IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MÁXIMA ACUÑA-ATALAYA;
DANIEL CHAUPE-ACUÑA;
JILDA CHAUPE-ACUÑA;
CARLOS CHAUPE-ACUÑA;
YSIDORA CHAUPE-ACUÑA,
ELIAS CHAVEZ-RODRIGUEZ;
MARIBEL HIL-BRIONES;

Plaintiffs,

v.

NEWMONT MINING CORPORATION,
NEWMONT SECOND CAPITAL CORPORATION,
NEWMONT USA LIMITED, and
NEWMONT PERU LIMITED.

Defendants

Civil Action No. 17-1315-GAM.

PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

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SUMMARY OF ARGUMENT

Since Plaintiffs moved for interim relief, Defendants' agents again invaded Tragdero Grande, trying to break into the Chaupes' house in the dead of night. The Court should deny Defendants' request to ignore the Chaupes' motion and prioritize their *forum non conveiens* (FNC) motion, and thus grant Defendants a law-free grace period to further threaten Plaintiffs' livelihood and safety.

Plaintiffs can win on the merits. Defendants' own videos show that their agents repeatedly invade Tragadero Grande with dozens of guards in riot gear who confront Plaintiffs while Defendants' agents tear up Plaintiffs' crops, destroy their huts, and kill and steal their livestock—all over Plaintiffs' protests. Defendants' claim that other abuses never happened is patent nonsense.

Defendants have no "possessory" right to invade Tragadero Grande. They admit the Chaupes possess the north part of the farm. And a Peruvian court has found that the Chaupes possess the south part. Regardless, Peru does not allow, let alone require, parties to use self-help where, as here, they are already litigating ownership or possession in court. And such a defense could not excuse death threats and many other abuses Defendants inflict on the Chaupes.

Defendants do not even try to refute most bases for liability for their subsidiary's acts. And they ignore critical evidence showing their control over Minera Yanacocha (MY) security.

The requirements of international comity abstention are not met. There is no "parallel" proceeding in Peru involving these Defendants and issues. Nor are there any exceptional circumstances that would allow this Court to abdicate the jurisdiction Congress has conferred.

Defendants' harassment has taken a steep emotional toll on the Chaupes; that is irreparable harm. And there is no end in sight. Defendants trumpet their bogus "right" and unbending intent to continue to invade the farm. Plaintiffs are not safe, because Defendants still thirst for gold.

The equities favor Plaintiffs. Defendants' only asserted "injury" is that they prefer not to wait for Peruvian courts, which are too slow. And given Delaware and Peru's strong interest in ensuring

Defendants follow the law and in protecting Plaintiffs, the public interest favors stopping the abuse.

ARGUMENT

I. The Court should not delay hearing Plaintiffs' preliminary injunction motion.

Defendants want this Court to put off Plaintiffs' preliminary injunction motion, while they continue to abuse the Chaupes. They have twice invaded Tragadero Grande since Plaintiffs filed this lawsuit. Ex. 67 ¶¶9, 14-16.[1] And they seek delay until the Court decides whether to send the case to Peru, even though the Peruvian authorities have proven unable or unwilling to stop their abuse. D.I. 37 at 11. Delay would contravene the whole point of a preliminary injunction: to afford *immediate*, interim relief to stop ongoing violations and preserve the *status quo*.

Courts must expedite any action for preliminary relief, 28 U.S.C. § 1657(a), and decide such motions "in time to prevent the harm threatened if the relief requested is found to be warranted." H. Rep. No. 98–985, 98th Cong., 2d Sess. 5783 n. 131 (1984).[2]

Defendants' speculative hope that they will win their FNC motion does not justify this Court turning a blind eye to serious ongoing threats to Plaintiffs' physical safety. *Forum non conveniens* is "an exceptional tool to be employed sparingly…[.]" *Carijano v. Occidental Petroleum Corp.*, 643 F.3d 1216, 1224 (9th Cir. 2011). Their motion does not challenge the merits or jurisdiction. *Sinochem Int'l Co. v. Malay. Int'l Shipping Corp.*, 549 U.S. 422, 432 (2007). And a court's duty to preserve the *status quo* is so compelling that courts may issue preliminary injunctions even before determining their own jurisdiction. *United States v. United Mine Workers*, 330 U.S. 258, 290, 292-93 (1947). If the Court grants interim relief and later dismisses on FNC grounds, it simply will have protected Plaintiffs while the case is being litigated, precisely what happens with *every* preliminary injunction.

