

United States Court of Appeals For the First Circuit

No. 23-1923

SUJEIL PEÑA-TORRES; JOSE E. BLASCO-JUSINO; LUCERO
RODRIGUEZ-FERNANDEZ; LISA M. TORRES-COLON; JOFFRE E.
GOMEZ-FRONTERA; ZABDIEL A. NIEVES-RIVERA; ENNY DE JESUS-UREÑA;
LORAIMA M. ROSADO-VILLAFANE; PAOLA M. PROSPER-CRESPO; WENDOLY M.
VAZQUEZ-OLIVERAS,

Plaintiffs, Appellants,

v.

UNIVERSITY OF SCIENCE, ARTS AND TECH, a/k/a USAT, a/k/a MEDICAL
COLLEGE OF LONDON, a/k/a MALINA MEDICAL COLLEGE, a/k/a
METROPOLITAN INNOVATIVE GROUP, INC., a/k/a USAT MONTSEERRAT LLC;
ORIEN L. TULP; CONJUGAL PARTNERSHIP TULP-DOE; CARLA M. KONYK;
JOHN DOE CONJUGAL PARTNERSHP DOE-KONYK; MANUEL JOSÉ
ORTIZ-BUSTILLO; JANE DOE CONJUGAL PARTNERSHIP ORTIZ-DOE; YANIRE
BUSTILLO; JOHN DOE CONJUGAL PARTNERSHIP DOE-BUSTILLO; DANIELA
CABRERA-PUJADAS; JOHN DOE CONJUGAL PARTNERSHIP DOE-CABRERA;
KAREN BALDWIN; CONJUGAL PARTNERSHIP DOE-BALDWIN; INSURANCE
COMPANY XYZ; JOHN DOE COMPANY ABC; JOHN DOE; JANE DOE,

Defendants, Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

[Hon. William G. Young, U.S. District Judge]

Before

Gelpí, Thompson, and Montecalvo,
Circuit Judges.

Victor M. Rivera-Ríos for appellants.
Charles A. Cuprill-Hernández and Charles A. Cuprill, P.S.C.

Law Offices, for appellee Daniela Cabrera-Pujadas.

Amexis Joel Bonilla-Nieves, with whom Chris A. Paulsen was on brief, for appellees University of Science, Arts and Technology, Carla M. Konyk, Orien L. Tulp, and Karen Baldwin.

Alejandro Bellver Espinosa, with whom Bellver Espinosa Law Firm was on brief, for appellees Yanire Bustillo and Manuel J. Ortiz-Bustillo.

October 2, 2026

GELPÍ, Circuit Judge. Appellants are medical students (the "Students")¹ who attended the University of Science, Arts and Technology ("USAT"), an international medical school based in Montserrat.² After the Educational Commission for Foreign Medical Graduates ("ECFMG") decertified medical educations from USAT, effective at the end of 2018, the Students sued USAT and several of its officials (collectively, the "defendants").³ The Students alleged that USAT had misrepresented the legitimacy of its educational program and its ability to provide a medical education that would qualify them for ECFMG certification, all while continuing to collect their tuition and fees. The Students claimed that this conduct amounted to a "pattern of racketeering activity" in violation of the Racketeer Influenced and Corrupt Organizations

¹ The appellants are Sujeil Peña-Torres, Jose E. Blasco-Jusino, Lucero Rodriguez-Fernández, Lisa M. Torres-Colón, Joffre E. Gomez-Frontera, Zabdiel A. Nieves-Rivera, Enny de Jesus-Ureña, Loraíma M. Rosado-Villafañe, Paola M. Prosper-Crespo, and Wendoly M. Vázquez Oliveras.

² Montserrat is a British Overseas Colony located in the Caribbean. Professor David A. Rezvani depicts Montserrat as a "colony" similar to a "Partially Independent Territory", that is, a nationalistically distinct, constitutionally unincorporated body politic which has powers of domestic sovereignty in some categories, however, its constitutional control lies within another state, to wit, the United Kingdom. See David A. Rezvani, Surpassing the Sovereign State: The Wealth, Self-Rule, and Security Advantages of Partially Independent Territories 91-92 (2014).

