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# Exorcising Tombstone's Evil Spirits: Eradicating Vigilante Ranch Enterprises Through Public Interest Litigation

Robert F. Castro\*

## I. Introduction

My mother, Magdalena, was born and raised in southeastern Arizona. Globe, Miami, and Thatcher-Safford are small hamlets that developed around the vibrant mining industries that once thrived throughout the region. When I was a child, my mother regaled me with stories of the Arizona desert. One story, in particular, still resonates with me to this day. It is the story about *Las Luces Fantasma* (i.e., ghost lights) that scared my mother when she was a little girl. These ghost lights would appear only at night, in the distance, and hover just above the desert floor. The lights seemed to move under their own power. They also seemed to change color as they flickered incandescently. My grandmother,

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Petra, warned her children not to venture out at night because the evil spirits, *Las Luces Fantasma*s, were waiting to abduct them. My grandmother's admonition may have been more prophetic than she realized.

Recently, evil spirits have emerged from the desert. These specters have taken the form of vigilante ranchers who protect their property<sup>1</sup> using highly controversial tactics. Armed with military fatigues, binoculars, hunting dogs, sniper towers, high-powered firearms, and fake police badges, these ranchers surreptitiously abduct, detain, and assault undocumented persons who are in transit across the ranchers' land holdings.<sup>2</sup> Rather than merely protecting property rights, these actions belie a darker subtext: the normalizing of aggression and violence against undocumented persons who have entered the United States.

This Article will explore federal and state legal strategies that public interest lawyers can use to combat the tide of unlawful violence that has erupted along Arizona's southeastern border. This Article will also alert the public to the Vigilante Ranch Enterprise<sup>3</sup> (VRE) problem, expose the substantial kinship between VREs and traditional hate groups, illustrate the artful use of public interest lawyering, and help ripen potential legal claims.

Part II is divided into four subparts.<sup>4</sup> Subpart A provides a socio-political context for understanding the conditions that led to the development of VREs in Arizona.<sup>5</sup> Subpart B describes the emergence and development of one particular VRE, the Cochise County Concerned Citizens Group (CCCC).<sup>6</sup> Subpart C discusses

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1. According to the Restatement of Property, property owners have the right to exclude others from their property. RESTATEMENT OF PROP. § 7(a) (1936). However, the use of deadly force solely to protect private property is not permitted. RESTATEMENT (SECOND) OF TORTS § 79 (1965).

2. See *infra* notes 34-56 and accompanying text.

3. I have coined the term "Vigilante Ranch Enterprise" to describe the collaborative networks of individuals and organizations that engage in a pattern or practice of violent racketeering activities. These racketeering activities constitute predicate acts that factually and proximately cause injuries to migrant victims. *Salinas v. United States*, 522 U.S. 52, 62 (1997). Vigilante Ranch Enterprises are unique, but perhaps not exclusive, to southwestern border states, including California, Arizona, New Mexico, and Texas. This Article focuses on the hyper-aggressive activities of one particular VRE, the Cochise County Concerned Citizens Group (CCCC) and its associated networks.

4. See *infra* notes 16-125 and accompanying text.

5. See *infra* notes 34-56 and accompanying text.

6. See *infra* notes 57-88 and accompanying text.

the many controversies that CCCC's confrontational activities have sparked.<sup>7</sup> Finally, Subpart D analyzes the conspiratorial dimensions of CCCC's violent racketeering activities.<sup>8</sup>

Part III identifies and evaluates the legal options for initiating litigation against Arizona VREs.<sup>9</sup> It focuses on three specific legal grounds that may provide a basis for such litigation: The Racketeer Influenced and Corrupt Organizations Act (RICO);<sup>10</sup> federal anti-conspiracy laws,<sup>11</sup> including The Failure To Prevent Conspiracy Act;<sup>12</sup> and Arizona tort or civil racketeering laws.<sup>13</sup> Subpart A provides background information on each of these actions.<sup>14</sup> Subpart B evaluates the potential application of these laws to the Arizona VRE problem.<sup>15</sup>

## II. Socio-Political Context for the Development of Arizona VREs

In the mid-1990s, Immigration and Naturalization Service (INS) officials began fortifying the California and Texas borders, two major entry points that undocumented migrants from Mexico used to enter the United States.<sup>16</sup> Use of high-tech equipment, enforcement personnel, and increased patrols dramatically reduced the flow of undocumented persons through the area.<sup>17</sup> The redistribution of border resources pinched the stream of incoming migrants and diverted it to the southern Arizona border.<sup>18</sup> Tragically, the harsh and unforgiving desert environment led to several deaths amongst these sojourners.<sup>19</sup>

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7. See *infra* notes 90-113 and accompanying text.

8. See *infra* notes 114-125 and accompanying text.

9. See *infra* notes 126-246 and accompanying text.

10. 18 U.S.C. § 1962 (1994); see *infra* notes 128-152 and accompanying text.

11. 42 U.S.C. § 1985(3) (1994); see *infra* notes 153-174 and accompanying text.

12. 42 U.S.C. § 1986 (1994); see *infra* notes 153-174 and accompanying text.

13. See *infra* notes 228-246 and accompanying text.

14. See *infra* notes 128-181 and accompanying text.

15. See *infra* notes 182-246 and accompanying text.

16. See Carol Morello, *Desert is Immigration Battleground*, USA TODAY, July 21, 1999, at 1A.

17. See *id.*

18. See Ken Ellingwood, *Tide Changes Flow—Better Controls Elsewhere Leave Ariz. Swamped*, SEATTLE TIMES, Apr. 26, 1999, at A4.

19. See Ignacio Ibarra, *Death on the Border—Road Crashes, Exposure Claim Record Number of Migrants*, ARIZ. DAILY STAR, Oct. 3, 1999, at 1A; *50 Dead*, ARIZ. DAILY STAR, July 2, 2000, at B8; Ignacio Ibarra, *Lethal Border Policy: Migrants Will Die in Arizona Desert Until U.S. Strategy Shifts* Expert Says, ARIZ. DAILY STAR, June 9, 2000, at A1. [hereinafter, Ibarra, *Lethal Border Policy*]

Known deaths of undocumented persons in the Arizona border region rose from approximately twenty in 1998 to almost sixty by June 2000.<sup>20</sup> In 1999, the Border Patrol rescued 236 distressed migrant persons in the Tucson sector.<sup>21</sup> By July 2000, Border Patrol agents had already assisted 844 persons stranded in the brutal desert.<sup>22</sup> In response to this significant rise, the Border Patrol temporarily assigned seven additional aircraft to patrol the Tucson sector during the summer of 2000.<sup>23</sup> Nevertheless, the numbers of migrants dying continued to grow.

