

ABRAHAM GARCIA MARMOLEJO, MULE, LLC, Plaintiffs v. RANCHO CINEGETICO EL GRAN..., Slip Copy
(2026)

2026 WL 2211839

Only the Westlaw citation is currently available.
United States District Court, W.D. Texas, Austin Division.

ABRAHAM GARCIA MARMOLEJO,
MULE, LLC, Plaintiffs

v.

RANCHO CINEGETICO EL GRAN
CHAPARRAL II, S. DE R.L. DE C.V.,
RICARDO MAZON LIZARRAGA, CARLOS
MAZON ESCALANTE, Defendants

No. 1:24-CV-00522-RP

Filed 07/22/2026

Attorneys and Law Firms

Aaron Alexander Brown, William T. Reid IV, Reid Collins
& Tsai LLP, Austin, TX, for Plaintiff Abraham Garcia
Marmolejo.

Aaron Alexander Brown, Reid Collins & Tsai LLP, Austin,
TX, for Plaintiff Mule, LLC.

Celso M. Gonzalez-Falla, Joseph Lawrence Korbel, Ricardo
G. Cedillo, Davis Cedillo & Mendoza, Inc., San Antonio, TX,
Dana Robinson Burris, Pro Hac Vice, Burris & MacOmber,
Tucson, AZ, for Defendants.

**REPORT AND RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE**

DUSTIN M. HOWELL UNITED STATES MAGISTRATE
JUDGE

***1 TO: THE HONORABLE ROBERT PITMAN UNITED
STATES DISTRICT JUDGE**

Before the Court is Defendants Rancho Cinégetico El Gran
Chaparral II, S. de R.L. de C.V. (“Chaparral”), Carlos Mazón
Escalante, and Ricardo Mazón Lizarraga's (collectively,
“Defendants”) motion to dismiss, Dkt. 77, and all related
briefing. After reviewing the filings and the relevant law, the

undersigned will recommend that the District Judge dismiss
all but Plaintiffs Abraham Garcia Marmolejo and Mule,
LLC's (“Plaintiffs”) claims brought under the Racketeer
Influenced and Corrupt Organizations Act (“RICO”).

I. BACKGROUND

A. The Agreements

This case arises from a business dispute concerning a
Mexican hunting ranch outfitting agreement and a Texas-
based joint venture relating to mule deer genetics. Dkt. 76.

1. The Outfitting Agreements

Mazón Lizarraga and Mazón Escalante own Chaparral, a
ranch in Mexico. *Id.* at 4. Garcia Marmolejo, a Texas resident
and United States citizen, entered into an outfitting agreement
(the “2016 agreement”) with Mazón Lizarraga whereby
Garcia Marmolejo promoted and sold hunts at Chaparral
and retained a percentage of revenue from each hunt. *Id.* at
4-5. Garcia Marmolejo promoted hunts in Texas, recruited
Texas clients, and accepted payments from clients through his
Texas-based entity, Plaintiff Mule, LLC (“Mule”). *Id.* at 5.
Mule then paid Chaparral its share—the revenue remaining
after Garcia Marmolejo's cut—via wire transfer. *Id.*

Under the outfitting agreement, Garcia Marmolejo and
Chaparral were each responsible for certain costs. *Id.* Over
time, Garcia Marmolejo alleges that Defendants ordered
Garcia Marmolejo to pay more of the costs and eventually
forced him to enter a second outfitting agreement (the
“2020 agreement”) favoring Defendants, which “effectively
lower[ed]” the revenue percentages Garcia Marmolejo could
retain. *Id.* at 6. Garcia Marmolejo states that when he pushed
back, Mazón Lizarraga threatened to “throw [] him out of the
business” and warned that Garcia Marmolejo should “think
twice before making an enemy of him [i.e., Mazón].” *Id.*

In 2021, Chaparral and Mule signed an outfitting agreement
to better memorialize Chaparral and Mule's business
relationship (the “2021 agreement”). *Id.* at 7. They agreed
to make the agreement retroactive to 2017, and according to
Garcia Marmolejo, the 2021 agreement “superseded[ed] the first
two outfitting agreements.” *Id.* The 2021 agreement states

ABRAHAM GARCIA MARMOLEJO, MULE, LLC, Plaintiffs v. RANCHO CINEGETICO EL GRAN..., Slip Copy (2026)

that Mule is domiciled in Texas. *Id.*; Dkt. 79-3, at 172.¹ It also required Chaparral to bear certain costs, including operations and animal care. *Id.* Garcia Marmolejo contends Chaparral nonetheless continued to charge Garcia Marmolejo for operations costs, and when Garcia Marmolejo took issue with that, Mazón Lizarraga threatened him again. Dkt. 76, at 7. But Garcia Marmolejo continued to work with Defendants through January 2024. *Id.*

*2 In January 2024, Defendants told Garcia Marmolejo that his clients were to pay Defendants directly by wiring money to Defendants' San Antonio bank account rather than sending funds to Mule. *Id.* at 8. Garcia Marmolejo asserts that once the clients did so, Defendants transferred all those funds to their accounts in Mexico and failed to pay Garcia Marmolejo or Mule their commissions. *Id.*

2. The Mule Deer Genetics Joint Venture

In 2016, Garcia Marmolejo and Mazón Lizarraga separately entered a joint venture related to mule deer genetics (the “Brushy Creek agreement”). *Id.* at 8. The agreement contemplated that Chaparral would provide the infrastructure and facilities, and Garcia Marmolejo would create and manage a mule deer breeding program. *Id.* at 8. Under that agreement, Chaparral owned 80% of the business and Garcia Marmolejo owned 20%. *Id.* And if the parties agreed to terminate the agreement, their contract provided that any remaining genetic material and animals would be “distributed to each of the parties in conformity with the parties' percentages.” *Id.* at 9.

The parties formed a Mexican corporation, Sociedad en Alta Genética El Chaparral II, S. de R.L. de C.V. (“Alta Genética”), “to promote reproduction, management, and sale” of the genetics. *Id.* Chaparral and Garcia Marmolejo owned Alta Genética shares in an 80%-20% split as well. *Id.* The parties also formed a Texas corporation, North American Mule Deer Corporation (“NAMDC”), for the same purpose and installed Garcia Marmolejo as its director and president. *Id.* According to Garcia Marmolejo, NAMDC had custody, but not ownership, of the genetic material. *Id.* Finally, to cryogenically store the genetic material, Garcia Marmolejo opened an account at Brushy Creek Custom Sires (“Brushy Creek”) in Taylor, Texas. *Id.* at 10. Brushy Creek currently

holds and stores 4 million dollars' worth of genetic material “jointly owned” by Chaparral and Garcia Marmolejo. *Id.* Chaparral and Garcia Marmolejo also jointly own mule deer bucks and big horn sheep. *Id.* Garcia Marmolejo alleges that Defendants have converted all the jointly owned property in Mexico and are “now attempting to convert the property located in Texas.” *Id.*

B. Garcia Marmolejo's Ouster

In January 2024, Mazón Lizarraga sent and asked Garcia Marmolejo to sign a set of documents transferring his ownership and interests in the parties' business ventures to Defendants. *Id.* at 11. Mazón Lizarraga threatened to lock Garcia Marmolejo and his clients out of the ranch the next day if Garcia Marmolejo did not sign. *Id.* Garcia Marmolejo refused and canceled the hunts. *Id.*

In the days that followed, Mazón Lizarraga invited Garcia Marmolejo, who was in Texas, to visit him and Mazón Escalante in Sonora, Mexico, “under the guise of trying to reach a resolution.” *Id.* Garcia Marmolejo planned to go, but “was alerted by persons close to [Mazón Lizarraga] that he had planned and plotted to get [Garcia Marmolejo] ‘picked up’ upon arrival by hired guns to show Garcia that ‘no one messes with them in Sonora.’ ” *Id.* Garcia Marmolejo states he has not returned to Mexico since in fear for his life. *Id.* at 12.

C. Defendants' Alleged Scheme

Garcia Marmolejo alleges that in February and March 2024, Defendants, through counsel, contacted Brushy Creek and requested that it remove Garcia Marmolejo from the account. *Id.* at 12-13. Defendants also removed Garcia Marmolejo as director and president of NAMDC. *Id.* at 13. Garcia Marmolejo further alleges that Defendants made “false and defamatory statements” about him to his clients, some of whom were in Texas. *Id.* at 13-15. And when Garcia Marmolejo refused to provide his clients' contact information, Defendants refused to deliver 20 of his clients' trophies. *Id.* at 14, 16.

*3 In addition, Garcia Marmolejo alleges that Defendants “conspired to fabricate and did fabricate a series of false criminal charges” against him and two of his employees for poaching three bighorn sheep. *Id.* at 16-18, 21. This led to one employee's arrest and alleged torture. *Id.* at 18. When Garcia

ABRAHAM GARCIA MARMOLEJO, MULE, LLC, Plaintiffs v. RANCHO CINEGETICO EL GRAN..., Slip Copy (2026)

Marmolejo “attempted to negotiate” to get his employee out of jail, Defendants met the offer with “additional extortion demands and threats,” demanding “economic consideration” and “flaunt[ing] Defendants’ ‘ability to control’ the dismissal of criminal proceedings in Mexico.” *Id.* at 19. Garcia Marmolejo contends that Mazón Escalante was aware of and approved the hunts, demonstrating the falsity of the charges. *Id.* at 23-29; *see also id.* at 32-33 (explaining the hunters were not required to have permits at the time of the hunt, but rather at export). Garcia Marmolejo states that Mule paid Chaparral for the sheep hunt as required. *Id.* at 31-32. And he alleges that Defendants’ counsel, Rob Burris, helped further the extortion scheme. *Id.* at 33-36.

In addition to the poaching charges, Garcia Marmolejo alleges Defendants fabricated criminal charges against him in Mexico for firearms violations, copyright, and abuse of trust. *Id.* at 37-38. Finally, Garcia Marmolejo asserts that Defendants’ scheme is ongoing, and Defendants plan to file additional criminal complaints against Garcia Marmolejo and his employee in Mexico. *Id.* at 38.

Based on this conduct, Plaintiffs bring claims for declaratory relief, breach of contract, tortious interference with prospective and continuing business relations, defamation, and conversion against Chaparral; assault by threats of bodily injury, assault by terroristic threat, and intentional infliction of emotional distress against Mazón Lizarraga; and tortious interference with contract, violations of RICO, and RICO conspiracy against all Defendants. *Id.* at 38-53.

Defendants moved to dismiss the case under *forum non conveniens* and to dismiss Plaintiffs’ tort and RICO claims for failure to state a claim. Dkt. 77, at 7-20. Defendants also argue the Court lacks personal jurisdiction over them. *Id.* at 20.

