

Texas Lacks Jurisdiction for Defamation Suit Over Docudrama

By Cameron Stracher and Sara Tesoriero

Location, location, location. The real estate axiom has never been more relevant to defamation cases in light of the hodge-podge of state anti-SLAPP statutes, and federal courts' interpretation of those laws. In a recent case, the Southern District of Texas held that it lacked jurisdiction over the producer and individual defendants involved in the production of the documentary series "The Last Narc," opening the door to a more favorable jurisdiction where the anti-SLAPP laws apply. [James Kuykendall v. Amazon Studios LLC et al.](#)

Background

"The Last Narc" is a four-part documentary series about the 1985 kidnapping, torture, and murder of DEA agent Enrique "Kiki" Camarena by the Guadalajara Drug Cartel in Guadalajara, Mexico (the "Series"). The Series was produced by defendants IPC Television, LLC ("IPC"), a Delaware limited liability company with its principal place of business in California, and Tiller Russell, a resident of New Mexico. It was distributed by defendant Amazon Studios LLC ("Amazon") via its digital streaming service, Prime Video. Defendant Hector Berrellez is a resident of California and a former DEA Supervisor and Special Agent whose interviews were featured in the Series. Plaintiff James "Jamie" Kuykendall is a Texas resident and retired DEA agent who served as head of the Guadalajara DEA office when Camarena was kidnapped.

Texas Lawsuit

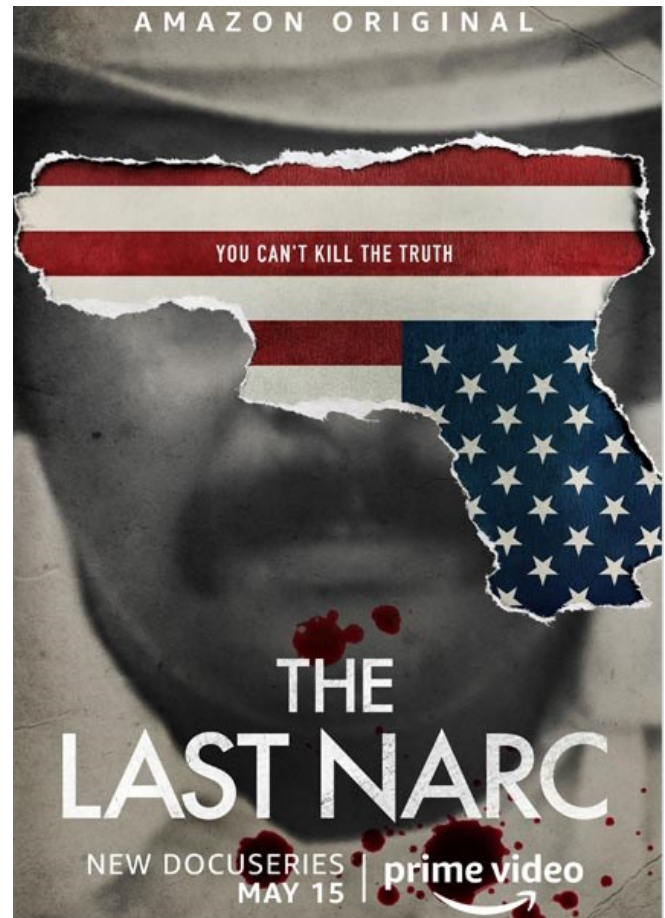
Plaintiff filed suit in the Southern District of Texas for defamation, intentional infliction of emotional distress, and violation of his right of publicity arising from allegedly false statements made about him in the Series. Defendants IPC, Russell, and Berrellez (the "IPC Defendants") filed a motion to dismiss for lack of personal jurisdiction or, in the alternative, to transfer the case to the Central District of California. The IPC Defendants argued that the court lacked jurisdiction over them because they did not reside in Texas, they were not responsible for the distribution of the Series in Texas, the Series did not focus on activities in Texas, and the Series did not rely on any sources from Texas. In the alternative, the IPC Defendants moved to transfer the case to the Central District of California. Defendant Amazon also filed a motion to transfer.

