*

264. See *id.*

265. See *id.*

266. *Roberts v. United States Jaycees*, 468 U.S. 609, 622 (1984).

their music.²⁶⁷ However, as discussed before, these associations do not receive unlimited protection, and government interference may be justified if it serves a compelling state interest “unrelated to the suppression of ideas” that cannot be carried out by any other less restrictive means.²⁶⁸ The objective of Georgia’s RICO Act is to address problems in Georgia arising from the increasing sophistication of criminality and the increasing harm to its citizens as a result.²⁶⁹ There is a simple yet obvious way to adhere to the goals of this statute through a less restrictive manner that does not criminalize Black art: arrest people because there is evidence they committed a crime, not because they created art.

Having established that YSL and its artists receive protection under the First Amendment’s freedom of association, the use of the artists’ lyrics as evidence to implicate them in a criminal organization is an unconstitutional violation of that freedom.²⁷⁰ However, Georgia set the precedent that this constitutional violation is permissible.²⁷¹ This creates a dangerous risk to both the current and future state of Black art.

B. *The Song’s True Meaning*

When prosecuting Black rap artists for their music, prosecutors mistakenly assume that the lyrics are always true.²⁷² Based on their own interpretation of someone else’s lyrics, the

267. See *id.* Young Thug’s music often focuses on social issues in America. See, e.g., YOUNG THUG, *Global Access* (feat. Nate Ruess), on BUSINESS IS BUSINESS (Young Stoner Life Recs. 2023) [hereinafter YOUNG THUG, *Global Access*] (“They will try and lock you up / Drag your name down through the mud / Afraid of all that you’ll become / ‘Cause that’s life here in America / So they will try and keep your mouth shut / Take your words and twist them up / Afraid that you will change the world / It’s just life here in America”); YOUNG THUG, *Die Slow* (feat. Strick), on PUNK (Young Stoner Life Recs. 2021) [hereinafter YOUNG THUG, *Die Slow*] (“They say you poor ‘cause you Black right to your face (yeah) / They say where you live, you’ll never be able to own that place”).

268. *Roberts*, 468 U.S. at 623.

269. GA. CODE ANN. § 16-14-2(a) (West 2024).

270. See *Roberts*, 468 U.S. at 622.

271. See YSL Indictment, *supra* note 104, at 11.

272. Alexander, *supra* note 6, at 231.

prosecutor establishes the defendant's motive or intent.²⁷³ However, while many rap songs depict the artist's real-life experiences, other times, the lyrics are fictitious or exaggerated.²⁷⁴ Fat Joe admitted that many of his lyrics are not true, comparing rap to fictional storytelling.²⁷⁵ Lil Durk included a disclaimer in the first song of his 7220 deluxe album, which stated that the lyrics on the album are not real.²⁷⁶ Jay-Z also reminded his fans to "believe half of what you see, none of what you hear[,] even if it's [said] by me."²⁷⁷ Thus, prosecutors may be relying on fictional stories as evidence against a defendant.²⁷⁸

Nevertheless, Fani Willis, the District Attorney for Fulton County who brought the RICO charges against Young Thug, vowed to continue using rap lyrics as evidence in criminal cases.²⁷⁹ Willis, like many prosecutors, believes these lyrics equate to confessions.²⁸⁰ As we will see, the problem of using potentially fictional lyrics as evidence of confessions extends even further when these songs are used to prosecute multiple artists associating together as a collective.

273. See *id.* at 230.

274. See Thornwell, *supra* note 7, at 344.

275. Fat Joe Says Rappers Shouldn't Be Held Accountable for Art, It's Freedom of Speech, TMZ (Dec. 1, 2023, 3:36 PM), <https://www.t TMZ.com/2023/12/01/fat-joe-young-thug-accountable-free-speech-rico-lyrics/> [<https://perma.cc/TEU3-NZRZ>].

276. Andre Gee, *Rappers Are Saying They're 'Cappin' in Songs. Here's Why.*, COMPLEX (Aug. 10, 2022), <https://www.complex.com/music/a/andre-gee/rap-disclaimers-lyrics-cappin-monster-corleone> [<https://perma.cc/9BUL-3HZE>]; see also LIL DURK, *So What*, on 7220 (Only The Family, Alamo Recs. & Sony Music Ent. 2022) [hereinafter LIL DURK, *So What*] ("This deluxe is all cap, this shit is not real").

277. Gee, *supra* note 276.

278. See Alexander, *supra* note 6, at 232.

279. In a news conference, Willis proclaimed, "Don't confess to crimes on rap lyrics if you do not want them used – or at least get out of my county." Tat Bellamy-Walker, *Georgia DA Fani Willis Says Rap Lyrics Will Continue to be Used in Criminal Cases*, NBC NEWS (Sept. 1, 2022, 3:34 PM), <https://www.nbcnews.com/news/nbcblk/georgia-da-fani-willis-says-rap-lyrics-will-continue-used-criminal-cas-rcna45680> [<https://perma.cc/7VFE-5893>].

280. Again, Willis said, "I think if you decide to admit your crimes over a beat, I'm going to use it." *Id.*

C. Criminalizing Rap Collectives

Like Young Thug with YSL, many rappers operate their own label.²⁸¹ One prominent example is Lil Wayne's Young Money Entertainment, a subsidiary of Cash Money Records.²⁸² Known for its renowned trio of Drake, Lil Wayne, and Nicki Minaj, Young Money is one of the most successful collectives in the music industry.²⁸³ Now, Young Money may be susceptible to a RICO case just like YSL.²⁸⁴ All it takes are lyrics that connect the artists to some accusation of criminal activity, and there is no shortage of verses that fit the criteria.²⁸⁵

On "Daylight," Drake repeatedly says, "Shot him in daylight," and that he "wasn't there when they caught the body."²⁸⁶ On "Rich Flex," he also repeatedly says "murder gang shit,"²⁸⁷ which is identical to a Young Thug lyric that the YSL indictment cites as evidence.²⁸⁸ Lil Wayne's music does not shy away from

281. See Sterling, *supra* note 42.

282. Patricia Bauer, *Lil Wayne*, BRITANNICA, <https://www.britannica.com/biography/Lil-Wayne> [<https://perma.cc/4ET4-AACU>] (Dec. 5, 2024); Demi Phillips, *Cash Money Records: The Rise of a Hip-Hop Empire*, HOTNEWHIPHOP (July 24, 2023), <https://www.hotnewhiphop.com/696876-cash-money-records> [<https://perma.cc/C5RE-BAFU>]. Another notable example is Diddy's Bad Boy Records, which is particularly significant today given that he is currently under investigation for human trafficking. See Aaron Katersky, Angeline Jane Bernabe & Luke Barr, *Diddy's Los Angeles, Miami Homes Raided by Federal Agents*, ABC NEWS (Mar. 25, 2024, 5:10 PM), <https://abcnews.go.com/GMA/Culture/diddys-los-angeles-miami-homes-raided-federal-agents/story?id=108481225> [<https://perma.cc/N6Y4-JFY8>]; Amna Nawaz and Karina Cuevas, *A Look at the Sex Trafficking Investigations Surrounding Music Mogul Sean 'Diddy' Combs*, PBS NEWS (Apr. 2, 2024, 6:35 PM), <https://www.pbs.org/newshour/show/a-look-at-the-sex-trafficking-investigations-surrounding-music-mogul-sean-diddy-combs> [<https://perma.cc/RB4J-4JZZ>].