II. FORUM NON CONVENIENS

A. Legal Standard

Forum non conveniens “proceeds from the premise that in rare circumstances, federal courts can relinquish their jurisdiction in favor of another forum.” *DTEX, LLC v. BBVA Bancomer, S.A.*, 508 F.3d 785, 794 (5th Cir. 2007) (quoting *Quackenbush v. Allstate Ins.*, 517 U.S. 706, 722 (1996)). A dismissal on *forum non conveniens* grounds “will ordinarily

be appropriate where trial in the plaintiff’s chosen forum imposes a heavy burden on the defendant or the court, and where the plaintiff is unable to offer any specific reasons of convenience supporting his choice.” *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 249 (1981).

Defendants typically bear the burden of proof on all elements of the *forum non conveniens* analysis. *DTEX*, 508 F.3d at 794. First, a defendant must show that an alternative forum is both available and adequate. *McLennan v. Am. Eurocopter Corp.*, 245 F.3d 403, 424 (5th Cir. 2001). “A foreign forum is available when the entire case and all parties can come within the jurisdiction of that forum. A foreign forum is adequate when the parties will not be deprived of all remedies or treated unfairly, even though they may not enjoy the same benefits as they might receive in an American court.” *Id.* Second, the court must determine which forum is “best suited” to the litigation considering private-and public-interest factors. *DTEX*, 508 F.3d at 794. “Ordinarily a strong favorable presumption is applied to the plaintiff’s choice of forum.” *Id.* at 795. “ ‘Unless the balance is strongly in favor of the defendant, the plaintiff’s choice of forum should rarely be disturbed.’ ” *Id.* (quoting *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947)).

But the analysis is different when there is a forum-selection clause (“FSC”). A valid FSC “controls the *forum non conveniens* inquiry in all but the most unusual cases.” *Id.* at 248 (quoting *Barnett v. DynCorp, Int’l, LLC*, 831 F.3d 296, 300 (5th Cir. 2016)) (internal quotation marks omitted). When a mandatory and enforceable FSC is present, the plaintiff’s choice of forum and the parties’ private interests carry no weight. *Atl. Marine Const. Co. v. U.S. Dist. Ct. for W. Dist. of Tex.*, 571 U.S. 49, 63-64 (2013). Relatedly, “[b]ecause the parties have already contractually agreed upon a given forum, a court need not determine the availability and adequacy of that chosen forum; presumably the parties themselves have already determined that the chosen forum is both adequate and available.” *Matthews v. Tidewater Crewing, Ltd.*, 658 F. Supp. 3d 332, 346 (E.D. La. 2023). The party defying the FSC bears the burden of establishing that dismissal is unwarranted.

***4** In determining whether to dismiss a case pursuant to an FSC, the Court first evaluates whether the FSC is mandatory or permissive. *See PCL Civil Constructors, Inc. v. Arch Ins. Co.*, 979 F.3d 1070, 1073 (5th Cir. 2020); *Weber v. PACTXPP Techs., AG*, 811 F.3d 758, 766 (5th Cir. 2016). An FSC is

ABRAHAM GARCIA MARMOLEJO, MULE, LLC, Plaintiffs v. RANCHO CINEGETICO EL GRAN..., Slip Copy (2026)

mandatory if it “ ‘affirmatively requires that litigation arising from the contract be carried out in a given forum.’ ” *PCL*, 979 F.3d at 1073 (quoting *Weber*, 811 F.3d at 768). This step-one inquiry is governed by state law, which is determined based on the original forum's choice-of-law rules. *Davis*, 2023 WL 4670491, at *9 (citing *Weber*, 811 F.3d at 770).

Second, the Court asks whether the FSC is enforceable. *PCL*, 979 F.3d at 1074 (citing *Weber*, 811 F.3d at 766). Federal law applies to determine the enforceability of an FSC. *Noble House LLC v. Certain Underwriters at Lloyd's, London*, 67 F.4th 243, 249 (5th Cir. 2023). There is a strong presumption in favor of enforcing mandatory FSCs. *Weber*, 811 F.3d at 773. This presumption is only overcome by a “clear showing” that the clause is unreasonable under the circumstances. *Id.* “Arguments going to the validity of the contract as a whole do not prevent enforcement of an FSC; instead, the party seeking to avoid enforcement must demonstrate that the FSC is invalid rather than merely claim the contract is invalid.” *Id.*

Third, the Court decides whether public-interest factors weigh against dismissal. *Id.* at 776; *Atl. Marine*, 571 U.S. at 62. The “party acting in violation of the forum-selection clause ... must bear the burden of showing that the public-interest factors overwhelmingly disfavor” dismissal. *Atl. Marine*, 571 U.S. at 67; *see also Noble House*, 67 F.4th at 249.

B. Discussion

The parties agree that Plaintiffs' RICO claims and claims for assault by threats of bodily injury, assault by terroristic threat, and intentional infliction of emotional distress against Mazón Lizarraga are not subject to any FSC. *See* Dkt. 77, at 11. The parties dispute whether the remaining claims—declaratory relief, breach of contract, tortious interference with prospective and continuing business relations, defamation, and conversion against Chaparral and tortious interference with contract against all Defendants—are subject to the FSCs in the 2016 and 2020 outfitting agreements and, at least for the declaratory-judgment claim, the Brushy Creek agreement. The undersigned accordingly analyzes the former set of claims using a traditional *forum non conveniens* analysis and the latter using the FSC-specific analysis.

1. Plaintiffs' claims for breach of contract, tortious interference with prospective and continuing business relations, defamation, conversion, and tortious interference with contract should be dismissed based on *forum non conveniens* because of the FSCs.

Plaintiffs do not dispute that the FSCs in the 2016 and 2020 agreements are mandatory. *See* Dkt. 79; *see PCL*, 979 F.3d at 1073 (“A forum selection clause is mandatory if it ‘affirmatively requires that litigation arising from the contract be carried out in a given forum.’ ” (quoting *Weber*, 811 F.3d at 768)). Rather, Plaintiffs argue the FSCs in the 2016 and 2020 agreements are unenforceable because they were superseded by the 2021 agreement, Dkt. 79, at 3-4; Plaintiffs' declaratory-judgment claim falls outside the scope of the Brushy Creek agreement, *id.* at 5-6; Defendants waived their right to enforce the FSCs, *id.* at 6-7; and the FSCs are unenforceable because they are unreasonable, *id.* at 7-10. The undersigned addresses each argument in turn.

a. The FSCs are enforceable.

i. The FSCs in the 2016 and 2020 agreements were not superseded.

*5 Plaintiffs argue that the FSCs in the 2016 and 2020 agreements are unenforceable, so Plaintiffs' claims for breach of contract, tortious interference with prospective and continuing business relations, defamation, and conversion against Chaparral, as well as its claim for tortious interference with contract against all Defendants, are not subject to any FSC. *See* Dkt. 79, at 3-4 (making arguments as to contract validity). Their principal argument is that the forum-selection clauses do not apply because the 2021 agreement between Chaparral and Mule, which did not incorporate any FSC, supersedes the 2016 and 2020 agreements containing FSCs. Dkt. 79, at 3. They assert that the parties' decision to make the 2021 agreement retroactive to 2017 “manifests a clear intent to modify and extinguish the rights and obligations under the previous versions.” *Id.* (citing *Millennium Petrochemicals, Inc. v. Brown & Root Holdings, Inc.*, 390 F.3d 336, 342 (5th Cir. 2004)).

ABRAHAM GARCIA MARMOLEJO, MULE, LLC, Plaintiffs v. RANCHO CINEGETICO EL GRAN..., Slip Copy (2026)

Plaintiffs' argument that the FSCs are invalid because the 2021 agreement supersedes the 2016 and 2020 agreements fails. "Arguments that go to the validity of the contract as a whole do not prevent enforcement of an FSC; instead, the party seeking to avoid enforcement must demonstrate that the FSC is invalid rather than merely claim the contract is invalid." *Weber*, 811 F.3d at 773; *see also id.* at 774 ("In effect, the court is to treat the FSC as both severable and presumptively valid."). Whether the 2016 and 2020 agreements were superseded goes to the validity of those contracts as a whole. Because Plaintiffs do not offer any argument that the FSCs *themselves* are invalid, they cannot show they are unenforceable on this basis.

Further, it is unclear that the 2016 and 2020 agreements were superseded in the first place. Plaintiffs cite *Millennium* for the proposition that a "contract can be superseded when the parties' intent with respect to an amendment was to apply it retroactively." Dkt. 79, at 4; *see* 390 F.3d at 342. Yet in that case, the court rejected the plaintiffs' argument that a contractual amendment superseded all previous versions of the contract, noting that, at least under Texas law,² "rights or obligations that may have vested or accrued under previous versions of a contract can only be modified or extinguished through the inclusion of express language that manifests such intent." *Millennium*, 390 F.3d at 342. Plaintiffs make no argument that any clause in the 2021 agreement—which was between Chaparral and *Mule*—manifests an intent to extinguish any rights under the 2016 and 2020 agreements between Chaparral and Garcia Marmolejo. Nor does the undersigned identify any such clause. The FSCs are not unenforceable as superseded.

ii. The declaratory-judgment claim is subject to an FSC as well.

Plaintiffs seek a declaratory judgment telling Brushy Creek which party owns the genetic materials it is holding in Taylor. Dkt. 76, at 39. They argue that this claim falls outside the scope of the Brushy Creek agreement's FSC because that agreement terminated in January 2024, and upon termination, the assets "became the individual property of" Chaparral and Garcia Marmolejo. Dkt. 79, at 5. Plaintiffs add that the declaratory-judgment claim is therefore not subject to the FSC because "(1) the contract and terms of the agreement are

not in dispute; (2) the assets are owned *individually* and there is no agreement governing their individual rights; and (3) the declaration sought is for the purpose of instructing Brushy Creek on the individual ownership of the assets it is holding." *Id.* at 5.

***6** To determine whether a claim falls within the scope of an FSC, courts look to the language of the contract. *Wellogix, Inc. v. SAP Am., Inc.*, 58 F. Supp. 3d 766, 777 (S.D. Tex. 2014) (citing *Braspetro Oil Servs. Co. v. Modec (USA), Inc.*, 240 F. App'x 612, 616 (5th Cir. 2007)).³ The Brushy Creek agreement provides

For the interpretation and fulfillment of this contract, as well as for the resolution of any controversy related to it, "THE PARTIES" agree that the clauses of this voluntary agreement and the laws of all the States of the Mexican Republic apply and for everything related thereto, they will submit to the jurisdiction of the courts of the city of Hermosillo, Sonora, Mexico, expressly waiving any other forum that for any reason may correspond to them.

Dkt. 79-3, at 19.

First, to the extent Plaintiffs argue the clause does not apply because the contract has expired, the undersigned is unpersuaded that termination of the Brushy Creek agreement means that its FSC no longer applies or ceases to "govern[] [the parties'] individual rights." *See Strata Heights Int'l Corp. v. Petroleo Brasileiro, S.A.*, 67 F. App'x 247, 2003 WL 21145663, at *7 (5th Cir. Apr. 28, 2003) ("When a clause purports to cover all disputes relating to the contract, that clause covers all disputes relating to the contract regardless of when that dispute arises."); *see also Weatherford Int'l, LLC v. Binstock*, 452 F. Supp. 3d 561, 570 (S.D. Tex. 2020) (applying the "general rule" that absent "express intent" that the FSC expire, an FSC "remains enforceable as to disputes involving a contract that has otherwise expired"). Plaintiffs offer no law to the contrary.