An example of one of the deaths is Hugo Sanchez Acevedo. Nineteen-year-old Hugo collapsed after experiencing chills and a headache while walking in the mountains northwest of Nogales, Arizona.<sup>24</sup> Desperate relatives carried him for approximately three hours while looking for a road to flag down help.<sup>25</sup> At some point during the rescue effort, Hugo died.<sup>26</sup> The cause of death is believed to be dehydration.<sup>27</sup>

A second example is the heart-wrenching story of Yolanda Gonzalez. Yolanda, a young mother from Oaxaca, Mexico, died while walking across the desert with her eighteen-month-old daughter.<sup>28</sup> Instead of saving herself, Yolanda chose to save her infant daughter by giving her the last few drops of water she had.<sup>29</sup> Sadly, it now seems common to find the bodies of migrant crossers on the scorched sands of the Tohono O' Odham reservation.<sup>30</sup> However, the stifling heat and parched environments are not the only dangers migrant crossers must face. Migrants must also watch for border thugs lying in wait for the opportunity to prey upon them.<sup>31</sup>

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20. Ibarra, *Lethal Border Policy*, *supra* note 19.

21. Pat Flannery, *Mercy Flights Along the Border*, ARIZ. REPUBLIC, July 8, 2000, at A1.

22. *Id.*

23. *Id.*

24. Ignacio Ibarra, *Desert Heat Kills 3 More Border Crossers*, ARIZ. DAILY STAR, June 6, 2000, at A4.

25. *Id.*

26. *Id.*

27. *Id.*

28. Carol Ann Alaimo & Joseph Barrios, *Teen Mom Dies to Save Tot: Border Crosser Gave Last Water to Daughter*, ARIZ. DAILY STAR, June 1, 2000, at A1; Pamela Hartman, *Unlike Elian Case, Mexican Mom's Sacrifice Largely Ignored*, TUCSON CITIZEN, June 2, 2000, at 1A.

29. *See* Alaimo & Barrios, *supra* note 28; Hartman, *supra* note 28.

30. *See* Alaimo & Barrios, *supra* note 28; Ibarra, *Lethal Border Policy*, *supra* note 19.

31. *See* Patrisia Gonzales & Roberto Rodriguez, *Border Violence Begg for*

The increased flow of migrants through southeastern Arizona has heightened tensions between migrants and local ranchers, who complain that migrants threaten their property and personal safety.<sup>32</sup> Alleging that the federal government and the INS have failed to control the Arizona border, ranch owners have vowed to protect their property rights against trespass through private armed enforcement.<sup>33</sup>

#### A. *Birth of the Vigilante Ranch Enterprise (VRE)*

Roger Barnett is a key figure in the Arizona VRE movement.<sup>34</sup> He is a former Cochise County Deputy Sheriff and owns Cross Rail and Lee Station ranches.<sup>35</sup> He was among the first to carry assault weapons and use hunting dogs to track migrants crossing his ranch property.<sup>36</sup> A colorful figure, Barnett wears military fatigues, carries assault weapons, and flashes mock police badges emblazoned with "Ranch Patrol."<sup>37</sup> "It's my land, I'm the authority out here," Barnett remarked to a reporter from the Arizona Daily Star.<sup>38</sup> Many in the Douglas area ranch community see Barnett as an icon.<sup>39</sup>

Barnett spearheaded a local drive organizing and mobilizing ranch owners against the influx of undocumented migrants traveling through the area.<sup>40</sup> As a result, ranch owners soon began creating home arsenals and militarizing their properties.<sup>41</sup>

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*Immigration Summit*, ARIZ. DAILY STAR, July 31, 2000, at B7.

32. See Ignacio Ibarra, *Rancher Says He's a Victim, Not a Vigilante*, ARIZ. DAILY STAR, Apr. 11, 1999, at 1B; Ellingwood, *supra* note 18.

33. See Vincent J. Schodolski, *Ranchers Round Up Immigrants: What Border Patrol Doesn't Do, Locals Do*, CHI. TRIB., May 12, 1999, at 1.

34. See Jose Palafox, *Arizona Border: Immigration Tensions Bring Out the Worst and the Best in Human Nature*, BORDERLINES UPDATER (July 7, 2000), at <http://www.us-mex.org/borderlines/updater/2000/july07Immigrat.html>.

35. Ibarra, *supra* note 32; Xavier Zaragoza, *Rancher: 'My Rights Are Being Violated' by a Flood of Immigrants*, THE DAILY DISPATCH (Douglas, Ariz.), Apr. 15, 1999, <http://www.douglasdispatch.com/archives>.

36. See Steven Robert Allen, *Border Crisis: Vigilante Ranchers Hunt Illegal Immigrants in Arizona*, WEEKLY WIRE (June 6, 2000), at [http://weeklywire.com/ww/06-26-00/alibi\\_feat3.html](http://weeklywire.com/ww/06-26-00/alibi_feat3.html).

37. See Ibarra, *supra* note 32; Morello, *supra* note 16.

38. Ibarra, *supra* note 32.

39. Roger Barnett's vigilante escapades were wildly celebrated at an anti-immigrant ranch rally held in May 2000. Marc Cooper, *Arizona: The New Border War*, THE NATION, July 17, 2000, at 23.

40. Open Letter from Isabel G. Garcia & Pancho Medina, attorneys, Arizona Border Rights Project, to Janet Reno, U.S. Attorney General (Apr. 25, 2000) [hereinafter Garcia & Medina] (on file with author).