283. See Phillips, *supra* note 282. After their success with Young Money, Drake and Nicki Minaj both launched their own record labels. See OVO SOUND, <https://www.ovosound.com/> [<https://perma.cc/LC8U-BJET>] (last visited Jan. 6, 2025); Jessica McKinney, *Nicki Minaj Launched Her Own Record Label. Here's What You Should Know About Her Roster*, COMPLEX (Mar. 10, 2023), <https://www.complex.com/music/a/j-mckinney/nicki-minaj-record-label-roster-everything-you-should-know> [<https://perma.cc/AM8V-J2TS>].

284. See *infra* notes 293–95 and accompanying text.

285. See *infra* notes 286–95 and accompanying text.

286. DRAKE, *Daylight*, on FOR ALL THE DOGS (OVO Sound 2023).

287. DRAKE & 21 SAVAGE, *Rich Flex*, on HER LOSS (OVO Sound 2022).

288. The indictment includes the lyric "murder gang shit" from the song "Original Slime Shit." YSL Indictment, *supra* note 104, at 33.

making similar references.²⁸⁹ In “Piano Trap,” he says, “We murder you, then bury you, dig a hole and throw dirt at you,”²⁹⁰ and in “I Don’t Sleep,” he says, “I’m reppin’ M-O-B, the mob, I got ties.”²⁹¹ Again, these lyrics align with those listed in the YSL indictment, which include several raps about having mob ties.²⁹² The indictment also lists lyrics that make reference to YSL.²⁹³ Similarly, in a collaboration song with Drake titled, “Right Above It,” Lil Wayne makes references to Young Money while saying he “shoot[s] first.”²⁹⁴ Finally, in the chorus of “Do We Have A Problem?” Nicki Minaj boasts, “I got a shooter and I got a driver.”²⁹⁵ This lyric closely resembles Young Thug’s words in “Anybody,” which coincidentally features Nicki Minaj.²⁹⁶ From this song, the indictment cites the lyric, “I never killed anybody but I got something to do with that body.”²⁹⁷ Both songs allude to an indirect involvement in the commission of a crime. Given how similar the lyrics from the Young Money artists are to the lyrics listed in the YSL indictment, there are significant concerns that other rap groups and labels may face RICO or other related charges in the future.²⁹⁸

For example, assume Lil Wayne is one day suspected of engaging in criminal street activity or a similar crime. Through RICO, the prosecutor could also charge Drake and Nicki Minaj with conspiracy by alleging that they released music under the

289. See *infra* notes 290–91 and accompanying text.

290. LIL WAYNE, *Piano Trap*, on FUNERAL (Young Money Ent. 2020).

291. LIL WAYNE, *I Don’t Sleep (feat. Takeoff)*, on FUNERAL (Young Money Ent. 2020).

292. Mob-themed lyrics listed in the indictment include, “YSL, this that mob life,” “it’s all mob business,” and “why would I lie, I got mob ties.” See YSL Indictment, *supra* note 104, at 30, 39–40.

293. Lyrics referencing YSL include, “YSL until we’re dead and pale,” and “YSL, we going overboard.” *Id.* at 33, 47.

294. In explicitly referencing Young Money, Lil Wayne says, “It’s Young Money mother-fucker.” LIL WAYNE, *Right Above It (feat. Drake)*, on I AM NOT A HUMAN BEING (Young Money Ent. 2010).

295. NICKI MINAJ & LIL BABY, *Do We Have A Problem?*, on QUEEN RADIO: VOLUME 1 (Cash Money Recs., Republic Recs. & Young Money Ent. 2022).

296. See YOUNG THUG, *Anybody*, *supra* note 111.

297. YSL Indictment, *supra* note 104, at 33; see YOUNG THUG, *Anybody*, *supra* note 111.

298. See, e.g., Gee, *supra* note 276 (reporting that the rapper Monster Corleone even considered quitting music out of fears that his lyrics could be used against him in court.).

Young Money label as an overt act in furtherance of the conspiracy. Like the YSL case, here, the artists are allegedly conspiring to further the interests of the Young Money “gang” by increasing its notoriety. Such prosecutorial action will likely disincentivize rappers to freely associate together through their own groups or labels out of fear that they will be collectively criminalized for their art.

D. Criminalizing Collaboration

Many rappers collaborate and work together to make music.²⁹⁹ For example, Chance The Rapper co-authored the songs “Famous” and “Feedback” with Kanye West.³⁰⁰ Similarly, Jay-Z wrote songs for a number of artists, including Beyonce, Diddy, Dr. Dre, and Rihanna.³⁰¹ Artists also create collaboration songs together, each contributing their own verse to the song.³⁰² Criminalizing multiple artists working together poses several problematic questions. When multiple artists work together to write a song, how do we know who actually composed each lyric? Is it sensible to prosecute Kanye West for his lyrics if they were written by Chance The Rapper? Is it rational to prosecute Jay-Z for lyrics rapped by Kanye West on their collaboration song? The lyrics listed in the YSL indictment provide multiple instances of these problems.

299. E.g., Joe Dziemianowicz, *Yes, Chance the Rapper Helped Write Songs for Justin Bieber, Brandy, and Kanye West*, NBC (May 24, 2023, 1:40 PM), <https://www.nbc.com/nbc-insider/songs-chance-the-rapper-co-wrote-for-other-artists> [https://perma.cc/THR7-9JZS] (indicating that Chance the Rapper has written songs for Justin Bieber, Brandy, and Kanye West among others).

300. *Id.*

301. Ralph Bristout, *13 Rappers Who've Written for Singers*, XXL MAG. (Mar. 21, 2013), <https://www.xxlmag.com/rappers-whove-written-for-singers/> [https://perma.cc/U663-NBS7].

