

## **Question**

The Plaintiff alleged that after the initial acts in December 2023-January 2024, the Defendants continued to engage in threatening and intimidating communications, and ongoing coordination, through at least May 2025. Open-ended continuity can be established by showing that the racketeering acts “involve a distinct threat of long-term racketeering activity, either implicit or explicit.” (H.J. Inc., 492 U.S. at 242; Johnson v. Heath, 56 F.4th at 859-60). The judge found that the later communications and threats were “distinct in character from the initial alleged scheme and do not evidence criminal conduct.” However, the Plaintiff’s complaint alleges that these communications were “in direct furtherance of their fraudulent scheme to see the divorce through to its finalization” (Complaint ¶ 49), and that they “demonstrate the enterprise’s ongoing criminal intent and explicit threats of future retaliation against Plaintiff for his efforts to expose and seek relief from their criminal activities.” (Complaint ¶ 51). By dismissing these allegations as unrelated or non-criminal, the judge failed to credit the Plaintiff’s theory that the scheme was ongoing and that the threats and communications were part of the same racketeering activity, thus plausibly alleging open-ended continuity.

## **Answer (U.S. Federal)**

### **Short response**

The Plaintiff’s allegations of ongoing threatening communications and coordination plausibly allege open-ended continuity under RICO, as established by Supreme Court and circuit precedent, and the judge’s dismissal for lack of criminality or connection to the original scheme appears inconsistent with the governing legal standards. The Plaintiff’s theory that these acts were in furtherance of a continuing fraudulent scheme and posed a threat of future racketeering activity should have been credited at the pleading stage.

### **Summary**

The legal standard for open-ended continuity under RICO requires that the alleged racketeering acts either explicitly or implicitly threaten long-term criminal activity, and this can be satisfied by showing that the acts are part of an ongoing scheme or pose a risk of future repetition. The Plaintiff’s complaint, which alleges that the Defendants’ continued threats and coordination were in direct furtherance of a fraudulent scheme and included explicit threats of future retaliation, aligns with the requirements for open-ended continuity as articulated by the Supreme Court and multiple federal appellate courts.

The judge’s finding that the later communications were “distinct in character” and not criminal overlooks the Plaintiff’s allegations that these

acts were part of the same enterprise and furthered the original scheme. Under the relevant authorities, courts must consider whether the facts as pleaded plausibly allege a threat of continued racketeering activity, and the Plaintiff's theory that the scheme was ongoing and the threats were part of the same racketeering activity is well-supported by the case law.

## Background and Relevant Law

### Statutory Framework

The [Racketeer Influenced and Corrupt Organizations](#) Act (RICO), 18 U.S.C. §§ 1961–1968, requires a plaintiff to plead and prove a “pattern of racketeering activity.” This pattern must consist of at least two predicate acts of racketeering within ten years, but the Supreme Court has clarified that two acts alone are not necessarily sufficient; the acts must be related and must amount to or pose a threat of continued criminal activity, which is the “continuity” requirement ([Inc v. Northwestern Bell Telephone Company, 492 U.S. 229, 109 S.Ct. 2893, 106 L.Ed.2d 195 \(1989\)](#)).

Continuity can be established in two ways: (1) closed-ended continuity, which involves a series of related predicate acts extending over a substantial period of time, or (2) open-ended continuity, which involves past conduct that by its nature projects into the future with a threat of repetition ([Inc v. Northwestern Bell Telephone Company, 492 U.S. 229 \(1989\)](#); [Johnson v. Heath, 56 F.4th 851 \(10th Cir. 2022\)](#)).

### Case Law

The Supreme Court in [Inc v. Northwestern Bell Telephone Company, 492 U.S. 229 \(1989\)](#) (H.J. Inc.) established that open-ended continuity may be shown if the predicate acts themselves involve a distinct threat of long-term racketeering activity, are part of the regular way of conducting business for an ongoing entity, or are a regular means of conducting or participating in an ongoing RICO enterprise. The Court emphasized that continuity is centrally a temporal concept, but that a threat of future criminal conduct can suffice even if the acts occurred over a short period.

Subsequent federal appellate and district court decisions have consistently applied and elaborated on this standard. For example, the Tenth Circuit in [Johnson v. Heath, 56 F.4th 851 \(10th Cir. 2022\)](#) reiterated that open-ended continuity can be established by showing that the racketeering acts involved implicit or explicit threats of repetition, formed the operations of an association for criminal purposes, or were the regular way of conducting a legitimate enterprise. The Fourth Circuit in [US Airline Pilots Ass'n v. Awappa, LLC, 615 F.3d 312 \(4th Cir. 2010\)](#) and the Seventh Circuit in [Menzies v. Seyfarth Shaw LLP, 943 F.3d 328 \(7th Cir. 2019\)](#) have similarly held that the focus for open-ended continuity is on whether there is a concrete threat that the conduct will continue into the future.

Courts have also made clear that the determination of continuity is fact-specific and must be made on a case-by-case basis, considering the nature of

the acts, their relationship to each other, and whether they pose a threat of continued criminal activity ([US Airline Pilots Ass'n v. Awappa, LLC, 615 F.3d 312 \(4th Cir. 2010\)](#); [Chen v. Mayflower Transit, Inc., 159 F.Supp.2d 1103 \(N.D. Ill. 2001\)](#)).

Secondary materials and treatises reinforce these principles, emphasizing that open-ended continuity can be established by a threat of continuing criminal activity extending indefinitely into the future, and that the existence of such a threat is a function of the particular facts of each case (see, e.g., RICO: A Primer; [Racketeer influenced and corrupt organizations](#)).