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[1] Citations to "Ex." without a D.I. reference are to exhibits to the Second Declaration of Maryum Jordan, submitted herewith.

[2] *See Anderson v. Davila*, 125 F.3d 148, 156 (3d Cir. 1997)(less than five days' notice to defendant sufficient).

Defendants cherry–pick cases in which a district court addressed *forum non conveniens* before preliminary relief. But those FNC motions also challenged jurisdiction,[3] which is undisputed here. And each case was a commercial dispute; none involved death threats or risks of bodily injury. Indeed, even in a case that did not involve physical safety, the *en banc* court in *Republic of Philippines v. Marcos*, 862 F.2d 1355, 1361 (9th Cir. 1988)(*en banc*), upheld a district court's refusal to consider *forum non conveniens* before issuing a preliminary injunction. A *forum non conveniens* motion can take months to decide. This Court should not let Newmont use that time to continue to terrorize the Chaupes.

II. Defendants misstate the legal standard for preliminary injunctions.

The Third Circuit rejected Defendants' position that all factors must favor plaintiffs, D.I. 37 at 12, renouncing *Ferring Pharm., Inc. v. Watson Pharm., Inc.*, 765 F.3d 205 (3d Cir. 2014). *Reilly v. City of Harrisburg*, 858 F.3d 173, 176-79 (3d Cir. 2017). Since Plaintiffs can win on the merits and will suffer irreparable harm, the Court balances the equities. *Id.* Regardless, all factors favor relief.

III. Plaintiffs can win on the merits.

A. Defendants' abuse and intimidation of the Chaupes is wrongful conduct.

1. The evidence shows Defendants' continued intimidation of the Chaupes.

Undisputed facts establish that Defendants have committed assault, intrusion upon seclusion, conversion and IIED. Defendants admit MY security has entered Tragadero Grande and destroyed Plaintiffs' property and crops. D.I. 37 at 15. And as their own videos show, they send in swarms of security personnel in riot gear, armed with batons.[4] That is assault; Defendants do not deny these invasions create apprehension of imminent harmful physical contact. D.I. 37 at 14; Ex.

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[3] *Broad. Rights Int'l Corp. v. Societe du Tour de France*, 675 F. Supp. 1439, 1440 (S.D.N.Y. 1987); *Koger, Inc. v. O'Donnell*, No. 07-3091, 2007 U.S. Dist. LEXIS 80551, at *3 (D.N.J. Oct. 31, 2007); *Flynn v. Nat'l Asset Mgmt. Agency*, 42 F. Supp. 3d 527, 531 (S.D.N.Y. 2014); *GE Healthcare v. Orbotech, Ltd.*, No. 09-C-0035, 2009 U.S. Dist. LEXIS 72221, at *2 (E.D. Wis. July 2, 2009).

[4] *See* Ex. 81 at 0:00:00-0:00:32; Ex. 82 at 0:00:12-0:00:23 (police surround Daniel). See also Ex. 80 showing that police are under the control of MY.

61 ¶18; Ex. 63 ¶5. As Defendants' only response, their claimed "right" to invade, fails as a matter of law, Section III.A.2., *infra*, undisputed facts show Plaintiffs can win these claims. *See* D.I. 28 at 8-9.