302. See Isaac Herron, *The Importance of Music Collaboration*, YOUTH TIME MAG. (Feb. 24, 2021), <https://youthtimemag.com/the-importance-of-music-collaboration/> [https://perma.cc/6RED-74U5]; *When Legends Combine: Hip-Hop Collaborations That Will Forever Resonate*, MEDIUM (June 21, 2023), <https://hiphopheadsza.medium.com/when-legends-combine-famous-hip-hop-collaborations-that-resonate-1f864755036d> [https://perma.cc/SHJ2-99JW].

The indictment lists a plethora of lyrics from the song “Take It to Trial” by Young Thug, Gunna, and Yak Gotti.³⁰³ However, all three artists, along with the song’s producer, Wheezy,³⁰⁴ each received writing credits for the song.³⁰⁵ Without any specificity in the credits, it is impossible to know who wrote any particular verse. For example, Wheezy, who is not listed in the indictment, could have written the entire song.³⁰⁶ Rather than inquiring further, Willis’ solution is to jointly prosecute all three rappers together.³⁰⁷

Another problem arises from the indictment’s use of the music video and lyrics from the song “Ski” by Young Thug and Gunna.³⁰⁸ The indictment argues that Young Thug, Gunna, and Lil Duke’s appearances in the “Ski” music video served as an overt act in furtherance of the conspiracy.³⁰⁹ It also lists the lyric, “Duke Rollin’60’s, he locked in C’s,” as evidence of the overt act.³¹⁰ However, Young Thug raps this lyric, and Lil Duke does not have any verse or writing credit in the song.³¹¹ Thus, Lil Duke is guilty only of appearing in the music video as a background figure.³¹² But, according to Willis, a brief music video

303. See YSL Indictment, *supra* note 104, at 46; see also YOUNG THUG, *Take It to Trial*, *supra* note 116.

304. Wheezy’s real name is Wesley Glass. See *Wheezy* (2), DISCOGS, <https://www.discogs.com/artist/1719960-Wheezy-2> [<https://perma.cc/GGK5-AZ2N>] (last visited Jan. 6, 2025).

305. *Take It to Trial*, GENIUS (Nov. 27, 2020), <https://genius.com/Young-stoner-life-young-thug-and-gunna-take-it-to-trial-lyrics> [<https://perma.cc/YWC9-7TP8>].

306. See YSL Indictment, *supra* note 104, at 1–3, 46.

307. See *id.* at 46.

308. See *id.* at 47; see also YOUNG STONER LIFE, YOUNG THUG, & GUNNA, *Ski*, on SLIME LANGUAGE 2 (Young Stoner Life Recs. & 300 Ent. 2021).

309. YSL Indictment, *supra* note 104, at 1–3, 47. The indictment refers to Lil Duke as Martinez Arnold. See *id.* at 1.

310. *Id.* at 47.

311. See *Ski*, GENIUS (Apr. 16, 2021), <https://genius.com/Young-stoner-life-young-thug-and-gunna-ski-lyrics> [<https://perma.cc/JZ88-23SF>]; Paul Tingen, *Inside Track: Young Thug & Gunna ‘Ski’*, SOUNDONSOUND (July 2021), <https://www.soundonsound.com/techniques/inside-track-young-thug-gunna-ski> [<https://perma.cc/JZ88-23SF>].

312. See YSL Indictment, *supra* note 104, at 47. Interestingly, the video also features rappers Swae Lee and NAV, along with professional football player DK Metcalf, none of which are included in the indictment. *Young Thug and Gunna Release New Visual for “Ski”*, HYPEBEAST (Apr. 16, 2021), <https://hypebeast.com/2021/4/young-thug-gunna-ski-music-video> [<https://perma.cc/Q6SC-AAM3>].

appearance and a mention by another rapper are overt acts in furtherance of a conspiracy to advance the interests of a criminal organization.³¹³ At this point, Lil Duke's only protection from criminal prosecution for his art is to never be seen in public or online with his fellow YSL artists.

The indictment also problematically includes lyrics from Young Thug and Juice WRLD's collaboration song "Bad Boy."³¹⁴ The lyrics read, "Smith & Wesson .45 put a hole in his heart" and, "better not play with me, killers they stay with me."³¹⁵ Using these lyrics in particular poses another substantial problem with Willis' belief that lyrics constitute confessions.³¹⁶ In this song, Juice WRLD raps these lyrics, not Young Thug.³¹⁷ By including these lyrics in the indictment, Willis asserts that Juice WRLD's speech serves as an admission of Young Thug's guilt simply because both rappers collaborated together on the same song.³¹⁸ However, Juice WRLD is not listed in the indictment, is not from Atlanta, and is not signed with YSL.³¹⁹ Thus, he has no association with YSL other than creating music with Young Thug. This creates an unlimited scope for the criminalization of rap and Black art. Through RICO, a collective of Black artists can now be prosecuted for one's individual lyrics, for verses another artist wrote for them, and even for lyrics spoken by someone else on a collaboration song.

Returning to the Young Money comparison, Willis' far-reaching legal theory would allow for 21 Savage's lyric, "All the opps get a bullet," on his collaboration song with Drake, to

313. See YSL Indictment, *supra* note 104, at 47.

314. See *id.* at 34; see also JUICE WRLD & YOUNG THUG, BAD BOY (Young Stoner Life Recs., 300 Ent., Atl. Recs., Interscope Recs. & Grade A Prods. 2021).

315. YSL Indictment, *supra* note 104, at 34.

316. See Bellamy-Walker, *supra* note 279.

317. See *Bad Boy*, GENIUS (Jan. 15, 2021), <https://genius.com/Juice-wrld-and-young-thug-bad-boy-lyrics> [<https://perma.cc/8HRN-UMSD>].

318. See YSL Indictment, *supra* note 104, at 34; Bellamy-Walker, *supra* note 279. Another issue arising from using this song specifically is that it is impossible to inquire into the true meaning of Juice WRLD's verse because he tragically passed away in 2019. See Dylan Shulman, *Juice WRLD*, BRITANNICA, <https://www.britannica.com/biography/Juice-WRLD> [<https://perma.cc/29M7-VCG8>] (Dec. 4, 2024).

319. See YSL Indictment, *supra* note 104, at 1–3; Shulman, *supra* note 318.

serve as an admission of Drake's guilt.³²⁰ Like Juice WRLD and Young Thug, 21 Savage and Drake are from different cities and are signed to different labels, thereby having no association aside from their music collaborations.³²¹ But if Young Money is one day implicated in a RICO case, this lyric could be presented as evidence of conspiracy simply because Drake exercised two constitutional liberties: the freedom of expression and the right of association.

