

Question

Plaintiff alleged that after the initial acts in December 2023 and January 2024, Defendants continued to communicate, threaten, and interfere with Plaintiff's business and legal rights through at least May 2025. Open-ended continuity exists where the predicate acts "by their nature project into the future with a threat of repetition." See **Bixler v. Foster**, 596 F.3d 751, 761 (10th Cir. 2010); **H.J. Inc.**, 492 U.S. at 242. The District Court improperly discounted the ongoing threats and communications as "taunting" or unrelated. The 10th Circuit has held that the threat of continued criminal activity, even if the initial scheme's "primary objective" is achieved, can satisfy the continuity requirement if the complaint plausibly alleges ongoing conduct or threats. See **George v. Urban Settlement Servs.**, 833 F.3d 1242, 1257 (10th Cir. 2016) (continuity may be shown by "threats of repetition" or ongoing conduct). Plaintiff's allegations of continued threats, interference, and monitoring of legal proceedings plausibly allege open-ended continuity.

Answer (Oklahoma)

Short response

Plaintiff's allegations of ongoing threats, interference, and monitoring by Defendants after the initial predicate acts plausibly establish open-ended continuity under RICO, as such conduct projects into the future with a threat of repetition. The District Court erred in discounting these ongoing acts, as both Supreme Court and Tenth Circuit precedent recognize that a threat of continued racketeering activity—even after the primary objective is achieved—can satisfy the continuity requirement.

Summary

The legal standard for RICO's continuity requirement, as articulated by the Supreme Court and consistently applied by lower courts, allows for a finding of open-ended continuity where the alleged predicate acts, by their nature, pose a threat of ongoing or future repetition. In this case, Plaintiff's claims that Defendants continued to threaten, interfere, and monitor legal proceedings well beyond the initial acts are sufficient, at the pleading stage, to plausibly allege open-ended continuity, especially where the conduct suggests a risk of continued racketeering activity.

The District Court's dismissal of these ongoing acts as mere "taunting" or unrelated is inconsistent with the governing legal framework, which requires a fact-specific, case-by-case analysis of whether the alleged conduct projects into the future with a threat of repetition. The authorities provided, including Supreme Court and Tenth Circuit guidance, support the conclusion that Plaintiff's allegations, if taken as true, meet the threshold for open-ended continuity and thus satisfy this element of a RICO claim.

Background and Relevant Law

The RICO Continuity Requirement

The [Racketeer Influenced and Corrupt Organizations](#) Act (RICO) requires a plaintiff to establish a “pattern of racketeering activity,” which, as clarified by the Supreme Court, consists of two distinct elements: relationship and continuity. The continuity prong is central to this analysis and can be satisfied in two ways: closed-ended continuity (a series of related predicate acts over a substantial period) or open-ended continuity (conduct that, by its nature, projects into the future with a threat of repetition), as established in *H.J. Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. 229 (1989).

Open-ended continuity does not require a long duration of past conduct; rather, it is present where the predicate acts themselves pose a specific threat of repetition extending indefinitely into the future, or where the conduct is part of the regular way the defendant conducts its business or participates in an ongoing enterprise, as summarized in [Chapter 4. Elements of Cause of Action](#) and *RICO: A Primer*.

Case Law Interpreting Open-Ended Continuity

The Supreme Court in *H.J. Inc.* emphasized that continuity is a flexible concept, to be assessed on a case-by-case basis, and that open-ended continuity may be established by showing that the racketeering acts include a specific threat of repetition or are part of the defendant’s regular way of conducting business. The Court declined to set rigid rules, instead requiring courts to examine the particular facts of each case (*H.J. Inc.*; [Chapter 4. Elements of Cause of Action](#)).

Subsequent authorities have consistently applied this standard. For example, the Tenth Circuit has recognized that the threat of continued criminal activity—even after the initial scheme’s primary objective is achieved—can satisfy the continuity requirement if the complaint plausibly alleges ongoing conduct or threats (*George v. Urban Settlement Servs.*, 833 F.3d 1242, 1257 (10th Cir. 2016)). Similarly, *Bixler v. Foster*, 596 F.3d 751, 761 (10th Cir. 2010) (as referenced in the prompt) and other authorities confirm that open-ended continuity exists where the predicate acts project into the future with a threat of repetition.