As for whether the declaratory-judgment claim otherwise falls within the scope of the Brushy Creek agreement's FSC, "clauses extending to disputes that 'relate to' ... the contract are construed broadly." *Wellogix*, 58 F. Supp. 3d at 778. Since the Brushy Creek FSC applies to "interpretation and fulfillment of the contract [and] resolution of any controversy *related to it*," Dkt. 79-3, at 19 (emphasis added), it should be broadly construed and applied to the claim so long as it

ABRAHAM GARCIA MARMOLEJO, MULE, LLC, Plaintiffs v. RANCHO CINEGETICO EL GRAN..., Slip Copy (2026)

has a significant relationship to or originates in the contract. *Wellogix*, 58 F. Supp. 3d at 778; *Binstock*, 452 F. Supp. 3d at 573. Plaintiffs seek a declaratory judgment informing Brushy Creek which party owns the assets it holds. Dkt. 76, at 39. The contract governs the percentage ownership of the assets upon its termination: it provides that Chaparral owns 80% of the venture and that Garcia Marmolejo owns 20%, and that in the event the contract is mutually terminated, the assets would be distributed according to those percentages. *See* Dkt. 79-3, at 13, 17. The parties' dispute over who owns the property now will likely require a determination of whether the contract was terminated mutually, and if it wasn't, what ownership percentages apply. Accordingly, the parties' dispute with respect to the declaratory-judgment claim originates in and has a significant relationship to the contract. *See Binstock*, 452 F. Supp. 3d at 573. The declaratory-judgment claim falls within the FSC's scope.

iii. Defendants did not waive the right to enforce the FSCs.

*7 Plaintiffs next assert that Defendants waived their right to enforce the FSCs “due to their pre-litigation actions taken in furtherance of their schemes and other tortious actions in Texas.” Dkt. 79, at 6. The undersigned disagrees.

The Fifth Circuit has not determined whether federal-or state-law principles control the standard for determining a party's waiver of rights under an FSC. *SGIC Strategic Glob. Inv. Cap., Inc. v. Burger King Eur. GmbH*, 839 F.3d 422, 426-27 (5th Cir. 2016) (declining to reach the issue because the defendant waived under neither standard); *see also Wellogix, Inc. v. SAP Am., Inc.*, 648 F. App'x 398, 401 (5th Cir. 2016). Under either test, Defendants have not waived their right to enforce the FSCs.

First, under the test from *GP Plastics Corp. v. Interboro Packaging Corp.*, 108 F. App'x 832, 836 (5th Cir. 2004), waiver of an FSC requires “ ‘(1) an existing right, benefit, or advantage; (2) actual or constructive knowledge of its existence; and (3) actual intent to relinquish that right.’ ” *SGIC*, 839 F.3d at 426 (quoting *GP*, 108 F. App'x at 836). “Waiver can also occur if a party engages in ‘conduct so inconsistent with the intent to enforce the right as to induce a reasonable belief that it has been relinquished.’ ” *Id.* (citing *N. Am. Specialty Ins. Co. v. Debis Fin. Servs., Inc.*, 513 F.3d 466,

470 (5th Cir. 2007)). In determining whether a party actually intended to relinquish their right to enforce an FSC, courts look to whether a party raised the FSC earlier in the litigation. *Global Oil Tools, Inc. v. Expeditors Int'l of Wash., Inc.*, 429 F. Supp. 3d 221, 228 (E.D. La. 2019); *see also Wellogix*, 648 F. App'x at 401; *GP*, 108 F. App'x at 836-37. Additionally, failure to raise an FSC in a motion to dismiss can constitute conduct inconsistent with the intent to enforce the clause. *Global Oil*, 429 F. Supp. 3d at 228.

Plaintiffs contend that Defendants waived the FSC under *GP* because they hired U.S. counsel who “ma[de] demands and threaten[ed] litigation in Texas”; filed an amendment and change of registered agent with the Texas Secretary of State to oust Garcia Marmolejo as NAMDC's president, *see* Dkt. 79-5, at 19; requested Garcia Marmolejo's counsel accept service for a threatened U.S. suit; sent threats to Garcia Marmolejo's email address in Texas; sent defamatory emails to Garcia Marmolejo's Texas-based clients; formed an LLC to conduct business in Texas and opened a bank account there; and, with their Texas-and Arizona-based counsel, “waged a campaign of terror” against Garcia Marmolejo. Dkt. 79, at 7. Regardless of its other contacts with Texas, the closest Defendants came to actual intent to relinquish their right to a Mexican forum was to merely *threaten* litigation in Texas. Plaintiffs point to no authority demonstrating that mere threats are sufficient to demonstrate Defendants' actual intent to waive their right to a Mexican forum, and the undersigned finds none. Further, threats of litigation are not so inconsistent with the intent to exercise that right as to induce a reasonable belief that it has been relinquished. *See SGIC*, 839 F.3d at 426.

More to the point, Defendants have raised the FSCs on multiple occasions, including in their earliest motion to dismiss. *See* Dkts. 8; 38; 42; 77; *Global Oil*, 429 F. Supp. 3d at 228. The undersigned finds Defendants' actions throughout the litigation do not demonstrate actual intent to relinquish their right to enforce the FSCs, or that any of Defendants' behavior is inconsistent with the intent to exercise that right. *See SGIC*, 839 F.3d at 426.

*8 A second test analyzes FSCs under the test used by federal courts to assess waiver of arbitration clauses, which are “a species” of FSC. *See Wellogix*, 648 F. App'x at 401-02. Defendants have not waived their right to enforce the FSCs under that test, either. The test states that a party to an FSC waives its right to enforce it if the party “(1)

ABRAHAM GARCIA MARMOLEJO, MULE, LLC, Plaintiffs v. RANCHO CINEGETICO EL GRAN..., Slip Copy (2026)

substantially invokes the judicial process ... and (2) thereby causes detriment or prejudice to the other party.” *Id.* at 402 (internal quotation marks omitted). To invoke the judicial process, a party “‘must, at the very least, engage in some overt act in court that evinces a desire to resolve the dispute through litigation.’” *Global Oil*, 429 F. Supp. 3d at 229 (cleaned up) (quoting *Hampton v. Equity Tr. Co.*, 736 F. App’x 430, 435 (5th Cir. 2018)). Defendants did not substantially invoke the judicial process in Texas by threatening suit here. *See* Dkt. 79, at 7. And Defendants have raised the FSCs throughout the litigation, including in their earliest motion to dismiss. *See* Dkts. 8; 38; 42; 77. Defendants have not waived their right to enforce the FSCs.

iv. The FSCs are not unreasonable.

Plaintiffs finally argue that the FSCs are unenforceable because they are unreasonable under the circumstances. *See Weber*, 811 F.3d at 773. An FSC may be unreasonable under the circumstances if

- (1) the incorporation of the forum selection clause into the agreement was the product of fraud or overreaching;
- (2) the party seeking to escape enforcement will for all practical purposes be deprived of his day in court because of the grave inconvenience or unfairness of the selected forum;
- (3) the fundamental unfairness of the chosen law will deprive the plaintiff of a remedy; or
- (4) enforcement of the [FSC] would contravene a strong public policy of the forum state.

Noble House, 67 F.4th at 248 (citing *Haynsworth v. The Corp.*, 121 F.3d 956, 963 (5th Cir. 1997)).

Plaintiffs assert that the second and fourth scenarios are present here. Dkt. 79, at 7-8. First, Plaintiffs argue that Garcia Marmolejo will be deprived of his day in court because Defendants have threatened him with physical violence and fabricated charges. *Id.* Plaintiffs point to cases demonstrating that financial difficulty can be sufficient to find an FSC unenforceable, arguing that Garcia Marmolejo's situation is “significantly more severe.” *Id.* at 8. They also point to two cases where courts have considered litigants' safety in determining whether a foreign forum was adequate under the traditional *forum non conveniens* test—i.e., in the absence of any FSC. In *Johansen v. Trico Marine International, Inc.*,

the court found that Nigeria was not an adequate foreign forum because plaintiff's kidnapping in Nigeria precipitated the suit, and it was not unreasonable that the plaintiff would fear for his life if he returned to Nigeria. No. H-07-3767, 2008 WL 11390861, at *14 (S.D. Tex. Aug. 29, 2008). The court declined to dismiss the case on *forum non conveniens* grounds, concluding that the public-and private-interest factors also did not counsel in favor of dismissal. *Id.* at *14-15. In *Goldfarb v. Channel One Russia*, the court found that Russia was not an adequate forum because the plaintiff's life would be in danger if he went there due to his earning “a place near the top of the [Russian Federal Security Service]'s enemy list.” 442 F. Supp. 3d 649, 658-59 (S.D.N.Y. 2020).

In response, Defendants argue there is no credible evidence of any threat against Garcia Marmolejo, and generalized claims that Defendants exercise political power are insufficient to overcome an FSC. Dkt. 80, at 7-8. Defendants cite *Du Quenoy v. American University of Beirut*, where the court dismissed a plaintiff's case on *forum non conveniens* grounds because he made only broad claims that the judicial system in Lebanon was “corrupt,” and the plaintiff had consented to Lebanon's jurisdiction via the FSC in his employment contract. No. 18 Civ. 6962 (ER), 2019 WL 4735371, at *7 (S.D.N.Y. Sep. 27, 2019). The court held that the plaintiff's “sole allegation that [his employer, a university] enjoys significant prominence and political clout in Lebanon is insufficient to overturn the [FSC].” *Id.*

*9 The undersigned finds Garcia Marmolejo will not be deprived of his day in court if forced to litigate in Mexico. While Garcia Marmolejo's allegations that Defendants will physically harm him if he returns to Mexico to litigate this case are not so unspecific as the insufficient claims in *Du Quenoy*, the undersigned finds that Defendants' alleged threats are more remote than in *Johansen* and *Goldfarb*. In *Johansen*, plaintiffs had been kidnapped at gunpoint in the would-be transferee forum. 2008 WL 11390861, at *14. In *Goldfarb*, the plaintiff produced evidence that he was presently at the top of the Russian security service's “enemy list.” 442 F. Supp. 3d at 659. Aside from alleging on “information and belief” that Defendants “have filed and/or will be filing additional complaints in Mexico,” Garcia Marmolejo makes no allegations that Defendants have threatened him with false criminal charges or physical harm since the parties' falling out in 2024. Given Garcia Marmolejo alleges no present attempt to manipulate the Mexican court

ABRAHAM GARCIA MARMOLEJO, MULE, LLC, Plaintiffs v. RANCHO CINEGETICO EL GRAN..., Slip Copy (2026)

system against him, the undersigned cannot conclude he would be deprived of his day in court if he were forced to litigate this case in Mexico.