## **Analysis**

### **The Plaintiff's Allegations and the Standard for Open-Ended Continuity**

The Plaintiff alleges that after the initial acts in December 2023–January 2024, the Defendants continued to engage in threatening and intimidating communications and ongoing coordination through at least May 2025. The complaint specifically asserts that these communications were in direct furtherance of the fraudulent scheme to see the divorce through to its finalization and that they demonstrated the enterprise's ongoing criminal intent and explicit threats of future retaliation.

Under the Supreme Court's standard in [Inc v. Northwestern Bell Telephone Company, 492 U.S. 229 \(1989\)](#), these allegations, if true, are sufficient to plead open-ended continuity. The Court held that continuity may be established by showing that the predicate acts themselves involve a distinct threat of long-term racketeering activity, or that they are part of the regular way of conducting business for an ongoing entity. The Plaintiff's allegations that the threats and communications were part of an ongoing scheme and included explicit threats of future retaliation directly address this standard.

The Tenth Circuit in [Johnson v. Heath, 56 F.4th 851 \(10th Cir. 2022\)](#) further clarifies that open-ended continuity can be established by showing that the racketeering acts involved implicit or explicit threats of repetition, or that they formed the operations of an association that exists for criminal purposes. The Plaintiff's complaint alleges both explicit threats of future retaliation and ongoing coordination, which, if credited, would support a finding of open-ended continuity.

Similarly, the Fourth Circuit in [US Airline Pilots Ass'n v. Awappa, LLC, 615 F.3d 312 \(4th Cir. 2010\)](#) and the Seventh Circuit in [Menzies v. Seyfarth Shaw LLP, 943 F.3d 328 \(7th Cir. 2019\)](#) have held that the focus for open-ended continuity is on whether there is a concrete threat that the conduct will continue into the future. The Plaintiff's allegations of ongoing threats and coordination, in furtherance of the same fraudulent scheme, plausibly allege such a threat.

## **The Judge's Dismissal and the Requirement to Credit the Plaintiff's Theory**

The judge dismissed the later communications and threats as "distinct in character from the initial alleged scheme and do not evidence criminal conduct." However, at the pleading stage, courts are required to accept the Plaintiff's factual allegations as true and draw all reasonable inferences in the Plaintiff's favor. The Plaintiff's theory is that the later acts were not isolated or unrelated, but were in direct furtherance of the original fraudulent scheme and demonstrated ongoing criminal intent.

The Supreme Court and lower courts have repeatedly emphasized that the continuity requirement is satisfied if the facts as pleaded plausibly allege a threat of continued racketeering activity, and that the determination is fact-specific ([Inc v. Northwestern Bell Telephone Company, 492 U.S. 229 \(1989\)](#); [US Airline Pilots Ass'n v. Awappa, LLC, 615 F.3d 312 \(4th Cir. 2010\)](#)). The judge's failure to credit the Plaintiff's theory that the scheme was ongoing and that the threats and communications were part of the same racketeering activity is inconsistent with this standard.

Moreover, the requirement that the acts be "related" is satisfied if they have the same or similar purposes, results, participants, victims, or methods of commission, or are otherwise interrelated by distinguishing characteristics and are not isolated events ([Inc v. Northwestern Bell Telephone Company, 492 U.S. 229 \(1989\)](#); [Bank of America Nat. Trust & Sav. Ass'n v. Touche Ross & Co., 782 F.2d 966 \(11th Cir. 1986\)](#), abrogated on other grounds by [Reves v. Ernst & Young, 507 U.S. 170 \(1993\)](#)). The Plaintiff's allegations that the later acts were in furtherance of the same fraudulent scheme and involved the same participants and victim support the relatedness requirement.

## **Case-by-Case Analysis and the Threat of Continued Racketeering Activity**

The authorities uniformly hold that whether the predicates establish a threat of continued racketeering activity depends on the specific facts of each case ([US Airline Pilots Ass'n v. Awappa, LLC, 615 F.3d 312 \(4th Cir. 2010\)](#); [Chen v. Mayflower Transit, Inc., 159 F.Supp.2d 1103 \(N.D. Ill. 2001\)](#)). The Plaintiff's allegations of ongoing threats and coordination, in furtherance of a scheme that had not yet reached its objective (the finalization of the divorce), and explicit threats of future retaliation, are precisely the type of facts that courts have found sufficient to plead open-ended continuity.

Secondary materials reinforce that open-ended continuity can be established by a threat of continuing criminal activity extending indefinitely into the future, and that the existence of such a threat is a function of the particular facts of each case (RICO: A Primer; [Racketeer influenced and corrupt organizations](#)). The Plaintiff's allegations fit squarely within this framework.

## **Authorities with Subsequent Negative Treatment**

Some authorities cited in the tables have been subject to subsequent negative treatment. For example, [Jackson v. Segwick Claims Mgmt. Servs., Inc., 699 F.3d 466 \(6th Cir. 2013\)](#) was vacated by a later district court decision, and [Tabas v. Tabas, 47 F.3d 1280 \(3rd Cir. 1995\)](#) was declined to extend by a later Third Circuit case. However, the core principles regarding open-ended continuity as articulated in these cases are consistent with the Supreme Court's decision in [Inc v. Northwestern Bell Telephone Company, 492 U.S. 229 \(1989\)](#), which remains controlling authority. The negative treatment of these cases does not undermine the general principles they articulate regarding open-ended continuity, but care should be taken not to rely on them for any broader propositions beyond those established by the Supreme Court.