V. JUDICIAL AND LEGISLATIVE SOLUTIONS

Fortunately, some courts have recognized the problem and created tests or added modifications to rules regarding admitting rap lyrics into evidence.³²² For example, in *Skinner*, the New Jersey Supreme Court required a "strong nexus" between the lyrics and the alleged crime.³²³ The Kentucky and South Carolina Supreme Courts both follow a similar standard.³²⁴ Federal courts in Pennsylvania and Tennessee also take related

320. See *DRAKE & 21 SAVAGE, Circo Loco, on HER LOSS* (OVO Sound, Slaughter Gang & Republic Recs. 2022).

321. In this instance, not only is Drake from a different state, but also a different country. See *Drake*, BRITANNICA, <https://www.britannica.com/biography/Drake> [<https://perma.cc/7CQN-MDW2>] (Jan. 15, 2025); Jordan Darville, *21 Savage Announces Deal with Epic Records, Calls Drake "a Genuine Person"*, THE FADER (Jan. 18, 2017), <https://www.thefader.com/2017/01/18/21-savage-epic-drake-deeper-than-rap> [<https://perma.cc/HB5F-C3DX>]; Noah Yoo, Madison Bloom & Evan Minsker, *21 Savage Confirms He Was Born In the United Kingdom*, PITCHFORK (Feb. 5, 2019), <https://pitchfork.com/news/21-savage-confirms-he-was-born-in-the-united-kingdom/> [<https://perma.cc/RQT5-7DZP>].

322. See Thornwell, *supra* note 7, at 340.

323. *State v. Skinner*, 95 A.3d 236, 238–39, 251–52 (N.J. 2014) ("Fictional forms of inflammatory self-expression, such as poems, musical compositions, and other like writings about bad acts, wrongful acts, or crimes, are not properly evidential unless the writing reveals a strong nexus between the specific details of the artistic composition and the circumstances of the underlying offense for which a person is charged, and the probative value of that evidence outweighs its apparent prejudicial impact.").

324. See, e.g., *Greene v. Commonwealth*, 197 S.W.3d 76, 87 (Ky. 2006) (admitting into evidence a video of the defendant rapping about the specific crime charged); *State v. Cheeseboro*, 552 S.E.2d 300, 313 (S.C. 2001) (holding that lyrics referencing "leaving no prints and bodies left in a pool of blood" were too vague to be included as evidence of armed robbery and execution-style homicide).

approaches.³²⁵ However, despite some courts citing to *Skinner*, the New Jersey approach is still an outlier and does not carry as much of an influence across other jurisdictions as some had hoped.³²⁶ Courts in California, Michigan, Missouri, and Texas have taken more pervasive approaches than the one outlined in *Skinner*.³²⁷ This results in a lack of uniformity across jurisdictions.³²⁸

On the legislative side, several states have introduced legislation that prohibits or strictly limits the use of rap lyrics as evidence.³²⁹ These bills, often referred to as “rap shield rules,”³³⁰ have received bipartisan support.³³¹ Many believe the YSL indictment sparked a unique movement within the rap community to urge the passage of these bills.³³² In 2022, California

325. See, e.g., *Bey-Cousin v. Powell*, 570 F. Supp. 3d 251, 255 (E.D. Pa. 2021) (“These rules require the Court to start with a presumption that artistic expression is not factual The Court recognizes that starting with a presumption that artistic expression is not a factual admission might in some cases lead to the exclusion of admissible evidence. But the First Amendment requires no less. To overcome that rule, the proponent of evidence must offer some preliminary indicia that the artistic expression is a truthful narrative, like the inclusion of factual detail that is not publicly available.”); *United States v. Sneed*, No. 14-CR-00159, 2016 WL 4191683, at *6 (M.D. Tenn. Aug. 9, 2016) (“We may not permit a jury to infer that simply because Defendant rapped about selling drugs that he is guilty of selling drugs.”).

326. Alexander, *supra* note 6, at 224–25.

327. See, e.g., *People v. Johnson*, 243 Cal. Rptr. 3d 586, 616–17 (Ct. App. 2019) (holding that the victim’s rap lyrics about stealing drugs and having an affair with the defendant’s girlfriend served as evidence of the defendant’s motive to retaliate against the victim); *United States v. Graham*, 293 F. Supp. 3d 732, 736 (E.D. Mich. 2017) (explaining that the lyric, “not guilty was the damn verdict,” from the defendant’s 2015 song was a literal depiction of the actual event of being found not guilty to a 2009 murder charge); *State v. Hawkins*, 58 S.W.3d 12, 25–26 (Mo. Ct. App. 2001) (holding that rap lyrics depicting violence contradicts testimony about the defendant’s peaceful nature); *McDade v. State*, 613 S.W.3d 349, 355–56 (Tex. App. 2020) (holding that in the sentencing phase, the defendant’s lyrics depicting threats of violence served as evidence of the defendant’s violent character and rebutted witness testimony of defendant’s good character).

328. See Alexander, *supra* note 6, at 225.

329. See Thornwell, *supra* note 7, at 341–44.

330. Araibi, *supra* note 9, at 837.

331. Deena Zaru, *As Young Thug Awaits Trial, the Push to Limit the Use of Rap Lyrics in Court Gains Bipartisan Support*, ABC NEWS (May 6, 2023, 6:01 AM) [hereinafter Zaru, *Push to Limit Lyrics in Court Gains Bipartisan Support*], <https://abcnews.go.com/US/young-thug-awaits-trial-push-limit-rap-lyrics/story?id=99073855> [https://perma.cc/2DC3-MUHJ].

332. Vowing to protect Black art, Kevin Liles has worked with top players in the music industry to lobby for federal legislation that would limit the use of rap lyrics in court. Deena Zaru,

became the first state to pass a law limiting the admissibility of rap lyrics in court.³³³ In 2023, Louisiana became the second state to enact such a law.³³⁴ Illinois, Maryland, Missouri, New York, and New Jersey have also introduced similar bills.³³⁵

California's law amended the state's rules of evidence by providing greater protection to "creative expression," which includes art and music.³³⁶ When considering whether to admit a creative expression into evidence, courts balance "the probative value of [the] evidence against the substantial danger of undue prejudice" against the defendant.³³⁷ However, the law creates two additional guidelines to consider in this balancing test.³³⁸ First, courts must give "minimal" probative value to the creative expression "for its literal truth or as a truthful narrative."³³⁹ This requirement holds "unless [the] expression is created near in time to the charged crime or crimes, bears a sufficient level of similarity to the charged crime or crimes, or includes factual

Ashan Singh, Tenzin Shakya & Sally Hawkins, *'Protect Black Art': How the Indictment of Young Thug and Gunna Sparked a Movement*, ABC NEWS (Oct. 15, 2022, 3:39 PM), <https://abcnews.go.com/US/protect-black-art-indictment-young-thug-gunna-sparked/story?id=91395434> [<https://perma.cc/MT5L-RQK6>].