Next, Plaintiffs assert it would be contrary to Texas public policy to “subject one of its citizens to the types of violence and harm threatened” against Garcia Marmolejo. Dkt. 79, at 10. In support of this argument, they cite only *Acaín v. International Plant Services, LLC*, in which the court held it was error to dismiss a case on international-comity grounds because it was not unreasonable for the Texas court to exercise jurisdiction in part because of Texas's “interest in preventing human trafficking within Texas.” 449 S.W.3d 655, 664 (Tex. App.—Houston [1st Dist.] 2014, pet. denied). Without more, Plaintiffs have not met their burden to show enforcement of the FSC would contravene a strong public policy of the forum state. *See Noble House*, 67 F.4th at 252 (declining to find enforcement of an FSC would contravene Texas public policy because plaintiff cited no case demonstrating so); *see also Young v. Valt.X Holdings, Inc.*, 336 S.W.3d 258, 265-66 (Tex. App.—Austin 2010, pet. dismissed) (“[F]ederal and Texas courts have explained that public policy ‘strongly’ favors enforcement of forum-selection clauses.”).

b. The public-interest factors favor dismissal.

The public-interest factors include

- (i) the administrative difficulties flowing from court congestion;
- (ii) the local interest in having localized controversies resolved at home;
- (iii) the interest in having [] the trial of a diversity case in a forum that is familiar with the law that must govern the action;
- (iv) the avoidance of unnecessary problems in conflicts of law, or in application of foreign law; and
- (v) the unfairness of burdening citizens in an unrelated forum with jury duty.

DTEX, 508 F.3d at 802. The public-interest factors will rarely defeat a valid FSC. *In re Rolls Royce Corp.*, 775 F.3d 671, 678 (5th Cir. 2014).

First, the administrative difficulties flowing from court congestion weigh slightly in favor of transfer. Though the parties offer no argument or evidence on court congestion in Hermosillo, Mexico, this District is one of the busiest per judge in the United States. Dkt. 80, at 8; *see Combined Civil and Criminal Federal Court*

Management Statistics, U.S. District Courts (December 31, 2025), [fcms_na_distprofile1231.2025.pdf](#). Second, Garcia Marmolejo argues that Texas's interest in having this controversy resolved in Texas is greater than Mexico's because of “Texas public policy to protect its citizens from violent offenses regardless of geographical boundaries.” Dkt. 79, at 14. But he offers no support for this assertion and concedes there is “no clear ‘home’ for this dispute.” *Id.* The undersigned finds Plaintiffs have not met their burden to show that Texas's interest “overwhelmingly disfavor[s]” dismissal, and if Plaintiffs are right that there is “no clear home” for this dispute, the FSC should control. *See Atl. Marine*, 571 U.S. at 67.

On the third and fourth factors, Defendants argue, without explanation, that all agreements at issue “require the application of Mexican law.” Dkt. 80, at 8. Plaintiffs appear to believe Texas and United States law governs, though they don't explain why or offer any briefing on any choice-of-law or conflict-of-laws issue. Dkt. 79, at 14. The undersigned declines to do the parties' work for them here. *See Wellogix*, 58 F. Supp. 3d at 775 (declining to determine whether federal law or the law of the contract—German or Texas law—applied to waiver of an FSC where the parties did not brief the issue); *see also Int'l Adm'rs, Inc. v. Life Ins. Co. of N. Am.*, 753 F.2d 1373, 1376 n.4 (7th Cir. 1985) (“Although we are not certain that Illinois law would apply to every issue, were the question properly argued, we are certain that it is not the job of the trial judge to do the parties' work for them.”); *Texas v. Equal Emp. Opportunity Comm'n*, 633 F. Supp. 3d 824, 847 n.10 (N.D. Tex. 2022) (“It is not the court's job to divine the applicable law for the parties[.]” (internal quotation marks omitted)). Assuming these factors weigh against transfer, and considering the other factors, the undersigned finds Plaintiffs have still not shown that the factors “overwhelmingly disfavor” dismissal here. *See Atl. Marine*, 571 U.S. at 67.

***10** Fifth and finally, Plaintiffs state that hearing this case in Texas would impose no burden on Texas citizens given “a life-long current Texas resident is the one being threatened with physical violence.” Dkt. 79, at 14. That may be true, but this factor does not weigh against dismissal. The undersigned is unpersuaded it would be unfair to burden Mexican citizens with this case given that the dispute concerns a Mexican hunting ranch and contracts related to it, even if the parties

ABRAHAM GARCIA MARMOLEJO, MULE, LLC, Plaintiffs v. RANCHO CINEGETICO EL GRAN..., Slip Copy (2026)

also dispute the ownership of certain assets in Texas. *See* Dkt. 79-3, at 12-19, 49-58, 80-88.

Because the FSCs are mandatory and enforceable and the public-interest factors do not overwhelmingly disfavor dismissal, Plaintiffs' claims for breach of contract, tortious interference with prospective and continuing business relations, defamation, and conversion against Chaparral and tortious interference with contract against all Defendants should be dismissed.

2. Plaintiffs' RICO claims and claims for assault by threats of bodily injury, assault by terroristic threat, and intentional infliction of emotional distress should not be dismissed under traditional *forum non conveniens*.

As stated above, the parties agree that Plaintiffs' RICO claims and claims for assault by threats of bodily injury, assault by terroristic threat, and intentional infliction of emotional distress against Mazón Lizarraga are not subject to any FSC. *See* Dkt. 77, at 11. The undersigned analyzes them under the traditional *forum non conveniens* test.

a. The undersigned presumes Mexico is an adequate forum.

Plaintiffs do not dispute that Mexico is available. *See* Dkt. 79. Plaintiffs do argue that Mexico is inadequate, pointing to Defendants' threats against Garcia Marmolejo and arguing his claims "do not arise from events that took place in Mexico." Dkt. 79, at 11. In general, the defendant bears the burden of demonstrating the existence of an available and adequate alternative forum. *Tellez v. Madrigal*, 223 F. Supp. 3d 626, 635 (W.D. Tex. 2016). But "it is the plaintiff who must overcome a presumption of adequacy of the proposed foreign forum." *Id.* (citing *DTEX*, 508 F.3d at 796). Plaintiffs must show it is " 'highly unlikely' " that they will be able to " 'obtain basic justice' in the alternative forum or show that the remedies available to [them] in the alternative forum are 'no remedy at all.' " *Id.* (quoting *DTEX*, 508 F.3d at 796). This is a stringent standard. *Id.* at 636.

Like the court in *Tellez*, the undersigned does not take lightly Garcia Marmolejo's assertions that going to court in Mexico will put him at risk of physical harm. Dkt. 79, at

11; *Tellez*, 223 F. Supp. 3d at 636. The undersigned also recognizes that, taking Garcia Marmolejo's allegations as true, Defendants have fabricated criminal charges against Garcia Marmolejo and his employees in the past. Dkt. 76, at 17-18. Though Garcia Marmolejo does not point to any specific ongoing threats against him or his employees, he alleges that Defendants' conspiracy is "ongoing." *See DTEX*, 508 F.3d at 797-98 (concluding Mexico was an adequate forum in part because allegedly "baseless" criminal proceedings had all been dismissed and there was "no evidence of any outstanding warrant or other threat" to plaintiff's agents' safety). But the undersigned is reluctant to conclude that Defendants' influence is so vast that they could manipulate the Mexican legal system to render it unfair to Garcia Marmolejo. *See Tellez*, 223 F. Supp. 3d at 636. The undersigned is unable to conclude based on these past threats that it is "highly unlikely" Garcia Marmolejo will obtain "basic justice" in a Mexican court. *See DTEX*, 508 F.3d at 796.⁴

*11 Like the court in *Tellez*, the undersigned will assume without deciding that Mexico is an adequate forum. 223 F. Supp. 3d at 636. Even if Mexico were an adequate forum, Defendants have not carried their burden to show that the public-and private-interest factors "strongly" favor dismissal with respect to the non-FSC claims. *See DTEX*, 508 F.3d at 795.

b. The private-interest factors do not weigh in favor of dismissal.

The private-interest factors are

- (i) the relative ease of access to sources of proof;
- (ii) availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; (iii) possibility of view of the premises, if view would be appropriate to the action; and (iv) all other practical problems that make trial of a case easy, expeditious, and inexpensive.

DTEX, 508 F.3d at 798 (quoting *Gilbert*, 330 U.S. at 508) (cleaned up). Defendants contend that courts in Hermosillo, Mexico have a greater interest in adjudicating Garcia Marmolejo's tort claims than any U.S. court, the evidence of those torts is in Mexico, and many of the relevant

ABRAHAM GARCIA MARMOLEJO, MULE, LLC, Plaintiffs v. RANCHO CINEGETICO EL GRAN..., Slip Copy (2026)

witnesses are outside the Court's subpoena power. Dkt. 77, at 12. Plaintiffs respond that a substantial number of witnesses reside in Texas, including Garcia Marmolejo; his experts; Brushy Creek, NAMDC, and Mule's corporate representatives; Garcia Marmolejo's clients; and documents. Dkt. 79, at 12.

First, the undersigned finds that the relative ease of access to sources of proof weighs in favor of dismissal. In examining this factor, courts look “to the location of documents and physical evidence, rather than to witnesses.” *Doe v. William Marsh Rice Univ.*, No. 4:19-CV-00658, 2020 WL 4464496, at *5 (E.D. Tex. Aug. 4, 2020). Garcia Marmolejo identifies the following sources of proof he contends are more easily accessed in Texas: bank records showing payments from Garcia Marmolejo's clients and from Garcia Marmolejo to Chaparral, bank records from Chaparral's San Antonio account, emails between the parties, emails between Defendants and Garcia Marmolejo's hunting clients, NAMDC corporate documents, and importation documents for the genetic materials held by Brushy Creek. Dkt. 79, at 12. Defendants disagree, stating that evidence relating to Garcia Marmolejo's tort claims is in Mexico. Dkt. 77, at 12.

While the undersigned does not doubt Garcia Marmolejo's assertion that certain bank records, corporate documents, and importation documents are held in Texas, some of that evidence is also likely already in Defendants' possession and can be accessed in Mexico. *See Blum v. Gen. Elec. Co.*, 547 F. Supp. 2d 717, 728 (W.D. Tex. 2008). For example, Defendants would have access to bank records showing payments from Garcia Marmolejo to Chaparral, email between Defendants and Garcia Marmolejo's hunting clients, emails between the parties—including any threatening communications—and emails between parties and clients. *See* Dkt. 79, at 12. Given that the parties also formed Alta Genética, a Mexican corporation, some corporate records are likely also located in Mexico. *See* Dkt. 76, at 9. Since “some inconvenience would result to either party with respect to access to sources of proof whether trial was held in Mexico or the United States,” *Tellez*, 223 F. Supp. 3d at 637, the undersigned finds that this factor weighs only slightly in favor of dismissal.