Similarly, [Bank of America Nat. Trust & Sav. Ass'n v. Touche Ross & Co., 782 F.2d 966 \(11th Cir. 1986\)](#) was abrogated by [Reves v. Ernst & Young, 507 U.S. 170 \(1993\)](#) on the issue of the RICO "operation or management" test, but its discussion of the pattern and continuity requirements remains consistent with the Supreme Court's later articulation in [H.J. Inc.](#)

## **Exceptions and Caveats**

While the Plaintiff's allegations are sufficient to plead open-ended continuity, the ultimate determination of whether the acts constitute criminal conduct under RICO will depend on the specific facts and evidence developed in discovery. Courts have cautioned that predicate acts extending over only a few weeks or months and threatening no future criminal conduct do not satisfy the continuity requirement ([Inc v. Northwestern Bell Telephone Company, 492 U.S. 229 \(1989\)](#); [Menasco, Inc. v. Wasserman, 886 F.2d 681 \(4th Cir. 1989\)](#)). However, where, as here, the Plaintiff alleges ongoing acts over a period of more than a year and a half, in furtherance of a scheme that has not yet reached its objective, and explicit threats of future retaliation, these concerns are not present.

It is also important to note that the continuity requirement is not satisfied by isolated or sporadic acts that do not pose a threat of future criminal conduct. The Plaintiff must ultimately prove that the acts were related and posed a threat of continued racketeering activity, but at the pleading stage, the allegations as described are sufficient.

## **Conclusion**

In summary, the Plaintiff's allegations of ongoing threatening communications and coordination, in furtherance of a fraudulent scheme and including explicit threats of future retaliation, plausibly allege open-ended continuity under RICO as articulated by the Supreme Court and federal appellate courts. The judge's dismissal of these allegations as unrelated or non-criminal failed to credit the Plaintiff's theory that the scheme was ongoing and that the threats and communications were part of the same racketeering activity. The relevant authorities require a case-by-

case analysis, and the Plaintiff's allegations, if true, are sufficient to survive a motion to dismiss on the issue of open-ended continuity. The Plaintiff's theory is well-supported by the governing legal standards, and the case should proceed to discovery to determine whether the facts ultimately support a finding of a pattern of racketeering activity.

## **Legal Authorities**

[HJ INC. v. Northwestern Bell Telephone Co., 653 F. Supp. 908 \(D. Minn. 1987\)](#)

### **U.S. District Court — District of Minnesota**

#### **Extract**

A number of courts, most notably the United States Court of Appeals for the Eleventh Circuit in Bank of America National Trust & Savings Association v. Touche Ross & Co., 782 F.2d 966 (11th Cir.1986), have attempted to steer a middle ground, holding that a single fraudulent scheme which encompasses various predicate acts over a significant period of time satisfies the pattern requirement. ... Under this approach, it is not necessary to allege multiple criminal schemes, provided that plaintiff alleges an 'open-ended scheme' over an extended period of time evincing criminal activity which is continuous in nature rather than isolated.

#### **Summary**

Concept of continuity in the context of RICO cases, specifically addressing the idea that a single fraudulent scheme with various predicate acts over a significant period can satisfy the pattern requirement. This aligns with the proposition that the Plaintiff's allegations of ongoing threatening communications and coordination could demonstrate open-ended continuity, as they suggest a continuous scheme rather than isolated acts.

[Johnson v. Heath, 56 F.4th 851 \(10th Cir. 2022\)](#)

### **U.S. Court of Appeals — Tenth Circuit**

#### **Extract**

Continuity can be either closed or open ended. Id. at 241, 109 S.Ct. 2893. Closed-ended continuity is a closed period of repeated racketeering conduct, while open-ended continuity consists of racketeering conduct that threatens future repetition. Id. Plaintiffs can establish open-ended continuity by showing that the racketeering acts involved implicit or explicit threats of repetition, that they formed the operations of an association that exists for criminal purposes, or that they were the defendants' regular way of conducting a legitimate enterprise. Id. at 242-43, 109 S.Ct. 2893.

## **Summary**

The concept of open-ended continuity in racketeering cases can be established by demonstrating that the acts involved implicit or explicit threats of future repetition. This aligns with the Plaintiff's allegations that the Defendants' actions were part of an ongoing scheme with threats of future retaliation, thus supporting the proposition that the scheme was ongoing and part of the same racketeering activity.

[Corley v. Rosewood Care Center, Inc., 142 F.3d 1041, 1998 WL 206367 \(7th Cir. 1998\)](#)

### **U.S. Court of Appeals — Seventh Circuit**

#### **Extract**

Open-ended continuity, by contrast, may involve predicate acts occurring over a short period of time so long as there is a threat that the conduct will recur in the future. H.J. Inc., 492 U.S. at 241, 109 S.Ct. at 2902 ('open-ended continuity' refers to 'past conduct that by its nature projects into the future with a threat of repetition'); see also Midwest Grinding, 976 F.2d at 1023. Such a threat is present when: '(1) 'a specific threat of repetition' exists, (2) 'the predicates are a regular way of conducting [an] ongoing legitimate business,' or (3) 'the predicates can be attributed to a defendant operating as part of a long-term association that exists for criminal purposes.'

## **Summary**

Open-ended continuity in RICO cases can be established by demonstrating a threat of future criminal conduct. The passage outlines that this can be shown through a specific threat of repetition, regular conduct of business in a fraudulent manner, or actions as part of a long-term criminal association. This aligns with the Plaintiff's allegations that the Defendants' actions were part of an ongoing scheme with threats of future retaliation, thus supporting the proposition of open-ended continuity.

[Jackson v. Segwick Claims Mgmt. Servs., Inc., 699 F.3d 466 \(6th Cir. 2013\)](#)

### **U.S. Court of Appeals — Sixth Circuit**

#### **Extract**

The plaintiffs have also sufficiently pleaded open-ended continuity. Open-ended continuity is "established if the related predicates themselves involve a distinct threat of long-term racketeering activity, either implicit or explicit." H.J. Inc., 492 U.S. at 242, 109 S.Ct. 2893. Continuity may be shown where " 'the predicates are a regular way of conducting defendant's ongoing

legitimate business.' " Brown I, 546 F.3d at 354 (quoting H.J. Inc., 492 U.S. at 243, 109 S.Ct. 2893).