333. Natalie Neysa Alund, *California Governor Gavin Newsom Signs Bill Limiting Use of Rap Lyrics as Evidence in Court*, USA TODAY (Oct. 3, 2022, 1:00 PM), <https://www.usatoday.com/story/news/politics/2022/10/03/california-rap-lyrics-court-evidence/8167269001/> [<https://perma.cc/8UPW-FQWY>]. The California bill declares the following: "Existing precedent allows artists' creative expression to be admitted as evidence in criminal proceedings without a sufficiently robust inquiry into whether such evidence introduces bias or prejudice into the proceedings. In particular, a substantial body of research shows a significant risk of unfair prejudice when rap lyrics are introduced into evidence." Assemb. B. 2799, 2021-2022 Leg., Reg. Sess. (Cal. 2022).

334. Montana Miller, *The Restoring Artistic Protection (RAP) Act Takes Effect in Louisiana*, RECORDING ACAD. (Aug. 2, 2023, 4:25 PM), <https://www.recordingacademy.com/advocacy/news/restoring-artistic-protection-act-enacted-in-louisiana> [<https://perma.cc/X9VX-KD34>]; see H.B. 475, 2023 Leg., Reg. Sess. (La. 2023).

335. *Current Legislation*, RAP ON TRIAL, <https://www.rapontrial.org/current-legislation> [<https://perma.cc/64MB-YGCF>] (last visited Jan. 6, 2025).

336. The Bill defines creative expression as "the expression or application of creativity or imagination in the production or arrangement of forms, sounds, words, movements, or symbols, including, but not limited to, music, dance, performance art, visual art, poetry, literature, film, and other such objects or media." Assemb. B. 2799, 2021-2022 Leg., Reg. Sess. (Cal. 2022).

337. CAL. EVID. CODE § 352.2(a) (2023).

338. *See id.*

339. *Id.*

detail not otherwise publicly available”³⁴⁰ This exception closely resembles the “strong nexus” requirement in *Skinner*.³⁴¹ Second, in weighing undue prejudice, courts must consider the potential that the trier of fact will treat the creative expression as “evidence of the defendant’s propensity for violence or general criminal disposition.”³⁴² The court must also consider the likelihood that the creative expression will induce implicit racial bias against the defendant.³⁴³ If the creative expression is admitted, the court may consider additional relevant evidence, including testimony about the genre of the creative expression, research regarding how the creative expression may bring out implicit or explicit racial bias, and evidence to dispute such testimony or research.³⁴⁴

A. New York’s “Rap Music on Trial” Bill

In 2021, the New York Senate introduced a similar bill.³⁴⁵ The legislation, known as the “Rap Music on Trial” bill, received support from many prominent rappers, including Jay-Z and Meek Mill.³⁴⁶ The proposal creates a presumption of inadmissibility for creative expressions.³⁴⁷ To overcome this presumption, the prosecution must prove by “clear and convincing evidence”

340. *Id.*

341. *See* *State v. Skinner*, 95 A.3d 236, 251–52 (N.J. 2014).

342. CAL. EVID. CODE § 352.2(a) (2023).

343. *Id.*

344. *Id.* § 352.2(b)(1)–(3).

345. *See* S. 7527, 2021–22 Leg., Reg. Sess. (N.Y. 2021). The New York Senate passed the bill on May 17, 2022. Matthew Ismael Ruiz, *New York State Senate Passes Bill Limiting Use of Song Lyrics in Court*, PITCHFORK (May 18, 2022), <https://pitchfork.com/news/new-york-state-senate-passes-bill-limiting-use-of-song-lyrics-in-court/> [https://perma.cc/SYJ7-69HS].

346. Jordan Rose, *New York State Senate Passes ‘Rap Music on Trial’ Bill Limiting Use of Song Lyrics as Evidence in Court*, COMPLEX (May 18, 2022), <https://www.complex.com/music/a/j-rose/new-york-state-senate-passes-bill-limiting-use-song-lyrics-evidence-court> [https://perma.cc/JJG4-UMUR].

347. S. 7527, 2021–22 Leg., Reg. Sess. (N.Y. 2021). The bill was reintroduced in 2023 and must pass the New York State Assembly to be enacted. S. 1738, 2023–24 Legis. Sess. (N.Y. 2023). The bill’s definition of creative expression is identical to the California definition: “the expression or application of creativity or imagination in the production or arrangement of forms, sounds, words, movements or symbols, including but not limited to music, dance, performance art, visual art, poetry, literature, film and other such objects or media.” *See* Assemb. B. 2799, 2021–22 Leg., Reg. Sess. (Cal. 2022).

that the creative expression (1) is literal and not figurative or fictional; (2) has a “strong factual nexus” with the specific facts of the alleged crime; (3) is relevant to a disputed fact; and (4) has probative value that cannot be provided by other evidence.³⁴⁸ If a creative expression is admitted into evidence, the bill creates a duty for the court to present the evidence in the least prejudicial manner possible.³⁴⁹ Thus, New York’s legislation builds upon the strong nexus requirement outlined in *Skinner* and codified in California.³⁵⁰ It then extends the protection of rap lyrics by creating a default rule of inadmissibility.³⁵¹

New York’s “Rap Music on Trial” bill encouraged several other states to propose similar bills.³⁵² In 2023, Illinois, Maryland, and Missouri each introduced legislation mirroring New York’s proposal.³⁵³ Each bill creates a presumption of inadmissibility for creative expressions while also providing for the opportunity to overcome this presumption through a four-part test identical to that contained in the New York bill.³⁵⁴ New Jersey’s proposal takes an even stricter approach than New York.³⁵⁵ Referred to as “J.B.’s Law,” this bill amends the state’s rules of evidence to create a blanket ban on all creative expressions from being included as evidence.³⁵⁶

348. Regarding the first prong, if the creative expression is a derivative of another work, the prosecution must prove that the defendant “intended to adopt the literal meaning of the work as the defendant’s own thought or statement[.]” N.Y. S. 1738.

349. *Id.* (“Where the court admits creative expression as criminal evidence, the court has a duty to apply careful redactions, provide limiting instructions, and consider the least prejudicial means of presenting the creative expression to the fact-finder.”).

350. *See id.*; *State v. Skinner*, 95 A.3d 236, 239 (N.J. 2014); Cal. Assemb. B. 2799.

351. *See* N.Y. S. 1738.

352. *See, e.g.*, H.B. 3420, 103rd Gen. Assemb., 2023-2024 Reg. Sess. (Ill. 2023); H.B. 940, 2023 Reg. Sess. (Md. 2023); H.B. 353, 102nd Gen. Assemb., 1st Reg. Sess. (Mo. 2023); *see also* N.Y. S. 1738 (providing a foundational four-prong test).

