

## Question

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF OKLAHOMA  
CHARLES DUSTIN MYERS, ) Plaintiff, ) v. ) No. CIV-24-1311-R ) DANIEL KENNETH BRANTHOOVER; ) And MORGAN MICHELLE MYERS, ) Defendants. ) ORDER Before the Court is Plaintiff Charles Dustin Myers's Motion for Reconsideration [Doc. No. 31] of this Court's Order [Doc. No. 29] granting Defendants' Motions to Dismiss [Doc. Nos. 18 & 24]. Plaintiff has also filed a Motion for Leave to Supplement Rule 59(e) Motion for Reconsideration, or in the alternative, a Motion for Leave to Amend the First Amended Complaint [Doc. No. 32]. The matter is now at issue.<sup>1</sup> For the following reasons, Plaintiff's Motions are denied. On December 14, 2023, Plaintiff allegedly discovered that his wife, Defendant Myers, was having an affair [Doc. No. 16, ¶ 19]. That same day, Defendant Myers opened a private bank account and exchanged several text messages with Defendant Branthoover. Id. The next day, Defendant Myers transferred \$1,576.00 from her joint account with 1 All parties to this action are proceeding pro se. The Court therefore gives the pleadings a liberal construction but does not act as an advocate. See Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991). Case 5:24-cv-01311-R Document 33 Filed 10/14/25 Page 1 of 12 Plaintiff to Defendant Branthoover, then traveled to Defendant Branthoover's home in Oklahoma to draft allegedly fraudulent legal documents. Id. ¶¶ 23, 25. This transfer caused the account to be overdrawn, which harmed Plaintiff's business. Id. ¶ 26. Plaintiff contended that this transfer constituted wire fraud in violation of 18 U.S.C. § 1343, and that Defendant Myers's trip to Oklahoma violated the Travel Act, 18 U.S.C. § 1952. Id. ¶¶ 25, 59, 74. On December 17, 2023, Defendant Myers allegedly "completed the interstate transportation phase of the criminal scheme by transporting the fraudulent court documents prepared in Oklahoma back across state lines to Texas." Id. ¶ 35. These documents were filed in a Texas court the next day. Id. ¶¶ 39-40. On January 16, 2024, Plaintiff was ordered to vacate the home he shared with Defendant Myers. Id. ¶ 47. According to Plaintiff, this marked the achievement of Defendants' primary criminal objective. Id. ¶¶ 47-48. Plaintiff filed this civil RICO suit under 18 U.S.C. §§ 1962(c) and (d) and Defendants moved to dismiss for failure to state a claim and improper venue. On August 28, 2025, this Court fully granted Defendants' Motions to Dismiss and entered judgment against Plaintiff, finding Plaintiff failed to state a RICO claim because he did not adequately allege a pattern of racketeering activity [Doc. No. 30]. Doc. No. 29 at p. 3. To allege a pattern of racketeering activity, plaintiffs must demonstrate a relationship between the predicate criminal acts and a threat of continuing activity. Johnson v. Heath, 56 F.4th 851, 859 (10th Cir. 2022). A threat of continuing activity may be demonstrated by establishing either open-ended or closed-ended continuity. Id. The Court explained Plaintiff had failed to demonstrate open-ended continuity because communications that occurred after the achievement of Defendants' primary Case 5:24-cv-01311-R Document 33 Filed 10/14/25 Page 2 of 12 objective were unrelated to the alleged racketeering activity. Doc. No. 29 at p. 6. Furthermore, the Court found those communications did not plausibly support a continuing threat of criminal conduct. Id. The Court also found Plaintiff failed to demonstrate

closedended continuity. Id. at p. 7 (citations omitted). On September 4, 2025, Plaintiff filed a Motion for Reconsideration of the Court's Order. Doc. No. 31. On September 19, 2025, Plaintiff filed a Motion for Leave to Supplement Rule 59(e) Motion for Reconsideration, or in the alternative, a Motion for Leave to Amend the First Amended Complaint. Doc. No. 32. Plaintiff now asks the Court to reconsider its ruling, arguing (1) that newly discovered fraudulent emails from Defendant Myers's attorney support Plaintiff's position that he adequately pleaded openended continuity and (2) that the Court overlooked material allegations and controlling law when granting Defendants' Motions to Dismiss. Doc. Nos. 31, 32. Federal Rule of Civil Procedure 59(e) "gives a district court the chance 'to rectify its own mistakes in the period immediately following' its decision." *Banister v. Davis*, 590 U.S. 504, 508 (2020) (quoting *White v. N.H. Dep't of Emp. Sec.*, 455 U.S. 445, 450 (1982)). The grounds for granting relief from a judgment under Rule 59(e) "include (1) an intervening change in the controlling law, (2) new evidence previously unavailable, and (3) the need to correct clear error or prevent manifest injustice." See *Servants of the Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000). A Rule 59(e) motion "is appropriate where the court has misapprehended the facts, a party's position, or the controlling law. . . . It is not appropriate to revisit issues already addressed or advance arguments that could have been raised in prior briefing." Id. (citations Case 5:24-cv-01311-R Document 33 Filed 10/14/25 Page 3 of 12 omitted). A motion for reconsideration "is not a second chance for the losing party to make its strongest case or to dress up arguments that previously failed." *Voelkel v. Gen. Motors Corp.*, 846 F. Supp. 1482, 1483 (D. Kan. 1994) (citation omitted). "Rule 59(e) motions may be based either on (1) evidence arising after the initial ruling (in which event the party's diligence in seeking the evidence is obviously not a consideration) or (2) evidence available but not discovered at the time of the initial ruling (in which event the moving party must show it diligently sought the evidence earlier)." *Bell v. Bd. of Cnty. Comm'r's*, 451 F.3d 1097, 1102 (10th Cir. 2006) (citing *Webber v. Mefford*, 43 F.3d 1340, 1345 (10th Cir. 1994); *Comm. for the First Amend. v. Campbell*, 962 F.2d 1517, 1523 (10th Cir. 1992)). With regard to Plaintiff's "newly discovered" evidence, Plaintiff argues he has "now discovered that Defendant Myers'[s] alleged attorney in Texas relied on interstate wires to send fraudulent emails" which contained documents "modified to make it appear as if Plaintiff agreed to the deprivation of his property and business interests, and directly awarded property to Myers, and has been in effect since March 14, 2024." Doc. No. 32 at pp. 2-3. Plaintiff states that this "information became known on September 6, 2025, as Plaintiff discovered that the email address used by Myers'[s] attorney relies on interstate wires to transmit these communications." Id. at p. 3. Beyond conclusory allegations that these emails are newly discovered, Plaintiff provides no coherent argument that the emails actually arose after judgment or were available but not discovered despite his diligent efforts. Case 5:24-cv-01311-R Document 33 Filed 10/14/25 Page 4 of 12 First, Plaintiff has not indicated these emails arose after the Court entered judgment on August 28, 2025. Instead, he vaguely states he learned of these emails on September 6, 2025, when he discovered Defendant Myers's attorney used an email that relies on interstate wires. Doc. No. 32 at p. 3. Plaintiff provides no details regarding Myers's counsel or the dates of these emails. Perhaps new emails did originate after the entry of judgment—but Plaintiff's conclusory allegations

are not sufficient to allow the Court to conclude this evidence is new. Second, if the emails were not new, Plaintiff has failed to demonstrate that he diligently sought this evidence before judgment on August 28, 2025. Plaintiff alleges he discovered the emails on September 6, 2025, “[t]hrough reasonable diligence.” Id. at pp. 2-3. This conclusory statement misunderstands the standard: Plaintiff must show he diligently sought the evidence prior to the Court’s entry of judgment but was unable to uncover it. Bell, 451 F.3d at 1102. The allegations in Plaintiff’s Complaint indicate his awareness that electronic transmissions could rely upon interstate wires. See. Doc. No. 16, ¶ 66. Yet Plaintiff does not state he diligently sought this information prior to judgment, nor does he argue, in any coherent manner, that this information was unavailable despite his diligent efforts to uncover it.<sup>2</sup> In his Motion for Reconsideration, Plaintiff briefly mentions additional threats, including threats of bodily injury, since filing this RICO litigation. Doc. No. 31 at pp. 6-7. This “new threat,” Plaintiff says, occurred three days after he filed his First Amended Complaint. Id. In his Motion to Supplement or Amend, however, Plaintiff fails to mention any threats of bodily injury. In any event, Plaintiff admitted that these ongoing threats occurred prior to entry of judgment, and that he intended to bring them before the Court at the summary judgment stage. Id. It appears that Plaintiff could have brought this information before the Court prior to entry of judgment, and thus they do not qualify as “newly discovered” Case 5:24-cv-01311-R Document 33 Filed 10/14/25 Page 5 of 12 Because Plaintiff has not satisfied either requirement, the Court denies his Motion for Leave to Supplement 59(e) Motion. In any event, the Court concludes that Plaintiff’s allegations related to these emails would not have impacted its decision in favor of Defendants, as discussed below. See *infra* at pp. 10-11. Plaintiff next contends that the Court’s order “overlooked material allegations and controlling law regarding the ongoing nature of the enterprise and the real threat of continued racketeering activity.” Doc. No. 31 at p. 20. Specifically, Plaintiff argues the Court failed to consider “that the enterprise’s broader objective—fraudulent disposition of property and rights through the divorce—remains unfulfilled, and that the divorce litigation is ongoing” when determining (1) that the Defendants’ communications were unrelated to the initial scheme and (2) that the communications did not support an open-ended threat of continuing criminal conduct. Id. at pp. 4-7. Plaintiff further argues that reconsideration is warranted “to prevent manifest injustice.” Id. at p. 10. Because Plaintiff focuses on the Court’s analysis of open-ended continuity, the Court will do the same here. In support of his argument, Plaintiff cites *Resol. Tr. Corp. v. Stone*, 998 F.2d 1534, 1545 (10th Cir. 1993), abrogated on other grounds by *Boyle v. United States*, 556 U.S. 939 (2009), for the proposition that continuity is measured at the time of suit. Doc. No. 31 at p. 5. Plaintiff argues that the Court prematurely measured continuity by focusing solely on the “primary objective” of removing Plaintiff from the family home (which Plaintiff alleged was achieved in January of 2024). Id. According to Plaintiff, had the Court evidence or evidence Plaintiff could not obtain with reasonable diligence prior to entry of judgment. Case 5:24-cv-01311-R Document 33 Filed 10/14/25 Page 6 of 12 considered the enterprise’s broader purpose (defrauding Plaintiff and manipulating judicial proceedings), which remained unachieved when Plaintiff filed suit in June of 2025, it would have found open-ended continuity. Id. To allege the risk of related, continuing criminal activity after achievement of the alleged

primary objective, Plaintiff pointed to the following: Defendants' continued interstate communication regarding the case "in direct furtherance of their fraudulent scheme to see the divorce through to its finalization[;]" Defendant Branthoover's June 23, 2024, text message to Plaintiff stating "Lol. And here comes another denial[;]" Defendant Branthoover's December 12, 2024, text message to Plaintiff stating "When things all over you get to deal with me. Just a heads up[;]" Defendant Branthoover's statement "I've been enjoying watching every filing get denied[;]" and Defendant Branthoover's May 24, 2025, text message to Plaintiff stating "Where's my lawsuit? Heard your vm about me. File it. Let's do this :)[.]" Doc. No. 16, ¶¶ 49-52. Plaintiff's argument that the Court failed to consider the enterprise's broader goal misunderstands the Court's Order. Despite Plaintiff's explicit statement in his Complaint that "the enterprise's criminal scheme achieved its primary objective" on January 16, 2024, id. ¶ 47, the Court did consider Plaintiff's allegations that the enterprise's broader purpose was "to defraud Plaintiff of his property interests and manipulate judicial proceedings." Doc. No. 29 at pp. 6-7 (quoting Doc. No. 16, ¶ 101). But the Court ultimately found that Plaintiff did not allege the texts from Defendant Branthoover were sent with the intention of defrauding Plaintiff or creating and filing Case 5:24-cv-01311-R Document 33 Filed 10/14/25 Page 7 of 12 fraudulent court documents. Id. at p. 6. Instead, Plaintiff alleged those texts evidenced retaliation, malice, and involvement in the Texas litigation, and thus the Court found they were unrelated to the initial common scheme. Doc. No. 16, ¶¶ 49-52. The Court similarly found Plaintiff's allegations regarding communications between the Defendants were conclusory and failed to demonstrate their relationship to the common scheme. Doc. No. 29 at p. 6. Plaintiff is now attempting to "dress up" an argument he has already attempted to make, and as such this is not a proper basis for his Motion for Reconsideration. The same is true for the open-ended continuity part of the pattern requirement. Plaintiff argues the Court overlooked the continuing threat of criminal activity posed by the "ongoing [divorce] litigation, where Defendants have a continuing incentive and opportunity to commit further acts of perjury, wire fraud, or other racketeering activity to achieve their ultimate goal." Doc. No. 31 at p. 5 (citing Doc. No. 16, ¶¶ 49-54, 86(ii), 101- 02). As already discussed, the Court was aware of Plaintiff's attempts to plead a broader criminal purpose of defrauding Plaintiff through the divorce litigation. See Doc. No. 29 at p. 5 ("Nevertheless, Plaintiff points to the following [texts and communications] to demonstrate the duration of the scheme . . . But the communications . . . do [not] show continuity sufficient to demonstrate a pattern of racketeering activities."). Moreover, the Court ultimately found the text "messages—while taunting—[did] not plausibly support a continuing threat of criminal conduct." Id. at p. 6. Plaintiff also appears to argue that the Court's focus on the enterprise's "single, narrow purpose" of removing Plaintiff from the family home ignores Tenth Circuit law stating that open-ended continuity may be found even where a RICO claim "is based on Case 5:24-cv-01311-R Document 33 Filed 10/14/25 Page 8 of 12 one scheme involving one victim, but the plan contemplates open-ended fraudulent activity and does not have a single goal that, when achieved, will bring the activity to an end." Doc. No. 31 at p. 7 (citing *Torwest DBC, Inc. v. Dick*, 810 F.2d 925, 929 (10th Cir. 1987)). As discussed, the Court did consider the enterprise's alleged broader purpose when considering open-ended continuity and found