## **Summary**

The concept of open-ended continuity in racketeering cases can be established if the predicate acts involve a distinct threat of long-term racketeering activity, either implicit or explicit. This aligns with the Plaintiff's argument that the ongoing communications and threats were part of a continuous scheme, thus supporting the proposition that the judge may have erred in dismissing these allegations as unrelated or non-criminal.

[Menzies v. Seyfarth Shaw LLP, 943 F.3d 328 \(7th Cir. 2019\)](#)

## **U.S. Court of Appeals — Seventh Circuit**

### **Extract**

The alternative continuity inquiry—applicable to an 'open-ended' series of misconduct—focuses not on what acts occurred in the past but on whether a concrete threat remains for the conduct to continue moving forward. ... This can be done by showing that a defendant's actions pose a specific threat of repetition; that the predicate acts form part of the defendant's ongoing and regular way of doing business; or that the defendant operates a long-term association for criminal purposes.

## **Summary**

The concept of open-ended continuity in RICO cases involves assessing whether there is a concrete threat of ongoing misconduct. This can be demonstrated by showing that the defendant's actions pose a specific threat of repetition or are part of their regular way of doing business. The passage supports the proposition by emphasizing that the continuity inquiry is forward-looking and focuses on the threat of future misconduct, which aligns with the Plaintiff's allegations of ongoing threats and coordination by the Defendants.

[Tabas v. Tabas, 47 F.3d 1280 \(3rd Cir. 1995\)](#)

## **U.S. Court of Appeals — Third Circuit**

### **Extract**

Moreover, even if we were not to have found that conduct lasting three and one-half years was sufficient to establish closed-ended continuity, we conclude that continuity still would have been established for the purposes of summary judgment in the present case under an 'open-ended' continuity analysis. Under H.J. Inc., if a RICO action is brought before a plaintiff can

establish long-term criminal conduct, the 'continuity' prong may still be met if a plaintiff can prove a threat of continued racketeering activity. Whether the predicate acts constitute a threat of continued racketeering activity depends on 'the specific facts of each case,' id. at 242, 109 S.Ct. at 2902, but H.J. Inc. suggests that open-ended continuity may be satisfied 'where it is shown that the predicates are a regular way of conducting defendant's ongoing legitimate business ... or of conducting or participating in an ongoing and legitimate RICO 'enterprise.'

## **Summary**

The concept of open-ended continuity under RICO can be established if there is a threat of continued racketeering activity. This can be shown if the predicate acts are a regular way of conducting the defendant's business or participating in an ongoing enterprise. The passage supports the proposition by indicating that the Plaintiff's allegations of ongoing threats and communications could demonstrate a threat of continued racketeering activity, thus satisfying the open-ended continuity requirement.

[Rini v. Zwirn, 886 F.Supp. 270 \(E.D. N.Y. 1995\)](#)

## **U.S. District Court — Eastern District of New York**

### **Extract**

The Court in H.J. Inc. explained that the continuity requirement can be met where the predicate acts establish either explicitly, 'a specific threat of repetition extending indefinitely into the future,' or implicitly, by 'showing that the predicate acts or offenses are part of an ongoing entity's regular way of doing business.' H.J. Inc., 492 U.S. at 242-43, 109 S.Ct. at 2902.

## **Summary**

The passage from "Rini v. Zwirn" references the Supreme Court's interpretation in H.J. Inc., which clarifies that open-ended continuity in RICO cases can be established by showing a specific threat of repetition or that the acts are part of an ongoing business practice. This directly supports the proposition that the Plaintiff's allegations of ongoing threats and communications could demonstrate open-ended continuity if they suggest a threat of long-term racketeering activity.

[Menasco, Inc. v. Wasserman, 886 F.2d 681 \(4th Cir. 1989\)](#)

## **U.S. Court of Appeals — Fourth Circuit**

## **Extract**

The Supreme Court recently visited RICO's pattern requirement. *H.J. Inc. v. Northwestern Bell Telephone Co.*, --- U.S. ----, 109 S.Ct. 2893, 106 L.Ed.2d 195 (1989). The H.J. Inc. Court reaffirmed that 'to prove a pattern of racketeering activity a plaintiff ... must show that the racketeering predicates are related, and that they amount to or pose a threat of continued criminal activity.' Id. 109 S.Ct. at 2900 (emphasis in original). Predicate acts are related if they have 'the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events.' Id. at 2901, quoting 18 U.S.C. Sec. 3575(e). Continuity, in turn, refers '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.' Id. at 2902 (emphasis added). To satisfy the continuity element, a plaintiff must show that 'the predicates themselves amount to, or ... otherwise constitute a threat of, continuing racketeering activity.' Id. at 2901 (emphasis in original). Significantly, '[p]redicate acts extending over a few weeks or months and threatening no future criminal conduct do not satisfy this requirement: Congress was concerned in RICO with long-term criminal conduct.' Id. at 2902. See also id. (continuity requires activity over a 'substantial period of time'); id. at n. 4 (continuity requires 'long-term criminal activity'). Thus, predicate acts must be part of a prolonged criminal endeavor.

## **Summary**

The Supreme Court's interpretation in *H.J. Inc.* provides a framework for establishing a pattern of racketeering activity under RICO. The passage emphasizes the need for related predicate acts that pose a threat of continued criminal activity, which aligns with the Plaintiff's allegations of ongoing threats and communications as part of a continuous scheme. The passage supports the idea that continuity can be established by demonstrating a threat of long-term racketeering activity, which is central to the Plaintiff's argument.