353. *See* Ill. H.B. 3420; Md. H.B. 940; Mo. H.B. 353; *see also* N.Y. S. 1738 (providing a foundational four-prong test).

354. *See* Ill. H.B. 3420; Md. H.B. 940; Mo. H.B. 353; *see also* N.Y. S. 1738 (providing a foundational four-prong test).

355. *See* Assemb. J. Res. 178, 220th Leg., 2022-23 Sess. (N.J. 2022).

356. *Id.* (“Relevant evidence shall not include evidence of a defendant’s creative or artistic expression, whether original or derivative, in audio or video format, and shall not be received into evidence, or used as impeachment evidence against the defendant in a criminal proceeding.”).

Efforts to protect rap have also reached the national level.³⁵⁷ In 2022, lawmakers introduced the “Restoring Artistic Protection (RAP) Act.”³⁵⁸ This bill amends the Federal Rules of Evidence by adding Rule 416: “Limitation on admissibility of defendant’s creative or artistic expression.”³⁵⁹ Like many state proposals, the RAP Act’s provisions model New York’s “Rap Music on Trial” bill: a four-part test to overcome a presumption of inadmissibility for creative expressions.³⁶⁰ It is fitting that the birthplace of rap is now leading the efforts to save it.³⁶¹

Despite nationwide bipartisan efforts to enact rap shield laws, some scholars believe they are controversial and even radical.³⁶² However, after thirty years of using rap lyrics in court, along with RICO laws now expanding the scope of how lyrics may be used, rap shield laws are needed now more than ever.³⁶³ Juries have long been able to convict solely based on a defendant’s rap lyrics.³⁶⁴ Now, under RICO, a defendant may be convicted based on someone else’s lyrics alone.³⁶⁵ Unfortunately, the criminal justice system has neither the tools nor the willingness to address this issue, which is why legislation is urgently needed.³⁶⁶ Worse, judges seem to believe that juror bias against rap is no longer problematic at all.³⁶⁷ Contrary to this mistaken

357. See Restoring Artistic Protection Act of 2022, H.R. 8531, 117th Cong. §§ 1–2 (2022).

358. See *id.*

359. *Id.*

360. See *id.*; S. 1738, 2023–24 Reg. Sess. (N.Y. 2023).

361. See Hugh Toner IV, *Crazy Story: Admission of Guilt or Braggadocio? Defendant-Authorized Drill Lyrics as Evidence in Trials*, 46 S. ILL. U. L.J. 377, 389 n.86, 403 (2022).

362. See Araibi, *supra* note 9, at 837; Zaru, *Push to Limit Lyrics in Court Gains Bipartisan Support*, *supra* note 331.

363. See Araibi, *supra* note 9, at 837.

364. Carter, *supra* note 32, at 941.

365. See *id.*; see also Minefield, *supra* note 128, at 856 (“[I]ndividuals with minor or loose connections to members, or a single member, of the targeted enterprise very well may find themselves on the other end of an ambitious state prosecutor’s RICO indictment, facing the statute’s severe and enhanced punishments.”).

366. See Araibi, *supra* note 9, at 837.

367. See, e.g., *United States v. Stuckey*, 253 F. App’x 468, 484 (6th Cir. 2007) (“Rap is no longer an underground phenomenon and is a mainstream music genre. Reasonable jurors would be unlikely to reason that a rapper is violent simply because he raps about violence.”); *United*

belief, many states, along with the federal government, are now taking steps to remedy what remains a worsening issue.³⁶⁸

B. Expanding New York's Proposal

New York's proposal presents a promising solution for the attack on Black art.³⁶⁹ Even so, it does not account for the recent developments that now allow rap lyrics to implicate rappers in criminal organizations. Therefore, New York's approach must be taken one step further: If a creative expression is admitted into evidence, it shall only be used as evidence against the specific defendant who authored the expression.³⁷⁰ The indictment citing Juice WRLD's lyrics from "Bad Boy" provides a concrete example of why this added requirement is needed.³⁷¹

The New York bill's stated purpose is to "protect freedom of speech and artistic expression . . . [by] ensuring that criminal defendants are tried based upon evidence of criminal conduct, not the provocative nature of their artistic works and tastes."³⁷² Assuming that the prosecution satisfies all four prongs required by the legislation,³⁷³ the bill's goal of protecting artistic expression fails in two ways. First, Juice WRLD is deterred from working with other rappers because of worries that his verses will be

States v. Mills, 367 F. Supp. 3d 664, 672 (E.D. Mich. 2019) ("[B]ecause rap, as an aspect of the larger cultural movement of hip hop, is a mainstream and widely recognized music genre, the Court finds it highly unlikely that any reasonable juror nowadays could conclude that Johnson is guilty of racketeering conspiracy merely because the rap songs contain potentially offensive themes.")

368. See Restoring Artistic Protection Act of 2022, H.R. 8531, 117th Cong. (2022); Assemb. B. 2799, 2021-2022 Leg., Reg. Sess. (Cal. 2022); S. 7527, 2021-22 Leg., Reg. Sess. (N.Y. 2021); H.B. 475, 2023 Leg., Reg. Sess. (La. 2023).

369. See N.Y. S. 7527; Carter, *supra* note 32, at 941.

370. The modified test would now require clear and convincing evidence that the creative expression: (1) is literal and not figurative or fictional; (2) has a strong factual nexus with the specific facts of the alleged crime; (3) is relevant to a disputed fact; (4) has probative value that cannot be provided by other evidence; and (5) is only offered as evidence against the author of the creative expression. See N.Y. S. 1738.

371. See YSL Indictment, *supra* note 104, at 34; see also JUICE WRLD & YOUNG THUG, *Bad Boy*, *supra* note 314.

372. *Senate Bill S7527*, N.Y. STATE SENATE, <https://www.nysenate.gov/legislation/bills/2021/S7527> [<https://perma.cc/3F6T-SGY6>] (last visited Jan. 6, 2025).

373. See N.Y. S. 7527.

used against the other artists in court. Why would Juice WRLD want to work with another rapper if their collaboration could potentially create criminal liability for his peer? Second, Young Thug cannot work with other rappers without fearing that his partner's verses will be used against him in court. If this is the case, why would Young Thug work with anyone but himself? What incentive does he have to create a record label aimed at helping upcoming artists if this will expose the group to criminal liability? In both instances, artistic expression is deterred, not protected. Therefore, to adequately protect Black art from further unconstitutional attacks, legislatures must enact laws resembling the New York "Rap Music on Trial" bill.³⁷⁴ Additionally, these proposals must feature an added requirement to ensure that lyrics are not used to implicate multiple artists together in a criminal organization. Thus, under the revised test, the YSL indictment cannot use Juice WRLD's or anyone else's lyrics as evidence against Young Thug. The only lyrics that may potentially incriminate Young Thug are those he authored and spoke himself. And even then, the first four prongs of the test provide that his lyrics are admissible only in the narrowest circumstances.