³ The appellees are USAT's founders, Orien L. Tulp and Carla M. Konyk, and additional USAT officials and/or employees Manuel José Ortiz-Bustillo, Daniela Cabrera-Pujada, and Yanire Bustillo.

Act ("RICO"), 18 U.S.C. §§ 1961-1969, and also asserted several claims under Puerto Rico law. The district court granted summary judgment to defendants and the Students appealed. We now **affirm**.

I. BACKGROUND

A. Factual Background⁴

We begin by describing the facts relevant to this appeal. USAT was established and licensed in Montserrat in 2003 by founders Orien L. Tulp and Carla M. Konyk. Konyk served as USAT's Vice President and Director of Administration, and Tulp served as its President and CEO. Because USAT is an international medical school, students who wished to apply to residency programs in the United States needed a certification from the ECFMG. Specifically, an ECFMG certification allows international medical school graduates to take the three exams that comprise the United States Medical Licensing Examination ("USMLE"), which is a prerequisite for residency. For years, USAT was listed in the International Medical Education Directory ("IMED"), which compiles a list of international medical schools that are certified by the ECFMG.⁵

⁴ The Students failed to timely oppose the Defendants-Appellees' motion for summary judgment. The Defendants-Appellees, in turn, filed a motion requesting that the district court deem the statement of material facts "admitted." The district court granted that motion and the Students have not challenged that decision on appeal. Therefore, we take the facts as asserted by the Appellees to be undisputed.

⁵ IMED became the World Directory of Medical Schools in 2014 due to an internal reorganization of ECFMG.

In 2007, a volcano erupted in Montserrat and the local government issued an evacuation order. While USAT continued to operate in Montserrat, it permitted students to evacuate. To accommodate the displaced students, USAT built a satellite transmitter station on its Montserrat campus to broadcast classes online. USAT also created "alternative sites" in the United States and Puerto Rico. USAT continued to offer classes online through December 31, 2018, long after the 2007 evacuation.

On or about July 2018, ECFMG received information that USAT was offering the online classes at a location in Miami, Florida.⁶ In response, ECFMG sent a letter to Tulp asking him to provide documentation certifying that USAT's "satellite campus" in Miami was authorized to operate as a medical school in the United States. Tulp did not provide the requested documentation; instead, he denied that the Miami location was a satellite campus. Between August and September 2018, however, ECFMG received additional information that USAT was also offering classes in Tampa, Florida, and Dallas, Texas.⁷

Simultaneously, in August 2018, ECFMG announced a new policy applicable to international medical schools such as USAT

⁶ It was later revealed that USAT also hosted its commencement ceremonies in Miami.

⁷ In addition to those locations, USAT had lecture conference sites in Baltimore, Maryland, and Puerto Rico, as well as an administrative office in Colorado.

(the "ECFMG Policy").⁸ Under the new policy, ECFMG required basic sciences and clinical rotations to be taught in the country where the medical school was located; additionally, it required authorization for international schools to operate satellite campuses in countries other than the main location. ECFMG also modified USAT's listing on the IMED directory with the following statement:

Note, as of January 1st, 2019, students and graduates of this medical school with a graduation year of 2019 and later are not eligible to apply to ECFMG for ECFMG certification, which also renders them ineligible to apply to ECFMG for the United States medical licensing examinations as a step towards ECFMG certification.

In other words, ECFMG stopped certifying medical education received by any USAT student after December 31, 2018.

Before ECFMG's investigation started, between February 2017 and May 2018, the Students researched and applied to medical schools. At various points in that time period, the Students met with the Individual Defendants who represented that USAT was an accredited medical school in Puerto Rico.⁹ USAT also sent

⁸ We note that descriptions of this policy in the record vary, including its exact contours and whether it was a "permissive" policy or a mandate. Per the discussion in Section II, however, the policy's precise provisions are not a "material fact" which would "affect the outcome" of this litigation. Quintana-Dieppa v. Dep't of the Army, 130 F.4th 1, 7 (1st Cir. 2025) (citation modified).