[Stewart v. Associates Consumer Discount Co., 1 F.Supp.2d 469 \(E.D. Pa. 1998\)](#)

## **U.S. District Court — Eastern District of Pennsylvania**

## **Extract**

To plead a 'pattern of racketeering activity,' a plaintiff must aver not only that the defendant committed at least two acts of prohibited racketeering activity but also that the predicate acts are related and that they amount to or pose a threat of continued criminal activity. *H.J., Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. 229, 240, 109 S.Ct. 2893, 2900, 106 L.Ed.2d 195 (1989)... Continuity, on the other hand, has been said to be 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. H.J., Inc., 492 U.S. at 241-242, 109 S.Ct. at 2902.

## **Summary**

To establish a pattern of racketeering activity under RICO, a plaintiff must demonstrate that the predicate acts are related and pose a threat of continued criminal activity. The concept of continuity can be open-ended, meaning that past conduct can project into the future with a threat of repetition. This supports the proposition that the Plaintiff's allegations of ongoing threats and communications could be part of a continuous racketeering activity, as they may demonstrate a threat of continued criminal conduct.

[Qantel Corp. v. Niemuller, 771 F.Supp. 1361 \(S.D. N.Y. 1991\)](#)

### **U.S. District Court — Southern District of New York**

#### **Extract**

The Supreme Court has recognized, however, that 'often a RICO action will be brought before continuity can be established in this way. In such cases, liability depends on whether the threat of continuity is demonstrated.' H.J. Inc., *supra*, 492 U.S. at 242, 109 S.Ct. at 2902 (emphasis in original). Whether the predicate acts alleged establish a threat of continued racketeering activity depends on the specific facts of each case. Such a threat may be shown, for example, where the related predicate acts themselves involve a clear threat of long-term racketeering activity, or where the predicate acts are part of an ongoing entity's regular method of doing business. See H.J. Inc., *supra*, 492 U.S. at 242, 109 S.Ct. at 2902.

## **Summary**

The Supreme Court has clarified that establishing a pattern of racketeering activity under RICO can involve demonstrating a threat of continuity. This can be shown through predicate acts that pose a clear threat of long-term racketeering activity. The passage supports the proposition by indicating that the Plaintiff's allegations of ongoing threats and communications could demonstrate such a threat, thus supporting the claim of open-ended continuity.

[Hemmerdinger Corp. v. Ruocco, 976 F.Supp.2d 401 \(E.D. N.Y. 2013\)](#)

### **U.S. District Court — Eastern District of New York**

## **Extract**

To state a claim under Section 1962(c), Plaintiff must also allege a pattern of racketeering activity, which is defined as “at least two acts of racketeering activity ... within ten years ... after the commission of a prior act of racketeering activity.” ... In *H.J., Inc. v. Northwestern Bell Tel. Co.*, the Supreme Court clarified the pattern requirement as one that requires continuity, which may be either closed- or open-ended. ... open-ended continuity refers to “past conduct that by its nature projects into the future with a threat of repetition.” ... To allege open-ended continuity, Plaintiff must allege “a threat of continued racketeering activity.”

## **Summary**

To establish a RICO claim under Section 1962(c), a plaintiff must demonstrate a pattern of racketeering activity, which can be shown through either closed- or open-ended continuity. Open-ended continuity involves demonstrating a threat of continued racketeering activity, which aligns with the Plaintiff's allegations of ongoing threats and communications in furtherance of a fraudulent scheme. The passage supports the proposition by explaining the legal standard for open-ended continuity, which the Plaintiff is attempting to establish.

[US Airline Pilots Ass'n v. Awappa, LLC, 615 F.3d 312 \(4th Cir. 2010\)](#)

## **U.S. Court of Appeals — Fourth Circuit**

### **Extract**

To demonstrate a pattern of such activity, the plaintiff must show “continuity plus relationship,” i.e., “that the racketeering predicates are related, and that they amount to or pose a threat of continued criminal activity.” *H.J. Inc.*, 492 U.S. at 239, 109 S.Ct. 2893 (emphasis and internal quotation marks omitted). ... The Supreme Court has 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.” *H.J. Inc.*, 492 U.S. at 241, 109 S.Ct. 2893. ... To allege open-ended continuity, a plaintiff must plead facts that demonstrate a “threat of continuity,” i.e., facts that give rise to a reasonable expectation that the racketeering activity will “extend[ ] indefinitely into the future.” Id. “Whether the predicates proved establish a threat of continued racketeering activity depends on the specific facts of each case.” Id.

## **Summary**

To establish a pattern of racketeering activity under RICO, a plaintiff must demonstrate both continuity and relationship among the predicate acts. The concept of continuity can be either closed-ended or open-ended. Open-ended continuity involves showing a threat of continued criminal activity that

projects into the future. The passage supports the proposition by explaining that open-ended continuity can be established by demonstrating a threat of continuity, which aligns with the Plaintiff's allegations of ongoing threats and communications as part of the same racketeering activity.

[Chen v. Mayflower Transit, Inc., 159 F.Supp.2d 1103 \(N.D. Ill. 2001\)](#)

**U.S. District Court — Northern District of Illinois**

**Extract**

The pattern requirement means that in addition to at least two predicate acts, a RICO plaintiff must show `that the racketeering predicates are related, and that they amount to or pose a threat of continued criminal activity.' ... Continuity, the Court observed, is both a closed- and open-ended concept, in that it refers '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.'