Defendants deny their agents have physically abused the Chaupes or their animals, but the evidence shows otherwise. Video confirms that, in August, 2011, Jilda was knocked unconscious. Ex. 64 ¶¶3-8; Ex. 65 ¶¶6-7; Exs. 65A-D; Ex. 89 (individual referencing Jilda, "the person is unconscious, believe they were abused, they are not getting better, [she]'s here on the floor….on her head with their shotguns."). Photos show the injuries to Plaintiffs' stabbed dog. D.I. 27, Ex. 3A. Medical reports confirm Maxima's injuries from her battery in August, 2011, D.I. 27, Ex. 2, and September, 2016. Ex. 62. And Defendants' September, 2016 video corroborates Maxima's account. D.I. 38-2, Ex. 10E; D.I. 27, Ex. 1 ¶32; Ex. 61 ¶27. While off-screen during the attack, she is heard yelling and, when back on screen, her poncho falls off (corroborating that security ripped at her clothes), she is crying and later a guard states that she "has fainted! Be careful! Let's leave!" Ex. 61 ¶27; D.I. 38-2, Ex. E at 7:39-8:29, 17:31; Ex. 85. Plaintiffs can win their battery claims.[5]

Defendants' claim they have never intruded into Plaintiffs home is also wrong. D.I. 37 at 15. Just a few weeks ago, Defendants' agents again tried to enter Plaintiffs' home. Ex. 67 ¶¶15-16.[6]

Defendants criticize certain Chaupes for trying to protect themselves, their family, guests and property. Exs. 61 ¶¶17-19; 63 ¶3; 67¶4. That is rich; given Defendants' insistence on a possessory defense and the Superior Court's finding that *Plaintiffs* possess the farm, any right to

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[5] Defendants ask the Court to ignore hearsay in Plaintiffs' declarations, D.I. 37 at 13-14, n.10, but courts may consider it. *Kos Pharm., Inc. v. Andrx Corp.*, 369 F.3d 700, 718-19 (3d Cir. 2004). Much of what they cite is admissible; the judge's statement, for example, is against her interest. FRE 804(b)(3). Defendants' declarations are rife with statements lacking foundation. E.g. D.I. 38-1, Ex. 1, ¶¶ 3, 6, 11, 13 (Velarde declaring about Peruvian law and events he did not claim to witness).

[6] Defendants claim their guards only detain Plaintiffs if they or persons with them lack identification. D.I. 37 at 8. Not so. Plaintiffs are detained even when they show identification. Ex. 61 ¶35; Ex. 63 ¶¶12-14; Ex. 63A; 63B; Ex. 63E; Ex. 64 ¶¶12-18; Ex. 64 A; Ex. 66 ¶¶5-8; Ex. 65 ¶¶14-17; Ex. 83.

defend possession belongs to the Chaupes. *See* D.I. 43, Ex. 15 ¶60; D.I. 38-2, Ex. 11 ¶¶13, 16.[7] And where, as here, plaintiffs "reasonably interpreted [defendants'] conduct as posing a threat to the[ir] safety and well-being," the possibility of a self-defense response (in that case, that their agents might *shoot* defendants), *supports* injunctive relief. *Wolfson v. Lewis*, 924 F. Supp. 1413, 1435 (E.D. Pa. 1996). Anyone whose isolated farm was invaded by dozens of men in riot gear, that had previously beaten them and their family, would fear for their safety.

Defendants paint a rosy picture of MY's relationship with Plaintiffs, but that is false.[8] MY repeatedly contacts the family to pressure them into dialogue, despite Plaintiffs' clear statements that they only want a dialogue in the presence of counsel and without intimidation. Ex. 61 ¶36; Ex. 64 ¶¶20-25; Ex. 65 ¶¶18-23.[9] Indeed, Newmont filed false criminal charges, rejected by the Supreme Court, which would have relegated four Chaupes to prison for 8 months. D.I. 27, Ex. 40 at 2, 21-22.