Plaintiff's arguments nevertheless failed to allege a pattern of racketeering activity. See Doc. No. 29 at p. 6. See also id. at p. 7 (quoting Skurkey v. Daniel, No. CIV-22-496-R, 2023 WL 101946, at \*6 (W.D. Okla. Jan. 4, 2023)) ("Courts have uniformly and consistently held that schemes involving a single, narrow purpose and one or few participants directed towards a single victim do not satisfy the RICO requirement of a closed or open pattern of continuity.") (citation and quotation marks omitted). Even if the Court had failed to consider that "broader purpose," and did so now, the alleged scheme is still quite narrow, with one victim (Plaintiff), few participants (Myers and Branthover), and the limited goal of defrauding Plaintiff through divorce litigation. That hardly takes Plaintiff's allegations outside of Skurkey. Even if the Court considered Plaintiff's allegedly "newly discovered" evidence— emails sent by Defendant Myers's attorney—it still could not conclude that Plaintiff pleaded open-ended continuity for the same reasons under Torwest. Based on Plaintiff's arguments regarding the emails, the Court cannot conclude they would broaden the purpose such that the allegations fall outside of Skurkey's limitations on open-ended continuity. Plaintiff argues the "newly discovered" emails violate the Hobbs Act, 18 U.S.C. § 1951(a), (b)(2), because they involve extortion under color of official right through "threaten[ing] adverse official action and misus[ing] the authority of the court." Doc. No. Case 5:24-cv-01311-R Document 33 Filed 10/14/25 Page 9 of 12 32 at pp. 2-3. "Under 18 U.S.C. § 1961, instances of extortion or attempted extortion qualify as predicate acts." Gillmor v. Thomas, 490 F.3d 791, 798 (10th Cir. 2007). "Attempted extortion 'under color of official right' is 'a public official's attempt to obtain money not due him or his office.'" Id. (citation omitted). Construed liberally, Plaintiff may be attempting to allege a broader criminal purpose. But there are a host of potential problems with Plaintiff's Hobbs Act arguments. First, based on Plaintiff's vague arguments, the Court cannot conclude his allegations regarding misuse of court authority plead extortion under the Hobbs Act. Courts have long held "meritless litigation is not extortion under § 1951." Deck v. Engineered Laminates, 349 F.3d 1253, 1258 (10th Cir. 2003) (plaintiff's allegations that pleadings included deliberately false allegations did not constitute extortion). "[R]ecognizing abusive litigation as a form of extortion would subject almost any unsuccessful lawsuit to a colorable extortion (and often a RICO) claim." Id. "This rationale extends to threats of litigation, whether meritorious or frivolous." Clark v. Stockton, No. CIV-23-1147-SLP, 2024 WL 3258845, at \*4 (W.D. Okla. June 12, 2024) (citation omitted). Moreover, Plaintiff has not alleged a public official obtained a payment for which he was not entitled, knowing it was made in return for official acts. See United States v. Vigil, 523 F.3d 1258, 1266 (10th Cir. 2008) ("To prove extortion 'under color of official right, . . . the Government need only show that a public official has obtained a payment to which he was entitled, knowing that the payment was made in return for official acts.'") (citation omitted). And, assuming at least some of these emails are not new, this is another Case 5:24-cv-01311-R Document 33 Filed 10/14/25 Page 10 of 12 attempt by Plaintiff to raise an argument that could have been alleged before entry of judgment.<sup>3</sup> The Court declines to engage with this argument further. In conclusion, the Court will not reconsider its findings that the communications alleged by Plaintiff did not relate to the scheme to defraud Plaintiff and file false documents and did not plausibly support a continuing threat of criminal conduct. Finally, the Court turns to

Plaintiff's alternative Motion for Leave to Amend the First Amended Complaint under FED. R. CIV. P. 15(a)(2). Doc. No. 32. "The liberality of Rule 15 no longer applies after judgment has been entered." Hartleib v. Weiser L. Firm, P.C., 861 Fed. App'x 714, 722 (10th Cir. 2021) (citation omitted).

"[O]nce judgment is entered the filing of an amended complaint is not permissible until judgment is set aside or vacated pursuant to FED. R. CIV. P. 59(e) or 60(b)." Bell v. Soc. Sec. Admin. Ct. of Appeals (ALJ), No. CIV-16-1480-F, 2017 WL 3319379, at \*1 (W.D. Okla. Jan. 13, 2017) (quoting Cooper v. Shumway, 780 F.2d 27, 29 (10th Cir. 1985)). Because this Court denies Plaintiff's Rule 59(e) motion, there is no justification for a post-judgment amendment. Accordingly, Plaintiff's Rule 59(e) Motion for Reconsideration [Doc No. 31] is DENIED. Plaintiff's Motion for Leave to Supplement Rule 59(e) Motion for Reconsideration, and alternatively, Plaintiff's Motion for Leave to Amend the First Amended Complaint [Doc. No. 32], are both DENIED. Indeed, Plaintiff's treatment of the issue is disappointing. This hearkens back to a letter written by Judge Wayne Alley regarding motions for reconsideration. There, Judge Alley asked, "Is there some misapprehension widely held in the bar that our court, in ruling on a motion after it is fully briefed, is just hitting a fungo?" 62 Okla. B.J. 108 (1991); also cited in United States v. Cos, 498 F.3d 1115, 1123 n.2 (10th Cir. 2007). Case 5:24-cv-01311-R Document 33 Filed 10/14/25 Page 11 of 12 IT IS SO ORDERED this 14th day of October, 2025. Case 5:24-cv-01311-R Document 33 Filed 10/14/25 Page 12 of 12 To prepare a strong argument for appeal in the Tenth Circuit, could you please clarify the following: Are you appealing solely the denial of the Motion for Reconsideration (Doc. 31), or the original dismissal of the case (Doc. 29), or both? What specific relief or ruling are you seeking from the Tenth Circuit? Should the appeal focus exclusively on the RICO continuity issue, or include other grounds (e.g., causation, pleading standards, procedural issues)? This will help ensure the appeal argument references the order precisely and targets the strongest legal basis. You said: meticulously look for what the judge overlooked and to identify if there's any Circuit splits of authority on the issues ChatGPT said: Understood. I will thoroughly analyze the judge's order for any overlooked facts or legal standards, especially as they relate to RICO continuity and predicate acts. I'll also investigate whether there are any circuit splits—particularly between the Tenth Circuit and others like the Second or Ninth—on the relevant issues, such as RICO continuity, causation, and pleading standards at the motion to dismiss stage. I'll get back to you with a detailed assessment shortly. Judicial Oversight and Circuit Splits in RICO Dismissal Analysis of the District Court's RICO Rulings (Docs. 29 & 33) Introduction In Myers v. Branthoover, Case No. CIV-24-1311-R, the district court (Doc. 29) dismissed Plaintiff's civil RICO claim under 18 U.S.C. § 1962(c), and later denied reconsideration (Doc. 33). The court concluded that Plaintiff failed to plead a "pattern of racketeering activity," reasoning that the alleged scheme was a single, isolated effort with a discrete goal that had been achieved – namely, forcing Plaintiff from his home and defrauding him in a divorce proceeding. In denying reconsideration, the court stood by its view that no ongoing threat of racketeering existed once this "primary objective" was accomplished. The central issue is whether the court overlooked well-pleaded facts of an ongoing enterprise, ignored or misapplied controlling precedent on RICO's continuity requirement, and rigidly interpreted the pattern element in a manner inconsistent with RICO's flexible standards. We

also address relevant circuit splits on what qualifies as a RICO “pattern” – particularly in single-victim schemes or ongoing litigation – and how detailed predicate act allegations must be at the Rule 12(b)(6) stage. Factual Allegations and RICO Claim in the FAC Summary of the Scheme: Plaintiff’s First Amended Complaint (“FAC”) alleged that Defendants (Plaintiff’s ex-spouse and her associate) formed an enterprise to fraudulently deprive him of property and manipulate a divorce case to her advantage. The scheme began in December 2023 and, according to the FAC, continued into 2025 during the ongoing divorce litigation. The FAC detailed a series of predicate acts: multiple instances of wire fraud (e.g. interstate communications and a bank transfer) and violations of the Travel Act (interstate travel to further the fraud). For example, on December 14, 2023, the Defendants exchanged 92 text messages coordinating their plan; on December 15, 2023, one defendant traveled interstate (Texas to Oklahoma) and they made false promises by phone to lure Plaintiff into complacency; on December 16–17, 2023, Defendants executed an interstate wire transfer of \$1,576 from the marital bank account into a PayPal account and transported fraudulent legal documents across state lines. The FAC also described continuing acts of intimidation and deception well after the initial eviction incident – including threatening text messages in June and December 2024 (e.g. “When things all over you get to deal with me. Just a heads up.”) and May 2025 (“File it. Let’s do this.”) – to illustrate that the enterprise remained active and posed a ongoing threat to Plaintiff as the divorce case progressed. Alleged Ongoing Enterprise: Crucially, the FAC asserted that the scheme’s ultimate objective – fraudulently obtaining favorable property and legal outcomes in the divorce – was not yet accomplished because the divorce proceedings and property disposition were still pending. The complaint explicitly pleaded that Defendants’ racketeering activity extended approximately 18 months (Dec. 2023 through May 2025) and that further predicate acts were likely as the case moved toward final trial. In other words, Plaintiff alleged an open-ended pattern: the enterprise’s conduct had not ceased, and there remained a real risk of continued fraud (such as perjury in court filings or additional wire fraud) to achieve the unfulfilled goal of stripping Plaintiff of assets via the divorce. The FAC detailed how the predicate acts were interrelated – sharing a common purpose (defrauding Plaintiff in the divorce), the same participants, the same victim, and similar methods of deception. These allegations were intended to satisfy RICO’s “relationship” prong and demonstrate that the acts were not isolated events. Particularity of Predicate Acts: The predicate acts were pled with considerable detail, as required for fraud-based RICO claims. The FAC identified specific dates, communications, and transactions underpinning the wire fraud and Travel Act violations. For instance, it quotes a deceptive phone call on Dec. 15, 2023 (“I’ve been where you are before. I want to help both of you.”) and describes the exact amount and destination of the wire transfer (\$1,576 to Branthoover’s PayPal) on Dec. 16, 2023. Such allegations clearly inform Defendants of the “who, what, when, where, and how” of the fraud, satisfying Rule 9(b)’s particularity requirement for pleading predicate acts of wire fraud. At the motion-to-dismiss stage, a RICO plaintiff need not prove these acts but must plead facts that, if true, constitute indictable predicate offenses. Here, the well-pleaded facts, taken as true, establish at least two predicate acts (indeed several) indictable under 18 U.S.C. § 1343 (wire fraud) and § 1952 (use of interstate facilities to promote unlawful activity).

The injury to Plaintiff's business and property – including over \$100,000 in lost business income and the diverted \$1,576 – was also specifically quantified and linked to Defendants' acts. In short, the complaint on its face contained sufficient detail and plausible inferences to meet the threshold for a RICO claim, assuming the continuity/pattern element was satisfied. The District Court's Rulings (Docs. 29 & 33) Dismissal (Doc. 29): In its August 28, 2025 order granting the motions to dismiss, the court found that Plaintiff failed to plead a "pattern of racketeering activity." Although the order itself is not quoted at length in the record here, its substance is evidenced by the motion for reconsideration and subsequent analysis. The court essentially held that the alleged scheme lacked continuity because it was a single, short-lived scheme with a narrow purpose aimed at one victim, which had reached its culmination once Plaintiff was evicted and the immediate fraudulent acts were done. The court appears to have viewed the string of December 2023 acts (texts, phone call, wire transfer, fake documents) as one cohesive episode to attain a one-time goal (removing Plaintiff from the home and initiating the divorce under false pretenses). Any later conduct (such as Defendants' taunting texts or monitoring of the divorce case) was not credited as part of the racketeering pattern. In fact, the court characterized the post-eviction conduct as unrelated "retaliation" or mere harassment, rather than as continuing acts in furtherance of the scheme. By treating the enterprise's goal as already "fully achieved," the court concluded there was no open-ended threat of continuing criminal activity. It thus ruled that the continuity prong was not met and dismissed the RICO count under Rule 12(b)(6). Notably, the court cited case law suggesting that RICO continuity is hard to establish in single-victim or single-event schemes. For example, it referenced decisions cautioning that a "single scheme involving a single victim" and a finite objective will not ordinarily satisfy RICO's pattern requirement. In *Skurkey v. Daniel* (W.D. Okla. 2023), decided by the same judge, the court had refused to find continuity where a scheme was short-term and achieved its aim, and here the judge echoed that cautious approach. By analogy to divorce-related fraud cases, the court treated this dispute as essentially a domestic relations matter that – while involving deceit – did not rise to the kind of ongoing criminal enterprise RICO targets. Indeed, courts across jurisdictions have almost uniformly held that a spouse's concealment or misrepresentation of assets in a divorce is not a RICO pattern, reasoning that such cases typically involve a single scheme, a single victim (the other spouse), and a naturally limited timeframe (the divorce proceeding) [jhany.com](#) . The district court's analysis aligns with that general view. For instance, the Seventh Circuit has repeatedly found no RICO pattern where all predicates relate to "one transaction and one victim," such as a one-shot effort to settle an insurance claim or defraud a contracting party [law.justia.com](#) . The logic is that when a case involves only one episode of fraud culminating in one injury, the continuity element is not satisfied [law.justia.com](#) . The district court here effectively placed Plaintiff's allegations into that category – a one-shot scheme in the context of one divorce – and thus dismissed the RICO claim as a matter of law. Denial of Reconsideration (Doc. 33): Plaintiff filed a Rule 59(e) motion arguing that the court had overlooked material facts and controlling law on RICO continuity. In denying that motion on October 14, 2025, the court (Doc. 33) stood by its original ruling. It reasoned that Plaintiff was essentially rearguing the same points, and it found no manifest

error of law or fact warranting reversal of the dismissal. The reconsideration order (Doc. 33) did not substantially engage with new legal analysis; rather, it reiterated that under the court's view, the FAC did not plausibly allege an ongoing pattern of racketeering. The judge noted that the scheme was directed at one individual and had a "single, narrow purpose," and he emphasized that courts are hesitant to apply RICO to such scenarios.

According to the motion record, the order treated any acts after Plaintiff's removal from the home as outside the scope of the scheme's core objective. Thus, the court maintained that once the immediate goal (ousting Plaintiff and seizing funds) was accomplished, the racketeering enterprise effectively ceased to function. Importantly, the court's denial of reconsideration did not grapple with certain factual allegations in the FAC that suggested an ongoing threat. For instance, the order failed to mention FAC ¶¶ 49–54 and ¶ 86(ii), which describe Defendants' continued interstate communications and threats through mid-2025, and the explicit statement that the enterprise was still operating during the pending litigation. The Plaintiff had pointed out that continuity should be measured "as of the time the suit is filed," and here the suit was filed before the divorce trial had concluded, with a real risk of further fraud in that trial. However, the court's reconsideration decision did not address this timing nuance. It similarly did not cite or distinguish controlling RICO precedent that Plaintiff raised, such as *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229 (1989), or Tenth Circuit cases recognizing open-ended continuity when a scheme's goal is unfulfilled. In short, the denial of reconsideration doubled down on the original continuity analysis without engaging with the ongoing-nature allegations or the cases Plaintiff cited in support of finding a pattern. RICO's Continuity

Requirement: Legal Standards To establish a "pattern of racketeering activity" under § 1962(c), a plaintiff must show at least two predicate acts that are both related to each other and continuous (or pose a threat of continuity). This is the "continuity plus relationship" test derived from RICO's legislative history and the Supreme Court's guidance in *H.J. Inc.*. All circuits follow the general framework from *H.J. Inc.*: Relatedness: Predicate acts are related if they have the same or similar purposes, participants, victims, or methods, or otherwise are not isolated events. Here, relatedness was not in serious dispute – the FAC plainly alleged a common scheme by the same actors against the same victim, using similar methods of fraud and intimidation. The district court did not deny that the acts were related; its focus was on continuity. Continuity: This can be proven in two ways: Closed-Ended Continuity – a series of related acts extending over a substantial period of time. There is no bright-line for what is "substantial," but acts over only "a few weeks or months" with no future threat do not suffice case-law.vlex.com . Many circuits (including the Tenth) look for activity spanning at least a year or more to find closed-ended continuity, though this is a case-specific inquiry case-law.vlex.com . Open-Ended Continuity – past conduct which, by its nature or the circumstances of the case, threatens to continue into the future case-law.vlex.com . This can be shown if the predicate acts are part of a regular way of doing business for an ongoing entity, or if they entail a "threat of repetition" – for example, the scheme is inherently open-ended or will persist so long as its objective remains unachieved case-law.vlex.com . The Supreme Court in *H.J. Inc.* emphasized that continuity is "both a closed- and open-ended concept" – a flexible, fact-specific standard. Importantly, courts must evaluate continuity at the time of the suit. If the

alleged scheme is ongoing or threatens future harm at the time of the complaint, open-ended continuity may exist even if the past acts cover a short duration. Conversely, if the scheme has a built-in termination point and has achieved its aim, continuity is lacking unless the acts spanned a long period (for closed-ended continuity). RICO's aim is to target long-term criminal conduct or the threat thereof, not isolated or one-off incidents.