**Summary**

The passage from "Chen v. Mayflower Transit, Inc." discusses the requirements for establishing a pattern of racketeering activity under RICO, specifically the need to show that the racketeering predicates are related and pose a threat of continued criminal activity. It also explains the concept of continuity, which can be either closed-ended or open-ended, with open-ended continuity involving conduct that projects into the future with a threat of repetition. This directly supports the proposition that the Plaintiff's allegations of ongoing threats and communications could establish open-ended continuity by demonstrating a threat of long-term racketeering activity.

[CS Tech. v. Horizon River Techs., 3:18-cv-00273-RJC-DSC \(W.D. N.C. Feb 21, 2020\)](#)

**U.S. District Court — Western District of North Carolina**

**Extract**

"'Continuity' 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." H. J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 241 (1989). "To allege open-ended continuity, a [claimant] must plead facts that demonstrate a threat of continuity, i.e., facts that give rise to a reasonable expectation that the racketeering activity will extend[] indefinitely into the future." US Airline Pilots Ass'n, 615 F.3d at 318 (quotation marks omitted)(second alteration in original).

## **Summary**

The concept of continuity in RICO cases can be either closed-ended or open-ended. Open-ended continuity involves demonstrating a threat of ongoing racketeering activity, which aligns with the Plaintiff's allegations of continued threats and communications as part of a fraudulent scheme. The passage supports the idea that the Plaintiff's allegations could establish open-ended continuity by showing a threat of future racketeering activity.

[In re Phillips Petroleum Securities Litigation, 738 F.Supp. 825 \(D. Del. 1990\)](#)

### **U.S. District Court — District of Delaware**

#### **Extract**

Recently, in H.J. Inc. v. Northwestern Bell Telephone Co., \_\_\_ U.S. \_\_\_, 109 S.Ct. 2893, 106 L.Ed.2d 195 (1989) (citing Barticheck v. Fidelity Union Bank/First National State, 832 F.2d 36 (3d Cir.1987)), the Supreme Court interpreted RICO's pattern requirement. The H.J. Inc. Court reaffirmed that in order 'to prove a pattern of racketeering activity a plaintiff ... must show that the racketeering predicates are related, and that they amount to or pose a threat of continued criminal activity.' Id. 109 S.Ct. at 2900 (emphasis in original). Predicate acts are related if they have 'the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events.' Id. at 2901, quoting 18 U.S.C. § 3575(e). Continuity refers '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.' Id. at 2902. To satisfy the continuity element, a plaintiff must show that 'the predicates themselves amount to, or ... otherwise constitute a threat of, continuing racketeering activity.' Id. at 2901 (emphasis in original). 'Predicate acts extending over a few weeks or months and threatening no future criminal conduct do not satisfy this requirement: Congress was concerned in RICO with long-term criminal conduct.' Id. at 2902.

## **Summary**

The Supreme Court in H.J. Inc. v. Northwestern Bell Telephone Co. clarified the requirements for establishing a pattern of racketeering activity under RICO. The passage emphasizes that the predicate acts must be related and pose a threat of continued criminal activity, which aligns with the Plaintiff's allegations of ongoing threats and communications as part of a continuous scheme. The passage also highlights the importance of demonstrating continuity, either through a closed period of repeated conduct or past conduct projecting future threats, which supports the Plaintiff's argument of open-ended continuity.

[Sizer v. Oshinnaiye, Civil Action No. FLH-19-569 \(D. Md. Jan 17, 2020\)](#)

## **U.S. District Court — District of Maryland**

### **Extract**

"As indicated, a pattern of racketeering activity involves continued criminal activity. H.J. Inc., 492 U.S. at 239. The Fourth Circuit has adopted a 'flexible' approach to the 'continuity' requirement. Brandenburg v. Seidel, 859 F.2d 1179, 1185 (4th Cir. 1989), overruled on other grounds by Quackenbush v. Allstate Ins. Co., 517 U.S. 706 (1996). Courts utilize a 'case-by-case analysis, Capital Lighting and Supply, LLC v. Wirtz, JKB-17-3765, 2018 WL 3970469, at \*6 (D. Md. Aug. 20, 2018), and consider 'the 'criminal dimension and degree' of the alleged misconduct.' 'Continuity' 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." H.J. Inc., 492 U.S. at 241.

### **Summary**

The concept of "continuity" in RICO cases can be both closed and open-ended. The passage emphasizes that continuity can refer to past conduct that projects into the future with a threat of repetition, which aligns with the Plaintiff's argument that the Defendants' actions were part of an ongoing scheme. The Fourth Circuit's flexible approach to continuity supports the idea that the Plaintiff's allegations of ongoing threats and communications could be seen as part of a continuous racketeering activity.

[Bank of America Nat. Trust & Sav. Ass'n v. Touche Ross & Co., 782 F.2d 966 \(11th Cir. 1986\)](#)

## **U.S. Court of Appeals — Eleventh Circuit**

### **Extract**

Defendants also contend that the banks failed to allege the existence of a pattern of racketeering activity. Although Sec. 1961(5) merely requires 'at least two acts of racketeering activity' in order to establish a pattern, the Supreme Court has indicated that two acts may not be sufficient. In Sedima, the Court reviewed the legislative history of RICO and stated that two isolated acts of racketeering activity do not constitute a pattern; rather, to establish a pattern there must be a showing of more than one racketeering activity and the threat of continuing activity. As an aid in interpreting RICO's pattern requirement, the Court quoted from 18 U.S.C. Sec. 3575(e): 'criminal conduct forms a pattern if it embraces criminal acts that have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events.'

## **Summary**

The passage discusses the requirements for establishing a pattern of racketeering activity under RICO. It emphasizes that a pattern requires more than just two isolated acts; there must be a threat of continuing activity, and the acts must be interrelated by distinguishing characteristics. This supports the proposition that the Plaintiff's allegations of ongoing threats and communications could establish a pattern of racketeering activity if they demonstrate a threat of long-term activity and are related to the initial scheme.