⁹ Orien L. Tulp, Carla M. Konyk, Manuel José Ortiz-Bustillo, Daniela Cabrera-Pujada, and Yanire Bustillo will be referred to as

promotional materials to the Students which contained information that led them to believe USAT's accreditation status was valid. The Students, relying on these representations, enrolled in USAT and paid tuition in amounts ranging from \$21,075 to \$120,000.

Between August and October 2018, the Students were preparing to take the USMLE. After they applied to take the examinations, ECFMG asked the Students to submit affidavits certifying that they took classes exclusively at the Montserrat campus. The Students posit that over 300 USAT students in identical situations submitted affidavits stating they took medical courses in the United States, not Montserrat.¹⁰ However, the Students did not introduce into evidence any of these affidavits. Then, in November 2018, officials from USAT instructed the Students to refrain from sending additional information to ECFMG, and to instead contact Konyk, who would direct them to USAT's attorney. Eventually, ECFMG informed each of the Students

the "Individual Defendants." The term "Individual Defendants" is not a determination as to their personal or official liability as "USAT Officers." Since the district court did not decide if the Individual Defendants were USAT officers or employees, this Court does not make any determinations to those effects.

¹⁰ The Students relied on a declaration from ECFMG's Vice President that was submitted as part of the joint summary judgment appendix in Tulp v. ECFMG, No. 1:18-cv-05540 (E.D. Pa.). The Students, however, did not produce those 300 affidavits in this case. They only produced a blank affidavit form which presumably those 300 students executed.

that they were not eligible to take the USMLE, as ECFMG would not credit the courses they completed at USAT after December 31, 2018.

B. Procedural Background

On July 23, 2019, the Students filed suit against USAT. The Students alleged that USAT and the Individual Defendants falsely represented that USAT could provide an education that would allow the Students to take the USMLE. They claimed that these misrepresentations, which led the Students to pay tuition, costs, and fees to USAT, constituted a "pattern of racketeering activity" under RICO, and that this pattern would continue with future recruitment of other students. The Students thus asserted causes of action under RICO, and under Puerto Rico law for fraudulent inducement, material breach of contract, and unjust enrichment.

Following motions practice, three amendments to the complaint, and discovery, on June 1, 2023, USAT moved for summary judgment, arguing that the Students failed to establish a RICO claim. In addition, Cabrera-Pujada also filed a motion for summary judgment reiterating the lack of a RICO claim and contending that her role as clinical coordinator at USAT did not involve any managerial or financial decisions.¹¹ The Students untimely opposed, and the district court only accepted the response as a "matter of grace." After a motion hearing, the district court

¹¹ *Supra* note 9.

dismissed the RICO claim with prejudice as to all defendants and declined to exercise supplemental jurisdiction over the Puerto Rico law claims. The Students timely appealed.¹²

II. DISCUSSION

We review the district court's grant of summary judgment de novo. López Collazo v. Ruiz-Feliciano, 180 F.4th 35, 39 (1st Cir. 2026) (citing U.S. Fire Ins. v. Peterson's Oil Serv., Inc., 155 F.4th 22, 28 (1st Cir. 2025)). "We will affirm only 'if there are no genuine disputes of material fact and the district court's conclusions are correct as a matter of law.'" Id. (quoting U.S. Fire Ins., 155 F.4th at 28).

Under RICO, it is 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." 18 U.S.C. § 1962(c) (citation modified). Further, "racketeering activity" includes, among other things, and as alleged by the Students in this case, "any act which is indictable under" 18 U.S.C. § 1341 (mail fraud) and § 1343 (wire fraud). 18 U.S.C.

¹² The Students' notice of appeal indicated that it applied to the entire judgment. However, the Students did not brief or challenge the district court's denial to exercise supplemental jurisdiction over Puerto Rico law claims. Consequently, we deem it waived. See Sparkle Hill, Inc. v. Interstate Mat Corp., 788 F.3d 25, 29 (1st Cir. 2015).

§ 1961(1)(B). Because USAT and the Individual Defendants represented that a USAT education would qualify the Students to take the USMLE, which "turned out to be a ruse", the Students assert that USAT's acceptance of their tuition and other fee payments via mail and wire transfer constituted racketeering activity actionable under RICO. See 18 U.S.C. § 1962(c).