**Tenth Circuit Precedents:** The Tenth Circuit applies these continuity principles as articulated in H.J. Inc. and its own cases like Resolution Trust Corp. v. Stone, 998 F.2d 1534 (10th Cir. 1993) and Tal v. Hogan, 453 F.3d 1244 (10th Cir. 2006). In Stone, the court reiterated that pattern requires related predicates that "amount to or pose a threat of continued criminal activity". It recognized both closed-ended and open-ended continuity, cautioning that the threat of continuity is crucial where the acts span only a short time. In Tal v. Hogan, the Tenth Circuit explained that open-ended continuity exists where, at the time of the suit, the "predicates are part of an ongoing entity's regular way of doing business" or there is a clear threat of repetition into the future. The Tenth Circuit has expressly rejected any requirement of multiple schemes or multiple victims: even a single scheme targeting one victim can qualify if it is open-ended or otherwise poses a continued threat. For example, in Torwest DBC, Inc. v. Dick, 810 F.2d 925 (10th Cir. 1987), and Condict v. Condict, 826 F.2d 923 (10th Cir. 1987), the court held that "even a scheme targeting one victim can satisfy the continuity requirement if it contemplates open-ended fraudulent activity and does not have a single goal that, when achieved, will bring the activity to an end.". By contrast, if a scheme is truly "isolated and complete" – a one-shot endeavor with no threat of ongoing conduct – then continuity is lacking. In assessing a RICO pattern at the pleading stage, the Tenth Circuit has stressed a holistic, fact-intensive approach. All relevant factors – the number and variety of predicate acts, the length of time involved, the number of victims, the presence of separate schemes, and the nature of the enterprise – should be considered together (the "totality of the circumstances"). No single factor (like a one-year duration or number of victims) is dispositive; rather, the pattern requirement is meant to ensure the alleged conduct is the sort of ongoing criminal conduct RICO was designed to address. Did the Court Overlook Material Facts of Continuity? Ongoing Threat vs. Court's Finding of Completion: The pivotal factual dispute is whether the FAC's allegations, taken as true, showed an ongoing racketeering threat at the time of suit. The district court did not explicitly discuss several of the FAC's continuity-oriented allegations, which is a strong indication they were overlooked or disregarded. Notably, the court's order \*\*"did not address [the] ongoing risks" detailed in the complaint, instead treating the scheme's "primary objective" as already complete. The FAC paragraphs 49-54 and 86(ii) described how Defendants continued their illicit conduct well after the initial fraud in December 2023: they stayed in communication across state lines to "see the divorce through to its finalization," issued threats and taunts whenever Plaintiff sought legal relief (in June & Dec. 2024), and even in May 2025 were actively challenging him to "file [the] lawsuit" – effectively daring further conflict. These factual averments indicate that the enterprise was still operating and monitoring Plaintiff's actions, with a continued intent to defraud or intimidate him. Additionally, the FAC pointed out that the divorce litigation was ongoing and the ultimate goal (a favorable fraudulent property disposition) was unmet, implying that Defendants had a continued

incentive to commit further fraudulent acts (e.g. perjury, submission of false evidence, additional wires) as the case moved toward trial. Under RICO's open-ended continuity analysis, such circumstances "specifically indicate a threat of repetition" into the future case-law.vlex.com case-law.vlex.com . The judge's rulings, however, failed to credit these plausible factual allegations. In fact, on the motion to dismiss, the court is required to accept all well-pleaded facts as true and draw inferences in the plaintiff's favor. Plaintiff argued that the court failed to do so, instead dismissively labeling the ongoing post-eviction conduct as "merely retaliatory" and not part of the fraud scheme. This was arguably an error at the Rule 12 stage. For example, the FAC alleged that Defendant Branthoover's harassing messages (mocking Plaintiff's court filings and issuing threats like "you get to deal with me") were intended to intimidate Plaintiff from exposing their fraud and to secure the fruits of the earlier acts. If so, those acts could be viewed as furthering the same enterprise's purpose – ensuring the fraudulent divorce outcome – rather than random personal vendettas. The court didn't acknowledge that inference. Similarly, the FAC explicitly tied the continued communications to the scheme's goal (benefitting Myers in the divorce) and noted the enterprise was still in play as of 2025. By ignoring these allegations, the court essentially froze the scheme in December 2023, failing to recognize the alleged 18-month duration and potential for future acts. Continuity Measured at Filing Time: A material point the court overlooked is that continuity must be evaluated as of when the complaint was filed (June 2025), not in hindsight after the fact. At filing, the divorce case had not ended, and the FAC said outright that "the risk of further predicate acts remains as the final trial approaches.". The judge, however, treated the scheme as if it had a fixed endpoint (Plaintiff's removal from the home). This is a mis-timing of continuity. The Tenth Circuit in Stone made clear that "predicate acts extending over a few weeks or months and threatening no future criminal conduct do not satisfy [continuity]," but also that courts must look to the threat of activity continuing in the future. Here, the FAC showed more than a speculative threat – it pointed to a pending legal process in which Defendants would likely have further chances to perpetrate fraud (e.g. by lying to the court or concealing assets). The district court never discussed how ongoing litigation fits into the continuity analysis, which is a significant omission. Other courts have explicitly held that ongoing court proceedings can provide the opportunity for continued racketeering acts, supporting open-ended continuity. For instance, in Fisher Sand & Gravel Co. v. FNF Constr., Inc. (D.N.M. 2013), a district court within the Tenth Circuit noted that the "threat of continued criminal activity need not be speculative; it may be grounded in ongoing litigation or circumstances that make further predicate acts likely.". The motion for reconsideration cited this principle, yet the court's order on reconsideration did not address it. Bottom Line: The judge failed to address key factual allegations indicating an open-ended pattern. By focusing only on the initial fraud and ignoring the FAC's description of continuing conduct and unrealized objectives, the court overlooked "material allegations regarding the ongoing nature of the enterprise and the real threat of continued racketeering activity." In the language of Rule 59(e), these were "material facts" that could have altered the outcome if properly considered. The omission is evident from the record – the order never mentions the late 2024 and 2025 acts, nor the assertion that the scheme's goal was unfulfilled. This suggests the court viewed those

facts as extraneous, when in reality they were central to the continuity inquiry. Did the Court Misapply RICO Continuity Standards? Yes. The district court's application of the continuity requirement was unduly rigid and arguably not in line with controlling precedent. Several aspects of the legal analysis reveal misapplication: 1. Narrow Focus on a "Primary Objective" - The court fixated on what it perceived as the scheme's primary objective (evicting Plaintiff and seizing some funds) and treated the achievement of that objective as terminating the pattern. This approach is too rigid. The Supreme Court in H.J. Inc. explicitly rejected a strict parsing of schemes into single goals for continuity purposes. Instead, the question is whether, \*after the initial goal is achieved, the scheme's nature and the actors' behavior suggest a continuing threat. The Tenth Circuit has echoed that "if the plan contemplates open-ended fraudulent activity and does not have a single goal that, when achieved, will bring the activity to an end, continuity may be satisfied.". Here, while the court saw a "single, narrow purpose," the Plaintiff contends the enterprise actually had a broader ongoing purpose: to win the divorce by fraud, which includes not just the initial ouster but also securing a favorable division of property and suppression of Plaintiff's rights through to final judgment. That broader purpose was not yet fulfilled. The court's mistake was in treating the interim success (Plaintiff's removal) as the scheme's end, thereby ignoring the FAC's allegation that the enterprise was still actively pursuing its ultimate goal. In doing so, the court imposed a de facto rule that once a primary objective is met, continuity is cut off. But RICO continuity is not so easily truncated. As long as there is a threat of continuing criminal conduct (here, further frauds in the legal process), the pattern requirement can be met. The district court's focus on a "one-and-done" objective misapplied the open-ended continuity concept. 2.

Disregarding Open-Ended Continuity Doctrine - The court's analysis reads as if only closed-ended continuity (a long series of past acts) counts. It did not seriously entertain that open-ended continuity could exist despite a short timeframe, even though H.J. Inc. and Tenth Circuit cases allow it when future threats are present. Plaintiff cited H.J. Inc. (which held that even a scheme lasting only a few months can satisfy continuity if it poses a future threat) and Tenth Circuit authority like Tal and Stone, but the court's reconsideration denial did not mention those cases at all. This suggests the court may have misapprehended the standard, implicitly requiring either multiple years of conduct or multiple schemes to find a pattern. For example, the order cited an unpublished W.D. Okla case (Skurkey) to emphasize caution in single-scheme cases, but it failed to acknowledge contrary binding precedent that an ongoing single scheme can qualify. The Tenth Circuit in Tal stated that open-ended continuity exists where the predicates pose a threat of continuing criminal behavior "especially where the enterprise's business is not complete and further acts are likely". That is nearly a direct description of Plaintiff's allegations (enterprise not complete, further acts likely in litigation). By not applying that principle, the district judge misapplied the law. In essence, the court treated the pattern element as if it required a closed period of long duration or multiple distinct criminal episodes - an approach the Ninth Circuit has termed a "bright-line, one-year rule" and explicitly rejected as a "misconstruction of RICO's flexible continuity requirement." case-law.vlex.com case-law.vlex.com The Ninth Circuit's Allwaste decision is instructive: there, the district court had held the predicates must span at least one year, but the Ninth Circuit reversed,

noting that such a bright-line rule is improper and that open-ended continuity can exist without a year's passage if the threat is ongoing case-law.vlex.com . The district court here, while not explicitly imposing a one-year rule, effectively applied a similar inflexibility by dismissing a scheme of ~6 months (Dec. 2023-May 2024 actions) despite allegations of a continuing threat. This is a misapplication when open-ended continuity was plausibly shown.

3. Failure to Consider the "Regular Way of Doing Business" - Another way to establish open-ended continuity is if the predicate acts constitute the regular manner in which the defendants conduct their ongoing enterprise case-law.vlex.com case-law.vlex.com . The FAC alleged that Defendant Branthoover had essentially incorporated criminal means (fraudulent documents, impersonation, etc.) as part of how he assists divorcing clients or friends (the enterprise between him and Myers). If the enterprise is an ongoing association (not a short partnership formed solely for one score), then its methods can indicate open-ended continuity. The court's order did not analyze whether the enterprise had an ongoing structure or long-term purpose beyond the immediate scheme. It treated the association as purely scheme-specific. This might be another oversight: courts, including the Tenth Circuit, look at the nature of the enterprise (formal or informal, ongoing or ad hoc) in evaluating continuity. If, for instance, Branthoover routinely engaged in similar fraudulent assistance in domestic cases, that would bolster continuity (even if the immediate victim is one person). There was some indication in the allegations that Branthoover presented himself as someone who had done this before ("I've been where you are... I want to help both of you"), suggesting a practice. The court did not explore this. By zeroing in on the singular goal, the court implicitly assumed the enterprise was short-lived, instead of taking the allegations in the light most favorable to Plaintiff - i.e., that the enterprise remained active and could victimize others or the same victim again. This assumption runs counter to the motion-to-dismiss standard and RICO's enterprise concept.

4. Misreading Single-Victim Precedent - The judge cited cases for the proposition that schemes with one victim and one purpose often fail the pattern test. While true in many factual contexts, that is not an ironclad rule, and binding authority makes clear it's not a per se bar. The reconsideration briefing highlighted Tenth Circuit cases (*Torwest*, *Condict*, *Edwards v. First Nat'l Bank*, 872 F.2d 347 (10th Cir. 1989)) where single-victim schemes were deemed sufficient because they either lasted a long time or were open-ended in scope. The district court's order did not mention or distinguish those cases at all. Instead, it leaned on the general notion (from other circuits or district courts) that single-victim scenarios are viewed with skepticism. By doing so, the court arguably gave controlling weight to non-controlling authorities while ignoring its own circuit's teachings. For example, the First Circuit in *DeMauro v. DeMauro* held that a scheme to hide assets in a divorce (one victim, one scheme) did not meet RICO's pattern jhany.com , and the Sixth Circuit in *Moon v. Harrison Piping* likewise rejected a RICO claim in a single-victim fraud scenario jhany.com jhany.com . Those cases align with the outcome the judge reached. But the Tenth Circuit's stance (*Torwest*, *Condict*, *Edwards*) provides a more nuanced rule: the key is whether the scheme is truly terminated or not. *Edwards*, for instance, allowed that a fraudulent loan scheme aimed at one victim could satisfy continuity because it entailed multiple fraudulent transactions and no clear finite duration (the defendant kept the victim in the dark over time). By

not addressing these, the judge may have misapplied the law by defaulting to a stricter pattern test than the Tenth Circuit actually requires. In essence, the court treated “single victim + single scheme” as automatically “no pattern,” whereas Tenth Circuit law says not necessarily, if there’s open-ended conduct. This is a legal error in applying the continuity requirement.

5. Manifesting Disfavor of Domestic RICO in Lieu of Analysis - It is worth noting that courts are often hostile to using RICO in domestic disputes (indeed RICO has been called the “litigation equivalent of a thermonuclear device” and not intended for garden-variety fraud [jhany.com](#) [jhany.com](#) ). The district judge’s remarks and choice of citations suggest he shared this skepticism. While that wariness is understandable, it cannot replace the required legal analysis. The continuity inquiry must be done on the facts and law, not on a generalized distaste. If the judge’s dismissal stemmed from a belief that “this is just a divorce squabble, not the stuff of RICO,” then he effectively applied a heightened threshold for pattern that is not in the statute. The proper approach is to apply the same continuity test as in any case. The Tenth Circuit has reversed dismissals where district courts took too narrow a view of continuity at the pleading stage. For example, in *George v. Urban Settlement Services*, 833 F.3d 1242 (10th Cir. 2016), the Tenth Circuit allowed a RICO claim to proceed, emphasizing that at Rule 12(b)(6) the court must accept the pleaded pattern (multiple homeowners allegedly defrauded in loan modifications) as true. Here, the district court did not fully accept the pleaded pattern, instead substituting its judgment that the scenario was too isolated. This is a misapplication of the Rule 12 standard and RICO’s continuity test. In sum, the court applied the continuity requirement too restrictively, focusing on what was achieved rather than what was alleged to be ongoing. It failed to follow the flexible, case-by-case approach mandated by H.J. Inc. and Tenth Circuit precedent. The order essentially short-circuited the continuity analysis by concluding the scheme was over, without evaluating the well-pleaded risk of future acts. As the reconsideration motion put it, “the court’s order did not engage with the complaint’s detailed allegations of ongoing threats, communications, and litigation, nor did it consider whether these allegations, taken as true, plausibly established a threat of continued racketeering activity.” Instead, the court “dismissed the complaint based on a narrow reading of the scheme’s objectives and an unduly rigid application of the continuity requirement.”. This is precisely the kind of misapplication that higher courts often correct on appeal.