41. See Elliot Blair Smith, *Armed Rancher Acts As a One Man Border Patrol*,

Moreover, ranch owners in adjacent areas also decided to take up firearms and stalk persons they believed were crossing their property unlawfully.<sup>42</sup> Individual ranchers repeatedly accosted and detained persons they suspected were in the United States illegally.<sup>43</sup>

Substantial evidence regarding concerted action amongst Douglas area ranch owners has emerged. On March 10, 1999, twenty ranchers forwarded a signed proclamation to local, state, and federal officials expressing their intentions to enforce border laws privately.<sup>44</sup> The ranchers proclaimed: "If the government refuses to provide this security, then the only recourse is to provide it for ourselves"<sup>45</sup> and "friction between invader and property owner in this area may increase to the point of blood being shed."<sup>46</sup> Violence soon erupted when ranchers made good on their threats by abducting and detaining people they suspected were in the United States illegally.<sup>47</sup>

On Sunday, April 4, 1999, Roger Barnett and two other armed individuals unlawfully detained twenty-seven people at gunpoint.<sup>48</sup> Despite the fact that the ranchers were armed, brandished police credentials, and wore military uniforms, they denied scaring or intimidating the migrant detainees.<sup>49</sup> The ranchers dismissed the idea that they were hunting for illegal immigrants.<sup>50</sup> A few weeks later, a Hereford, Arizona rancher fired upon sojourning migrants.<sup>51</sup> Additionally, in mid-June,

USA TODAY, Apr. 28, 2000, at 4A.

42. *See id.*

43. *See Palafox, supra* note 34.

44. *See Morello, supra* note 16; Ignacio Ibarra, *Rancher Detains 27 Illegal Entrants*, ARIZ. DAILY STAR, Apr. 6, 1999, at 1A.

45. *See Morello, supra* note 16.

46. Ibarra, *supra* note 44.

47. Letter from Isabel Garcia and Jose Matus, attorneys, Arizona Border Rights Project, to Jose de Jesus Rivera, U.S. Attorney for Tucson, Ariz. (Apr. 14, 1999) (on file with author); Letter from Jose Matus to Jose de Jesus Rivera (Mar. 10, 2000) (on file with author).

48. Ibarra, *supra* note 44.

49. Clearly, Barnett's detention of migrant crossers constitutes false imprisonment, under the Restatement (Second) of Torts, which states:

(1) an actor is subject to liability to another for false imprisonment if (a) he acts intending to confine the other or third person within boundaries fixed by the actor, and (b) his act directly or indirectly results in such confinement of the other, and (c) the other is insidious of the confinement or is harmed by it.

RESTATEMENT (SECOND) OF TORTS § 35 (1965).

50. *See Ibarra, supra* note 44.

51. *See Ignacio Ibarra, Confrontations Between Ranchers, Illegals Worry*

rancher Jeff Whitaker fired upon people crossing his ranch land.<sup>52</sup>

These early incidents emboldened the attitude of local ranchers towards their migrant quarry. In July 1999, rancher Robert Hoffman allegedly said, “[Y]ou’re not allowed to shoot ‘em [migrants], but I keep threatening to hang ‘em on these fence poles.”<sup>53</sup> A few months later, Roger Barnett told a Newsweek reporter: “Humans . . . That’s the greatest prey there is on earth.”<sup>54</sup> These hyper-aggressive attitudes were more than rhetoric: they translated into unbridled acts of violence against migrant sojourners. True to Barnett’s words, many ranchers adopted “migrant hunting” as their new sport. For example, rancher Jerry Chap shot and wounded a migrant who was allegedly attempting to open a fence on his property.<sup>55</sup> Building on the frenzy, rancher Jerry Vance now uses a watchtower, reportedly built for shooting at “jack rabbits,” to survey his property for illegal crossers.<sup>56</sup>

#### B. *The Cochise County Concerned Citizens Group (CCCC)*

Armed mobilization between and among local ranchers soon resulted in the development of CCCC.<sup>57</sup> Ranchers formed this organization to coordinate vigilante activities and negotiate with out-of-state anti-immigrant groups.<sup>58</sup> CCCC quickly became the operational hub whereby Douglas area ranchers would meet to discuss and strategize about how to deal with the influx of migrant crossers.<sup>59</sup>

CCCC’s development energized the already cavalier attitude that local ranchers exhibited towards migrant crossers.<sup>60</sup> On

*Officials*, ARIZ. DAILY STAR, Apr. 20, 1999, at 1B.

52. See Jeff Smith, *Heightened Tension Along the Arizona-Sonora Line*, TUCSON WKLY., July 17, 1999, <http://www.tucsonweekly.com/tw/06-17-99/smith.htm>.

53. Pauline Arrillaga, Associated Press, *Along Nation’s Busiest Immigration Route, Land and Lives at Stake* (July 10, 1999), <http://www.usbc.org/info/crime/ranchersfedup.htm>.

54. Alan Zarembo, *People Smugglers Inc.*, NEWSWEEK, Sept. 13, 1999, at 36.

55. See Smith, *supra* note 52.

56. Morello, *supra* note 16.

57. See generally RANCH RESCUE, at <http://www.ranchrescue.com> (last visited Mar. 24, 2002).

58. See generally *id.* For example, the Ranch Rescue organization, based in Texas, expressly solicits funding on behalf of CCCC and coordinates paramilitary operations for the transfer of resources and manpower across state lines to benefit CCCC ranch members. See *id.*

59. See Ignacio Ibarra, *Opponents of Illegal Immigration Will Confer*, ARIZ. DAILY STAR, May 4, 2000, at A4.

60. See Ignacio Ibarra, *Illegal Entrants Accuse Cochise County Rancher of*



February 25, 2000, sources reported that rancher Andres Mueller physically beat migrant detainees with a metal flashlight.<sup>61</sup> In yet another incident, on April 5, 2000, Mueller accosted Javier Bencomo Arreolo and his companions when they were walking near, but not on, Mueller's ranch property.<sup>62</sup> He detained the group at gunpoint.<sup>63</sup> He then directed his wife, Linda Mueller, to unleash their watchdog onto the frightened group.<sup>64</sup> The group fled in terror when the dog attacked, injuring several of the migrants.<sup>65</sup> Mueller then got into his truck, drove ahead of the fleeing group, and stopped them again at gunpoint.<sup>66</sup> Using his truck, he herded Arreolo and the others back onto his ranch land so that the group would be found within the boundaries of his property when he called the INS.<sup>67</sup>

In April 2000, a new and more dangerous dimension emerged from CCCC's collaborative activities. A flyer entitled "Ranch Rescue" began to circulate in southeastern Arizona.<sup>68</sup> The flyer's text encourages vigilante involvement in CCCC's activities by extending an open invitation for volunteers to camp out with local ranchers to help "protect" their property rights.<sup>69</sup> Specifically, the flyer states that local ranchers need help because criminal trespassers damage property,<sup>70</sup> threaten the economic livelihood of ranchers,<sup>71</sup> and engage in other criminal behavior.<sup>72</sup> It also alleges that the high numbers of illegal aliens crossing through the area overwhelm local police agencies and that the government

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*Assault*, ARIZ. DAILY STAR, Feb. 26, 2000, at 1B.