***12** Regarding witnesses, Garcia Marmolejo claims his experts, Brushy Creek and NAMDC representatives, NAMDC's accountant, Garcia Marmolejo's clients, Mule's

corporate representative, and Defendants' “agents and co-conspirators” are in Texas. Dkt. 79, at 12. Other than noting that Garcia Marmolejo himself does not wish to travel to Mexico, Plaintiffs do not state their witnesses would be unwilling to testify. Accordingly, these arguments should be afforded less weight. *See In re Planned Parenthood Fed'n of Am.*, 52 F.4th 625, 630-31 (5th Cir. 2022) (noting the availability of compulsory process receives less weight when it has not been alleged or shown that any witness would be unwilling to testify). For their part, Defendants state that the individual who informed Garcia Marmolejo about Mazón Lizarraga's plot to have him “picked up” upon arrival is in Mexico, as are witnesses to the criminal poaching charges. Dkt. 77, at 12. Defendants emphasize that these witnesses would be outside the Court's subpoena power, *id.*, suggesting they would be unwilling to testify. Again, compulsory process would pose some challenges in either forum. The undersigned finds that this factor is neutral.

As neither party offers any argument with respect to the cost for willing witnesses or ability to view the premises, these factors are neutral. *See* Dkts. 77; 79; 80.

Finally, with respect to other practical factors, Garcia Marmolejo argues it would be a “grave hardship” to require him to litigate in Mexico and that this is a Texas-based dispute. Dkt. 79, at 13. As discussed above, it is unclear whether Mexico is an available and adequate forum given Defendants' threats. And while much of the conduct giving rise to Garcia Marmolejo's claims under RICO and for assault by threats of bodily injury, assault by terroristic threat, and intentional infliction of emotional distress occurred in Mexico, *see* Dkt. 76, at 43-44, 47-53, this case also involves property in Texas and threats received in Texas. This factor does not weigh in favor of dismissal.

c. The public-interest factors do not weigh in favor of dismissal.

The public-interest factors do not weigh in favor of dismissal, either. Again, those factors are

- (i) the administrative difficulties flowing from court congestion;
- (ii) the local interest in having localized controversies resolved at home;
- (iii) the interest in having [] the trial of a diversity case in a forum that is familiar with

ABRAHAM GARCIA MARMOLEJO, MULE, LLC, Plaintiffs v. RANCHO CINEGETICO EL GRAN..., Slip Copy (2026)

the law that must govern the action; (iv) the avoidance of unnecessary problems in conflicts of law, or in application of foreign law; and (v) the unfairness of burdening citizens in an unrelated forum with jury duty.

DTEX, 508 F.3d at 802.

First, as the undersigned determined above, the administrative difficulties flowing from court congestion weigh slightly in favor of transfer. But second, while the undersigned previously noted that Texas's interest in this dispute is not clearly greater than Mexico's, Defendants fail to meet their burden to show that Mexico's interest in this dispute is any greater than Texas's. *See* Dkt. 80, at 8 (noting that this “controversy is not localized”). They state only that the “courts of Hermosillo have a direct interest in adjudicating the parties' dispute, which involves conduct and agreements carried out in Mexico.” *Id.* Third and fourth, with respect to choice-of-law issues, Defendants claim Mexican law would govern but do not explain why. *Id.* Fifth, Defendants offer no argument that it would be unfair to burden Texas citizens with jury duty in this case. These factors are neutral.

Having determined that neither the private-nor the public-interest factors favor dismissal, the undersigned concludes that the balance is not “strongly in favor” of dismissal. *See DTEX*, 508 F.3d at 795. Accordingly, the undersigned will recommend that the District Judge decline to dismiss Plaintiffs' non-FSC claims based on *forum non conveniens*.

Finally, upon any adoption of this recommendation, the Court may sever claims subject to the mandatory FSC and maintain jurisdiction over the others. *See Harland Clarke Holdings Corp. v. Milken*, 997 F. Supp. 2d 561, 576 n.11 (W.D. Tex. 2014) (noting that even if the court could not transfer the entire case under 28 U.S.C. § 1404, it would sever the claims that were “undisputably subject to the mandatory, exclusive forum-selection clause”), *see also id.* (noting the party “should not be able to flout the forum-selection clause to which it voluntarily agreed by adding nonsignatory parties”); *Oxysure Therapeutics, Inc. v. Gemini Master Fund, Ltd.*, No. 4:15-CV-00821-ALM-CAN, 2016 WL 4083241, at *10-11 (E.D. Tex. July 8, 2016), *R. & R. adopted*, 2016 WL 4039226 (E.D. Tex. July 28, 2016) (“[W]here a Court finds that some claims are subject to a forum-selection clause and some are not, it should dismiss or transfer the claims that should properly be brought in a contractually agreed-upon forum, but maintain jurisdiction over others.” (collecting cases)); *cf.*

Rolls Royce, 775 F.3d at 681 (describing the district court's severance inquiry when some, but not all, litigants are subject to a forum-selection clause).

III. FAILURE TO STATE A CLAIM

A. Legal Standard

*13 Pursuant to Rule 12(b)(6), a court may dismiss a complaint for “failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). In deciding a 12(b)(6) motion, a “court accepts ‘all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff.’ ” *In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205 (5th Cir. 2007) (quoting *Martin K. Eby Constr. Co. v. Dall. Area Rapid Transit*, 369 F.3d 464, 467 (5th Cir. 2004)). “To survive a Rule 12(b)(6) motion to dismiss, a complaint ‘does not need detailed factual allegations,’ but must provide the plaintiff's grounds for entitlement to relief—including factual allegations that when assumed to be true ‘raise a right to relief above the speculative level.’ ” *Cuvillier v. Taylor*, 503 F.3d 397, 401 (5th Cir. 2007) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). That is, “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’ ” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570).

A claim has facial plausibility “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* “The tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.* A court ruling on a 12(b)(6) motion may rely on the complaint, its proper attachments, “documents incorporated into the complaint by reference, and matters of which a court may take judicial notice.” *Dorsey v. Portfolio Equities, Inc.*, 540 F.3d 333, 338 (5th Cir. 2008) (citations and internal quotation marks omitted). A court may also consider documents that a defendant attaches to a motion to dismiss “if they are referred to in the plaintiff's complaint and are central to her claim.” *Causey v. Sewell Cadillac-Chevrolet, Inc.*, 394 F.3d 285, 288 (5th Cir. 2004). But because the court reviews only the well-pleaded facts in the complaint, it may not consider new factual allegations made outside the

ABRAHAM GARCIA MARMOLEJO, MULE, LLC, Plaintiffs v. RANCHO CINEGETICO EL GRAN..., Slip Copy (2026)

complaint. *Dorsey*, 540 F.3d at 338. “[A] motion to dismiss under 12(b)(6) ‘is viewed with disfavor and is rarely granted.’ ” *Turner v. Pleasant*, 663 F.3d 770, 775 (5th Cir. 2011) (quoting *Harrington v. State Farm Fire & Cas. Co.*, 563 F.3d 141, 147 (5th Cir. 2009)).

B. Discussion

The undersigned recommends that the District Judge dismiss Plaintiffs' remaining claims, except for the RICO claim, for failure to state a claim under Rule 12(b)(6).

1. The claim for assault by threat of bodily injury should be dismissed.

The District Judge should dismiss this claim. Garcia Marmolejo's claim for assault by threat of bodily injury—as well as his claims for assault by terroristic threat and intentional infliction of emotional distress—is based on Mazón Lizarraga's threat to have Garcia Marmolejo “picked up” if he came to Mexico. Dkt. 76, at 44. Defendants move to dismiss Garcia Marmolejo's claim for assault by threat of bodily injury because the threat was not imminent given that Garcia Marmolejo never traveled to Hermosillo and heard about the threat from a third party. Dkt. 77, at 13.

To state a claim for assault by threat of bodily injury under Texas law, Garcia Marmolejo must allege Mazón Lizarraga “(1) intentionally, knowingly, or recklessly caused bodily injury to [Garcia Marmolejo]; (2) intentionally or knowingly threatened [him] with imminent bodily injury; or (3) intentionally or knowingly caused physical contact with [him] when [Mazón Lizarraga] knew or reasonably believed the contact to be offensive or provocative.” *Davis v. Cisneros*, 744 F. Supp. 3d 696, 738 (W.D. Tex. 2024) (citing Tex. Penal Code § 22.01(a)).⁵ “The focus in an assault by threat case is on the defendant's words and conduct, and the critical inquiry is whether a reasonable person under the circumstances would consider the words and conduct to be an objective threat of imminent bodily injury.” *Id.* (quoting *Jones v. Shipley*, 508 S.W.3d 766, 769 (Tex. App.—Houston [1st Dist.] 2016, pet. denied)). A threat is imminent if it is “ready to take place, near at hand, impending, hanging threateningly over one's head, menacingly near.” *Devine v. State*, 786 S.W.2d 268, 270 (Tex. Crim. App. 1989) (internal quotation marks omitted).

*14 The undersigned agrees with Defendants that Mazón Lizarraga's alleged threat to “pick up” Garcia Marmolejo was insufficiently imminent to support an assault claim. Courts have found threats imminent where the defendant threatened to beat up the victim while sprinting toward him and swinging a branch, *Babcock v. State*, 501 S.W.3d 651, 654 (Tex. App.—Eastland 2016, pet. ref'd), threatened to stab a jailer when he opened the cell door, *Tanksley v. State*, 656 S.W.2d 194, 196 (Tex. App.—Austin 1983, no pet.), and pointed a shotgun at the victim, *Garcia v. State*, 819 S.W.2d 634, 636 (Tex. App.—Corpus Christi 1991, no pet.). In contrast, threats of bodily injury are not imminent when they will occur at some indefinite point in the future. *See, e.g., Devine*, 786 S.W.2d at 270-71 (concluding the threat was not imminent when the defendant threatened to kill her ex-husband at some indefinite time in the future).

Though Garcia Marmolejo may have “intended” to go to Mexico to meet with Mazón Lizarraga, he was still located in Texas at the time he received word of the threat. Dkt. 76, at 11. This is nowhere near the level of imminence found sufficient to support a claim in *Babcock*, *Tanksley*, or *Garcia*, where bodily injury was “ready to take place.” *See Devine*, 786 S.W.2d at 270.

Garcia Marmolejo does state that he planned to visit Defendants “on a specific date.” Dkt. 76, at 43. But as discussed, courts require much closer temporal proximity to support imminence. Garcia Marmolejo's cases do not help him, either. In *Black v. Thaler*, the court determined the evidence was factually sufficient to support the jury's finding on imminence in a habeas case in which the defendant threatened the victims around 9:00 p.m. that he would “slice [them] up” that night after following them to their house in a separate car. No. 4:09-CV-453-A, 2010 WL 1996893, at *5 (N.D. Tex. May 18, 2010). Here, Mazón Lizarraga threatened to “pick [Garcia Marmolejo] up” when he arrived in Mexico on an unidentified, “specific” date. Dkt. 76, at 44. Though the date was specific, there is no showing that it was “near at hand” or “ready to take place.” *See id.* At the very least, Garcia Marmolejo would have first needed to arrange travel to Mexico. And unlike in *Black*, where “two car doors stood between” the parties, a national border stood between Garcia Marmolejo and Mazón Lizarraga. Finally, in *United States v. Morales*, the court analyzed whether a statement was a “true threat” under 18 U.S.C. § 875, not whether a threat of bodily

ABRAHAM GARCIA MARMOLEJO, MULE, LLC, Plaintiffs v. RANCHO CINEGETICO EL GRAN..., Slip Copy (2026)

injury was imminent. 272 F.3d 284, 288 (5th Cir. 2001). The District Judge should dismiss Plaintiffs' claim for assault by threat of bodily injury.