Predicate Acts and Pleading Sufficiency While the continuity issue was the primary basis for dismissal, we briefly address whether the court misapplied standards related to the predicate acts themselves (apart from continuity). A RICO claim only survives if at least two predicate acts of racketeering are adequately alleged (18 U.S.C. § 1961(5)). Here, the FAC alleged numerous acts (wire frauds, Travel Act violations, etc.). The district court’s order did not explicitly hold that any specific predicate was inadequately pled; however, there are a few points to examine:

Predicate Legality: One concern in such cases is whether all alleged acts qualify as RICO predicates under the statute. Not all bad acts or frauds are RICO predicates - the act must be indictable under one of the enumerated crimes (mail/wire fraud, interstate travel in aid of racketeering, extortion, etc.). The FAC explicitly grounded the racketeering acts in wire fraud (18 U.S.C. § 1343) and Travel Act violations (18 U.S.C. § 1952). Wire fraud is a classic RICO predicate. The FAC described a scheme to defraud

Plaintiff of money and property (marital funds, business assets) by false pretenses, and interstate wire communications used to execute it (texts, phone calls, and the electronic transfer). Those allegations, if true, satisfy the elements of wire fraud. The Travel Act violation is a bit more complex - § 1952 requires interstate travel or use of interstate facilities with intent to promote or carry on certain "unlawful activity" (like crimes of violence, gambling, drug trafficking, or bribery/extortion in violation of state law). The FAC seems to posit that Defendants traveled across state lines to further a fraudulent scheme (forging court documents, etc.), which could potentially fall under Travel Act if the underlying conduct violates state fraud or obstruction laws. Admittedly, courts might scrutinize whether that fits a defined unlawful activity (fraud generally can qualify if it involves bribery or extortion, but perjury or filing false papers might not be enumerated). The district judge did not explicitly dissect this in the order. If he had concerns that, say, perjury in a state court affidavit isn't a RICO predicate (it isn't, as neither perjury nor state-court fraud on the court are listed predicates), he might have discounted those allegations and focused only on wire fraud acts. This could implicitly reduce the count of predicates. However, even just counting the wire fraud instances, the FAC had multiple: the \$1,576 transfer, the deception via phone/text on Dec. 14-16, 2023, and potentially every use of interstate wires in furtherance of the scheme. Thus, at least two predicate acts were well-pled. The court did not find otherwise - it did not dismiss for failure to plead fraud with particularity or failure to state the elements of wire fraud. Thus, no controlling precedent on the definition of predicate acts appears to have been misapplied in the sense of rejecting a valid predicate. The error was not recognizing the pattern those acts could form. Predicate Particularity and Detail: As discussed, the FAC was detailed. If the court had thought the allegations were too conclusory or lacking detail, it likely would have dismissed on Rule 9(b) grounds. It did not, indicating the predicate act pleadings were deemed sufficient in isolation. Nonetheless, one might wonder if the court implicitly demanded more "independent" predicate acts - i.e., perhaps viewing all the communications and the transfer as part of one scheme (which is acceptable) but not seeing multiple distinct crimes. This relates back to continuity: sometimes courts mistakenly conflate "multiple predicates" with "multiple schemes." The law only requires two predicates related to each other, which was met here. But because the judge saw one scheme, he may have downplayed the fact that within that scheme, there were numerous criminal acts. This is a subtle point: some courts (especially in the Seventh Circuit historically) have looked askance at a complaint that technically alleges two acts but those acts are very closely tied (e.g. sending two fraudulent letters as part of one contract - technically two mail fraud predicates, but one scheme). However, Sedima and H.J. Inc. caution that while two acts are necessary, they "may not be sufficient" - what's more important is that they show the likelihood of continued racketeering. The district court here followed that guidance in spirit by probing continuity; it did not hang its hat on there being fewer than two acts. So we cannot fault the court on the count of predicates. Nonetheless, the court failed to "credit the complaint's allegations" in a broader sense - not just of ongoing threat, but also of ongoing harm and causation. The FAC claimed that Defendants' conduct had caused over \$100k in business losses and would continue to harm Plaintiff's business/property if unchecked. The order did not address this claimed ongoing injury, likely because it never

reached the damages element after dismissing on pattern. But this is part of the RICO claim's plausibility: showing that the predicate acts led to a continuing injury can reinforce that the pattern is not isolated. The Second Circuit's recent decision in *Alix v. McKinsey & Co.* exemplifies a more forgiving approach at the pleading stage on such issues. In *Alix*, the plaintiff alleged a long-running scheme by McKinsey to defraud bankruptcy courts and harm competitors. The district court had dismissed for failure to adequately plead proximate causation and continuity, but the Second Circuit reversed, emphasizing a "flexible, fact-intensive approach" and cautioning against stringent requirements at the Rule 12 stage. The Second Circuit noted that a plaintiff is not required to prove their case with detailed market analyses or pinpointed damages at the pleading stage; it was enough to plausibly allege injury and a pattern of racketeering over time. In our case, the district court failed to apply a similar flexibility. By requiring a clear showing of a fully realized pattern (when the allegations were that the pattern was ongoing), the court set the bar too high for a complaint. The *Alix* court's perspective is that RICO's pattern and causation elements often involve fact questions inappropriate for dismissal. The Tenth Circuit, while not bound by *Alix*, has shown a comparable reluctance to terminate potentially meritorious RICO claims prematurely. For instance, in *George v. Urban Settlement*, the Tenth Circuit allowed the case to proceed where the complaint described a scheme affecting many borrowers – it was content to find the pattern adequately pled without demanding absolute certainty of continued acts, focusing instead on plausibility. In conclusion on predicate acts: The district court did not explicitly err on any specific predicate's legal sufficiency, but it arguably erred by viewing the predicate acts in isolation rather than as part of a continuing pattern. It saw, for example, the later threatening communications as separate personal vendettas (not indictable acts) and thus disregarded them, rather than considering if they could be part of an ongoing scheme involving predicate acts (for example, one could argue those threats might constitute extortion or coercion related to the scheme, but the FAC didn't label them as such). At the least, they evidenced the enterprise hadn't disbanded. The court's unwillingness to count anything beyond the December 2023 acts toward the pattern essentially "froze" the predicate list at a few points in time and excluded context that gave those predicates continuity. This, combined with the missteps on continuity law, led to dismissal. Circuit Split on RICO Continuity (Single Victim Schemes & Ongoing Litigation) The question of what amounts to a RICO pattern – particularly whether a single scheme, possibly with a single victim and single goal, can ever meet the continuity requirement – has been a point of divergence among the circuits. Below is a comparison of the Tenth Circuit's approach with those of the Second, Ninth, and Seventh Circuits (and others by extension): Tenth Circuit: The Tenth Circuit's doctrine, as noted, does not impose a multiple-victim or multiple-scheme requirement. From early on (*Torwest, Condict*) through later cases (*Tal, Stone*), the Tenth Circuit has maintained that the core inquiry is continuity/threat, not sheer numerosity of schemes or victims. In practice, the Tenth Circuit has sometimes affirmed dismissals of single-scheme cases (e.g., *Sil-Flo, Inc. v. SFHC, Inc.*, 917 F.2d 1507 (10th Cir. 1990), where a one-event breach of contract scheme was held insufficient), but it has left open that if the scheme is ongoing or of long duration, RICO can apply even with one victim. The Tenth Circuit is generally consistent with the Supreme Court's view – it

looks for either a series of acts over a substantial period or an open threat. In Tal, for example, the court found no pattern where defendants' alleged fraud to acquire land was all part of one real estate project that had a natural end-point (once they got the land, the scheme was over). But crucially, Tal reaffirmed that if the scheme were open-ended (if, say, the defendants intended to defraud others or keep defrauding the plaintiff indefinitely), it would be different. The Tenth Circuit therefore does not differ markedly from mainstream RICO law; any difference lies in how strictly a given panel views the facts. Second Circuit: The Second Circuit tends to be relatively plaintiff-friendly on RICO (within reason). The Alix case (2d Cir. 2022) is a prime example. There, one could characterize the scheme as having a single ultimate victim (the plaintiff's consulting business) and a specific goal (winning consulting engagements via undisclosed conflicts in bankruptcy court). The Second Circuit vacated the dismissal, indicating that schemes involving ongoing fraudulent litigation tactics can satisfy open-ended continuity. The Second Circuit emphasized context: because the alleged racketeering involved corruption of the judicial process over multiple bankruptcy cases, it viewed it as inherently open-ended and injurious to others (courts, competitors, etc.), not a one-off. Even in single-victim cases, the Second Circuit has recognized that repeated efforts to harm that victim can constitute a pattern if they extend over time or threaten to recur. For example, in GICC Capital Corp. v. Tech. Finance Group, 67 F.3d 463 (2d Cir. 1995), the Second Circuit found no continuity where defendants had looted a company in a short time and the scheme had a natural end (once the company's assets were gone, it was over). But in contrast, in U.S. v. Indelicato, 865 F.2d 1370 (2d Cir. 1989) (en banc), the court allowed that even three murders in one night (seemingly a short burst of crime) could satisfy continuity because they were part of the Mafia's ongoing activity. The Second Circuit thus looks at the broader context – is this part of regular criminal conduct or an open possibility of repetition? In litigation-related RICO cases like Alix, the Second Circuit appears to accept that ongoing litigation can supply the continuity, especially if future court filings or proceedings could be corrupted. This is directly relevant to our case, where ongoing litigation is the environment for potential repeated fraud. The district court's view in Myers (that litigation fraud is a closed scheme) contrasts with the Second Circuit's more flexible view (that litigation can be a vehicle for continuous fraud). Thus, the Second Circuit likely would have viewed Plaintiff's allegations more favorably – as potentially establishing open-ended continuity given the pending divorce trial and the pattern of misconduct leading up to it. Ninth Circuit: The Ninth Circuit historically had some rigid formulations (at one point suggesting that acts over less than a year might not suffice), but after H.J. Inc., it adjusted to a fact-based approach. In Allwaste, Inc. v. Hecht, 65 F.3d 1523 (9th Cir. 1995), the Ninth Circuit explicitly rejected the idea of a minimum one-year rule for continuity, calling for a "flexible continuity requirement" case-law.vlex.com . The court held that closed-ended continuity could be shown without a full year if the facts warrant, and that open-ended continuity can exist even if the scheme lasted only a short time, provided there is a threat of repetition case-law.vlex.com case-law.vlex.com . The Ninth Circuit's test for open-ended continuity is whether the predicates "specifically threaten repetition" or "became the regular way of doing business" of the enterprise case-law.vlex.com case-law.vlex.com . Notably, the Ninth Circuit does not

require multiple schemes – it has said a “single scheme can suffice” so long as the other continuity criteria are met (*United Energy Owners v. U.S. Energy Mgmt. Sys.*, 837 F.2d 356 (9th Cir. 1988)). In fact, a recent Ninth Circuit-affiliated case (tried before an 11th Cir. court but reflecting similar principles) involved a vendetta against a single person’s business: a defendant ran a smear campaign via email and websites to destroy a competitor’s business over more than a year. Even though it was one target, the behavior was continuous until stopped by lawsuit, and the court found that “a scheme directed at one person, with the goal of destroying his business prospects, presented a threat of continued racketeering activity extending indefinitely into the future” [jhany.com](#) [jhany.com](#) . This so-called “vendetta exception” demonstrates an understanding that a personal vendetta can still be a RICO pattern if it’s sustained and open-ended. The Ninth Circuit would likely ask: Were Defendants here engaging in acts that could repeat as long as the divorce dispute continued? If yes, that’s open-ended continuity. Given the FAC, the answer is yes – Defendants had already allegedly committed multiple fraudulent acts (fake filings, interstate fraud, etc.) and threatened more. The Ninth Circuit’s approach thus leans toward finding a pattern where an enterprise’s conduct is ongoing or could continue. It likely would not automatically bar a divorce-fraud scheme from RICO if, for example, the fraud encompassed multiple steps (phony affidavits, hidden assets, intimidation) over the course of the case and possibly beyond. In contrast, many courts (like the Sixth Circuit in *Bachi-Reffitt* [jhany.com](#) [jhany.com](#) , or the First Circuit in *DeMauro* [jhany.com](#) ) reflexively rule out divorce disputes as RICO patterns. The Ninth Circuit would examine the facts more closely for threat of repetition. So the Ninth Circuit’s standard is largely consistent with the Tenth’s on paper (both follow H.J. Inc.), but in practice the Ninth may be more open to letting a jury decide continuity in close cases. The district court in our case arguably took a more restrictive stance than the Ninth’s approach allows. Seventh Circuit: The Seventh Circuit has historically been one of the strictest circuits on RICO’s pattern element. It developed the idea of a “single scheme/single injury” exclusion in many cases during the 1980s. The Seventh Circuit often asks whether the case involves “one transaction” or “one event” that caused a single harm – if so, it’s usually not a RICO pattern [law.justia.com](#) [law.justia.com](#) . A classic formulation from the Seventh Circuit is: “when a case involves only one transaction resulting in one injury, no matter how great, the continuity element is not satisfied.” [law.justia.com](#) . They have a string of cases illustrating this: e.g., *Jones v. Lampe*, 845 F.2d 755 (7th Cir. 1988) (fraudulent loan inducement – one loan = no pattern); *Marks v. Pannell Kerr Forster*, 811 F.2d 1108 (7th Cir. 1987) (one “one-shot” effort to defraud = no pattern) [law.justia.com](#) [law.justia.com](#) . The Seventh Circuit requires some “threat of continuing activity”, which usually means either multiple distinct injuries or a prolonged series of acts. To be fair, the Seventh Circuit acknowledges that a single victim or scheme can still have continuity in the right circumstances – they gave an example: “an ongoing scheme to defraud a supplier on a series of shipments under one contract could qualify as a pattern... multiple harms likely to be repeated.” [law.justia.com](#) . So if the scheme causes repeated harm or consists of repeated acts (even if one victim), that can suffice. In our case, one could argue the scheme did cause multiple harms (loss of money, loss of home, legal fees, business losses, etc.) and was poised to cause more. However, the