61. *See id.*

62. Tessie Borden, *Crosser Sues Rancher*, ARIZ. REPUBLIC, Aug. 12, 2000, <http://www.nbpc.net/news/acrchive/august2000/crossersues.html>.

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. TOP NOTCH RANCH, RANCH RESCUE (on file with author).

69. *See* Jim Krane, *Ranchers Round Up Immigration Border*, APB NEWS (May 2000), at [http://www.apbnews.com/newscenter/breakingnews/2000/05/05/border0505\\_01.html](http://www.apbnews.com/newscenter/breakingnews/2000/05/05/border0505_01.html) TOP NOTCH RANCH, RANCH RESCUE, at <http://www.topnotchranch.com> (last visited Jan. 20, 2002).

70. Allegations of property damage include cut fences and severed water lines. TOP NOTCH RANCH, *supra* note 69.

71. Allegations of economic threats include stolen vehicles and injured livestock. *Id.*

72. Allegations of criminal behavior include robberies and assaults. *Id.*

deliberately refuses to remedy the situation.<sup>73</sup> The flyer provides a phone number with a Texas area code and an email address that interested parties can use to obtain additional information.<sup>74</sup>

The specific language used in the "Ranch Rescue" flyer is troublesome because it misrepresents CCCC activities as legitimate actions necessary to protect ranchers, who are supposedly the "real" victims. For example, one recruiting pitch states that CCCC needs people to "help . . . organize a grassroots assistance mission to the ranchers in Douglas."<sup>75</sup> The word "grassroots" is misleading because it conveys the idea that the Ranch Rescue effort is a working man's movement, a righteous plan by patriotic individuals who are trying to aid their fellow countrymen in protecting their property rights against invaders. Similarly, the term "assistance" is disingenuous because it implies that Ranch Rescue is not vigilantism, but rather benevolent action.<sup>76</sup>

A second item on the flyer states: "The problem is in southern Arizona now. Help us put a stop to it before it reaches our ranches and farms elsewhere in the USA."<sup>77</sup> This thinly veiled statement attempts to create fear and paranoia amongst other similarly situated landowners. Furthermore, the flyer may be attempting to elicit outrage, and it implies that illegal immigration can be controlled if concerned citizen-soldiers act now.

The solicitation of like-minded organizations also represents a darker and more dangerous undercurrent to rancher actions—the direct involvement of recognized hate groups in partnership with CCCC. On May 13, 2000, CCCC held a public rally to brainstorm with other anti-immigrant groups about illegal immigration, and to celebrate their successful routing of migrant victims to date.<sup>78</sup> Attendees of the meeting included the KKK,<sup>79</sup>

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73. *Id.*

74. *Id.*

75. *Id.*

76. The flyer also uses the term "mission," which can be read to mean a religious crusade or a military assignment—perhaps it was meant to mean both (i.e., a holy war). *Id.*

77. *Id.*

78. Ignacio Ibarra, *Cochise Ranchers Backed at Rally*, ARIZ. DAILY STAR, May 15, 2000, at A5. For example, the California Coalition for Immigration Reform (CCIR) circulated a flyer at the May 13, 2000 rancher rally, stating:

CCIR lauds Roger Barnett and the many equally courageous ranchers. For every illegal alien they halt and turn over to the Border Patrol for deportation is: One less illegal alien getting tax-funded benefits that

Voices of Citizens Together (VCT),<sup>80</sup> and David Duke's National Organization for European American Rights (NO FEAR).<sup>81</sup> At the rally, Cochise County Supervisor Les Thompson lauded rancher activities and promised to assist their efforts in whatever way he could.<sup>82</sup>

Soon afterwards, a second flyer emerged announcing the development of a quasi-movement called "Neighborhood Ranch Watch."<sup>83</sup> The leaflet, much like its predecessor "Ranch Rescue," solicits volunteers to help in the militarization of local ranch properties.<sup>84</sup> The flyer also provides concrete details on how to carry out CCCC's plans in conjunction with local law enforcement agencies.<sup>85</sup> The plan calls for the use of cell phones to coordinate ranch patrols with local sheriff's patrols, trip wires to discharge signal flares for the spotting of migrants, hunting dogs to track down crossing migrants, and infrared night sight devices.<sup>86</sup> The sheriff's department directed the use of all of the above described devices.<sup>87</sup> Finally, the flyer proposes that local ranchers be deputized as volunteer officers so they would possess broader arresting authority.<sup>88</sup>

### C. Reactions to CCCC's Hyper-Confrontational Activities

Not all ranchers in southern Arizona agree with Barnett or subscribe to CCCC's aggressive ideology.<sup>89</sup> Many ranchers publicly express their disdain for violence against migrant crossers.<sup>90</sup> Unfortunately, these public condemnations do little to

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citizens and even our war veterans are denied . . . One less illegal alien smuggling deadly drugs into our country to poison our citizens . . . One less illegal alien to join the murderous illegal alien gangs who rob, rape, and murder innocent American citizens.

Jose Palafox, *Arizona Ranchers Hunt Mexicans*, Z MAG., July/Aug. 2000, at 28-29.

79. Arizona Ninth District of the Imperial Wizards of the Ku Klux Klan (KKK). See Palafox, *supra* note 78, at 28; Ibarra, *supra* note 78.