2. Defendants have no "possessory defense"; the Chaupes possess the land.

Defendants claim the "right" to invade Tragadero Grande to defend "possession," D.I. 37 at 1-2, but the Chaupes possess Tragadero Grande. The parties' experts agree: only a *possessor* can rely on a "possessory defense." D.I. 38-2, Ex. 11 ¶¶6-10; D.I. 43, Ex. 15 ¶73. Defendants admit Plaintiffs possess the north part of their farm, including their home. D.I. 37 at 5-6. Newmont says it

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[7] Defendants mischaracterize self-defense as violence. D.I. 37 at 7. For example, during the October 4, 2016 incident, Jaime tried to flee baton-wielding guards; they chased him, yelling "Close in, close him in"; only in response did he take his machete out and bang against the well-armored guards' riot shields. Ex. 75 at 5:50-6:50, Ex. 78 at 1, Ex. 67 at ¶8. Defendants do not contend any Plaintiff ever injured anyone. Defendants falsely claim that their 2011 criminal complaint failed because the Supreme Court could not identify *which* Chaupe acted violently, D.I. 37 at 8-9, but it found that "[n]o acts of violence were attributed" to the accused. D.I. 27, Ex. 40 at 21-22.

[8] MY sought out Ysidora and offered to help her find a job; when they offered work for MY, Ysidora turned them down. Ex. 64 ¶¶26-32; Ex. 65 ¶¶24-29. Defendants confuse Plaintiffs with their relatives in asserting that they have sought favors like money for religious festivities and funeral expenses from MY. D.I. 37 at 10; Ex. 61 ¶¶37-39; Ex. 63 ¶¶18-21; Ex. 65 ¶¶30-33; Ex. 66 ¶9.

[9] *E.g.* Exs. 75-77; Ex. 78 at 3-16. (Raul Farfan attempting to force Jaime into dialogue staged for media; Jaime responds that they cannot have real dialogue while armed men destroy his crops.)

has not invaded that part since 2011, *id.*, but their agents killed Plaintiffs' sheep there, and entered the house numerous times. Ex. 61 ¶¶12-15; Ex. 67 ¶¶15-16; D.I. 38-1, Ex. 9 (MY admits in 2016 to "constant possessory defenses ... in the northern area"). Defendants have no excuse for these acts.

Defendants also have no right to invade the south part of the farm; the highest Peruvian court to address the issue, has repeatedly found that Plaintiffs possess it too. D.I. 27 Ex. 42 at 8-9; Ex. 74 at 6-7.[10] Defendants admit that court's finding addressed this "Southern" parcel. D.I. 37 at 9; D.I. 38-1, Ex. 1 ¶22; *see* D.I. 43, Ex. 15 ¶70. This Court need only follow the Peruvian court.[11]

That holding aside, Peruvian law recognizes no extra-judicial defense where either possession or ownership is already being litigated. D.I. 43, Exs. 15 ¶¶60, 67, 73. Here, *both* issues are before Peruvian courts. *Id.* ¶¶66-67; D.I. 37 at 9. Far from being "required" to invade the Chaupe's farm, D.I. 37 at 13-14, Defendants are forbidden from doing so. D.I. 43, Ex. 15 ¶¶66-67.[12]

Regardless, no possessory defense allows them to kill Plaintiffs' animals, maim Plaintiffs' dogs, harass Plaintiffs outside Tragadero Grande, beat them or threaten them with death.[13]

3. Factual disputes do not preclude interim relief.

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[10] Given this, possession prior to 2011 is irrelevant. Nonetheless, Defendants claim Plaintiffs did not live there until August, 2011. D.I. 37 at 5. The aerial images they submit cannot be relied upon for this claim. Ex 68. And while Newmont claims that the road to Tragadero Grande was "built by Yanacocha," D.I. 38-1, Ex. 1 ¶¶ 4-5 & Ex. 1A at 1, that road has apparently existed since the 1960s. Ex. 88 Peru's Supreme Court cited Plaintiffs' 1994 Certificate of Possession and Attorney General Reports from August and September, 2011 showing "old foundations with plantings of [] trees." D.I. 27, Ex. 40 at 21. *See also* Ex. 70.