2. The claim for assault by terroristic threat should be dismissed.

Garcia Marmolejo's claim for assault by terroristic threat should also be dismissed. The parties dispute whether there is a civil cause of action under Texas law for assault by terroristic threat. *See* Dkt. 77, at 14. Plaintiffs argue that *Wells v. May*, No. 05-12-01100-CV, 2014 WL 1018135, at *3 (Tex. App.—Dallas Feb. 12, 2014, no pet.), “implicitly” recognizes the claim. Dkt. 79, at 16-17. Assuming without deciding that there is a civil cause of action for assault by terroristic threat under Texas law, Garcia Marmolejo would still need to show that the threat was imminent. *See Wells*, 2014 WL 1018135, at *3 (concluding plaintiff's claims were not groundless because he alleged defendant had assaulted him by intentionally or knowingly threatening him with *imminent* bodily injury); Tex. Penal Code § 22.07(a)(2) (making it a criminal offense to “threaten[] to commit any offense involving violence to any person or property with intent to ... place any person in fear of *imminent* serious bodily injury” (emphasis added)). As discussed, Garcia Marmolejo cannot show that Mazón Lizarraga's threat was imminent. This claim should be dismissed.

3. The claim for intentional infliction of emotional distress should be dismissed.

***15** Garcia Marmolejo's claim for intentional infliction of emotional distress (“IIED”) should be dismissed as well. To state an IIED claim, Garcia Marmolejo must allege that (1) Mazón Lizarraga acted intentionally or recklessly; (2) his conduct was extreme or outrageous; (3) his actions caused Garcia Marmolejo emotional distress; and (4) the emotional distress was severe. *Kroger Tex. Ltd. P'ship v. Suberu*, 216 S.W.3d 788, 796 (Tex. 2006). But “[t]he Texas Supreme Court has stated that a claim for intentional infliction of emotional distress is ‘first and foremost, a “gap-filler” tort, judicially created for the limited purpose of allowing recovery in those rare instances in which a defendant intentionally inflicts severe emotional distress in a manner so unusual

that the victim has no other recognized theory of redress.’ ” *Doe through Next Friend Roe v. Snap, Inc.*, No. H-22-00590, 2022 WL 2528615, at *11 (S.D. Tex. July 7, 2022) (quoting *Hoffman-La Roche, Inc. v. Zeltwanger*, 144 S.W.3d 438, 447 (Tex. 2004)). “ ‘Where the gravamen of a plaintiff's complaint is really another tort, intentional infliction of emotional distress should not be available.’ ” *Id.* (quoting *Hoffman-La Roche*, 144 S.W.3d at 447). “Additionally, ‘when the substance of the complaint is covered by another tort, a plaintiff cannot maintain an intentional infliction claim regardless of whether he or she succeeds on, or even makes, [an alternate] claim.’ ” *Id.* (quoting *Miller v. Target Corp.*, 854 F. App'x 567, 569 (5th Cir. 2021)).

Garcia Marmolejo's IIED claim is based on Mazón Lizarraga's threat to have Garcia Marmolejo “ ‘picked up’ by hired guns.” Dkt. 76, at 44. His IIED claim is not based on conduct separate from that giving rise to his assault claims. *See id.* at 43 (alleging assault by threats of bodily injury and assault by terroristic threat based on Mazón Lizarraga's threat to have Garcia Marmolejo “picked up” by hired guns); *Barry v. United States*, 667 F. Supp. 3d 495, 509 (S.D. Tex. 2023) (concluding plaintiff's allegations did not support an IIED claim “because he rests all three causes of action on these same allegations”); *Travina v. Univ. of Tex.*, No. A-21-CV-01040-RP, 2022 WL 1308828, at *7 (W.D. Tex. May 2, 2022) (concluding plaintiff's IIED claim was distinct from her threat of bodily injury claim where the former was based on comments predating and unrelated to the sexual assault supporting her threat of bodily injury claim). Garcia Marmolejo's IIED claim should be dismissed.

4. The civil RICO claims should not be dismissed at this time.

“The RICO statute makes it ‘unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.’ ” *EnvTech, Inc. v. DeBusk*, 178 F.4th 208, 219 (5th Cir. 2026) (quoting 18 U.S.C. § 1962(c)). “It also makes it ‘unlawful for any person to conspire to violate any of the provisions of subsection ... (c) of this section.’ ” *Id.* (quoting 18 U.S.C. § 1962(d)). “Both subsections require proof of three elements: ‘(1) a person who

ABRAHAM GARCIA MARMOLEJO, MULE, LLC, Plaintiffs v. RANCHO CINEGETICO EL GRAN..., Slip Copy (2026)

engages in (2) a pattern of racketeering activity, (3) connected to the acquisition, establishment, conduct, or control of an enterprise.’ ” *Id.* (quoting *D&T Partners, LLC v. Baymark Partners Mgmt., LLC*, 98 F.4th 198, 204-05 (5th Cir. 2024)). Defendants challenge the second and third elements, as well as whether Plaintiff’s have sufficiently pleaded predicate acts or any injury resulting from the RICO scheme.

a. Plaintiffs plead predicate acts occurring in the U.S.

At least as to § 1962(c),⁶ RICO applies to foreign predicate acts only to the extent that the underlying predicate statutes apply extraterritorially. *RJR Nabisco, Inc. v. Eur. Cmty.*, 579 U.S. 325, 340 (2016). Defendants thus argue that because “all the alleged wrongful conduct giving rise to” the allegedly fabricated Mexican criminal prosecution occurred in Mexico, Plaintiffs’ claim fails. Dkt. 77, at 15. But Defendants mischaracterize Plaintiffs’ complaint. More than simply bringing false charges, Plaintiffs allege a broader scheme including predicate acts such as extortion, mail fraud, and wire fraud. *See* Dkt. 76, at 48-49. They allege that these acts occurred, at least in part, in Texas. *See id.* at 48 (alleging Defendants’ counsel in Texas and Arizona participated in extortion, mail fraud, and wire fraud). So even if it were true that all conduct in connection with the Mexican criminal prosecution occurred in Mexico, the Court cannot dismiss the remainder of Plaintiffs’ complaint on this basis.⁷

***16** On extraterritoriality, the undersigned notes that concerns with extraterritoriality matter only to the extent Plaintiffs fail to allege any domestic violation of a predicate statute. In other words, Plaintiffs can state a RICO claim based entirely on conduct occurring in the U.S. so long as they allege conduct in the U.S. that satisfies every essential element of the offense. *See RJR*, 579 U.S. at 345. Defendants do not argue that Plaintiffs fail to allege any domestic violation. Therefore, the Court should not dismiss Plaintiffs’ RICO claim on the basis that none of Plaintiffs’ predicate statutes apply extraterritorially. *See* Dkt. 77, at 15.

b. Plaintiffs allege a RICO enterprise.

“A RICO person is the defendant, while a RICO enterprise can be either a legal entity or an association-in-fact.” *St. Paul*

Mercury Ins. Co. v. Williamson, 224 F.3d 425, 440 (5th Cir. 2000). To allege a § 1962(c) claim, Garcia Marmolejo must allege that the RICO “persons” are distinct from the enterprise—here, an association-in-fact comprising Defendants and their attorneys. 18 U.S.C. § 1962(c) (pertaining to “any person employed by or associated with any enterprise” engaged in a RICO scheme (emphasis added)); *In re Uplift RX, LLC*, 667 B.R. 665, 700 (Bankr. S.D. Tex. 2024) (“Section 1962(c) requires the RICO person to be distinct from the RICO enterprise because the language deals with a ‘person employed by or associated with any enterprise.’ ” (citing *Landry v. Air Line Pilots Ass’n Int’l*, 901 F.2d 404, 425 (5th Cir. 1990))).

Defendants argue that because Mazón Lizarraga and Mazón Escalante “acted on behalf of El Chaparral in their representative capacities,” they cannot be considered a RICO actor separate from Chaparral. Dkt. 77, at 16. They also argue that Defendants’ counsel cannot be considered separate from Chaparral, “as the attorneys have only been named by Plaintiffs as ‘agents and actors of the enterprise.’ ” *Id.*; *see* Dkt. 76, at 13 (alleging that counsel for Defendants acted “on behalf of Defendants and at all times acting as their agent”); *see also* Dkt. 79, at 20 (alleging “Defendants caused and directed their agents to attempt to take Garcia’s personal property”).

These arguments should be rejected. First, even if Chaparral, Mazón Lizarraga, and Mazón Escalante were the *only* alleged members of the enterprise in this case, Plaintiffs still would have alleged a distinct enterprise. The distinctness requirement is concerned with whether the named defendants are identical to the entire enterprise. The Supreme Court has held that an employee, including a corporate owner, who “conducts the affairs of a corporation through illegal acts” comes within the terms of RICO such that an enterprise comprising the owner and his company is sufficiently distinct. *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158, 163 (2001); *see also Abraham v. Singh*, 480 F.3d 351, 357 (5th Cir. 2007) (concluding plaintiff alleged a distinct RICO enterprise comprising a defendant and his company). The fact that Plaintiffs allege an enterprise comprising each of these Defendants *in addition to* Defendants’ counsel lends further support to the conclusion that the named defendants in this case are not identical to the enterprise.

ABRAHAM GARCIA MARMOLEJO, MULE, LLC, Plaintiffs v. RANCHO CINEGETICO EL GRAN..., Slip Copy (2026)

Defendants' citation to *In re Burzynski*, 989 F.2d 733 (5th Cir. 1993), does not help them here. In *Burzynski*, the Fifth Circuit concluded that an enterprise comprising a company, its litigation consultant, and the litigation consultant's company contravened the person/enterprise distinction. *Id.* at 742-43. But the Fifth Circuit has since clarified that “courts have routinely required a distinction when a *corporation* has been alleged as both a RICO defendant and a RICO enterprise, but a similar requirement has not been mandated when *individuals* have been named as defendants and as members of an association-in-fact RICO enterprise.” *St. Paul*, 224 F.3d at 447 (addressing *Burzynski* and the cases on which it relied) (emphasis added). Section 1962(c)'s distinctiveness requirement, then, is not contravened where individual defendants are closely associated with a company forming part of their enterprise, but where the RICO enterprise is identical to a defendant corporation. *See id.* That is not the case here.