80. See Palafox, *supra* note 78, at 28; Ibarra, *supra* note 78.

81. See Ibarra, *supra* note 78.

82. See *id.*

83. NEIGHBORHOOD RANCH WATCH FLYER (on file with author).

84. See *id.*

85. See *id.*

86. *Id.*

87. *Id.*

88. See *id.*

89. See Jose Garcia, *Another Long Hot Summer in Arizona*, FRONTERA NORTE SUR (July 2000), at [http://www.nmsu.edu/~frontera/jul\\_aug00/feat3.html](http://www.nmsu.edu/~frontera/jul_aug00/feat3.html).

90. See *id.*

stem violence by CCCC or its affiliated ranch network.<sup>91</sup> If anything, the actions of Barnett and other CCCC associates grow bolder and more ruthless.<sup>92</sup>

Barnett now leaves his ranch property to stop people on public highways.<sup>93</sup> On February 19, 2000, Barnett and his brother Donald intercepted a pick-up truck half a mile west of Highway 80.<sup>94</sup> Once pulled over, an armed Barnett demanded to see the immigration papers of the vehicle's occupants.<sup>95</sup> When the occupants informed Barnett that they did not possess any papers, the two brothers "escorted" the vehicle to a Border Patrol station.<sup>96</sup>

A few months later, on April 9, 2000, Barnett and an unnamed woman stopped two vehicles traveling northbound on Highway 80.<sup>97</sup> He and his partner were armed when they ordered both vehicles to stop.<sup>98</sup> Despite having no authority to do so, Barnett prevented the migrants from leaving by forcefully taking their car keys.<sup>99</sup> Simultaneously, his accomplice took pictures of the group.<sup>100</sup> Sometime later, they called the Border Patrol, who took the migrants into the custody.<sup>101</sup>

Recognizing the rising level of hostility along the border, U.S. Senator Jon Kyl of Arizona issued a press release acknowledging the "crisis situation" that existed between ranchers and migrant crossers.<sup>102</sup> In the press release, Senator Kyl stated that he had met with Attorney General Janet Reno and secured a pledge from

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91. See Ignacio Ibarra, *Law Broken by Detention of Migrants Mexico Claims*, ARIZ. DAILY STAR, Feb. 25, 2000, at 3B [hereinafter Ibarra, *Law Broken by Detention*]; Ignacio Ibarra, *Rancher May Face Charges for Stopping Illegal Entrants*, ARIZ. DAILY STAR, Feb. 23, 2000, at 1B [hereinafter Ibarra, *Rancher May Face Charges*]; Xavier Zaragoza, *Barnetts Stop Immigrants on Highway 80*, THE DAILY DISPATCH, Apr. 11, 2000, <http://www.douglasdispatch.com/archives>.

92. Ibarra, *Law Broken by Detention*, *supra* note 91; Ibarra, *Rancher May Face Charges*, *supra* note 91; Zaragoza, *supra* note 91.

93. Ibarra, *Law Broken by Detention*, *supra* note 91; Ibarra, *Rancher May Face Charges*, *supra* note 91; Zaragoza, *supra* note 91.

94. Zaragoza, *supra* note 91.

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.* Barnett alleged that he never ordered them to stop, but rather the vehicles mistakenly followed him after he had made a hand signal to turn onto his property. *Id.* The occupants of both vehicles claim, however, that Barnett used his headlights and threatening hand gestures to order them off the road. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. Press Release, Jon Kyl, We Must Do More to Secure Arizona's Border (May 5, 2000), <http://www.senate.gov/~kyl/co52600.htm>.

her for more border resources to help alleviate the situation.<sup>103</sup> Additionally, Reno publicly urged Douglas area residents to shun vigilantism and let federal law enforcement handle the flow of illegal entrants.<sup>104</sup> However, local law enforcement had different ideas.<sup>105</sup> On May 25, 2000, sheriffs from four Arizona border counties announced their support for the ranchers' "struggle" to protect their private property and unveiled a plan to improve lines of communication between their departments and the ranchers.<sup>106</sup>

Despite federal disapproval, local ranchers continued to victimize migrant sojourners.<sup>107</sup> On May 21, 2000, two horsemen dressed in black shot Miguel Angel Palafox in the neck near Sasabe, Arizona.<sup>108</sup> Amazingly, Palafox crawled to safety despite the gunshot wound and sweltering 115-degree heat.<sup>109</sup> In spring 2000, Barnett physically assaulted another migrant who attempted to flee Barnett's unlawful detention.<sup>110</sup>

On October 15, 2000, the U.S. Department of Justice responded to the escalating violence by issuing an Officer Safety Bulletin, which warned federal officers working in southeastern Arizona of the potential violence that could erupt from CCCC's anti-immigrant activities.<sup>111</sup> The bulletin also cautioned that the inflammatory nature of CCCC's rhetoric might attract other known hate mongers interested in inciting violence against federal officers or migrant crossers.<sup>112</sup> While CCCC members publicly

103. *See id.*

104. *See* Thomas Stauffer, *Concerned Reno Urges Border Residents to Shun Vigilantism*, ARIZ. DAILY STAR, May 21, 2000, at A2.

105. *See Arizona Ranchers Clash with Illegal Aliens & Mexican Government*, IMMIGRATION REP. (Federation for American Immigration Reform, Wash. D.C.), June 2000, at <http://www.fairus.org/html/6-6-00.htm>.

106. *Id.*

107. *See id.*

108. Tim McGirk Douglas, *Border Clash*, TIME DAILY, June 26, 2000, at 26.

109. *Id.*

110. *Id.*

111. *American Anti-Immigrant Groups Rally to the Southwest Border*, OFFICER SAFETY BULLETIN (U.S. Dep't of Justice), Oct. 25, 2000, at 5.