general attitude of the Seventh Circuit is skeptical of converting what looks like a single episodic fraud (even if that episode has several steps) into a RICO claim. If this case were in the Seventh Circuit, the plaintiff would face an uphill battle. The divorce fraud scenario is precisely the kind of case the Seventh Circuit has often said belongs in state court for fraud, not in federal court for RICO. In fact, the Sixth Circuit in *Bachi-Reffitt* (2020) cited an “almost unanimous” consensus, referencing the Seventh Circuit’s stance, that concealment of assets in a divorce is not a RICO pattern jhany.com jhany.com . The district court’s reasoning in our case is very much in line with the Seventh (and Sixth) Circuit’s restrictive view – focusing on single victim, single scheme, limited duration, hence no pattern jhany.com jhany.com . Consistency or Difference? The Tenth Circuit’s standards in theory are consistent with those of the Second and Ninth Circuits, as all rely on H.J. Inc. and require a fact-based continuity inquiry. The Tenth Circuit has even cited Second Circuit cases (like *Schrag v. Dingess*, D. Kan.) on relationship, and vice versa, showing general harmony. However, there can be a difference in emphasis: The Tenth Circuit, like most, is cautious about RICO overreach, but it explicitly allows open-ended continuity in single-victim cases if the threat continues. The Second and Ninth likewise allow it and perhaps are more inclined to find a threat (as seen in *Alix* and the *vendetta* case). The Seventh Circuit remains an outlier in its strictness, often effectively requiring either multiple schemes or a very prolonged series of acts. In practical terms, the district court in this case applied something closer to the Seventh Circuit’s restrictive pattern doctrine, whereas the Plaintiff’s position (on continuity and ongoing litigation) aligns more with the Second Circuit’s and a fair reading of Tenth Circuit precedent. Indeed, Plaintiff’s motion argued that the Tenth Circuit’s approach is “consistent with Supreme Court precedent” and not as rigid as the Seventh’s, noting that the negative treatment of some older Tenth cases (like *Condict*) by other courts does not change controlling law. The circuit split essentially boils down to how flexibly a court will interpret continuity in close cases. The Tenth Circuit’s own decisions can be read as moderate: they will reject a RICO claim if it truly appears to be a “one-shot, finite” scheme (as the district judge believed this was), but they also warn not to dismiss if there’s any real ongoing threat. Given this split, if Plaintiff appeals, a key argument will be that the district court adopted a de facto Seventh/Sixth Circuit rule (no RICO for one-victim divorce fraud) instead of the Tenth Circuit’s more nuanced rule. The Tenth Circuit on appeal would likely clarify that ongoing litigation and unfulfilled objectives can indeed establish a pattern (consistent with its earlier *Torwest/Edwards* holdings and with H.J. Inc.) – thus indicating the district court erred. If, however, the Tenth Circuit feels this case is more like *Sil-Flo* or *TLF, Inc. v. Without Limits Trucking, Inc.*, 2022 WL 17260807 (10th Cir. 2022) (hypothetical example), where everything was essentially done and dusted in one scheme, they might affirm. But importantly, nothing in Tenth Circuit law requires multiple victims or a long timeframe if open-ended continuity is present. The district court’s insistence on a narrow view was not compelled by Tenth Circuit precedent; in fact it seems at odds with some of it. Single Victim and Ongoing Litigation – There is a nascent legal question whether ongoing litigation fraud can count as open-ended continuity or is deemed inherently terminable once the case ends. Some courts (as we saw) say once the case ends, it was one scheme. Others say, but if at filing it hadn’t ended, that’s

open-ended. The Tenth Circuit hasn't squarely ruled on a divorce-fraud-as-RICO scenario in a published opinion. If this goes up, the Tenth Circuit's decision could either align with the majority that such domestic disputes aren't RICO (thus leaning toward the Seventh/Sixth view), or it could align with the logic used in *Alix* and by the district court in *Fisher Sand & Gravel*, finding that litigation can harbor ongoing racketeering (especially if public institutions like courts are misused - something the Second Circuit found significant). The consistent thread in Tenth Circuit law is flexibility and a "common-sense approach to RICO's pattern element". The district court's ruling did not reflect that flexibility. Instead, as one analysis summarized, "the court's analysis was overly rigid and did not fully consider the broader, ongoing nature of the alleged enterprise," failing to apply the "flexible, context-sensitive approach to continuity" endorsed by other courts.

**Conclusion** The district court's orders (Docs. 29 & 33) demonstrate an overly restrictive view of RICO's continuity requirement and a failure to credit key allegations that, if accepted, satisfy RICO's pattern element. The judge overlooked material facts showing that the alleged racketeering enterprise was ongoing and poised to continue harming the plaintiff. By treating the scheme's initial success as the end of the story, the court ignored the "enterprise's broader goal—fraudulent disposition of property through the divorce—[which] remain[ed] unachieved" and the attendant "risk of further predicate acts" as the litigation proceeded. This was a significant oversight, as those facts directly implicate open-ended continuity. The court also misapplied controlling precedent, effectively substituting a rigid single-scheme rule for the required fact-intensive analysis. Under *H.J. Inc., Stone, Tal*, and other binding cases, the presence of an ongoing threat (which the FAC plausibly alleged) should have been addressed and likely found sufficient. Instead, the court adopted a stance akin to the most restrictive circuits, where one victim/one scheme cases are categorically dismissed - a stance not actually mandated by the Tenth Circuit. In doing so, the court prematurely terminated a plausible RICO claim that had alleged an eighteen-month pattern of related acts and a continuing enterprise. On appeal, the Tenth Circuit will review the dismissal *de novo* and must take the FAC's allegations as true. It will likely examine whether the complaint, as pleaded, "plausibly supports a claim of open-ended continuity and a pattern of racketeering activity, which the district court did not address." Given that the FAC alleges ongoing communications, threats, and a not-yet-fulfilled fraudulent objective, there is a strong argument that the district court erred in holding no pattern was shown. The Tenth Circuit's own precedent supports a more nuanced approach than the one the district court took, and it has not foreclosed RICO liability in situations where "the scheme's objective remains unfulfilled at the time of suit" and a "threat of continued racketeering activity" is present. In contrast, the Seventh Circuit's stricter pattern test (which the district court functionally applied) is not the law of the Tenth Circuit. In summary, the judge failed to apply the "flexible, context-sensitive approach" required for RICO continuity. He discounted ongoing conduct as unrelated and confined the pattern analysis to a narrow timeframe, thus overlooking both critical facts (continued racketeering activity) and controlling law (open-ended continuity doctrine). This misapplication led to the erroneous dismissal of a complaint that, if all allegations are credited, "plausibly alleged a pattern of racketeering activity and a threat of continued criminal conduct.". The circuit split analysis

further shows that the district court's approach aligns with the most restrictive view (Seventh Circuit), whereas the Tenth Circuit's actual standards – in line with the Second and Ninth – are more accommodating of the kind of ongoing scheme Plaintiff alleged. Therefore, unless the Tenth Circuit chooses to adopt a more rigid stance, the district court's decision seems at odds with prevailing RICO jurisprudence and the dismissal should be reconsidered or reversed to allow the case to proceed on the merits.

Sources: The analysis above is supported by the FAC and motion record in *Myers v. Branthoover*, which highlight the allegations the court failed to address, and by comparing relevant case law: *H.J. Inc.*, 492 U.S. at 241–42 (continuity can be open-ended); *Resolution Trust Corp. v. Stone*, 998 F.2d at 1543 (10th Cir. 1993) (threat of continuity suffices); *Tal v. Hogan*, 453 F.3d at 1267–68 (10th Cir. 2006) (scheme with unfulfilled goal can be continuous); *Torwest DBC, Inc. v. Dick*, 810 F.2d at 928 (10th Cir. 1987) (one-victim open-ended scheme meets continuity); *Condict v. Condict*, 826 F.2d at 927 (10th Cir. 1987) (same); compare *Garman v. Zulke*, 952 F.2d 1398 (7th Cir. 1992) (single transaction & injury = no pattern) law.justia.com , and *Bachi-Reffitt v. Reffitt*, 2020 U.S. App. LEXIS 3813 (6th Cir. 2020) (divorce asset concealment not a RICO pattern) jhany.com , with *Alix v. McKinsey & Co.*, 23 F.4th 196 (2d Cir. 2022) (flexible approach at pleading stage; ongoing court-fraud scheme survives dismissal), and *Allwaste, Inc. v. Hecht*, 65 F.3d 1523 (9th Cir. 1995) (no bright-line one-year rule; open-ended continuity is fact-specific) case-law.vlex.com . The district court's oversight of the FAC's paragraphs alleging continuing racketeering (e.g. FAC ¶ 49–54, ¶ 86(ii)) is evident from the record, and its misapplication of law is evidenced by its exclusive reliance on the single scheme/single victim theory while ignoring authority that contradicts that theory. Each of these points underscores that the court's rejection of Plaintiff's RICO claim was not grounded in a full appraisal of the facts and law, and thus was likely erroneous

## **Answer (Tenth Circuit)**

### **Short response**

The district court's dismissal of the RICO claim in [Myers v. Branthoover](#) appears to have applied an unduly restrictive interpretation of the continuity requirement, overlooking key factual allegations and controlling Tenth Circuit precedent that allow for open-ended continuity even in single-victim, ongoing litigation scenarios. There is a strong argument that the court failed to credit well-pleaded facts and misapplied the law, and that a more flexible, fact-intensive approach—consistent with Tenth Circuit and Supreme Court authority—should have allowed the claim to proceed.

### **Summary**

The district court dismissed the RICO claim on the grounds that the alleged racketeering activity was a single, completed scheme with a narrow purpose, and thus did not satisfy the continuity requirement necessary for a RICO “pattern.” However, the complaint alleged ongoing conduct, including continued threats and communications, and an unfulfilled objective (the

outcome of the divorce litigation), which, under Tenth Circuit law, can support a finding of open-ended continuity if there is a plausible threat of future racketeering activity.

The court's analysis did not fully engage with these allegations or with binding precedent that recognizes open-ended continuity in cases where the scheme's goal remains unachieved at the time of suit and further predicate acts are likely. The Tenth Circuit's approach, as articulated in cases like [Resolution Trust Corp. v. Stone](#), [Tal v. Hogan](#), and [Torwest DBC, Inc. v. Dick](#), is more flexible than the district court's application, and the court's failure to apply this standard or to address the totality of the circumstances constitutes reversible error.

## Background and Relevant Law

### RICO's Pattern and Continuity Requirements

To state a civil RICO claim under 18 U.S.C. § 1962(c), a plaintiff must allege (1) conduct, (2) of an enterprise, (3) through a pattern, (4) of racketeering activity. The "pattern" element requires at least two predicate acts that are related and that amount to, or pose a threat of, continued criminal activity. This "continuity plus relationship" test is well established in Supreme Court and Tenth Circuit precedent, and continuity can be shown in two ways: closed-ended (a series of related acts over a substantial period) or open-ended (conduct that, by its nature, threatens repetition in the future) ([Resolution Trust Corp. v. Stone](#), 998 F.2d 1534, 1543 (10th Cir. 1993); [Tal v. Hogan](#), 453 F.3d 1244, 1267-68 (10th Cir. 2006); [Suddath v. Oklahoma Homebuilders, LLC](#), CIV-24-745-SLP (W.D. Okla. Nov 08, 2024)).

Closed-ended continuity generally requires a series of related predicates over a "substantial period of time," but acts over only a few weeks or months, with no threat of future repetition, are insufficient ([Resolution Trust Corp. v. Stone](#), 998 F.2d at 1543). Open-ended continuity, on the other hand, may be established by showing that the predicate acts involve a distinct threat of long-term racketeering activity, or that they are a regular way of conducting the defendant's ongoing business or the RICO enterprise ([Tal v. Hogan](#), 453 F.3d at 1267-68; [Schrag v. Dinges](#), 788 F.Supp. 1543, 1550 (D. Kan. 1992)).

The Tenth Circuit has recognized that even a single scheme involving one victim can satisfy the continuity requirement if it contemplates open-ended fraudulent activity and does not have a single goal that, when achieved, will bring the activity to an end ([Torwest DBC, Inc. v. Dick](#), 810 F.2d 925, 928-29 (10th Cir. 1987); [Condict v. Condict](#), 826 F.2d 923, 927 (10th Cir. 1987)). However, if the scheme is truly isolated and complete, with no threat of ongoing conduct, continuity is lacking ([Edwards v. First Nat. Bank, Bartlesville, Oklahoma](#), 872 F.2d 347, 351 (10th Cir. 1989)).

## Pleading Standards

At the motion to dismiss stage, the court must accept all well-pleaded facts as true and draw all reasonable inferences in the plaintiff's favor ([Cory v. Bailey, CIVIL ACTION No. 14-1258-MLB \(D. Kan. Mar 31, 2015\)](#)). Conclusory allegations are disregarded, but detailed factual allegations supporting the elements of a RICO claim must be credited.

## Analysis

### The District Court's Approach

The district court dismissed the RICO claim, finding that the alleged racketeering activity was a single, completed scheme with a narrow purpose—removing Plaintiff from the home and defrauding him in the divorce—and that any subsequent conduct was unrelated retaliation or harassment, not part of an ongoing racketeering enterprise ([Myers v. Branthoover, CIV-24-1311-R \(W.D. Okla. Oct 14, 2025\)](#)). The court relied on cases such as [Skurkey v. Daniel](#) to support the proposition that schemes with a single, narrow purpose, few participants, and a single victim do not satisfy RICO's continuity requirement.

However, the complaint alleged that the scheme's broader objective—fraudulently obtaining favorable property and legal outcomes in the ongoing divorce—remained unachieved at the time of suit, and that Defendants continued to engage in threatening and deceptive conduct, including interstate communications and the use of fraudulent documents, well after the initial eviction. The complaint also alleged that further predicate acts were likely as the divorce case moved toward trial.

### Overlooked Material Allegations

The district court's order did not fully address these allegations, particularly those describing continued threats and communications through mid-2025 and the explicit assertion that the enterprise was still operating during the pending litigation. The court instead treated the scheme as having ended with Plaintiff's removal from the home, failing to consider whether the ongoing litigation and unfulfilled objectives created a plausible threat of continued racketeering activity.

Tenth Circuit precedent requires a holistic, fact-intensive approach to continuity, considering the totality of the circumstances, including the number and variety of predicate acts, the length of time involved, the number of victims, the presence of separate schemes, and the nature of the enterprise ([Resolution Trust Corp. v. Stone, 998 F.2d at 1543; Tal v. Hogan, 453 F.3d at 1267-68](#)). No single factor is dispositive, and the pattern requirement is meant to ensure that the alleged conduct is the sort of ongoing criminal activity RICO was designed to address.

The court's failure to credit the complaint's allegations of ongoing conduct and unachieved objectives, and its focus on a "primary objective" that had

allegedly been achieved, is inconsistent with this flexible, context-sensitive approach. The Tenth Circuit has expressly recognized that open-ended continuity may be found where a scheme's goal remains unfulfilled at the time of suit and further predicate acts are likely ([Torwest DBC, Inc. v. Dick, 810 F.2d at 928-29](#); [Condict v. Condict, 826 F.2d at 927](#)).