The essential case law materials provided reinforce these principles, repeatedly stating that open-ended continuity is present where conduct, even if short-lived, poses a threat of future repetition, and that the existence of such a threat is a function of the particular facts of the case ([Racketeer influenced and corrupt organizations](#) (2000–2011); [Chapter 4. Elements of Cause of Action](#)).

Analysis

Application of the Law to Plaintiff's Allegations

Plaintiff alleges that, following initial predicate acts in December 2023 and January 2024, Defendants continued to communicate, threaten, and interfere with Plaintiff's business and legal rights through at least May 2025. These allegations include not only the original acts but also a pattern of ongoing conduct—threats, interference, and monitoring of legal proceedings—extending well beyond the initial period.

Under the legal framework established by H.J. Inc. and its progeny, the key inquiry is whether these ongoing acts, if true, pose a threat of continued racketeering activity into the future. The authorities make clear that open-ended continuity is satisfied where the nature of the acts suggests a risk of repetition or ongoing harm, regardless of whether the initial scheme's main objective has been achieved (*George v. Urban Settlement Servs.*; [Racketeer influenced and corrupt organizations](#) (2000–2011)).

The Tenth Circuit's approach, as reflected in *George v. Urban Settlement Servs.*, is particularly instructive. There, the court held that continuity may be shown by threats of repetition or ongoing conduct, and that the threat of continued criminal activity is sufficient to meet the continuity requirement. The court also recognized that the existence of a threat of continued racketeering activity is a factual determination, to be assessed in light of the specific allegations in the complaint.

Here, Plaintiff's allegations of continued threats, interference, and monitoring of legal proceedings are precisely the type of ongoing conduct that courts have found sufficient to establish open-ended continuity. The conduct is not limited to a closed period but instead projects into the future, suggesting a risk of further harm or repetition. This aligns with the Supreme Court's guidance that open-ended continuity may be established where the racketeering acts themselves include a specific threat of repetition extending indefinitely into the future ([Chapter 4. Elements of Cause of Action](#)).

The District Court's Error

The District Court's decision to discount the ongoing threats and communications as mere "taunting" or unrelated is inconsistent with the governing legal standards. The Supreme Court and Tenth Circuit have both emphasized that the continuity requirement is a flexible, fact-specific inquiry, and that ongoing threats or interference can be sufficient to establish open-ended continuity (*H.J. Inc.*; *George v. Urban Settlement Servs.*). The District Court's approach appears to have improperly disregarded the factual allegations of ongoing conduct, rather than assessing whether those allegations, if true, would pose a threat of continued racketeering activity.

The essential case law materials provided reinforce that the existence of a threat of continued racketeering activity is a function of the particular facts of each case, and that courts should avoid rigid or formulaic approaches ([Racketeer influenced and corrupt organizations](#) (2000–2011)). By dismissing the ongoing conduct as unrelated or insignificant, the District Court failed to conduct the required case-by-case analysis and instead applied an unduly restrictive interpretation of the continuity requirement.

Supporting and Supplementary Authorities

The supplementary materials, including [Miskovsky v. State, 2001 OK CR 26, 31 P.3d 1054 \(Okla. Crim. App. 2001\)](#), further support this analysis. That case reiterates that continuity can be shown through either a closed period of repeated conduct or past conduct that projects into the future with a threat of repetition, and that it is insufficient to show only predicate acts over a short period with no threat of future conduct. This supports the proposition that ongoing threats and interference, as alleged by Plaintiff, are sufficient to establish open-ended continuity.

Secondary materials such as RICO: A Primer also confirm that the continuity requirement is satisfied where the predicate acts pose a threat of continued criminal activity, either through a series of related acts over time (closed-ended) or a threat of continuing activity into the future (open-ended). These materials reinforce the conclusion that Plaintiff's allegations, if true, meet the standard for open-ended continuity.

Exceptions and Caveats

While the authorities are clear that open-ended continuity may be established by a threat of continued racketeering activity, courts have also emphasized that the existence of such a threat is a factual determination, to be made on a case-by-case basis. Not every allegation of ongoing conduct will necessarily suffice; the conduct must plausibly suggest a risk of future repetition or ongoing harm (H.J. Inc.; [Racketeer influenced and corrupt organizations](#) (2000–2011)).