112. *See id.* Reportedly, the Southern Poverty Law Center recently concluded a fact-finding mission to southeastern Arizona and is evaluating the results to determine whether the rancher-committed hate crimes have been committed by ranchers against migrant crossers. Telephone Interview with Isabel Garcia, attorney and spokesperson, Arizona Border Rights Project, Los Angeles, Cal. (Oct. 20, 2000). The Southern Poverty Law Center is a nationally-known public interest law firm that specializes in utilizing damage litigation against hate groups like the Ku Klux Klan. Information about this firm can be found at Southern Poverty Center's website, located at <http://www.splcenter.org/intelligenceproject/ip-index.html> (last visited Mar. 24, 2002).

eschew any similarity between themselves and traditional hate groups, the cross-pollination between the two is significant.<sup>113</sup>

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113. In response to an outcry from ranch activists, the INS later clarified its Office Safety Bulletin by drawing a distinction between CCCC and traditional hate groups. See Ignacio Ibarra, *INS Inflames Cochise Residents*, ARIZ. DAILY STAR, Nov. 16, 2000, <http://www.azstarnet.com/star/thu/001116agentswarning.html>; Ignacio Ibarra, *INS Says It Erred in Listing Groups*, ARIZ. DAILY STAR, Nov. 18, 2000, <http://www.azstarnet.com/star/sat.001118borderfolo.html>. Powerful evidence exists, however, suggesting a substantial affiliation between Douglas area ranch groups, CCCC, and organizations whose agendas are unashamedly driven by racial and xenophobic animus. The fact that CCCC does not adorn their violent practices with the most obvious trappings normally associated with hate groups (e.g., hoods, swastikas, etc.) does not warrant the conclusion that CCCC does not subscribe to many of the same themes as traditional hate-based groups. Even well-known hate groups have moved away from harsh rhetoric and inflammatory symbolism towards more mainstream discourses centered around issues of racial and cultural pride. See, e.g., Michael Tierney, *Rebirth of the Ku Klux Klan; He Uses PC Jargon, Has a University Degree, and Looks After His Mother. But Grand Dragon James Sheeley Still Preaches Hate*, THE HERALD (Glasgow), Dec. 1, 2001, at 8, LEXIS, News Library, The Herald (Glasgow) File (KKK leader eschews "hate group" label and instead characterizes himself as a member of a social and fraternal white civil rights organization); David G. Savage, *Government to Scrutinize Klan Bid to 'Adopt' Highway*, MILWAUKEE J. SENTINEL, Nov. 12, 2000, at 13A, LEXIS, News Library, Milwaukee Journal Sentinel File (recounting KKK's attempt to rehabilitate its public image by participating in state highway cleanup program); Karlyn Barker, *A Resurgence by the Klan*, The Washington Post, June 7, 1980, at A1, LEXIS, News Library, US News, Combined File (KKK boasts membership by individuals with university, and even law, degrees). This ideological sleight of hand makes their ultimate agendas—the subjugation of racial minority communities—no less offensive or threatening. In the shadowy and clandestine world of hate-based movements, fraternal associations can best be substantiated by identifying common themes amongst companion groups. For example, public interest organizations that track and monitor hate groups have identified Glenn Spencer's anti-immigrant group Voices of Citizens Together (VCT) as an official hate group. See Katie Thomas, *Visiting Alarmist; Opponent of Mexican Immigration Bringing Views to LI [Long Island]*, NEWSDAY (N.Y., N.Y.), July 29, 2001, at A03, LEXIS, News Library, US News, Combined File; Patrick J. McDonnell, *Brash Evangelist; Thanks to an Obsession with Immigration, Glenn Spencer Has Ended Up on a List of Hate Groups*, L.A. TIMES, July 15, 2001, (Magazine) at 14, LEXIS, News Library, Los Angeles Times File. Spencer and VCT are associates and supporters of CCCC. See Ibarra, *supra* note 78. A careful evaluation reveals that CCCC exhibits many of the same propensities as other hate-based movements. First, CCCC inflicts violent acts against specific classes of people because of their race or ethnicity. In this case, the precision of rancher assaults, inflicted solely upon people from Mexico and Central America, strongly suggests that CCCC's behavior is driven as much by racial and xenophobic animus as it is by the undocumented status of migrant crossers. Second, CCCC uses highly inflammatory rhetoric whereby spokespersons objectify and dehumanize their victims. Roger Barnett, in referring to migrants, said, "Humans. . . That's the greatest prey there is on earth." Zarembo, *supra* note 54, at 36. Further, CCCC's companion groups, like VCT, have eagerly joined these attacks against undocumented sojourners. See Palafox, *supra* note 78, at 29. Third, CCCC bases its philosophies on wafer-thin belief systems grounded in racial and xenophobic paranoia that groups rely on to legitimate their shared use of violence against unoffending victims. For example, key CCCC members appear to

#### D. CCCC's Conspiratorial Activities

Strong evidence links CCCC with other vigilante organizations<sup>114</sup> and xenophobic groups<sup>115</sup> in CCCC's burgeoning network of internet sites.<sup>116</sup> Rather than merely expressing hateful rhetoric, group collaboration results in tangible actions in the form of paramilitary operations. For example, in the fall of 2000, CCCC successfully carried out Operation Raven, a virtual battle plan for the transfer of personnel, firearms, munitions, funds, technology, and other materials across state lines.<sup>117</sup> Documented at the Ranch Rescue website, Operation Raven made explicit that Arizona was an open carry state where private

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believe that recent increases in unlawful crossings are the result of an organized plan by Mexico to take back the Southwest. *See id.* at 29. Fourth, CCCC is composed of members who regularly ignore state and federal laws to surreptitiously carry out their organizational conspiracies. For example, Roger Barnett commandeers vehicles from public roads and demands to inspect immigration papers from the occupants of the captured vehicles. Zaragoza, *supra* note 91. Further, group members, such as Andres Mueller, act boldly and without fear of criminal consequences. Ibarra, *supra* note 60. Fifth, CCCC has promulgated the execution of paramilitary plans, such as Operation Raven, to facilitate the commission of additional racketeering and conspiratorial violence. *See infra* note 117 and accompanying text. Sixth, it can be construed that CCCC uses coded language like "protection of private property" and "open carry" to convey hidden messages and deflect charges of vigilantism. Seventh, there has been federal recognition that such activities are dangerous and unlawful. Stauffer, *supra* note 104. Eighth, CCCC demonstrates harsh group rhetoric and predatory behavior that attracts well-known hate groups (e.g., KKK) who share similar belief systems that are grounded in racial and xenophobic animus. Ibarra, *supra* note 78. All of these factors confirm CCCC's close kinship with traditional hate groups and CCCC's status as a collateral hate-based movement.