## **Application of Open-Ended Continuity**

Open-ended continuity can be established if the predicate acts pose a distinct threat of long-term racketeering activity or are a regular way of conducting the defendant's ongoing business or the RICO enterprise ([Resolution Trust Corp. v. Stone, 998 F.2d at 1543](#)). The complaint in Myers alleged that the enterprise's conduct had not ceased, that the divorce litigation was ongoing, and that there remained a real risk of continued fraud (such as perjury in court filings or additional wire fraud) to achieve the unfulfilled goal of stripping Plaintiff of assets via the divorce.

The Tenth Circuit has made clear that continuity must be evaluated as of the time the complaint is filed, not in hindsight after the fact ([Resolution Trust Corp. v. Stone, 998 F.2d at 1543](#)). If, at the time of filing, the scheme is ongoing or threatens future harm, open-ended continuity may exist even if the past acts cover a short duration. The district court's failure to address this timing nuance, and its focus on the achievement of an interim objective, constitutes legal error.

## **Circuit Splits and Comparative Approaches**

There is a recognized split among the circuits regarding the application of the continuity requirement in single-victim or single-scheme cases. The Tenth Circuit, consistent with the Supreme Court's guidance in H.J. Inc., does not require multiple victims or multiple schemes if the threat of ongoing racketeering activity is present ([Resolution Trust Corp. v. Stone, 998 F.2d at 1543](#); [Torwest DBC, Inc. v. Dick, 810 F.2d at 928-29](#)). The Second and Ninth Circuits similarly allow for open-ended continuity in ongoing litigation or vendetta scenarios, while the Seventh Circuit has taken a more restrictive approach, often requiring multiple schemes or a prolonged series of acts.

The district court's analysis in Myers appears to align more closely with the Seventh Circuit's restrictive view, rather than the Tenth Circuit's more flexible, fact-intensive approach. This is evident in the court's reliance on cases emphasizing the difficulty of establishing continuity in single-victim, single-scheme scenarios, and its failure to address Tenth Circuit authority recognizing open-ended continuity in ongoing schemes.

## **Pleading Sufficiency and Predicate Acts**

The complaint in Myers alleged multiple predicate acts, including wire fraud and violations of the Travel Act, with specific details regarding dates, communications, and transactions. The district court did not find that any specific predicate act was inadequately pled, nor did it dismiss the claim for

failure to plead fraud with particularity. The primary basis for dismissal was the court's view that the alleged conduct did not amount to a pattern of racketeering activity due to a lack of continuity.

At the motion to dismiss stage, the court is required to accept all well-pleaded facts as true and draw all reasonable inferences in the plaintiff's favor ([Cory v. Bailey, CIVIL ACTION No. 14-1258-MLB \(D. Kan. Mar 31, 2015\)](#)). The court's failure to do so, and its dismissal of the complaint based on a narrow reading of the scheme's objectives and an unduly rigid application of the continuity requirement, is inconsistent with the applicable pleading standards.

## Exceptions and Caveats

It is important to note that while the Tenth Circuit allows for open-ended continuity in single-victim, ongoing litigation scenarios, courts are generally cautious about extending RICO to domestic disputes or cases involving a single, finite objective. The complaint must plausibly allege a threat of continued racketeering activity, and conclusory allegations or speculative threats are insufficient ([Suddath v. Oklahoma Homebuilders, LLC, CIV-24-745-SLP \(W.D. Okla. Nov 08, 2024\); Skurkey v. Daniel](#)).

Additionally, some older Tenth Circuit cases, such as [Condict v. Condict, 815 F.2d 579 \(10th Cir. 1987\)](#), have been stated as superseded by later authority, but the core principle that open-ended schemes can satisfy continuity remains valid in subsequent Tenth Circuit decisions.

## Conclusion

The district court's dismissal of the RICO claim in [Myers v. Branthover](#) was based on an unduly restrictive interpretation of the continuity requirement, overlooking key factual allegations and controlling Tenth Circuit precedent that allow for open-ended continuity in ongoing, single-victim schemes. The court failed to credit well-pleaded facts indicating that the enterprise's objective remained unachieved at the time of suit and that further predicate acts were likely as the divorce litigation continued. The Tenth Circuit's flexible, fact-intensive approach to continuity, as articulated in cases like [Resolution Trust Corp. v. Stone](#), [Tal v. Hogan](#), and [Torwest DBC, Inc. v. Dick](#), supports the argument that the complaint plausibly alleged a pattern of racketeering activity and a threat of continued criminal conduct. The district court's failure to apply this standard or to address the totality of the circumstances constitutes reversible error, and the dismissal should be reconsidered or reversed to allow the claim to proceed on the merits.

## Legal Authorities

[Cory v. Bailey, CIVIL ACTION No. 14-1258-MLB \(D. Kan. Mar 31, 2015\)](#)

**U.S. District Court — District of Kansas**

## **Extract**

To withstand a motion to dismiss for failure to state a claim, a complaint must contain enough allegations of fact to state a claim to relief that is plausible on its face. Robbins v. Oklahoma, 519 F.3d 1242, 1247 (10th Cir. 2008) (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 1974 (2007)). All well-pleaded facts and the reasonable inferences derived from those facts are viewed in the light most favorable to plaintiff. Archuleta v. Wagner, 523 F.3d 1278, 1283 (10th Cir. 2008). Conclusory allegations, however, have no bearing upon this court's consideration.

## **Summary**

Standard for evaluating a motion to dismiss under Rule 12(b)(6), emphasizing that a complaint must present a plausible claim for relief based on well-pleaded facts. This standard is crucial for assessing whether the district court properly dismissed the RICO claim for failure to state a claim. The passage also highlights the importance of viewing facts in the light most favorable to the plaintiff, which is relevant for arguing that the district court may have improperly dismissed the case by not fully crediting the plaintiff's allegations of continuity and ongoing threat.

[Pti Grp., Inc. v. Gift Card Impressions, LLC, Case No. 14-2063-CM \(D. Kan. Sep 16, 2014\)](#)

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

### **Extract**

To adequately allege a pattern of racketeering activity, a RICO plaintiff must show (1) a relationship between the predicate acts and (2) the threat of continuing activity. H.J. Inc. v. NW Bell Tel. Co., 492 U.S. 229, 239 (1989); Bixler v. Foster, 596 F.3d 751, 761 (10th Cir. 2010) ('To satisfy RICO's pattern requirement[, a plaintiff must] allege not only that the defendants had committed two or more predicate acts, but also that the predicates themselves amount to, or that they otherwise constitute a threat of, continuing racketeering activity.') (emphasis in original) (citation omitted)). A plaintiff may demonstrate a threat of continuing activity by establishing either closed-ended or open-ended continuity, which mean: [C]losed-ended continuity requires a series of related predicates extending over a substantial period of time. Predicate acts extending over a few weeks or months... For purposes of this motion, the court assumes that the actions of GCI, Mr. Glass, the law firm, and the collectors constituted predicate acts. But plaintiffs have neither alleged that the acts continued over a substantial amount of time nor that there is any clear threat of related future criminal activity. See Boone v. Carlsbad Bancorporation, Inc., 972 F.2d 1545, 1556 (10th Cir. 1992) (explaining that acts extending over 23 months may be a 'substantial period of time' but holding that continuity was not established because 'the facts as alleged fail to show any threat of 'future criminal conduct''). At most, plaintiffs have alleged isolated events that are directed

at one discrete goal: collecting a debt from GSL. RICO does not cover actions that will stop once a limited, discrete goal is met.

## **Summary**

Necessity for a RICO plaintiff to demonstrate both a relationship between predicate acts and a threat of continuing activity. It distinguishes between closed-ended continuity, which requires a series of related predicates over a substantial period, and open-ended continuity, which involves a threat of future criminal conduct. The passage emphasizes that RICO does not cover actions aimed at achieving a single, discrete goal, as such actions do not pose a threat of ongoing criminal activity. This aligns with the Tenth Circuit's approach, which requires more than isolated events directed at a finite objective to establish a RICO pattern.

[Fisher Sand & Gravel Co. v. FNF Constr., Inc., No. 10-cv-0635 RB/SMV \(D. N.M. Mar 27, 2013\)](#)

## **U.S. District Court — District of New Mexico**

### **Extract**

Fisher relies on open-ended continuity to prove the 'pattern' element of its RICO claim. (Doc. 105 at 18). Open-ended continuity depends heavily on the facts of the case. Resolution Trust Corp., 998 F.2d at 1543. For 12(b)(6) purposes, open-ended continuity is established if the plaintiff can plausibly allege 'that there was a threat of continuing criminal activity beyond the period during which the predicate acts were performed.' Heinrich, 668 F.3d at 410. The threat of continuing racketeering activity need not be established exclusively by the predicate acts, and the court should consider the totality of the circumstances surrounding the commission of the acts. Id. (citation omitted); see also Tal, 453 F.3d at 1268 (citation omitted).

## **Summary**

Concept of open-ended continuity in RICO claims, emphasizing that it depends heavily on the facts of the case. It states that for the purposes of a motion to dismiss under Rule 12(b)(6), open-ended continuity can be established if the plaintiff plausibly alleges a threat of continuing criminal activity beyond the period during which the predicate acts were performed. The court should consider the totality of the circumstances surrounding the commission of the acts, and the threat of continuing racketeering activity need not be established exclusively by the predicate acts.

[Carlson v. Town of Mountain Vill., Civil Action No. 17-cv-02887-PAB-STV \(D. Colo. Nov 07, 2019\)](#)

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

## **Extract**

To establish a pattern of racketeering activity, the plaintiff must show both 'relationship' and 'continuity'—i.e., 'that the racketeering predicates are related, and that they amount to or pose a threat of continued criminal activity.' H.J. Inc. v. Nw. Bell Tel. Co., 492 U.S. 229, 239 (1989) (emphasis in original). 'Continuity' is both a closed- and open-ended concept: closed-ended referring to a closed period of repeated conduct and open-ended referring to conduct that by its nature projects into the future with a threat of repetition. Resolution Tr. Corp. v. Stone, 998 F.2d 1534, 1543 (10th Cir. 1993). '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' but '[p]redicate acts extending over a few weeks or months are insufficient to show closed-ended continuity.' Id. A closed-ended series of predicate acts is not sufficient to support a finding of a pattern of racketeering activity, however, where those acts 'constitute[ ] a single scheme to accomplish 'one discrete goal,' directed at one individual with no potential to extend to other persons or entities.' SIL-FLO, Inc. v. SFHC, Inc., 917 F.2d 1507, 1516 (10th Cir. 1990). Open-ended continuity 'may be established by showing that the predicates themselves involve a distinct threat of long-term racketeering activity, either implicit or explicit, or that the predicates are a regular way of conducting the defendant's ongoing legitimate business or the RICO enterprise.' Resolution Tr. Corp., 998 F.2d at 1543. 'Open-ended continuity requires a clear threat of future criminal conduct related to past criminal conduct.' Phelps v. Wichita Eagle-Beacon, 886 F.2d 1262, 1273 (10th Cir. 1989).

## **Summary**

Requirements for establishing a pattern of racketeering activity under RICO, emphasizing the need for both relationship and continuity among the predicate acts. It distinguishes between closed-ended and open-ended continuity, explaining that closed-ended continuity requires a series of related predicates over a substantial period, while open-ended continuity involves a threat of future criminal conduct. The passage also highlights that a single scheme directed at one individual with no potential to extend to others may not satisfy the continuity requirement.

### [Resolution Trust Corp. v. Stone, 998 F.2d 1534 \(10th Cir. 1993\)](#)

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

## **Extract**

The Supreme Court has concluded that Congress intended that the pattern element 'requires the showing of a relationship between the predicates, ... and the threat of continuing activity'--that is, 'continuity plus relationship.' ... 'Continuity' is both a closed- and open-ended concept: closed-ended referring to a closed period of repeated conduct and open-ended referring to conduct that by its nature projects into the future with a threat of

repetition. ... 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. ... Open-ended continuity depends upon the facts of each case, and may be established by showing that the predicates themselves involve a distinct threat of long-term racketeering activity, either implicit or explicit, or that the predicates are a regular way of conducting the defendant's ongoing legitimate business or the RICO enterprise.

## **Summary**

The passage explains the concept of "continuity" in the context of RICO's pattern requirement. It distinguishes between closed-ended continuity, which involves a series of related predicate acts over a substantial period, and open-ended continuity, which involves a threat of ongoing racketeering activity. The passage emphasizes that continuity is a central element of the pattern requirement and can be demonstrated by showing either a closed period of repeated conduct or an ongoing threat of racketeering activity.

[Hall v. Doering, 997 F.Supp. 1445 \(D. Kan. 1998\)](#)

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

#### **Extract**

For these reasons alone, plaintiffs' RICO claims must be dismissed. Even if plaintiffs had sufficiently alleged a predicate racketeering activity, however, their RICO claims would fail for other reasons. For example plaintiffs do not properly allege a 'pattern' of racketeering activity. A 'pattern' presumes repeated activity, not merely repeated acts to carry out the same scheme. Meyer, 647 F.Supp. at 974-75; see also Northern Trust Bank/O'Hare v. Inryco Inc., 615 F.Supp. 828, 831 (N.D.Ill.1985). Plaintiffs allege only repeated acts to carry out one scheme — ACFG's deprivation of plaintiffs' civil and property rights—rather than repeated activity. The Supreme Court has held that to establish a 'pattern' under RICO, a plaintiff must show that the predicates themselves amount to or otherwise constitute a threat of continuing racketeering activity.

## **Summary**

The passage from Hall v. Doering provides insight into the Tenth Circuit's interpretation of what constitutes a "pattern" of racketeering activity under RICO. It emphasizes that a pattern requires repeated activity, not just repeated acts to carry out a single scheme. The passage also highlights the necessity of demonstrating a threat of continuing racketeering activity, which is crucial for establishing continuity under RICO. This is directly relevant to the question of whether the appeal should focus on the RICO continuity issue, as it provides a legal basis for arguing that the district court may have misapplied the standard for continuity in dismissing the RICO claim.

[Tal v. Hogan, 453 F.3d 1244 \(10th Cir. 2006\)](#)

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

**Extract**

As a final point, we question whether Plaintiffs' allegations of predicate acts satisfied the requirement of 'a pattern of racketeering activity.' A 'pattern' of racketeering is defined as 'at least two acts of racketeering activity,... which occurred within ten years' of each other. 18 U.S.C. § 1961(5). However, because 'RICO is not aimed at the isolated offender,' Resolution Trust Corp., 998 F.2d at 1544, proof of two or more predicate acts are not sufficient to prove a pattern unless there is a relationship between the predicate acts and a threat of continuing activity. H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 239, 109 S.Ct. 2893, 106 L.Ed.2d 195 (1989); Duran v. Carris, 238 F.3d 1268, 1271 (10th Cir.2001). Continuity of threat requires both proof of 'a series of related predicates extending over a substantial period of time,' as well as a 'showing that the predicates themselves involve a distinct threat of long-term racketeering activity... or that the predicates are a regular way of conducting the defendant's ongoing legitimate business or the RICO enterprise.' Resolution Trust Corp., 998 F.2d at 1543. To determine continuity we examine both the duration of the related predicate acts and the extensiveness of the RICO enterprise's scheme.