1. *Applying the modified New York Test to the YSL indictment*

When looking exclusively at the lyrics spoken by Young Thug, each one listed in the indictment fails the revised New York Test.³⁷⁵ Many fail at either the first or second prong because they are not literal or do not have a factual nexus with the specific facts of the alleged crime.³⁷⁶ Because the indictment asserts that the lyrics are overt acts to increase the YSL gang's power and reputation, any cited lyric must reference YSL.³⁷⁷ Otherwise, it is impossible to decipher whether Young Thug is

374. See *id.*; *Support for the Rap Music on Trial Bill*, N.Y.C. BAR (May 4, 2022), nycbar.org/reports/support-for-the-rap-music-on-trial-bill/ [<https://perma.cc/E3NQ-K92W>].

375. See N.Y. S. 7527; YSL Indictment, *supra* note 104, at 30.

376. See N.Y. S. 7527; YSL Indictment, *supra* note 104, at 30.

377. YSL Indictment, *supra* note 104, at 30.

rapping about YSL or about something else entirely.³⁷⁸ Therefore, any lyric that does not directly mention YSL fails the first prong's literal requirement.³⁷⁹ This leaves only a handful of lyrics remaining from the indictment. Of these remaining lyrics, many contain simple phrases, such as "Slime or get slimed" and "YSL until we're dead and pale."³⁸⁰ While these lyrics reference YSL, they fail the second prong because they do not mention the facts of any alleged crime.³⁸¹ This prong adheres to *Skinner*, which held that lyrics that do not mention any crimes actually committed must be accepted as fictional.³⁸² However, the line, "this that slime shit, hey, YSL shit, hey, killin 12 shit" gets more specific.³⁸³ This Young Thug lyric makes direct reference to YSL while talking about "killing 12," which is slang for police.³⁸⁴ However, it still fails the second prong because the indictment does not charge Young Thug with killing a police officer.³⁸⁵ Thus, there is not a strong factual nexus with the specific facts of an alleged crime. The only lyric in the indictment that passes the first two prongs is "YSL, this that mob life."³⁸⁶ It passes the first prong because it directly mentions YSL, and it passes the

378. For example, the cited lyric, "fuck the police," could simply be Young Thug expressing his personal opinion through his music, just as N.W.A. once did. *See id.*; *see also* Araibi, *supra* note 9, at 818 (discussing N.W.A.'s protest song about the police).

379. *See* N.Y. S. 7527.

380. *See* YSL Indictment, *supra* note 104, at 30, 33; *see also* YOUNG THUG, *Take It to Trial*, *supra* note 135 ("Slime 'em out, lead, they gon' tell 'em I ain't listen . . . For slimes, you know I'll kill").

381. *See* N.Y. S. 7527.

382. *State v. Skinner*, 95 A.3d 236, 251 (N.J. 2014).

383. YSL Indictment, *supra* note 104, at 30; *see also* YOUNG THUG, *Slime Shit*, *supra* note 115.

384. In slang, police are often referred to as "12." *Why Are Police Called 12?*, LEGAL EXPLANATIONS, <https://legal-explanations.com/blog/why-are-police-called-12/> [https://perma.cc/Y9YR-CW4V] (June 29, 2023).

385. The indictment originally charged Christian Eppinger with the attempted murder of multiple police officers, but he has since been severed from the case. YSL Indictment, *supra* note 104, at 56, 75; Tim Darnell, *YSL Defendant Christian Eppinger Severed from Case After Attorney's Laptop Seized*, ATLANTA NEWS FIRST, <https://www.atlantaneWSfirst.com/2023/06/08/ysl-defendant-christian-eppinger-severed-case-after-attorneys-laptop-seized/> [https://perma.cc/DX7E-7PM8] (June 8, 2023, 2:58 PM). However, even if Eppinger was still included in the RICO case, the lyric fails the fifth prong of the modified New York test because the lyric can only be offered as evidence against Young Thug, not anyone else.

386. *See* YSL Indictment, *supra* note 104, at 30; *see also* YOUNG THUG, *Slime Shit*, *supra* note 115.

second prong because it alludes to YSL's participation in mob life, which includes criminal street gang activity.³⁸⁷ This aligns with the charge that YSL is a gang. Further, the third prong is satisfied because this lyric is relevant to the disputed fact of whether YSL is a criminal street gang.³⁸⁸ However, it fails the fourth prong because the probative value offered by the lyric can be proven by other evidence, namely specific instances of criminal activity, such as selling drugs, homicide, or any other crimes enumerated in Georgia's RICO statute.³⁸⁹ Accordingly, no lyric listed in the indictment is admissible under the New York test.

While New York's proposal provides a viable tool to protect Black art, there may be skepticism of such a strict test. Consider a hypothetical where a man goes to a bar and brags to people about a murder. In one scenario, he brags about the murder through traditional conversation. In another scenario, he brags about the murder by singing a song about it. One might believe this creates a loophole because the traditional statement may be used as evidence, while the song may not. However, this is not the case. The first prong of the New York test requires clear and convincing evidence that the expression is literal and not fictional.³⁹⁰ If the prosecution proves this while satisfying the remaining prongs required by the test, then the bar song may be admitted as evidence.³⁹¹ While the song may have a tougher standard to be admitted as evidence, it is still possible under certain circumstances.

Another criticism of the proposal arises from the concern that it potentially enables rap artists to openly brag about crimes that they actually did commit. Proponents of rap would

387. See S. 7527, 2021-22 Leg., Reg. Sess. (N.Y. 2021); see also H. Mitchell Caldwell & Daryl Fisher-Ogden, *Stalking the Jets and the Sharks: Exploring the Constitutionality of the Gang Death Penalty Enhancer*, 12 GEO. MASON L. REV. 601, 628 (2004) (referring to gang killings as comparable to mob-style killings).

388. See N.Y. S. 7527.

389. See *id.*; GA. CODE ANN. § 16-14-3(5)(A) (2023).

390. N.Y. S. 7527.

391. See *id.*

respond by saying that rap songs regularly consist of braggadocious and exaggerated lyrics, rather than specific recollections of past acts.³⁹² However, this conflicts with the mantra that rap artists are authentic and “keep it real” with their audience.³⁹³ Consequently, prosecutors have struggled with differentiating true and false lyrics.³⁹⁴ To resolve this issue, some scholars have proposed that courts allow defendants to offer expert witnesses to provide context and differentiate between exaggerated lyrics and lyrics confessing to actual crimes.³⁹⁵ These witnesses would be experts on the genre of rap, with scholarship focusing on its history and evolution.³⁹⁶ However, time and resource constraints present difficulties with this solution.³⁹⁷ Nevertheless, some courts have allowed these expert witnesses, while others have not.³⁹⁸ While using expert witnesses may provide some relief to the concern of rappers potentially bragging about actual crimes in their songs, the New York test provides a more concise solution.