114. Ranch Rescue is an example of such a vigilante organization.

115. Voices of Citizens Together (VCT) is an example of such a xenophobic group.

116. VCT hosts a website that rabidly accuses "alien savages" of eroding the American union by taking jobs away from Americans and unlawfully exploiting social service programs. AMERICAN PATROL REPORT, at <http://www.americanpatrol.com> (last visited Mar. 24, 2002). VCT regularly posts statements at this site that accuse the INS and the U.S. Department of Justice of ignoring the illegal immigration problem. *See id.* Ranch Rescue sponsors a website that provides contact information and updates concerning CCCC's activities. *See* RANCH RESCUE, *supra* note 57. The site also solicits funds and resources on CCCC's behalf, some of which is directed at assisting ranchers with repairing damaged property. *See id.* This site expressly refers to illegal migrants as "criminal trespassers" who regularly threaten, intimidate, assault, and harass innocent property owners. *Id.* This website also details paramilitary operations already executed (e.g., Operation Raven and Operation Falcon) and yet to be undertaken (e.g., Operation Hawk). *See id.*

117. *See* RANCH RESCUE, ARIZONA, at <http://www.ranchrescue.com/arizona.htm> (last visited Mar. 24, 2002). Emblems memorializing completed and proposed operations are displayed like trophies at the Ranch Rescue website. *See id.*

individuals could carry firearms in public settings.<sup>118</sup> Reminiscent of an ad promoting safari adventures, Operation Raven implicitly promised its potential volunteers action when it stated that there existed a “very real physical danger of confrontation with [criminal trespassers]” and recommended that its security volunteers “carry firearms.”<sup>119</sup> In the spring of 2001, CCCC executed Operation Falcon, which was patterned closely after Operation Raven.<sup>120</sup>

Local officials appear uninterested and unwilling to stop rancher violence. Despite the rash of violent incidents and the attention brought to them by human rights organizations, officials such as Sheriff Larry Dever have done little in response.<sup>121</sup> Instead, he simply denies that vigilantism occurs.<sup>122</sup> Rather than equally enforcing laws, local officials appear more interested in permitting vigilantism to occur because of its widespread popularity amongst a small but highly aggressive group of ranchers. The lack of enforcement by local police agencies sends a dangerous signal to ranchers that the government accepts their unlawful behavior, or at least creates the belief among ranchers that they are immune from criminal prosecution.

The convergence of rancher violence, mobilizing efforts, strategic planning, assistance from officials, and multiple

118. *See id.*

119. *Id.*

120. RANCH RESCUE, TEXAS, <http://www.ranchrescue.com/texas.htm> (last visited Mar. 24, 2002).

121. *See* Ibarra, *supra* note 78; Garcia & Medina, *supra* note 40. At the May 13, 2000, public rally hosted by CCCC and other anti-immigrant groups, Sheriff Dever made revealing comments regarding his personal involvement with local anti-immigrant organizations. *See id.* He stated, “I fear there are people around us that want to take advantage of us. . . . I have a fear that there are people with other agendas. I don’t know *that they’re bad agendas* [referring to the KKK], but they may be a little bigger than *we are*.” *Id.* (emphasis added).

122. *See* Cooper, *supra* note 39, at 23. While Dever concedes that “ranchers rounding up like in the old West might be a bit inflammatory,” he maintains that “the vigilante scare just isn’t fair.” *Id.* These denials are particularly startling considering that everyone around Sheriff Dever seems acutely aware of the explosive situation. Mike Palmer, Chairman of the Cochise County Board of Supervisors, stated, “I don’t want to regress into a vigilante state like the 1880s and have human life taken over the protection of private property. It’s almost getting to that level. . . . It’s very volatile.” Ken Ellingwood & Esther Schrader, *Ranchers on Arizona Border Raise Tensions over Migrants*, L.A. TIMES, May 17, 2000, at A1. Carol Capas, spokeswoman for the Cochise County Sheriff’s Department, told a Los Angeles Times reporter that “[t]he situation is just boiling.” *Id.* Douglas City Mayor Ray Borane stated that the situation could turn into a disaster with people hunting illegal entrants for sport. *See* Ignacio Ibarra, *Brochure Invites Volunteers to Join Border Ranch Watch*, ARIZ. DAILY STAR, Apr. 20, 2000, at A5.



transfers of resources provides ample proof that CCCC, its members, its agents, and its affiliated ranch network constitute a VRE. As such, CCCC engages in a pattern of activities that are potentially actionable under RICO,<sup>123</sup> the federal anti-conspiracy statute,<sup>124</sup> the Failure to Prevent Conspiracy Act,<sup>125</sup> and Arizona tort or civil racketeering laws.

### III. Responding to Vigilante Activity Through Public Interest Litigation

Ideally, successful strategies in public interest litigation turn on winning symbolic as well as pragmatic victories. The nature of legal actions chosen by public interest lawyers should say something about the types of wrongs being contested. In this section, the choice of legal claims is meant to underscore the predatory dimensions of Arizona VREs.

First, because Arizona VREs act in ways similar to organized crime networks they should be treated as such. Thus, a Racketeer Influenced and Corrupt Organizations Act (RICO)<sup>126</sup> action is an appropriate claim to make against the "frontier gangsters" that operate Arizona VREs. Second, because the clandestine conspiracies hatched by Arizona VREs are grounded in racial and xenophobic animus, the brutalities committed by these ranch networks should be actionable under anti-conspiracy statutes originally created to suppress organized KKK violence.<sup>127</sup> Thus, actions under the Federal Anti-Conspiracy Laws are appropriate claims to make against Arizona VREs. Third, because migrant victims suffer from personal injuries as a direct result of rancher violence, they should be able to make claims against ranchers under Arizona tort or civil racketeering laws.

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123. 18 U.S.C. § 1962 (1994).

124. 42 U.S.C. § 1985(3) (1994).

125. 42 U.S.C. § 1986 (1994) [the federal anti-conspiracy statute and the Failure to Prevent Conspiracy Act are hereinafter collectively referred to as the Federal Anti-Conspiracy Laws].

126. 18 U.S.C. §§ 1961-1962 (1994).