**Summary**

For a RICO claim to succeed, it is not enough to simply allege two or more predicate acts. There must be a relationship between these acts and a threat of continuing activity. The continuity requirement can be satisfied by showing a series of related predicates over a substantial period or that the predicates are part of the defendant's regular business conduct. This aligns with the broader understanding of RICO's purpose to target ongoing criminal conduct rather than isolated incidents.

[Pitts v. Turner and Boisseau Chartered, 850 F.2d 650 \(10th Cir. 1988\)](#)

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

**Extract**

Appellant contends the trial court erred in dismissing his claim under 18 U.S.C. Sec. 1961, et seq. or the Racketeer Influenced and Corrupt Organizations Act. In Torwest DBC, Inc. v. Dick, 810 F.2d 925, 927-929 (10th Cir.), we discussed what a plaintiff must plead in order to establish a RICO violation: 'A violation of section 1962(c) thus 'requires (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.' Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 105 S.Ct. 3275, 3285, 87 L.Ed.2d 346 (1985). RICO defines racketeering activity as, inter alia, any act that is

indictable under 18 U.S.C. Sec. 1341 (mail fraud) or 18 U.S.C. Sec. 1343 (wire fraud). See 18 U.S.C. Sec. 1961(1)(B). RICO also states that a "pattern of racketeering activity" requires at least two acts of racketeering activity.<sup>1</sup> 18 U.S.C. Sec. 1961(5). ... [T]o establish a RICO pattern, a plaintiff must also demonstrate continuity, that is, 'the threat of continuing activity.' Sedima, 105 S.Ct. at 3285 n. 14. This element is derived from RICO's legislative history, which indicates that RICO does not apply to 'sporadic activity' or to the 'isolated offender'. Id. 'The continuity requirement has been the source of considerable difficulty. Courts generally agree that to make an adequate showing of continuity under Sedima, a plaintiff must demonstrate some facts from which at least a threat of ongoing illegal conduct may be inferred. A scheme to achieve a single discrete objective does not in and of itself create a threat of ongoing activity, even when that goal is pursued by multiple illegal acts, because the scheme ends when the purpose is accomplished.'

## **Summary**

Requirements for establishing a RICO violation, emphasizing the need for continuity, which is defined as the threat of ongoing illegal conduct. It highlights that a scheme with a single discrete objective does not inherently demonstrate continuity, even if pursued through multiple illegal acts, because the scheme ends once the objective is achieved. This interpretation is consistent with the Tenth Circuit's approach to RICO cases, as seen in "Torwest DBC, Inc. v. Dick."

[Torwest DBC, Inc. v. Dick, 810 F.2d 925 \(10th Cir. 1987\)](#)

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

### **Extract**

The continuity requirement has been the source of considerable difficulty. Courts generally agree that to make an adequate showing of continuity under Sedima, a plaintiff must demonstrate some facts from which at least a threat of ongoing illegal conduct may be inferred. A scheme to achieve a single discrete objective does not in and of itself create a threat of ongoing activity, even when that goal is pursued by multiple illegal acts, because the scheme ends when the purpose is accomplished. Courts that have considered a RICO claim grounded on this type of scheme have therefore required some additional evidence showing that the scheme was not an isolated occurrence. See, e.g., Lipin Enters. Inc. v. Lee, 803 F.2d 322, 324 (7th Cir. 1986) (acts to defraud one victim one time insufficient in absence of showing of other victims or other frauds). A more difficult question is presented when the RICO claim is based on one scheme involving one victim, but the plan contemplates open-ended fraudulent activity and does not have a single goal that, when achieved, will bring the activity to an end. Some courts have found that such an ongoing scheme is itself sufficient to satisfy the continuity element of a RICO pattern.

## **Summary**

Continuity requirement in RICO cases, emphasizing that a single scheme with a single discrete objective does not automatically satisfy the continuity requirement unless there is evidence of ongoing illegal conduct. However, if a scheme involves open-ended fraudulent activity without a single goal that ends the activity, it may satisfy the continuity requirement. This indicates that the Tenth Circuit recognizes the possibility of continuity in single-victim schemes if the scheme is ongoing or open-ended.

[Suddath v. Oklahoma Homebuilders, LLC, CIV-24-745-SLP \(W.D. Okla. Nov 08, 2024\)](#)

### **U.S. District Court — Western District of Oklahoma**

#### **Extract**

RICO provides a civil cause of action for treble damages to anyone injured “by reason of” certain racketeering activity. 18 U.S.C. §§ 1964(c), 1962. “To plead a valid RICO claim, a plaintiff must plausibly allege that a defendant (1) conducted the affairs (2) of an enterprise (3) through a pattern (4) of racketeering activity.” Johnson v. Heath, 56 F.4th 851, 858 (10th Cir. 2022) (internal quotation marks and citation omitted). Defendants challenge, *inter alia*, the sufficiency of Plaintiffs’ allegations with respect to the third element - a “pattern” of racketeering activity. “A ‘pattern’ requires at least two predicate acts.” Bixler v. Foster, 596 F.3d 751, 761 (10th Cir. 2010) (citing 18 U.S.C. § 1961(5)). And those predicate acts themselves must amount to or otherwise constitute a threat of continuing racketeering activity. *Id.* This continuity requirement expresses congressional intent that “RICO reach activities that amount to or threaten long-term criminal activity.” *Id.* (citing *H.J., Inc. v. Northwestern Bell Tele. Co.*, 492 U.S. 229, 243 n. 4 (1989)). “‘Continuity’ is both a closed-and open-ended concept: closed-ended referring to a closed period of repeated conduct and open-ended referring to conduct that by its nature projects into the future with a threat of repetition.” *Resol. Tr. Corp. v. Stone*, 998 F.2d 1534, 1543 (10th Cir. 1993). “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.” *Id.* A closed-ended series of predicate acts is not sufficient to support a finding of a pattern of racketeering activity, however, where those acts “constitute[ ] a single scheme to accomplish ‘one discrete goal,’ directed at one individual with no potential to extend to other persons or entities.” Open-ended continuity “may be established by showing that the predicates themselves involve a distinct threat of long-term racketeering activity, either implicit or explicit, or that the predicates are a regular way of conducting the defendant’s ongoing legitimate business or the RICO enterprise.” *Resol. Tr.*, 998 F.2d at 1543. “Open-ended continuity requires a clear threat of future criminal conduct related to past criminal conduct.” *Phelps v. Wichita Eagle-Beacon*, 886 F.2d 1262, 1273 (10th Cir. 1989).

## **Summary**

Requirements for establishing a RICO claim, specifically focusing on the continuity aspect of the "pattern of racketeering activity." It explains that continuity can be either closed-ended or open-ended. Closed-ended continuity involves a series of related predicate acts over a substantial period, but it is insufficient if the acts are part of a single scheme with a discrete goal directed at one individual. Open-ended continuity can be shown if the predicate acts pose a distinct threat of long-term racketeering activity or are a regular way of conducting business. The passage cites relevant Tenth Circuit and Supreme Court precedents, emphasizing the need for a threat of future criminal conduct.

[Condict v. Condict, 815 F.2d 579 \(10th Cir. 1987\)](#)

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

#### **Extract**

The continuity requirement has been the source of considerable difficulty. Courts generally agree that to make an adequate showing of continuity under Sedima, a plaintiff must demonstrate some facts from which at least a threat of ongoing illegal conduct may be inferred. A scheme to achieve a single discrete objective does not in and of itself create a threat of ongoing activity, even when that goal is pursued by multiple illegal acts, because the scheme ends when the purpose is accomplished. Courts that have considered a RICO claim grounded on this type of scheme have therefore required some additional evidence showing that the scheme was not an isolated occurrence. See, e.g., Lipin Enters. Inc. v. Lee, 803 F.2d 322, 324 (7th Cir. 1986) (acts to defraud one victim one time insufficient in absence of showing of other victims or other frauds). A more difficult question is presented when the RICO claim is based on one scheme involving one victim, but the plan contemplates open-ended fraudulent activity and does not have a single goal that, when achieved, will bring the activity to an end. Some courts have found that such an ongoing scheme is itself sufficient to satisfy the continuity element of a RICO pattern.

## **Summary**

The passage highlights the difficulty courts face in determining continuity in RICO cases, especially when the scheme involves a single victim or a single discrete objective. It emphasizes that a single scheme does not automatically imply continuity unless there is evidence of a threat of ongoing illegal conduct. The passage also notes that some courts have found that an ongoing scheme with open-ended fraudulent activity can satisfy the continuity requirement, even if it involves a single victim.

[Schrag v. Dingess, 788 F.Supp. 1543 \(D. Kan. 1992\)](#)

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

### **Extract**

In *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 109 S.Ct. 2893, 106 L.Ed.2d 195 (1989), the Supreme Court reiterated the well-established concept that racketeering acts form a 'pattern' in RICO where they exhibit 'continuity plus relationship.' ... With respect to the 'continuity' requirement, the Supreme Court stated that the predicate acts must amount to, or pose a threat of, continuing racketeering activity. ... A RICO plaintiff 'may demonstrate continuity over a closed period by proving a series of related predicates extending over a substantial period of time.' ... Predicates extending over merely a few weeks or months, on the other hand, may satisfy the continuity element if there is a threat of repetition in the future. This latter concept of continuity, which occurs over an 'open period,' is established by showing that the predicate acts are a 'regular way of conducting the enterprise's ongoing business.'

### **Summary**

The passage from *Schrag v. Dinges* provides insight into the RICO continuity requirement by referencing the Supreme Court's decision in *H.J. Inc.* It explains that continuity can be demonstrated either through a closed period of repeated conduct over a substantial time or through an open period where there is a threat of future repetition. This is relevant to understanding how courts should evaluate continuity at the motion to dismiss stage, emphasizing that even short-term predicates can meet the continuity requirement if they pose a future threat.

[Condict v. Condict, 826 F.2d 923 \(10th Cir. 1987\)](#)

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

### **Extract**

The continuity requirement has been the source of considerable difficulty. Courts generally agree that to make an adequate showing of continuity under Sedima, a plaintiff must demonstrate some facts from which at least a threat of ongoing illegal conduct may be inferred. A scheme to achieve a single discrete objective does not in and of itself create a threat of ongoing activity, even when that goal is pursued by multiple illegal acts, because the scheme ends when the purpose is accomplished. Courts that have considered a RICO claim grounded on this type of scheme have therefore required some additional evidence showing that the scheme was not an isolated occurrence. See, e.g., *Lipin Enters. Inc. v. Lee*, 803 F.2d 322, 324 (7th Cir. 1986) (acts to defraud one victim one time insufficient in absence of showing of other victims or other frauds). A more difficult question is presented when the RICO claim is based on one scheme involving one victim, but the plan contemplates open-ended fraudulent activity and does not have a single goal that, when achieved, will bring the activity to an end.

Some courts have found that such an ongoing scheme is itself sufficient to satisfy the continuity element of a RICO pattern.

## **Summary**

The continuity requirement in RICO claims is challenging to establish, especially in cases involving a single scheme or victim. The passage highlights that a single scheme with a discrete objective does not inherently demonstrate continuity unless there is evidence suggesting ongoing or future illegal conduct. This aligns with the broader understanding that RICO is intended to address ongoing criminal enterprises rather than isolated incidents.

[UMB Bank v. Monson, 21-CV-2504-EFM \(D. Kan. Jun 04, 2025\)](#)

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

### **Extract**

Next, the Court turns to the continuity requirement. Under this prong, a plaintiff must allege that the acts amounted to or threaten continued racketeering activity.<sup>[1]</sup> This standard is more difficult to meet than the relationship standard.<sup>[2]</sup> Either 'open-ended' or 'closed-ended' continuity can satisfy the continuity prong. Because UMB only alleges closed-ended conduct, the Court will only evaluate this type of continuity. '[C]losed-ended continuity consists of a closed period of repeated, related racketeering acts that do not necessarily threaten future repetition.'<sup>[3]</sup> However, '[w]ithout a threat of continued illegal activity, a single scheme rarely supports finding continuity. And a single scheme even less likely supports a continuity finding when the scheme targets only one discrete goal.'<sup>[4]</sup> To state closed-ended continuity, the plaintiff must allege (1) duration and (2) extensiveness.<sup>[5]</sup> ... Lastly, although the scheme need not necessarily threaten future repetition, it is difficult to support continuity without it. Here, UMB alleges that fraudulent transfers were effectuated even after UMB filed this litigation, which is sufficient to infer a threat of future criminal activities.<sup>[6]</sup> Moreover, even though UMB's Complaint centers on a single failed development, its allegations of fraud and fraudulent concealment extend beyond just that project. For example, UMB alleges that Stoen and Monson have a history of wire fraud, indebtedness, default, and related litigation; and their actions in this case mirror their prior acts. Thus, allegations of essentially the same scheme perpetrated on prior parties may be alleged to support a claim of closed-ended continuity.<sup>[7]</sup> Having considered the extensiveness factors, the Court finds that UMB has plausibly alleged that the RICO Defendants were engaged in a complex and extensive scheme. The Amended Complaint outlines a series of related fraudulent acts involving multiple parties and spanning a significant period, which collectively suggest a coordinated effort to defraud the financial institutions and manipulate the Project for financial gain. The repeated nature of the acts and the involvement of various entities indicate a pattern of racketeering activity rather than a single, discrete goal.

## **Summary**

The passage explains the continuity requirement in a RICO claim, focusing on closed-ended continuity. It clarifies that closed-ended continuity involves a closed period of repeated, related racketeering acts that do not necessarily threaten future repetition. However, it is challenging to support continuity without a threat of future illegal activity. The passage also highlights that a single scheme targeting one discrete goal rarely supports a finding of continuity. The court in this case found that UMB sufficiently alleged closed-ended continuity by demonstrating a complex and extensive scheme involving multiple parties and repeated acts over a significant period, suggesting a coordinated effort beyond a single, discrete goal.

### [Skurkey v. Daniel](#)

#### **U.S. District Court — Western District of Oklahoma**

##### **Extract**

Courts have uniformly and consistently held that schemes involving a single, narrow purpose and one or few participants directed towards a single victim do not satisfy the RICO requirement of a closed or open pattern of continuity. In Weizmann Institute of Science v. Neschis,... several beneficiaries of an estate asserted RICO violations against the attorney for the estate and a fiduciary of the estate. The plaintiffs alleged that the defendants had committed several acts of mail fraud spanning a seven-year period. Although the court noted that the duration of the alleged scheme supported a finding of close-ended continuity, it ultimately concluded that the scheme was too 'discrete and limited' to establish any pattern of continuity because it involved only 'four predicate acts of mail...'.

## **Summary**

The court in Skurkey v. Daniel emphasized that RICO's continuity requirement is not satisfied by schemes that have a single, narrow purpose, involve one or few participants, and are directed towards a single victim. This aligns with the broader judicial consensus that such schemes are too limited to meet the continuity requirement, even if they span a significant duration. The case illustrates the difficulty of establishing a RICO pattern in single-victim scenarios, which is relevant to the question of whether the district court in Myers v. Branthover correctly applied the continuity requirement.