[Inc v. Northwestern Bell Telephone Company, 492 U.S. 229, 109 S.Ct. 2893, 106 L.Ed.2d 195 \(1989\)](#)

## **U.S. Supreme Court**

### **Extract**

Continuity of racketeering activity likewise may be demonstrated in a variety of ways. Continuity is centrally a temporal concept, and may be either closed- or open-ended. A party alleging a RICO violation may demonstrate continuity over a closed period by proving a series of related predicates extending over a substantial period of time. Otherwise, it must be shown that the predicates establish a threat of long-term racketeering activity—for example, because the predicates themselves involve a distinct threat of such activity; because they are part of the regular way of doing business for an ongoing entity such as a criminal association or legitimate business; or because they are a regular means of conducting or participating in an ongoing RICO enterprise.

## **Summary**

Continuity in racketeering activity can be demonstrated through either closed or open-ended means. The passage specifically mentions that continuity can be shown if the predicates establish a threat of long-term racketeering activity, which aligns with the Plaintiff's argument that the Defendants' actions involved ongoing threats and coordination. This supports the proposition that the Plaintiff's allegations of continued threatening communications and coordination could establish open-ended continuity under RICO.

[Racketeer influenced and corrupt organizations.](#)

## **Extract**

The 'continuity' component is met by either closed-ended continuity, defined as 'a series of related predicates extending over a substantial period of time,' or open-ended continuity, defined as conduct that poses a threat of extending into the future. (55) The Court suggested a case-by-case examination of this issue, noting that the existence of a 'threat of continued racketeering activity' is a function of particular facts. (56) ... See H.J. Inc., 492 U.S. at 242 (suggesting open-ended continuity can be satisfied by showing likelihood of predicate acts continuing into the future or by showing that predicate acts occur in normal course of entity's business).

## **Summary**

The concept of "continuity" in RICO cases can be established through either closed-ended or open-ended continuity. Open-ended continuity is particularly relevant here, as it involves conduct that poses a threat of extending into the future. The passage from H.J. Inc. supports the idea that open-ended continuity can be shown by demonstrating a likelihood of predicate acts continuing into the future, which aligns with the Plaintiff's allegations of ongoing threats and communications as part of the same racketeering activity.

### Racketeer influenced and corrupt organizations.

**American Criminal Law Review - Georgetown University Law Center - Sacks, Michele - 2005-03-22**

## **Extract**

The 'continuity' component is met by either closed-ended continuity, defined as 'a series of related predicates extending over a substantial period of time,' or open-ended continuity, defined as conduct that poses a threat of extending into the future. The Court suggested a case-by-case examination of this issue, noting that the existence of a 'threat of continued racketeering activity' is a function of particular facts. The Court offered a non-exhaustive list of situations that may constitute a pattern, and stated 'development of these concepts must await future cases.'

## **Summary**

The concept of "continuity" in RICO cases can be established through either closed-ended or open-ended continuity. Open-ended continuity is particularly relevant here, as it involves conduct that poses a threat of extending into the future. The passage emphasizes that the determination of a "threat of continued racketeering activity" is fact-specific and requires a case-by-case analysis. This supports the Plaintiff's argument that the ongoing communications and threats are part of a continuous racketeering scheme, as they pose a threat of future criminal conduct.

## [Racketeer influenced and corrupt organizations.](#)

**American Criminal Law Review - Georgetown University Law Center - Douglass, Sean M. - 2011-03-22**

### **Extract**

The 'continuity' prong is satisfied by proof of either closed-ended continuity or open-ended continuity. Closed-ended continuity in the RICO context may be demonstrated 'by proving a series of related predicates extending over a substantial period of time.' Open-ended continuity in the RICO context is conduct that may last only a short period of time but nonetheless poses a threat of extending into the future. The Court suggested a case-by-case examination of this issue, noting that the existence of a 'threat of continued racketeering activity' is a function of particular facts.

### **Summary**

The concept of open-ended continuity in RICO cases involves conduct that poses a threat of extending into the future, even if it lasts only a short period of time. The passage emphasizes the need for a case-by-case examination to determine the existence of a threat of continued racketeering activity. This aligns with the Plaintiff's argument that the Defendants' ongoing communications and threats were part of a continuous scheme, thus supporting the proposition that open-ended continuity can be established.

## [Chapter 4. Elements of Cause of Action](#)

**Civil RICO: A Definitive Guide. Fifth Edition - American Bar Association - Gregory P. Joseph**

### **Extract**

Open-ended continuity, in contrast, requires proof of "a threat of continued racketeering activity." Id. at 242. Under H.J. Inc., open-ended continuity may be established in various ways. The Court furnished some examples. First, a small number of related predicates occurring close together in time will establish open-ended continuity if "the racketeering acts themselves include a specific threat of repetition extending indefinitely into the future, and thus supply the requisite threat of continuity." Second, the threat of continuity may be established with a "showing that the predicate acts or offenses are part of an ongoing entity's regular way of doing business." Third, continuity is proved "if the predicates can be attributed to a defendant operating as part of a long-term association that exists for criminal purposes." In any case, the entity involved may be a legitimate business and need not be one "traditionally grouped under the phrase 'organized crime.'" Id. at 242-43.

## **Summary**

Open-ended continuity in RICO cases can be established by demonstrating a threat of continued racketeering activity. This can be shown through a specific threat of repetition, the predicate acts being part of an ongoing business practice, or the acts being part of a long-term criminal association. The Plaintiff's allegations that the communications were in furtherance of a fraudulent scheme and demonstrated ongoing criminal intent align with the criteria for open-ended continuity as described in the passage.