[11] While this finding was at the preliminary injunction stage that is no reason to ignore the Peruvian court. If it changes its mind, this Court could follow its lead. The "independent" expert report, D.I. 37 at 9, is not a judicial finding. D.I. 27, Ex. 42 at 8-9. Defendants' acts refute their possession; while MY has put up fences on Tragadero Grande to separate it from land MY claims, the farm, including the south part, is on the Chaupe's side. D.I. 38-2 Ex. 10A (showing many "possessory defenses" on the Chaupe's side). To invade, MY has to cross its own fences. Ex. 76.

[12] Their expert concedes they are "not obliged" to invade. D.I. 38-2, Ex. 11 ¶33. They admit they do not assert a possessory defense over the north part of the farm, but still claim to own it, and that they invade not because it is required, but because Peru's courts are slow. D.I. 37 at 5-6, 9, 19.

[13] The decision about the Prosecutors' inaction on the Chaupe's usurpation complaints, D.I. 37 at 8 n.6, found it improper to determine property rights in a criminal case. D.I. 38-1, Ex. 4 at 1755.

With respect to many of Plaintiffs' assault, intrusion upon seclusion, conversion and IIED claims, Plaintiffs are entitled to relief based on undisputed facts. Section III.A.I, *supra*. In any event, interim relief does not require that factual disputes be "resolved in [Plaintiffs'] favor." D.I. 37 at 13. Plaintiffs need only show that they "can win." *Reilly v. City of Harrisburg*, 858 F.3d 173, 179 (3d Cir. 2017). *Accord* D.I. 28 at 8; *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981) (party not required to prove his case); *Wolfson*, 924 F. Supp. at 1432-34 (analyzing whether jury could find for plaintiff).

A hearing is not impossible because "all" witnesses in Peru cannot testify here. Interim relief is "customarily" based on evidence "less complete" than at trial. *Univ. of Tex.*, 451 U.S. at 395. Defendants' declarants swear they will testify, or are under Defendants' control. D.I. 38-1, Exs. 1 ¶1, 8 ¶1; D.I. 38-2, Exs. 10 ¶1, 13, 15, 17; *see also* D.I. 27, Ex. 36 at 19 (contract requires Securitas to defend MY affiliates in claims relating to its services). Witnesses can also testify by video in this relaxed evidentiary setting. Defendants cannot prevail by refusing to produce witnesses.[14]

B. Defendants are liable for the acts of their subsidiaries/agents.

Defendants do not attempt to refute Plaintiffs' showings that liability flows from: 1) their negligent supervision; 2) their ratification; and 3) the fact that Newmont Peru Ltd. and Newmont Peru S.R.L. operate as one entity, making Newmont Peru Ltd. responsible for Conga's day-to-day operations. *See* D.I. 28 at 17-18.

As to agency, Defendants misstate the standard. Plaintiffs need only show that the parent has control or the right of control over the subsidiary's conduct at issue, D.I. 28 at 10-11, not that it "dominate[d]" that conduct. D.I. 37 at 16; *Abex Inc. v. Koll Real Estate Grp.*, Civil Action No. 13462, 1994 Del. Ch. LEXIS 213, at *40 (Ch. Dec. 22, 1994) ("right to control [is] the critical factor").

[14] In *Capriotti's Sandwich Shop, Inc. v. Taylor Family Holdings, Inc.*, 857 F. Supp. 489, 502 (D. Del. 2012), the preliminary injunction motion was "case dispositive." *Id.* But here, as in most cases, a hearing will not be a final trial. *Univ. of Tex.*, 451 U.S. at 395. The *Noohasan v. De Jongh*, No. 11-cv-0021, 2012 U.S. Dist. LEXIS 45368, at *9, 11-12 (D.V.I. Mar. 31, 2012), court denied relief because the plaintiff submitted contradictory evidence, not because the defendants disputed facts.