If the prosecutor believes the lyrics are about real crimes, they should prove it with clear and convincing evidence. The first two prongs of the New York test are particularly relevant to this inquiry.³⁹⁹ If the lyrics actually are about a real crime, the

392. See Andrea L. Dennis, *Poetic (In)Justice? Rap Music Lyrics as Art, Life, and Criminal Evidence*, 31 COLUM. J.L. & ARTS 1, 25 (2007).

393. See *id.* at 25–26.

394. See, e.g., *People v. Coneal*, 254 Cal. Rptr. 3d 653, 666 (Cal. App. 2019) (explaining that the District Attorney’s Office Inspector did not demonstrate an ability to differentiate real lyrics from made up lyrics).

395. See, e.g., *Toner IV*, *supra* note 361, at 408–09 (proposing that courts allow rap experts to assist in providing an accurate assessment of rap lyrics); Dennis, *supra* note 392, at 32 (proposing that courts allow expert testimony to interpret rap lyrics).

396. *Toner IV*, *supra* note 361, at 410.

397. Another difficulty arises in how to determine whether someone qualifies as a “rap expert.” *Id.* at 411–12.

398. Compare *United States v. Harris*, No. 8:12-cr-205-T-17MAP, 2016 WL 4204633, at *4 (M.D. Fla. July 28, 2016) (explaining that expert testimony is reasonable to assist the jury with interpreting lyrical evidence), and *United States v. Herron*, No. 10–CR–0615 (NGG), 2014 WL 1871909, at *9 (E.D.N.Y. May 8, 2014), *aff’d*, 762 F. App’x 25 (2d Cir. 2019) (denying the Government’s motion to preclude the defendant’s proposed expert witness testimony), with *United States v. Wilson*, 493 F. Supp. 2d 484, 491 (E.D.N.Y. 2006) (granting the Government’s motion to preclude the defendant’s proposed expert witness testimony).

399. See S. 7527, 2021–22 Leg., Reg. Sess. (N.Y. 2021).

prosecutor can prove it by offering evidence that the lyrics (1) are literal and not fictional; and (2) have a strong factual nexus with the facts of the alleged crime.⁴⁰⁰ *United States v. Stuckey* provides an example of lyrics that successfully meet these two requirements.⁴⁰¹ Stuckey was convicted of murdering an informant, and the court admitted lyrics that explicitly mentioned “shooting snitches, wrapping them in blankets, and dumping their bodies in the street.”⁴⁰² These lyrics bore a strong resemblance to the events following the murder, which included wrapping the body and dumping it in an alley.⁴⁰³ While the remaining prongs must still be met under the New York test, satisfying the first two requirements establishes that the lyrics in question are a literal depiction of the alleged crime. Therefore, the New York test protects rap artists from being prosecuted through their music while ensuring that they are unable to openly brag about any crimes they may have actually committed.

CONCLUSION

Over three decades ago, the Supreme Court declared music as protected under the First Amendment of the Constitution.⁴⁰⁴ However, like many other constitutional freedoms, Black men do not receive the same level of protection as their peers.⁴⁰⁵ Since its inception, Black rap artists have faced attacks from all levels of government.⁴⁰⁶ Worse, rap is the only music genre subject to

400. *Id.*

401. See *United States v. Stuckey*, 253 F. App’x 468, 482–83 (6th Cir. 2007); see also *Holmes v. State*, 306 P.3d 415, 419–20 (Nev. 2013) (admitting the lyrics, “jack[ing] you for your necklace” as evidence of the defendant stealing a necklace during the charged robbery).

402. *Stuckey*, 253 F. App’x at 473, 482.

403. *Id.* at 475.

404. *Ward v. Rock Against Racism*, 491 U.S. 781, 790 (1989).

405. See Jason E. Powell, *R.A.P.: Rule Against Perps (Who Write Rhymes)*, 41 RUTGERS L.J. 479, 490 (2009).

406. See Sripathi, *supra* note 12, at 215. Now, the criminalization of rap is spreading to other countries. See Yekaterina Shrayber, *What’s Said in the Booth Never Stays in the Booth: A Comparative Analysis of the Use of Rap Lyrics in American and English Criminal Trials*, 47 LOY. L.A. INT’L & COMP. L. REV. 25, 26 (2024) (discussing the criminalization of rap in the United Kingdom).

these attacks.⁴⁰⁷ Over time, the attempts to censor Black artists have only become more severe. First, it started with attacks and condemnation from high-ranking government officials. Then, prosecutors started using defendants' self-authored rap lyrics against them in court. Now, prosecutors are using rap lyrics to implicate a collective of Black rap artists in criminal organizations. Despite the countless constitutional violations, prosecutors will do whatever it takes to secure a conviction.

Thankfully, some states are finally acknowledging this long-ignored problem by proposing legislation that minimizes the use of lyrics in court. Unfortunately, there has been minimal success in enacting these laws.⁴⁰⁸ But after Young Thug and members of his record label were indicted on RICO charges, the stakes have never been higher. The YSL indictment illustrates that the criminalization of Black art knows no boundaries. While Young Thug agreed to a plea deal on October 31, 2024, the suggested solutions in this Note are still reflective of an overall issue that needs to be cured.⁴⁰⁹ Without more legislative success in enacting rap shield laws, it is only a matter of time before another RICO indictment cites rap lyrics to implicate a collective of Black artists in a criminal organization. Young Thug and YSL may have been the first, but they will not be the last.

407. Araibi, *supra* note 9, at 808.

408. Miller, *supra* note 334. As of 2023, only California and Louisiana have successfully enacted laws that limit using rap lyrics in court. *Id.*

409. Plea Agreement, *State v. Williams*, No. 22SC183572 (Ga. Super. Ct. Oct. 31, 2024). After agreeing to a non-negotiated plea, Young Thug pleaded no contest to conspiracy to violate Georgia's RICO Act and organizing a criminal street gang, and guilty to participating in criminal street gang activity, violating Georgia's Controlled Substances Act, and unlawful firearm possession. *Id.* Judge Paige Reese Whitaker imposed a forty-year sentence, including five years in prison, which was commuted to time served, and fifteen years of probation. *Id.* However, if Young Thug violates probation, he will serve twenty years in prison. *Id.*