To bring a successful RICO claim, a plaintiff must present evidence of four elements: "(1) conduct, (2) of an enterprise, (3) through a pattern, (4) of racketeering activity." Giuliano v. Fulton, 399 F.3d 381, 386 (1st Cir. 2005) (quoting Kenda Corp. v. Pot O'Gold Money Leagues, Inc., 329 F.3d 216, 233 (1st Cir. 2003)); see also Perez v. Volvo Car Corp., 247 F.3d 303, 312-13 (1st Cir. 2001) ("To prove mail or wire fraud attributable to [USAT], the plaintiffs must adduce evidence of (1) a scheme to defraud; (2) [USAT's] knowing and purposeful participation in the scheme, intending to defraud; and (3) the use of the mails or interstate wire . . . in furtherance of the scheme."). In the case at hand, the district court held that the Students did not produce sufficient evidence as to the third element, pattern, and so dismissed the RICO claim. The Students contend that this holding was error, so we begin -- and end -- our analysis there.

We have previously spoken of the congressional purpose behind the enactment of RICO as meant to apply "only to enduring criminal conduct[.]" Efron v. Embassy Suites (Puerto Rico), Inc.,

223 F.3d 12, 15 (1st Cir. 2000) (quoting Feinstein v. Resol. Tr. Corp., 942 F.2d 34, 45 (1st Cir. 1991)), abrogated on other grounds by Salinas v. United States, 522 U.S. 52 (1997). Thus, a pattern of racketeering activity under RICO "requires at least two acts" of such activity within a ten-year period. 18 U.S.C. § 1961(5). In H.J. Inc. v. Northwestern Bell Telephone Co., 492 U.S. 229 (1989), the Supreme Court explained that a "pattern" in a RICO action also requires two "constituent[]" elements, which "in practice . . . will often overlap": the predicate acts must be related, and they must "amount to, or . . . otherwise constitute a threat of, continuing racketeering activity." Id. at 240. Courts refer to these two elements as "relatedness" and "continuity," but only the second is at issue here. See id. at 239-40. 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." Id. at 241; see also Giuliano, 399 F.3d at 387. Thus, continuity as a "temporal concept" can be established through two approaches: open or closed-ended. H.J. Inc., 492 U.S. at 242. The Students have asserted a RICO claim under the closed-ended theory of continuity.¹³

¹³ During oral argument, the Students explained that while their main theory was based on closed-ended continuity, they also understood that the evidence could satisfy open-ended continuity. However, the Students failed to articulate this argument in their

The Students claim that they have shown a "pattern of racketeering activity," with more than two predicate acts within a ten-year period, because "over 300 students were led to believe that USAT could operate in the United States for years." Additionally and/or in the alternative, the Students claim that they have shown a pattern solely premised on their own payments and USAT's "false representations" as to its accreditation status between early 2017 and August 2018. Under their theory, each misrepresentation as to the accredited status of USAT constitutes a "predicate act" actionable under RICO, and so "more than 300 acts of racketeering occurred within ten years of each other."

As an initial point, we note that it is not clear the Students established three hundred predicate acts of mail and wire fraud via tuition payments.¹⁴ But even if we accept, for the sake

opening brief. Therefore, under our case law, they have waived it. See, e.g., Sparkle Hill, Inc., 788 F.3d at 29. ("[W]e do not consider arguments for reversing a decision of a district court when the argument is not raised in a party's opening brief."); Home Orthopedics Corp. v. Rodriguez, 781 F.3d 521, 528 (1st Cir. 2015) ("[L]itigants must provide meat on the bones of their arguments if they expect us to seriously entertain them."). Still, we will briefly address why their claim would also fail on an open-ended theory of continuity below.