Additionally, courts may scrutinize whether the ongoing acts are sufficiently related to the original predicate acts and whether they form part of a pattern of racketeering activity, rather than isolated or unrelated incidents. However, in this case, Plaintiff's allegations of continued threats, interference, and monitoring of legal proceedings appear to be closely related to the original scheme and thus are likely to be viewed as part of a continuing pattern.

No negative or subsequent treatment of the key authorities has been identified in the provided materials. The Supreme Court's decision in H.J. Inc. remains the controlling authority on the continuity requirement, and the Tenth Circuit's approach is consistent with that precedent.

Conclusion

In summary, Plaintiff's allegations of ongoing threats, interference, and monitoring of legal proceedings after the initial predicate acts are sufficient, at the pleading stage, to plausibly allege open-ended continuity under RICO. The Supreme Court and Tenth Circuit have both recognized that a threat of continued racketeering activity—whether or not the initial scheme's primary objective has been achieved—can satisfy the continuity requirement, and that the existence of such a threat is a factual determination to be made in light of the specific allegations. The District Court's dismissal of the ongoing conduct as mere "taunting" or unrelated was inconsistent with this legal framework. Accordingly, Plaintiff's complaint should be deemed to have adequately alleged open-ended continuity, and the case should proceed to further factual development.

Legal Authorities

[Miskovsky v. State, 2001 OK CR 26, 31 P.3d 1054 \(Okla. Crim. App. 2001\)](#)

United States State Court of Appeals of Oklahoma. Court of Criminal Appeals of Oklahoma

Extract

The continuity requirement is slightly more demanding. A prosecutor must either show a 'closed period of repeated conduct' or 'past conduct that by its nature projects into the future with a threat of repetition.' H.J. Inc. notes that, since Congress was concerned with long-term criminal conduct, it is insufficient to show predicate acts which extend merely over weeks or months with no threat of future conduct.

Summary

The passage from "Miskovsky v. State" discusses the continuity requirement under RICO, emphasizing that continuity can be shown through either a closed period of repeated conduct or conduct that projects into the future with a threat of repetition. This aligns with the proposition that ongoing threats and interference can demonstrate open-ended continuity, as the conduct projects into the future with a threat of repetition.

[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)

Summary

Concept of "continuity" in the context of RICO, specifically mentioning open-ended continuity as conduct that poses a threat of extending into the future. This directly supports the proposition that ongoing threats and interference can establish open-ended continuity. The passage also emphasizes a case-by-case examination, which aligns with the proposition's argument that the District Court improperly discounted the ongoing threats.

[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 passage explains the concept of continuity in the RICO context, distinguishing between closed-ended and open-ended continuity. It highlights that open-ended continuity involves conduct that, even if short-lived, poses a threat of future extension. This aligns with the proposition that ongoing threats and interference can establish open-ended continuity, as the conduct projects into the future with a threat of repetition.

[Racketeer influenced and corrupt organizations.](#)

American Criminal Law Review - Georgetown University Law Center - Holt, Michael W. - 2009-03-22

Extract

The 'continuity' prong is satisfied by proof of either closed-ended continuity or open-ended continuity. Closed-ended continuity is defined as 'a series of related predicates extending over a substantial period of time.' Open-ended continuity is defined as 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 racketeering cases is recognized as conduct that poses a threat of extending into the future. This aligns with the proposition that ongoing threats and interference can establish open-ended continuity. The passage supports the idea that the existence of a threat of continued activity is a factual determination, which is relevant to the Plaintiff's allegations of ongoing conduct.

[Racketeer influenced and corrupt organizations.](#)

American Criminal Law Review - Georgetown University Law Center - Bagley, Ross - 2007-03-22

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)

Summary

The continuity requirement for RICO can be satisfied by demonstrating either closed-ended or open-ended continuity. Open-ended continuity is defined as conduct that poses a threat of extending into the future, which aligns with the proposition that ongoing threats and interference can establish open-ended continuity. The passage also emphasizes a case-by-case examination, which supports the idea that the specific facts of the Plaintiff's allegations could demonstrate a threat of continued 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.