Defendants pluck their domination language from *Japan Petroleum Co., (Nigeria), Ltd. Ashland Oil Co.,* 456 F. Supp. 831, 840-41 (D. Del. 1978), which required domination of the subsidiary (not the conduct), but the Third Circuit rejected that test because under "customary agency principles" such domination is unnecessary. *Phoenix Canada Oil Co. v. Texaco,* 842 F. 2d 1466, 1477-78 (3d Cir. 1988).

Defendants also ignore key evidence establishing that NMC and Newmont USA have control and/or the right of control over Conga's security and the handling of the Chaupe matter. D.I. 28 at 12-15, 16-17.[15] They do not dispute the evidence of NMC's control exerted through its global security and sustainability and external relations (S&ER) teams, which goes beyond "general standards and principles," D.I. 38-1 Ex. 1 ¶15, and includes supervision extending from the corporate to site level. *See* D.I. 28 at 12-14. Defendants admit their senior security director "oversee[s] regional operations." D.I. 37 at 16.[16] They claim this is just for "economy" and "convenience," but provide no evidence of this, and cite the *Japan Petroleum* test the Third Circuit rejected. What matters is control, not their reasons for it.[17]

Defendants' evidence supports Plaintiffs' control showing. MY's security manager, who states that he is "responsible for all of the security actions," D.I. 38-1, Ex. 8 at ¶1, against the Chaupes, reports directly to Newmont USA. D.I. 28 at 16-17; D.I. 27 Ex. 26 at 19:24-25, 133:16-18. Defendants also do not deny that they could stop these abuses at the snap of their fingers.[18]

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[15] *See also* D.I. 38-1, Ex. 9 at 3 (NMC noting its "willingness" to reach an agreement with the Chaupes). Javier Velarde also admits that representatives for NMC participate in Regional Leadership meetings on the Chaupe matter. D.I. 38-1, Ex. 1 ¶15.

[16] Defendants' cite to their "senior security director" confounds NMC's Senior Security Director and Newmont USA's Security Director for the Americas. Both have controlling roles in Conga security beyond offering "collaborative, strategic advice." D.I. 37 at 3; D.I. 28 at 11-17.

[17] *Garza v. Citigroup Inc.,* 192 F. Supp. 3d 508, 514 (D. Del. 2016), did not involve agency. Nor did the court hold that oversight of compliance and risk management is never enough; plaintiff did not "demonstrat[e] that this general supervision would provide [Defendant] with direct control."

[18] If Plaintiffs' evidence does not suffice, they request discovery. *See Kone Corp. v. Thyssenkrupp USA, Inc.*, No. 11-465, 2011 U.S. Dist. LEXIS 109518, at *14, 19-21 (D. Del. Sep. 26, 2011).

C. Defendants cannot show international comity warrants dismissal.

Federal courts have a "virtually unflagging obligation" to exercise jurisdiction Congress creates. *Gross v. German Foundation Indus. Initiative*, 456 F.3d 363, 394 (3d Cir. 2006). International comity dismissal has exacting requirements, which Defendants fail to mention. D.I. 37 at 17.

First, there must be a "parallel" proceeding in Peru involving "substantially all the same parties" and issues, creating a "substantial likelihood that the [foreign] litigation will dispose of all claims" presented here. *Hay Acquisition Co. v. Schneider*, 2005 U.S. Dist. LEXIS 24490 at *34–35 (E.D. Pa. Apr. 27, 2005). But there are no claims against these Defendants in Peru.[19]

Second, parallel proceedings are not enough; two nations' courts routinely exercise concurrent jurisdiction over the same claim. *China Trade & Dev. Corp. v. M.V. Choong Yong*, 837 F.2d 33, 35-36 (2d Cir. 1987).[20] Abstention requires "exceptional circumstances," *Neuchatel Swiss General Ins. Co. v. Lufthansa Airlines*, 925 F.2d 1193, 1194 (9th Cir. 1991), which Defendants do not claim here.[21]

Plaintiffs' tort claims do not require the Court to resolve the property dispute. Defendants also claim federal courts may dismiss a U.S. action based solely on the interests of a foreign forum, but that was only one factor *Mujica v. Airscan Inc.*, 771 F.3d 580, 603 (9th Cir. 2014), considered. Worse, *Mujica* applied *Ungaro-Benages v. Dresdner Bank AG*, 379 F.3d 1227 (11th Cir. 2004), *id.*, but the Third Circuit has criticized *Ungaro*'s "broad" approach. *Gross*, 456 F.3d at 393-94.