¹⁴ The record shows that the Students referenced affidavits executed by more than 300 former USAT students, which purportedly state that USAT and its officers misled the students into paying tuition in exchange for an accredited medical education that would allow them to take the USMLE. The Students did not, however, introduce those affidavits into the evidence in this case. See supra footnote 10. Instead, during oral argument the Students

of argument, that there are viable predicates, closed-ended continuity requires "a series of related predicates extending over a substantial period of time." Id. But "[p]redicate acts extending over a few weeks or months and threatening no future criminal conduct" do not suffice. Id. Contrary to the Students' assertions, there is no such "substantial period" here.¹⁵ Id. To begin, from USAT's inception in 2003 to the volcano's eruption in 2007, there is no indication that USAT offered classes in the United States. As to the predicate acts alleged post-2007, the record in this case shows that ECFMG did not issue the policy requiring basic sciences and clinical rotations to be taught in the country where an international medical school is located until August 2018, rendering the alleged false representations that led the Students to enroll, well, not false.

That leaves the Students with a four-month period between August 2018 and December 31, 2018, the last date on which USAT students could apply for ECFMG certification. Under our

pointed to a pleading submitted in Tulp v. ECFMG, Case No. 1:18-cv-05540 (E.D. Pa.).

¹⁵ In briefing, the Students asserted that the pattern of racketeering activity occurred over "approximately fifteen (15) years," without indicating the start and end dates of that period. That length of time would appear to correspond to 2003 (when USAT was founded) to 2018 (when ECFMG decertified USAT). But at oral argument, the Students indicated that the theory of closed-ended continuity began in 2010, presumptively after the volcano eruption in 2007. Under this clarification, the asserted period of relevance is approximately eight years, from 2010 to 2018.

precedent, four months and even longer have been insufficient to establish closed-ended continuity as a matter of law. See Efron, 223 F.3d at 17 (stating that although the predicate acts that occurred elapsed for twenty-one months met H.J. Inc.'s requirement of "more than a few weeks or months", it was still insufficient to establish continuity) (citing H.J. Inc., 492 U.S. at 242) (citation modified); Home Orthopedics Corp., 781 F.3d at 530 (rejecting a finding of closed-ended continuity where defendants' "single financial endeavor was to help . . . collect a specific amount of money under . . . a single contract") (citation modified); Feinstein, 942 F.2d at 45 (finding that the predicate acts that "spanned no more than three to four months" failed to satisfy continuity requirement) (citation modified). Notably, even the Students acknowledge that "[i]f a plaintiff alleges only a few predicate acts, or acts that span only a few weeks or months, then closed continuity is not established."

Finally, ECFMG did not "render[]" USAT students "ineligible to apply" for certification and the USMLE until January 1, 2019, and even then, only students with a graduation year of 2019 or later were ineligible. Thus, again, on this record, the alleged false representations that led the Students to enroll were not false at the time.¹⁶

¹⁶ Notably, appellee Ortiz presented in his briefing that he is a former USAT student that took and passed the USMLE and is now

Finally, as noted in footnote 13, we will briefly explain why the Students also cannot prevail on a theory of open-ended continuity. Open-ended continuity refers to "past conduct that by its nature projects into the future with a threat of repetition." H.J. Inc., 492 U.S. at 241. As such, predicate acts which do not extend over a "substantial period of time" -- and so cannot establish closed-ended continuity -- may still lend themselves to RICO liability if a "threat of continuity is demonstrated." Id. USAT, however, did not continue to collect costs, tuition, and fees for classes held after December 31, 2018, so the alleged racketeering activity ended. There is thus no evidence that the predicate acts would have continued "into the future." Id. at 242.

Our conclusion that the Students failed to establish closed- or open-ended continuity necessarily means they have not shown a "pattern of racketeering" activity. In turn, their RICO claim fails on that basis. Although we recognize the difficult situation experienced by the Students in this case, RICO is not a "swift sword capable of righting all the wrongs of a troubled world." Miranda v. Ponce Fed. Bank, 948 F.2d 41, 49 (1st Cir. 1991), abrogated by Salinas, 522 U.S. at 52.

a licensed physician. The latter also renders the Students' claim as to the misrepresentation of USAT's accreditation implausible.

III. CONCLUSION

For the foregoing reasons, we affirm the District Court's judgment dismissing appellants' RICO claim and declining to exercise supplemental jurisdiction over Puerto Rico law claims.