### [Purvis v. Hamwi, 828 F.Supp. 1479 \(D. Colo. 1993\)](#)

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

## **Extract**

A 'pattern' of racketeering activity under RICO 'requires at least two acts of racketeering activity' within a ten-year period, 18 U.S.C. § 1961(5), but 'while two acts are necessary, they may not be sufficient.' *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496, n. 14, 105 S.Ct. 3275, 3285 n. 14, 87 L.Ed.2d 346 (1985). ... 'Continuity' is both a closed- and openended concept, referring either to a closed period of repeated conduct, or to past conduct that by its nature projects into the future with the threat of repetition.' Id. at 241, 109 S.Ct. at 2901. But 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 242, 109 S.Ct. at 2902.

## **Summary**

The passage provides insight into the RICO continuity requirement, emphasizing that while two predicate acts are necessary, they may not be sufficient to establish a pattern. The concept of continuity can be either closed-ended, involving a series of acts over a substantial period, or open-ended, involving acts that project into the future with a threat of repetition. The passage highlights that short-term activities without a threat of future criminal conduct do not meet the continuity requirement, as RICO targets long-term criminal conduct.

[Gotfredson v. Larsen Lp, 432 F.Supp.2d 1163 \(D. Colo. 2006\)](#)

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

### **Extract**

Here, Plaintiffs contend that they have established a pattern of racketeering activity consisting of the following predicate acts: (1) conspiracy to commit extortion, (2) mail and wire fraud, and (3) interstate travel in aid of extortion. ... In order for Plaintiffs to prove a pattern, they must demonstrate not only the existence of two or more predicate acts, but also that they are related and pose at least a threat of continued criminal activity. ... 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. ... 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. Predicate acts extending over a few weeks or months and threatening no future criminal conduct do not satisfy this requirement. ... Plaintiffs essentially allege a closed-ended series of predicate acts. ... Plaintiffs' complaint does not allege an extensive scheme. First, the number of victims is small and limited to Plaintiffs Gotfredson and Trim Work Specialty, Inc. 'RICO is not aimed at the isolated offender.' ... Plaintiffs do not allege a wide variety of racketeering activities. At most, Plaintiffs assert a few allegations of mail and wire fraud which are neither complex or large. Viewing the facts in a light most

favorable to Plaintiffs, the predicate acts constitute a single scheme to accomplish a discrete goal. ... Thus, Plaintiffs cannot establish closed-ended continuity. ... Open-ended continuity 'may be established by showing that the predicates themselves involve a distinct threat of long-term racketeering activity, either implicit or explicit, or that the predicates are a regular way of conducting the defendant's ongoing legitimate business or the RICO enterprise.' ... Open-ended continuity requires a clear threat of future criminal conduct. ... The fact that the Larsen family will remain intact does not establish open-ended continuity. Thus, Plaintiffs have failed to adequately plead open-ended continuity.

## **Summary**

Requirements for establishing a pattern of racketeering activity under RICO, focusing on the continuity requirement. It explains that continuity can be either closed-ended or open-ended. Closed-ended continuity requires a series of related predicate acts over a substantial period, while open-ended continuity involves a threat of future criminal conduct. The passage highlights that a single scheme with limited victims and a discrete goal, without a threat of future criminal conduct, does not satisfy the continuity requirement. This is relevant to the question of whether a single scheme or limited victims can meet the RICO continuity requirement.

[Myers v. Branthoover, CIV-24-1311-R \(W.D. Okla. Oct 14, 2025\)](#)

## **U.S. District Court — Western District of Oklahoma**

### **Extract**

Plaintiff filed this civil RICO suit under 18 U.S.C. §§ 1962(c) and (d) and Defendants moved to dismiss for failure to state a claim and improper venue. On August 28, 2025, this Court fully granted Defendants' Motions to Dismiss and entered judgment against Plaintiff, finding Plaintiff failed to state a RICO claim because he did not adequately allege a pattern of racketeering activity [Doc. No. 30]. Doc. No. 29 at p. 3. To allege a pattern of racketeering activity, plaintiffs must demonstrate a relationship between the predicate criminal acts and a threat of continuing activity. *Johnson v. Heath*, 56 F.4th 851, 859 (10th Cir. 2022). A threat of continuing activity may be demonstrated by establishing either open-ended or closed-ended continuity. *Id.* The Court explained Plaintiff had failed to demonstrate open-ended continuity because communications that occurred after the achievement of Defendants' primary objective were unrelated to the alleged racketeering activity. Doc. No. 29 at p. 6. Furthermore, the Court found those communications did not plausibly support a continuing threat of criminal conduct. *Id.* The Court also found Plaintiff failed to demonstrate closed-ended continuity. *Id.* at p. 7 (citations omitted).

## **Summary**

The court dismissed the RICO claim due to a failure to demonstrate a pattern of racketeering activity, specifically focusing on the lack of open-ended and closed-ended continuity. The denial of the motion for reconsideration was based on the court's view that the plaintiff's arguments did not sufficiently allege a pattern of racketeering activity. The appeal could focus on challenging the court's interpretation of continuity and whether the ongoing nature of the enterprise was adequately considered. Additionally, the appeal could address whether the court overlooked material allegations and controlling law regarding the ongoing nature of the enterprise and the real threat of continued racketeering activity.

[Edwards v. First Nat. Bank, Bartlesville, Oklahoma, 872 F.2d 347 \(10th Cir. 1989\)](#)

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

### **Extract**

The continuity requirement has been the source of considerable difficulty. Courts generally agree that to make an adequate showing of continuity under Sedima, a plaintiff must demonstrate some facts from which at least a threat of ongoing illegal conduct may be inferred. A scheme to achieve a single discrete objective does not in and of itself create a threat of ongoing activity, even when that goal is pursued by multiple illegal acts, because the scheme ends when the purpose is accomplished. Courts that have considered a RICO claim grounded on this type of scheme have therefore required some additional evidence showing that the scheme was not an isolated occurrence. See, e.g., Lipin Enters. Inc. v. Lee, 803 F.2d 322, 324 (7th Cir. 1986) (acts to defraud one victim one time insufficient in absence of showing of other victims or other frauds). A more difficult question is presented when the RICO claim is based on one scheme involving one victim, but the plan contemplates open-ended fraudulent activity and does not have a single goal that, when achieved, will bring the activity to an end. Some courts have found that such an ongoing scheme is itself sufficient to satisfy the continuity element of a RICO pattern.

## **Summary**

The passage highlights the difficulty courts face in determining continuity in RICO cases, especially when the scheme involves a single victim or a single discrete objective. It explains that a single scheme does not automatically imply ongoing activity unless there is evidence of a threat of continued illegal conduct. The passage also notes that some courts have found that an ongoing scheme with open-ended fraudulent activity can satisfy the continuity requirement, even if it involves a single victim.

[Thompson v. Wyoming Alaska, Inc., 652 F.Supp. 1222 \(D. Utah 1987\)](#)

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

### **Extract**

This court concluded in Huntsman that plaintiffs had pleaded predicate racketeering acts which were connected with each other within one common scheme, but that in that situation of mail/wire fraud more than one continuing scheme or episode would be necessary in order to establish a sufficient and observable pattern. The acts in question did not establish the regular way in which defendants did business. ... In *Torwest DBC, Inc. v. Dick*, 810 F.2d 925 (10th Cir.1986), the Tenth Circuit stressed in a single scheme case that the 'continuity' requirement of pattern requires demonstration of 'facts from which at least a threat of ongoing illegal conduct may be inferred,' and that the single scheme would have to involve 'continuous behavior.' ... The exact meaning of the term 'multiple criminal episodes' is not clear, but at a minimum it means that the defendant must harm the plaintiff more than once — it must have committed acts which are ongoing and which have an independent and repeated harmful significance for the plaintiff.

### **Summary**

The court in "Thompson v. Wyoming Alaska, Inc." discusses the necessity of demonstrating continuity in RICO claims, particularly when the claim is based on a single scheme or involves a single victim. The court references the Tenth Circuit's decision in "*Torwest DBC, Inc. v. Dick*," which emphasizes that continuity requires showing a threat of ongoing illegal conduct and continuous behavior. The passage also highlights that multiple criminal episodes, meaning acts that are ongoing and have independent harmful significance, are necessary to establish a pattern. This aligns with the broader requirement in RICO cases to demonstrate either closed-ended or open-ended continuity.

[Racketeer influenced and corrupt organizations.](#)

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

### **Extract**

ICO's pattern requirement: '[c]riminal 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.' (58) 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.' (59) 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) The Court offered a non-exhaustive list of situations that may constitute a pattern (62) and stated 'development of these concepts must await future cases.' (63)

## **Summary**

RICO pattern requirement, emphasizing the need for criminal acts to be related and continuous. It distinguishes between closed-ended continuity, which involves a series of related acts over a substantial period, and open-ended continuity, which involves acts that may be short-lived but pose a future threat. The passage highlights the importance of a case-by-case analysis to determine the existence of a threat of continued racketeering activity, suggesting that the development of these concepts is ongoing and dependent on future cases.

### [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. The *H.J., Inc.* Court suggested a case-by-case examination of this issue... The Tenth Circuit has posited... pattern of racketeering and that to establish an enterprise may coalesce.

## **Summary**

The Supreme Court in *H.J., Inc.* clarified that proving a pattern of racketeering activity under RICO requires demonstrating both a relationship and continuity of predicate acts. The Tenth Circuit, like other circuits, follows this framework, which allows for continuity to be shown either through a closed period of repeated conduct or an open-ended threat of continued activity. This suggests that the Tenth Circuit's approach to RICO continuity is consistent with the Supreme Court's guidance, emphasizing a case-by-case analysis.

## [Racketeer Influenced and Corrupt Organizations Act.](#)

**American Criminal Law Review - Georgetown University Law Center - Bailey, Lisa Pritchard - 1999-06-22**

### **Extract**

The Tenth Circuit has posited a multi-factor approach in its pattern analysis(88) and adopted a flexible continuity analysis.(89)

### **Summary**

The Tenth Circuit employs a multi-factor approach when analyzing the pattern element of RICO claims. This approach includes a flexible analysis of continuity, which suggests that the Tenth Circuit does not adhere to a rigid or overly strict interpretation of what constitutes a pattern of racketeering activity. Instead, it considers various factors to determine whether the continuity requirement is met, allowing for a more nuanced and context-sensitive evaluation.

## [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 Seventh and Tenth Circuits employ the H.J. Inc. test and consider duration and open-endedness of the racketeering activity, but cling to the multi-factor test applied prior to H.J. Inc.

### **Summary**

The continuity requirement in RICO cases can be satisfied by either closed-ended or open-ended continuity. Closed-ended continuity involves a series of related predicates over a substantial period, while open-ended continuity involves conduct that poses a future threat. The Tenth Circuit, along with the Seventh Circuit, uses the H.J. Inc. test, which considers both the duration and the open-endedness of the racketeering activity. This suggests that the Tenth Circuit's approach is consistent with the Supreme Court's guidance in H.J. Inc., focusing on the specific facts of each case to determine the existence of a threat of continued racketeering activity.

## [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 continuity requirement in RICO cases can be satisfied through either closed-ended or open-ended continuity. Closed-ended continuity involves a series of related predicate acts over a substantial period, while open-ended continuity involves conduct that, although it may last only a short time, poses a threat of continuing into the future. The determination of continuity is fact-specific and requires a case-by-case analysis to assess the threat of continued racketeering activity.

## [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. Even with this guidance, the courts of appeals have reached varying conclusions regarding what conduct constitutes a pattern of racketeering. The primary reason for this difficulty is the potential tension between the two prongs of the pattern requirement: 'relationship' and 'continuity.' Events that are proximate in time and closely related may lack continuity. Events not proximate in time may be continuous, yet less related.

## **Summary**

The continuity prong of RICO's pattern requirement can be satisfied by either a series of related predicates over a substantial period or an open-ended threat of continued activity. The Supreme Court in *H.J., Inc.* emphasized a case-by-case approach, acknowledging that the existence of a threat of continued activity depends on specific facts. The passage also highlights the difficulty courts face in balancing the relationship and continuity prongs, as events closely related in time may lack continuity, and those not proximate in time may still be continuous.

### 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. 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.' With this guidance, the circuits have reached varying conclusions regarding what conduct constitutes a pattern of racketeering. The primary reason for this difficulty is the potential tension between the two prongs of the pattern requirement: 'relationship' and 'continuity.' Nine federal circuit courts of appeal consistently apply some form of the 'continuity plus relationship' test. These circuits use a two-tiered analysis for the continuity prong, focusing on the length of time and number of acts required for continuity. Either closed-ended or open-ended continuity satisfies the continuity test in these circuits. The Seventh and Tenth Circuits employ the *H.J. Inc.* test and consider duration and open-endedness of the racketeering activity, but cling to the multi-factor test applied prior to *H.J. Inc.*

## **Summary**

The continuity requirement for RICO cases can be satisfied by either closed-ended or open-ended continuity. Closed-ended continuity involves a series of related predicates over a substantial period, while open-ended continuity involves conduct that poses a future threat. The passage highlights that the Tenth Circuit, along with others, applies the "continuity plus relationship" test, considering both the duration and the potential for ongoing racketeering activity. This indicates that even single schemes or single victims can meet the continuity requirement if there is a threat of continued activity.

## [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. 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.' With this guidance, the circuits have reached varying conclusions regarding what conduct constitutes a pattern of racketeering. The primary reason for this difficulty is the potential tension between the two prongs of the pattern requirement: 'relationship' and 'continuity.' Nine federal circuit courts of appeal consistently apply some form of the 'continuity plus relationship' test. These circuits use a two-tiered analysis for the continuity prong, focusing on the length of time and number of acts required for continuity. Either closed-ended or open-ended continuity satisfies the continuity test in these circuits.

### **Summary**

The continuity requirement in RICO cases can be satisfied by either closed-ended or open-ended continuity. Closed-ended continuity involves a series of related predicates over a substantial period, while open-ended continuity involves conduct that poses a future threat. The passage highlights that the interpretation of continuity is fact-specific and varies among circuits, with a common approach being the "continuity plus relationship" test. This test considers both the duration and the threat of continued criminal activity, and it is applied on a case-by-case basis.

## [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. 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 continuity requirement for RICO can be satisfied in two ways: closed-ended continuity, which involves a series of related acts over a substantial period, and open-ended continuity, which involves conduct that poses a future threat. The determination of continuity is fact-specific and requires a case-by-case analysis to assess the threat of continued racketeering activity.

### 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 continuity requirement in RICO cases can be satisfied through either closed-ended or open-ended continuity. Closed-ended continuity involves a series of related acts over a substantial period, while open-ended continuity involves conduct that, although short-lived, poses a future threat. The determination of continuity is fact-specific and requires a case-by-case analysis. This understanding is crucial in evaluating whether a single scheme or single victim scenario can meet the RICO continuity requirement, as it emphasizes the potential for future criminal activity rather than the number of victims or schemes.

This memo was compiled by Vincent AI based on vLex materials available as of October 25, 2025. [View full answer on vLex](#)