In any event, comity is about abstention, *Neuchatel*, 925 F.2d at 1194, not the merits.

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[19] The *habeas* claims involve different rights (Peru's constitutional right to freedom), plaintiffs (only Maxima and Jaime), and defendants (none here), as well as fewer abuses (only surveillance and limits on movement). D.I. 38-1, Exs. 6 ¶10, 7 ¶¶3, 22. They do not dispose of Plaintiffs' tort claims.

[20] One nation's jurisdiction is not exclusive if another has an interest, like citizenship. *Allendale Mut. Ins. Co. v. Bull Data Sys., Inc.*, 10 F.3d 425, 431-32 (7th Cir. 1993) (noting courts sometimes enjoin foreign litigation). Thus, parties need not exhaust foreign remedies. *Sarei v. Rio Tinto, PLC*, 550 F.3d 822 (9th Cir. 2008), addressed only international law claims under the Alien Tort Statute.

[21] *See Royal & Sun Alliance Ins. Co. of Canada v. Century Int'l Arms, Inc.*, 466 F.3d 88, 95 (2d Cir. 2006) (circumstances routine in parallel litigation are not exceptional).

IV. Without a preliminary injunction, Plaintiffs will suffer irreparable harm.

Defendants' claim that the Chaupes have not shown cognizable injuries, D.I. 37 at 18, is false. Section III, *supra*. They argue that destruction of "real property" is not irreparable, but do not deny that other harms are. "[H]arassing and intrusive conduct ... [that] could jeopardize [Plaintiffs'] health and well-being" is irreparable harm. *Wolfson*, 924 F. Supp. at 1435. The invasions, destruction of livelihood, detentions, maiming of their dogs, death threats—all cause the Chaupes severe emotional distress. D.I. 28 at 5-6; D.I. 27, Ex. 16, 38. And it is ongoing. Defendants invaded the north part of the farm recently, and promise to continue to raid the south part if Plaintiffs farm there.

V. The balance of equities favors Plaintiffs.

Defendants do not claim they will be harmed if they must stop invading and harassing Plaintiffs on the north part of the farm, or stop beating and threatening Plaintiffs. D.I. 37 at 18-19. They claim harm if they cannot invade the south part, but have no possessory defense. Section III.A.2., *supra*. Their only asserted "injury" is that they prefer not to wait for Peruvian courts. But they do not intend to build any mine for years. And having to proceed in court is not an "injury."

VI. The public interest is served by temporarily halting the abuse.

Defendants do not deny Delaware's strong interest in ensuring its companies obey the law, or in stopping intimidation. D.I. 37 at 20; D.I. 28 at 19-20. They say Peru has an interest in adjudicating this dispute, but ignore that Peru shares Delaware's interest in assuring respect for the law,[22] which an injunction would support. This factor favors Plaintiffs.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request a preliminary injunction.

[22] *Lony v. EI Du Pont de Nemours & Co.*, 886 F. 2d 628, 642 (3rd Cir. 1989). Here too, *Capriotti's Sandwich Shop*, 857 F.Supp. at 502, is inapposite because the preliminary injunction motion was "case dispositive." If Peru turns out to be the proper forum—it is not—the claims would be heard there.

Dated: December 11, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Misty A. Seemans, hereby certify that on December 11, 2017, I caused to be electronically filed a true and correct copy of the foregoing document with the Clerk of the Court using CM/ECF, which will send notification that such filing is available for viewing and downloading to the following counsel of record:

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