*17 It follows from this that a company's agents and officers, acting in the “ordinary course of business,” cannot constitute a distinct enterprise. *See Whelan v. Winchester Prod. Co.*, 319 F.3d 225, 230 (5th Cir. 2003). Permitting a RICO enterprise comprising a corporation and its employees acting in the ordinary course of business would allow Plaintiffs an end-run around section 1962(c)'s distinctiveness requirement, since most corporations will employ individuals to carry out their affairs. But it does not follow that any agent of a corporation may not be part of a RICO enterprise solely because he is an agent of the corporation—whether an owner, manager, or attorney. As the Fifth Circuit has noted, “[a]lthough a defendant may not be both a person and an enterprise, a defendant may be both a person and a part of an enterprise. ... Otherwise, an individual member of a collective enterprise, such as an association-in-fact, could not be prosecuted for violating § 1962(c) because he or she would not be considered distinct from the enterprise.” *St. Paul*, 224 F.3d at 447 (internal quotation marks omitted).

True, courts have concluded that enterprises comprising a client and its attorneys are insufficiently distinct where the attorneys are named as RICO persons. For example, in *Warnock v. State Farm Mutual Automobile Insurance Company*, the court found that where the defendant's attorneys “acted purely as agents of [their client] in filing subrogation complaints,” the attorneys and their client could not “form a RICO enterprise as a matter of law.” 833 F. Supp.

2d 604, 612 (S.D. Miss. 2011); *see also Kelly v. Palmer, Reifler, & Assocs., P.A.*, 681 F. Supp. 2d 1356, 1379 (S.D. Fla. 2010) (“If the Palmer Law Firm were acting as an agent for its clients, it cannot be deemed an entity separate and distinct from the enterprise for RICO liability purposes.”). Here, the attorneys are not RICO persons; as such, whether they are distinct from the RICO enterprise is irrelevant.

Finally, citing *Zastrow v. Houston Auto Imports Greenway Ltd.*, 789 F.3d 553, 561 n.7 (5th Cir. 2015), Defendants argue Plaintiffs' section 1962(c) claim should be dismissed because it is “a series of alleged predicate acts directed at an individual or business with nothing more.” Dkt. 77, at 16. Defendants are correct that a RICO enterprise cannot be “created by the alleged racketeering activity itself.” *Zastrow*, 789 F.3d at 562. Here, however, Plaintiffs allege “ongoing relationships” between defendants that “include[], but [are] not limited to, the predicate acts.” *Gil Ramirez Grp., LLC v. Hou. Indep. Sch. Dist.*, No. 4:10-CV-04872, 2017 WL 3236110, at *10 (S.D. Tex. July 31, 2017). Finally, with respect to Defendants' contention that Plaintiffs “cannot show Defendants and their lawyers associated to do anything but litigate a business dispute,” that is an issue for the merits. *See* Dkt. 77, at 16. Plaintiffs have alleged a distinct, ongoing RICO enterprise sufficient to survive Rule 12(b)(6).

c. Plaintiffs sufficiently plead predicate acts.

Next, Defendants urge the Court to dismiss the RICO claims because five of Plaintiffs' alleged predicate acts are not listed in 18 U.S.C. § 1961(1) and “therefore cannot be used to establish a pattern of racketeering activity.” *Id.* at 17. Section 1961 defines “racketeering activity” as

(A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under [certain provisions of title 18, United States Code.]

18 U.S.C. § 1961(1). Initially, a state-law offense need not be listed in Section 1961 to form the basis of a RICO claim. *See id.* § 1961(1)(A). To the extent Defendants argue certain alleged predicate acts fall outside Section § 1961(1)(A), they

ABRAHAM GARCIA MARMOLEJO, MULE, LLC, Plaintiffs v. RANCHO CINEGETICO EL GRAN..., Slip Copy (2026)

fail to articulate how each offense fails definitionally or due to the prescribed punishment range, especially given the punishment allowable for some of Plaintiffs' alleged predicate offenses depends on other details of the act and the value of any property affected. *See, e.g.*, Tex. Penal Code §§ 20.02 (defining the offense as a Class A misdemeanor, unless recklessly exposes victim to substantial risk of bodily injury), 31.03(a) (prescribing punishment based on the value of the stolen property), 32.32(b) (prescribing punishment based on the value of the stolen property). The RICO claim should not be dismissed on this basis.

***18** Additionally, Defendants assert that with respect to the remaining predicate acts, Plaintiffs “simply identify the statute, give a general description of the conduct it prohibits, and conclude that Defendants violated the statute.” Dkt. 77, at 17. Defendants' argument seems to be that the list of predicate acts in Plaintiffs' complaint is insufficient to state a claim. *See* Dkt. 76, at 49-52. In view of the rest of the complaint, which sets out factual allegations in detail, and in the absence of any more specific argument from Defendants on this point, the undersigned finds Plaintiffs have alleged non-conclusory facts in support of the remaining predicate acts.

d. Plaintiffs allege a direct injury.

A RICO plaintiff “only has standing if, and can only recover to the extent that, he has been injured in his business or property by the conduct constituting the [RICO] violation.” *Brown v. Protective Life Ins. Co.*, 353 F.3d 405, 407 (5th Cir. 2003) (quoting *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 (1985)). Defendants argue that Plaintiffs fail to allege any injury to Plaintiffs' business or property, pointing out that the genetic material remains in Brushy Creek's possession and “no property was obtained from” Plaintiffs. *See* Dkt. 77, at 17-18. This argument, too, is based on an unfairly narrow reading of Plaintiffs' complaint. More than injury to genetic material held at Brushy Creek, Plaintiffs allege Defendants' activity harmed Garcia Marmolejo's business and property, including by harming his outfitting business in the U.S. and taking control of some of Garcia Marmolejo's property, including certain vehicles. Dkt. 76, at 38, 47.

With respect to the extortion predicate act in particular, Defendants argue Plaintiffs fail to state a claim because

“no property was obtained from Plaintiffs.” Dkt. 77, at 18. But both the statute and Defendants' case contemplate a claim for attempted extortion. *See* 18 U.S.C. § 1951(a) (“Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do ... shall be fined under this title or imprisoned[.]”); *Scheidler v. Nat'l Org. for Women, Inc.*, 537 U.S. 393, 410-11 (2003) (concluding there was no RICO violation based on extortion where petitioners “did not obtain or attempt to obtain respondents' property”). Whether there was “nothing of an extortionate nature in the email communication,” *see* Dkt. 77, at 18 n.23, is an issue for the merits.

Finally, Defendants challenge Plaintiffs' mail-and wire-fraud predicate acts, stating that a “RICO actor's ‘use of’ the mail or wire communications to obtain property or cause actual injury cannot be satisfied when the alleged injury never happened,” and when “agents rightly claim[] an interest in property.” *Id.* at 18. Again, Plaintiffs allege actual injury resulting from Defendants' actions, including damage to his outfitting business. *See, e.g.*, Dkt. 76, at 38. To the extent Defendants simply argue they did not harm Plaintiffs or had a right to the property at issue, that is an issue for the merits stage. Finally, as the undersigned concluded at the motion-to-amend stage, Plaintiffs plead both mail and wire fraud with particularity. *See* Dkt. 61, at 17-19.

e. Plaintiffs plead a continuing pattern of predicate acts.

Contrary to Defendants' assertions, Plaintiffs plead a continuing pattern of racketeering activity. As the undersigned has repeatedly reminded, whether the alleged predicate acts “have an unlawful relationship to one another” or consist only of the “lawful activity of responding to Garcia's wrongful conduct” is an issue for the merits and will not support dismissal at this stage. *See* Dkt. 77, at 18-20.

***19** Further, the District Judge should decline to dismiss the RICO claim on the basis that Plaintiffs fail to allege *continued* criminal activity. A RICO plaintiff may allege the “threat of continuing activity” or “continuity” element by showing “(1) a ‘closed period of repeated conduct,’ or (2) an open-ended period of conduct that ‘by its nature projects into the future with a threat of repetition.’” *Malvino v. Delluniversita*, 840

ABRAHAM GARCIA MARMOLEJO, MULE, LLC, Plaintiffs v. RANCHO CINEGETICO EL GRAN..., Slip Copy (2026)

F.3d 223, 231 (5th Cir. 2016) (quoting *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 239 (1989)). “An open-ended period of conduct involves ‘a threat of continued racketeering activity’ and may be established by a showing that there is a ‘specific threat of repetition extending indefinitely into the future,’ or ‘that the predicates are a regular way of conducting [a] defendant’s ongoing legitimate business.’” *Id.* at 232 (quoting *H.J. Inc.*, 492 U.S. at 242-43).

Here, Plaintiffs allege an open-ended pattern: they state “[t]he enterprise remains in place today and is continuing to conduct illicit activity for the same purpose of extorting Garcia and depriving him of millions of dollars of property that belongs to him.” Dkt. 76, at 52; *see also id.* at 1 (“With the knowledge of and active participation by their counsel in Texas and Arizona, Defendants continue to extort Garcia by fabricating criminal charges, orchestrating wrongful arrests, and causing the imprisonment and physical torture of Garcia’s associates.”), 36 (“Defendants’ efforts and conspiracy to harass and damage Garcia and his business has continued and extended to a series of equally fabricated criminal charges against Garcia. In fact, in connection with additional extortion demands on Garcia, Garcia learned of three additional criminal proceedings commenced by Defendants against Garcia.”). This is unlike *D&T Partners*, where the defendants’ scheme was “finite and reached its ‘natural conclusion.’” 98 F.4th at 210. This is also unlike cases where the defendants’ scheme will soon reach its natural conclusion, as in the case of an allegedly fraudulent loan that will eventually be paid. *See Tran v. Gulf Coast Bank & Tr. Co.*, No. 24-1933, 2026 WL 878459, at *12 (E.D. La. Mar. 31, 2026).

Finally, Defendants make no independent argument that Plaintiffs’ section 1962(d) claim should be dismissed. *See* Dkt. 77; *cf. N. Cypress Med. Ctr. Operating Co. v. Cigna Healthcare*, 781 F.3d 182, 203 (5th Cir. 2015) (affirming dismissal of section 1962(d) claims where plaintiffs failed to state a claim under section 1962(c)). Therefore, Plaintiffs’ RICO claims should not be dismissed at this time.

IV. PERSONAL JURISDICTION

A. Legal Standard

The Federal Rules of Civil Procedure allow a defendant to assert lack of personal jurisdiction as a defense to suit. Fed.

R. Civ. P. 12(b)(2). On such a motion, “the plaintiff bears the burden of establishing the district court’s jurisdiction over the nonresident.” *Stuart v. Spademan*, 772 F.2d 1185, 1192 (5th Cir. 1985). The court may determine the jurisdictional issue “by receiving affidavits, interrogatories, depositions, oral testimony, or any combination of the recognized methods of discovery.” *Id.* But when, as here, the Court rules on the motion without an evidentiary hearing, the plaintiff need only present a prima facie case that personal jurisdiction is proper; proof by a preponderance of the evidence is not required. *Walk Haydel & Assocs., Inc. v. Coastal Power Prod. Co.*, 517 F.3d 235, 241 (5th Cir. 2008). Uncontroverted allegations in a plaintiff’s complaint must be taken as true, and conflicts between the facts contained in the parties’ affidavits must be resolved in the plaintiff’s favor. *Id.* Nevertheless, a court need not credit conclusory allegations, even if uncontroverted. *Panda Brandywine Corp. v. Potomac Elec. Power Co.*, 253 F.3d 865, 869 (5th Cir. 2001) (per curiam).