Summary

The concept of "continuity" under RICO can be satisfied by demonstrating either closed-ended or open-ended continuity. Open-ended continuity is particularly relevant to the proposition as it involves conduct that poses a threat of extending into the future, which aligns with the Plaintiff's allegations of ongoing threats and interference. The passage supports the idea that the continuity requirement can be met by showing a threat of continued racketeering activity, which is consistent with the Plaintiff's claims.

[Racketeer influenced and corrupt organizations.](#)

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

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 is recognized when conduct, even if short-lived, poses a threat of future continuation. This aligns with the proposition that ongoing threats and interference can establish open-ended continuity. The passage supports the idea that the existence of a threat of continued activity is a factual determination, which is relevant to the Plaintiff's allegations of ongoing threats and interference.

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

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

Extract

Under the “less inflexible approach” adopted in *H.J. Inc.*, continuity is “both a closed- and open-ended concept.” *Id.* at 241. Closed-ended continuity refers “to a closed period of repeated conduct,” while open-ended continuity denotes “past conduct that by its nature projects into the future with a threat of repetition.” ... 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.”

Summary

The concept of open-ended continuity in RICO cases involves past conduct that projects into the future with a threat of repetition. The passage provides examples of how open-ended continuity can be established, such as when the racketeering acts themselves include a specific threat of repetition extending indefinitely into the future. This directly supports the proposition that ongoing threats and interference by the Defendants can establish open-ended continuity.

[Racketeer influenced and corrupt organizations.](#)

American Criminal Law Review - Georgetown University Law Center - Allison, Bridget - 1998-03-22

Extract

The Supreme Court made a second attempt to clarify the 'pattern' concept in *H.J., Inc. v. Northwestern Bell Telephone Co.* In that case, the Court held that when proving a 'pattern of racketeering activity,' RICO requires both relationship and continuity of predicate acts as separate elements. However, the Court recognized that proof of these factors will often overlap. The relationship prong is defined by the connection of the defendant's criminal acts to one another: 'continuity' is successfully proved if a prosecutor can show actual continuity during a past, closed period of repeated conduct or an open-ended threat of continued racketeering activity in the future.

Summary

The Supreme Court in *H.J., Inc. v. Northwestern Bell Telephone Co.* clarified the requirements for proving a "pattern of racketeering activity" under

RICO, emphasizing the need for both relationship and continuity. The passage specifically highlights that continuity can be demonstrated by showing either actual continuity during a past period or an open-ended threat of continued activity in the future. This aligns with the proposition that ongoing threats and interference can establish open-ended continuity.

[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)

Summary

The concept of "continuity" in RICO cases can be satisfied by demonstrating 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 existence of a "threat of continued racketeering activity" is determined by the specific facts of each case, which aligns with the proposition that ongoing threats and interference can establish open-ended continuity.

[Racketeer influenced and corrupt organizations.](#)

**American Criminal Law Review - Georgetown University Law Center -
Bourgeois, Richard L., Jr. - 2000-03-22**

Extract

The 'continuity' prong is successfully proven if a prosecutor can prove 'a series of related predicates extending over a substantial period of time' or an open-ended threat of continued racketeering activity in the future. The H.J., Inc. 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 avoided a black-letter enumeration of particular factors which may constitute a pattern.

Summary

Concept of "continuity" in the context of racketeering, specifically mentioning that continuity can be established through a series of related predicates over time or an open-ended threat of continued activity. This aligns with the proposition that ongoing threats and interference can demonstrate open-ended continuity. The reference to the H.J., Inc. case further supports the idea that continuity involves a threat of future activity, which is relevant to the Plaintiff's allegations of ongoing conduct.

[RICO: A Primer](#)

Extract

The continuity requirement is likewise satisfied where the predicates are a regular way of conducting the defendant's ongoing legitimate business (in the sense that it is not a business that exists for criminal purposes), or of conducting or participating in an ongoing and legitimate RICO 'enterprise.' 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 continuity requirement for RICO violations can be satisfied by demonstrating a threat of continued criminal activity. This can be shown through open-ended continuity, which involves a threat of continuing criminal activity extending indefinitely into the future. This aligns with the proposition that the plaintiff's allegations of continued threats and interference support the existence of open-ended continuity.

This memo was compiled by Vincent AI based on vLex materials available as of August 30, 2025. [View full answer on vLex](#)