[Racketeer influenced and corrupt organizations.](#)

**American Criminal Law Review - Georgetown University Law Center - Mecone, James Morrison - 2006-03-22**

## **Extract**

The 'continuity' component is met by either closed-ended continuity, defined as 'a series of related predicates extending over a substantial period of time,' or open-ended continuity, defined as conduct that poses a threat of extending into the future. (53) The Court suggested a case-by-case examination of this issue, noting that the existence of a 'threat of continued racketeering activity' is a function of particular facts. (54) ... (53.) See H.J. Inc., 492 U.S. at 242 (suggesting open-ended continuity can be satisfied by showing likelihood of predicate acts continuing into the future or by showing that predicate acts occur in normal course of entity's business); ... (54.) H.J. Inc., 492 U.S. at 242.

## **Summary**

The passage from the American Criminal Law Review discusses the concept of continuity in the context of RICO, specifically addressing how open-ended continuity can be established. It highlights that open-ended continuity involves conduct that poses a threat of extending into the future and that this determination is based on the particular facts of each case. The passage references H.J. Inc., which is a key case in understanding the continuity requirement under RICO. This directly supports the proposition that the Plaintiff's allegations of ongoing threats and communications could establish open-ended continuity if they demonstrate a threat of continued racketeering activity.

[Racketeer influenced and corrupt organizations.](#)

**American Criminal Law Review - Georgetown University Law Center - Argust, Corey P. - 2010-03-22**

## **Extract**

Open-ended continuity in the RICO context is conduct that may last only a short period of time but nonetheless, poses a threat of extending into the future. (60) The Court suggested a case-by-case examination of this issue, noting that the existence of a 'threat of continued racketeering activity' is a function of particular facts. (61)

## **Summary**

Open-ended continuity under RICO can be established by demonstrating a threat of continued racketeering activity. This aligns with the Plaintiff's allegations that the Defendants' actions posed a threat of ongoing criminal conduct, which is central to establishing open-ended continuity in the context of RICO.

### Racketeer influenced and corrupt organizations.

**American Criminal Law Review - Georgetown University Law Center - Franklin, Amy - 2008-03-22**

## **Extract**

The 'continuity' component is met by either closed-ended continuity, defined as 'a series of related predicates extending over a substantial period of time,' or open-ended continuity, defined as conduct that poses a threat of extending into the future. (55) The Court suggested a case-by-case examination of this issue, noting that the existence of a 'threat of continued racketeering activity' is a function of particular facts. (56) ... See H.J. Inc., 492 U.S. at 242 (suggesting open-ended continuity can be satisfied by showing likelihood of predicate acts continuing into the future or by showing that predicate acts occur in normal course of entity's business); ...

## **Summary**

The concept of "open-ended continuity" under RICO can be established by demonstrating a threat of continued racketeering activity. The passage from H.J. Inc. supports the idea that if the Plaintiff can show that the Defendants' actions pose a threat of continuing into the future, this could satisfy the requirement for open-ended continuity. The Plaintiff's allegations that the Defendants' communications were in furtherance of a fraudulent scheme and demonstrated ongoing criminal intent align with the criteria for open-ended continuity as described in the passage.

### RECONCEIVING COERCION-BASED CRIMINAL DEFENSES.

**Journal of Criminal Law and Criminology - Northwestern University, School of Law - Galoob, Stephen R. - 2022-03-22**

## **Extract**

The inquiry here is meant to invoke the 'pattern of racketeering activity' element of the Racketeer Influenced and Corrupt Organizations Act (RICO). The Organized Crime Control Act (1970), which includes RICO, provides that 'criminal conduct forms a pattern if it embraces criminal acts that have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events.' The Supreme Court characterized this requirement as a 'relationship' element and held that the statute further requires a 'continuity' element, '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.'

## **Summary**

The passage explains the "pattern of racketeering activity" under RICO, emphasizing the need for both a "relationship" and "continuity" element. The continuity element can be satisfied by showing either a closed period of repeated conduct or conduct that projects into the future with a threat of repetition. This directly supports the proposition that the Plaintiff's allegations of ongoing threats and communications could establish open-ended continuity under RICO, as they suggest a threat of long-term racketeering activity.

### [RICO: A Primer](#)

## **Extract**

A plaintiff may demonstrate a pattern by establishment that the predicate acts pose a threat of continued criminal activity, which is generally demonstrated by showing either: \* Closed-ended continuity. Proving 'a series of related predicate acts extending over a substantial period of time.' \* Open-ended continuity. A threat of 'continuing criminal activity extending indefinitely into the future,' in light of the nature of the enterprise and predicate acts alleged.

## **Summary**

The concept of open-ended continuity under RICO can be established by demonstrating a threat of continuing criminal activity extending indefinitely into the future. This aligns with the Plaintiff's allegations that the Defendants' actions were part of an ongoing scheme, thus supporting the argument that the threats and communications were part of the same racketeering activity.

### [RICO: A Primer](#)

## **Extract**

A plaintiff may demonstrate a pattern by establishment that the predicate acts pose a threat of continued criminal activity, which is generally demonstrated by showing either: ... Open-ended continuity. A threat of 'continuing criminal activity extending indefinitely into the future,' in light of the nature of the enterprise and predicate acts alleged.

## **Summary**

The concept of open-ended continuity in RICO cases involves demonstrating a threat of ongoing criminal activity. This aligns with the Plaintiff's allegations that the Defendants' actions were part of a continuous scheme, thus supporting the argument that the threats and communications were part of the same racketeering activity.

This memo was compiled by Vincent AI based on vLex materials available as of August 31, 2025. [View full answer on vLex](#)