B. Discussion

*20 Last, Defendants ask the Court to dismiss this case for lack of personal jurisdiction. Dkt. 77, at 20. Because the undersigned recommends that the District Judge dismiss all but Plaintiffs’ RICO claim, the undersigned will analyze whether the Court may exercise personal jurisdiction over Defendants based on the facts giving rise to the RICO claim. *See Sangha v. Navig8 ShipManagement Priv. Ltd.*, 882 F.3d 96, 101 (5th Cir. 2018). The undersigned finds that it can.

“A federal district court may exercise personal jurisdiction over a nonresident defendant if (1) the forum state’s long-arm statute confers personal jurisdiction over that defendant; and (2) the exercise of personal jurisdiction comports with the Due Process Clause of the Fourteenth Amendment.” *Freudensprung v. Offshore Tech. Servs., Inc.*, 379 F.3d 327, 343 (5th Cir. 2004) (internal citations omitted). Because the “Texas long-arm statute has been interpreted as extending to the limits of due process,” “the jurisdictional analysis is collapsed into one inquiry as to whether jurisdiction comports with federal due process.” *Turner v. Harvard MedTech of Nev., LLC*, 620 F. Supp. 3d 569, 574 (W.D. Tex. 2022). Federal due process requires the satisfaction of two elements before a federal court may properly exercise jurisdiction: “(1) the nonresident must have minimum contacts with the forum state, and (2) subjecting the nonresident to jurisdiction must be consistent with ‘traditional notions of fair play

ABRAHAM GARCIA MARMOLEJO, MULE, LLC, Plaintiffs v. RANCHO CINEGETICO EL GRAN..., Slip Copy (2026)

and substantial justice.’ ” *Freudensprung*, 379 F.3d at 343 (internal citations omitted). The “minimum contacts” prong is further subdivided into contacts that give rise to general jurisdiction and those that give rise to specific jurisdiction. *Id.* Since Plaintiffs do not argue Defendants are subject to general jurisdiction, the undersigned addresses only specific jurisdiction.

The Court may exercise specific jurisdiction over Defendants if (1) they have minimum contacts with Texas, i.e., they purposely directed their activities toward Texas or purposefully availed themselves of the privileges of conducting activities here; (2) Plaintiffs' cause of action arises out of or results from Defendants' forum-related contacts; and (3) the exercise of personal jurisdiction is fair and reasonable. *Ward v. Rhode*, 544 F. App'x 349, 352 (5th Cir. 2013) (citing *McFadin v. Gerber*, 587 F.3d 753, 759 (5th Cir. 2009)). The specific-jurisdiction inquiry thus “focuses on the relationship among the defendant, the forum, and the litigation.” *Walden v. Fiore*, 571 U.S. 277, 284 (2014) (quotation omitted).

First, the undersigned finds Defendants have minimum contacts with Texas, and Plaintiffs' cause of action arises out of or results from those forum-related contacts. In *Tellez*, the court determined that it could exercise specific jurisdiction over a RICO defendant who seized control of a U.S. company, sent transmissions to the company in Texas instructing the company to prohibit the plaintiff from accessing its offices or information, sent a transmission to the Texas Secretary of State directing it to remove the plaintiff as the company's secretary, and instructed its attorney to send a letter to the plaintiff in Texas related to the scheme. 2016 WL 11121114, at *7-8. Plaintiffs allege many of the same contacts here in furtherance of the RICO scheme: Defendants sent or directed their attorneys to send communications demanding that Garcia Marmolejo give up his rights to the Texas property, Dkt. 76, at 12-13; directed their attorneys to “demand sole control over the account at Brushy Creek,” a Texas company, *id.* at 40-41; directed their attorneys to “threaten[] Brushy Creek with suit should they fail to remove Garcia from the account,” *id.* at 41; and removed Garcia Marmolejo as director and president of NAMDC, a Texas corporation, *id.* at 13; *see also* Dkt. 79-2 (describing how each defendant individually participated in these acts). Though Defendants did not successfully take control of the Texas assets at Brushy Creek, Garcia Marmolejo alleges Chaparral partially owns them. *Id.* at 8; *see Shaffer v. Heitner*, 433 U.S. 186,

207 (1977) (“[W]hen claims to the property itself are the source of the underlying controversy between the plaintiff and the defendant, it would be unusual for the State where the property is located not to have jurisdiction.”).

*21 Next, the exercise of jurisdiction over Defendants is fair and reasonable. “Once a plaintiff establishes minimum contacts between the defendant and the forum [s]tate, the burden of proof shifts to the defendant to show that the assertion of jurisdiction is unfair and unreasonable.” *Cent. Freight Lines Inc. v. APA Transp. Corp.*, 322 F.3d 376, 384 (5th Cir. 2003). “In determining whether exercising personal jurisdiction over a foreign defendant offends traditional notions of fair play and substantial justice, courts balance the burden on the defendant, the forum state's interest in adjudicating the dispute, the plaintiff's interest in obtaining relief, the judicial system's interest in efficient resolution of controversies, and the common interest of the states in furthering fundamental social policies.” *Tellez*, 2016 WL 11121114, at *10 (citing *Asahi Metal Indus. Co., Ltd. v. Superior Court of Ca., Solano Cnty.*, 480 U.S. 102, 113 (1987)).

The undersigned concludes that Defendants have not carried their burden to show any of these factors demonstrate the exercise of personal jurisdiction here would offend traditional notions of fair play and substantial justice. Defendants offer no argument that the exercise of jurisdiction over Defendants is unfair or unreasonable save for the fact that the FSCs require this dispute to be resolved in Mexico. *See* Dkt. 80, at 11 (arguing that the dispute should be resolved in Hermosillo); *see also* Dkt. 77, at 20 (stating that the 2021 agreement designating Laredo as Garcia Marmolejo's domicile is insufficient to establish minimum contacts). Though the Fifth Circuit has found that the presence of an FSC is a significant factor in determining whether specific personal jurisdiction exists in breach-of-contract cases, *see Moncrief Oil Int'l, Inc. v. OAO Gazprom*, 481 F.3d 309, 312-13 (5th Cir. 2007), this is no longer a breach-of-contract case. The exercise of personal jurisdiction over Defendants is fair and reasonable. The District Judge should not dismiss the RICO claims based on lack of personal jurisdiction.

V. RECOMMENDATION

ABRAHAM GARCIA MARMOLEJO, MULE, LLC, Plaintiffs v. RANCHO CINEGETICO EL GRAN..., Slip Copy
(2026)

In accordance with the above discussion, the undersigned **RECOMMENDS** that the District Judge **DISMISS** Plaintiffs' claims for declaratory relief, breach of contract, tortious interference with prospective and continuing business relations, defamation, and conversion against Chaparral and tortious interference with contract against all Defendants based on *forum non conveniens* without prejudice.

The undersigned **FURTHER RECOMMENDS** that the District Judge **DISMISS** Plaintiffs' claims for assault by threats of bodily injury, assault by terroristic threat, and intentional infliction of emotional distress for failure to state a claim with prejudice. However, Plaintiffs' RICO claims should not be dismissed at this time.

The referral of this case to the Magistrate Judge should now be canceled.

VI. WARNINGS

The parties may file objections to this report and recommendation. A party filing objections must specifically

identify those findings or recommendations to which objections are being made. The District Judge need not consider frivolous, conclusive, or general objections. *See Battle v. United States Parole Comm'n*, 834 F.2d 419, 421 (5th Cir. 1987). A party's failure to file written objections to the proposed findings and recommendations contained in this report within fourteen days after the party is served with a copy of the report shall bar that party from *de novo* review by the District Judge of the proposed findings and recommendations in the report and, except upon grounds of plain error, shall bar the party from appellate review of unobjected-to proposed factual findings and legal conclusions accepted by the District Judge. *See* 28 U.S.C. § 636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 150-53 (1985); *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc).

*22 SIGNED July 22, 2026.

All Citations

Slip Copy, 2026 WL 2211839

Footnotes

- 1 Though Plaintiffs assert the agreement shows Garcia Marmolejo is domiciled in Texas, see Dkt. 76, at 7, the 2021 agreement does not mention Garcia Marmolejo. Dkt. 79-3, at 172.
- 2 Though Defendants assert Mexican law "would govern the [parties'] agreement," neither party addresses which law applies to questions of contract interpretation to the extent they are distinct from questions of enforceability in this case. *See Weber*, 811 F.3d at 770-774 (applying German substantive law to determine whether the FSC is mandatory and applying federal law to determine whether the FSC was enforceable). Because Plaintiffs fail to demonstrate the FSC itself is invalid, the Court need not resolve the issue.
- 3 The Fifth Circuit has applied federal law to the issue of whether a claim falls within the scope of an FSC. *Wellogix*, 58 F. Supp. 3d at 777. Plaintiffs also rely on federal law, see Dkt. 79, at 5, and Defendants invoke no law at all in their reply, Dkt. 80, at 5. The undersigned will apply federal law. *See Wellogix*, 58 F. Supp. 3d at 777.
- 4 To the extent Plaintiffs argue that they cannot bring all their claims in Mexico, " 'adequacy' does not require that the alternative forum provide the same relief as an American court." *DTEX*, 508 F.3d at 796; see Dkt. 79, at 11 (arguing Garcia Marmolejo's claims "do not arise from events that took place in Mexico"). The Fifth Circuit has also held that the "absence of a remedy for civil RICO claims does not make a foreign forum inadequate." *DTEX*, 508 F.3d at 797 (citing *Kempe v. Ocean Drilling & Expl. Co.*, 876 F.2d 1138, 1146 (5th Cir. 1989)).
- 5 The elements of assault are the same in civil and criminal cases. *Davis*, 744 F. Supp. 3d at 738; *see also Loaisiga v. Cerda*, 379 S.W.3d 248, 256 (Tex. 2012).

ABRAHAM GARCIA MARMOLEJO, MULE, LLC, Plaintiffs v. RANCHO CINEGETICO EL GRAN..., Slip Copy
(2026)

-
- 6 In *RJR*, the Court did not reach the issue of whether section 1962(d)'s "extraterritoriality tracks that of the provision underlying the alleged conspiracy." *RJR Nabisco, Inc. v. Eur. Cmty.*, 579 U.S. 325, 343 (2016).
- 7 Further, even if Defendants' reading of the complaint were correct, the Supreme Court held in *RJR* that provided the underlying predicate statute applies extraterritorially, it is immaterial whether the pattern of racketeering is foreign or domestic. 579 U.S. at 342 (concluding that within the bounds of RICO's extraterritoriality requirement, "the location of the affected enterprise does not impose an independent constraint").

End of Document

© 2026 Thomson Reuters. No claim to original U.S.
Government Works.