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After first holding that it lacked general personal jurisdiction over the IPC Defendants, the Court analyzed specific personal jurisdiction using the tests articulated by the Supreme Court in *Calder v. Jones*, 465 U.S. 783 (1984) and *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984). Under *Calder* and its progeny, to satisfy the constitutional minimum for exercising personal jurisdiction over a non-resident defendant, a plaintiff must demonstrate that the defendant “aimed” her defamatory statements at the forum state by showing that (1) the subject matter of, and (2) the sources for the defamatory content were in the forum state.

The fact that a plaintiff lives in the forum state, without more, is insufficient to confer jurisdiction over a non-resident defendant. Plaintiff argued that the subject prong of *Calder* was satisfied because the Series discussed his testimony about a Texas meeting during a murder trial in California, and also described an incident involving defendant Berrellez in El Paso. The Court held, however, that such “sporadic” references “collateral to the focus” of the Series did not satisfy the subject matter requirement. Plaintiff also argued that the sources prong was satisfied because defendant Russell emailed two individuals about allegations in the Series who, unbeknownst to him, resided in Texas, and the Series included an interview with a Texas resident. The Court noted that email communications do not necessarily convey the sender’s location, and the parties did not dispute that the information from these sources was not used in the Series. In addition, the Texas resident whose interview was included in the Series only discussed events that occurred in California and Mexico, not Texas. Thus, the Court held, the sources prong was not satisfied, and the Court lacked personal jurisdiction over the IPC Defendants under *Calder*.

In the alternative, Plaintiff argued the Court had jurisdiction under *Keeton* because Defendants exploited the Texas market by making the Series available for streaming in Texas and profiting from viewership of the Series in Texas. The Court noted that *Keeton*’s “circulation test” is typically used for distributors of defamatory content, and the distributor of the Series was Amazon, not the IPC Defendants. Thus, it held that a distributor’s targeting of a specific forum should not be imputed to defendants who created the allegedly defamatory content, and it rejected Plaintiff’s argument that the IPC Defendants participated in distribution by expecting Amazon to target the “widest audience possible” for the Series.



The Court also rejected the argument that a recent interpretation of *Keeton* by the Texas Supreme Court extended personal jurisdiction over the IPC Defendants. In *TV Azetca v. Ruiz*, 490 S.W.3d 29 (Tex. 2016), the Texas Supreme Court held that it had personal jurisdiction over two Mexican broadcast companies and a Mexican news anchor and producer under *Keeton* because of defendants' efforts to promote, distribute, and profit from the broadcasts at issue in the Texas market. The District Court noted, however, that it was not bound by state court interpretations of Due Process requirements. Nevertheless, it found that the IPC Defendants' "random" and "fortuitous" contacts with Texas, which included Russell's remote interview with a Texas-based podcast, did not constitute sufficient minimum contacts to convey personal jurisdiction. The Court also rejected Plaintiff's argument that "nationwide" marketing and promotional efforts are sufficient to show purposeful availment of the Texas market.

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Rather than dismissing the case, the Court granted the IPC Defendants' alternative motion to transfer the case in the "interests of justice." The Court also granted Amazon's motion to transfer. The case is now pending in the United States District Court for the Central District of California, where defendants are preparing to file their anti-SLAPP motions.

Cameron Stracher and Sara Tesoriero of Cameron Stracher, PLLC and Laura Prather and Alexander Lutsky of Haynes and Boone, LLP represented the IPC defendants. Amazon was represented by Alonzo Wickers, Diana Palacios, and Cydney Swofford Freeman of Davis Wright Tremaine LLP. Gilberto Hinojosa appeared as local counsel for all defendants. Plaintiff was represented by Dicello Levitt Gutzler LLC and The Lanier Law Firm.