127. For an interesting historical analysis of this act, see generally Ken Gormley, *Private Conspiracies and the Constitution: A Modern Vision of 42 U.S.C. Section 1985(3)*, 64 TEX. L. REV. 527 (1985).

A. *Federal and State Law*

## 1. RICO

RICO is a fine example of a federal statute, originally meant to combat the excesses of organized crime networks, that can be applied to modern-day manifestations of organizational predation.<sup>128</sup> In the past few years, RICO actions have been litigated against anti-choice groups,<sup>129</sup> insurance partnerships,<sup>130</sup> and rogue law enforcement agencies.<sup>131</sup> To this end, RICO is an important tool to combat the violent hate-based activities of VREs like CCCC.<sup>132</sup>

To prevail in a RICO civil action, a plaintiff must prove three elements. First, the plaintiff must show that the organizational defendant is an enterprise affecting interstate commerce.<sup>133</sup> The Ninth Circuit, in *Musick v. Burke*,<sup>134</sup> ruled that merely moving finished products through the stream of interstate commerce is insufficient to trigger interstate involvement for the purposes of RICO.<sup>135</sup> Second, plaintiffs must show that one or more individual defendants are employed or associated with an enterprise whose activities affect interstate commerce.<sup>136</sup> In *Salinas v. United States*, the Supreme Court ruled that “a conspiracy may exist even if a conspirator does not agree to commit or facilitate each and every part of the substantive offense,”<sup>137</sup> and that although work may be divided between conspirators, “each [person] is responsible

128. *Application of the RICO Law to Nonviolent Advocacy Groups: Hearing Before the Subcomm. on Crime of the House Committee on the Judiciary*, 105th Cong. 9-11 (1998) [hereinafter *Hearing*] (statement of Rep. Bill McCollum), [http://commdocs.house.gov/committees/judiciary/hju59932.000/hju59932\\_0.htm](http://commdocs.house.gov/committees/judiciary/hju59932.000/hju59932_0.htm).

129. *See, e.g.*, *NOW v. Scheidler*, 50 U.S. 249 (1994).

130. *See, e.g.*, *Humana, Inc. v. Forsyth*, 525 U.S. 299 (1999).

131. *See Don Terry, Rackets Law Can Be Used Against Police in Los Angeles*, N.Y. TIMES, Aug. 29, 2000, at A14.

132. CCCC's inflammatory rhetoric, clandestine violence, and predatory conspiracies—hatched with well-known hate groups—target undocumented persons specifically on account of their race, national origin, and political status. This makes CCCC a collateral hate-based movement. *See supra* notes 79-82 and accompanying text. A collateral hate-based movement expositis and acts on many of the same issues as traditional hate groups, but publicly eschews the notion of being called a “hate group.”

133. 18 U.S.C. § 1962 (1994).

134. 913 F.2d 1390 (9th Cir. 1990).

135. *See id.* at 1394-95, 1398.

136. *Salinas v. United States*, 522 U.S. 52 (1997).

137. *Id.* at 63.

for the acts of each other.”<sup>138</sup> If conspirators have a plan which calls for some conspirators to perpetrate the crime and others to provide support, the supporters are as guilty as the perpetrators.<sup>139</sup> Finally, the plaintiff must show that the defendants’ participation in the organizational activities of the enterprise constitutes a “pattern of racketeering activity.”<sup>140</sup> The U.S. Supreme Court, in *H.J. Inc. v. Northwestern Bell Telephone Co.*, ruled that for a “pattern” of racketeering activity to exist, such activity must be related and continuous.<sup>141</sup> In determining whether acts are related, the Court noted that the following factors should be considered: whether the events are non-isolated and whether they have a common purpose, result, victim, method, or participants.<sup>142</sup>

An additional obstacle for plaintiffs is to demonstrate they have standing to raise a RICO claim. Under civil RICO, plaintiffs must demonstrate that they have suffered harm to their business or property as a result of the defendant’s racketeering activities.<sup>143</sup> Case law makes it clear that this damage must be proven to survive a motion to dismiss for failure to state a claim upon which relief can be granted.<sup>144</sup> Recent cases attempting to use a civil RICO action to redress non-economic injuries have been unsuccessful against these motions to dismiss. Personal injuries sustained by plaintiffs because of the defendant’s predicate acts have not been sufficient to establish standing to sue for civil RICO actions.<sup>145</sup> Thus, plaintiffs’ lawyers need to be extraordinarily resourceful in constructing their standing claims. This Article will suggest some possibilities for establishing standing, given this unique situation.<sup>146</sup>

While there may exist philosophical disagreements over whether civil RICO actions should be applied to non-violent groups,<sup>147</sup> virtually everyone agrees that violent enterprises should

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138. *Id.* at 63-64.

139. *Id.*

140. *H.J. Inc. v. N.W. Bell Tele. Co.*, 492 U.S. 229 (1989).

141. *Id.* at 239.

142. *Id.* at 240.

143. *Falise v. Am. Tobacco Co.*, 94 F. Supp. 2d 316 (E.D.N.Y. 2000).

144. FED. R. CIV. P. 12(b)(6); see *Falise*, 94 F. Supp. 2d at 333; *Int’l Bhd. of Teamsters v. Phillip Morris*, 196 F.3d 818, 825 (7th Cir. 1999).

145. See *Falise*, 94 F. Supp. 2d at 333.

146. See *infra* Part III.B.1.d.

147. See *Hearing*, *supra* note 128 (statement of Rep. Bill McCollum; Rep. Charles E. Schumer).

be held accountable for their actions.<sup>148</sup> Given CCCC's propensity to engage in violent racketeering behavior, filing a civil RICO action against CCCC as a VRE would re-center the use of RICO in a manner acceptable to all concerned officials. Further, a civil RICO action utilized in this way would remain faithful to the intentions of RICO's drafters, who believed that RICO should be used to eradicate organized predatory behavior.<sup>149</sup>

If a civil RICO action is successful, the potential rewards would be robust, including treble damages, declaratory relief, and counsel fees. The obstacles to that success, however, are formidable. RICO case law makes it clear that municipalities like Cochise County and the Cochise County Sheriff's Department cannot be sued in a civil action.<sup>150</sup> Additionally, the possibilities for permanent injunctive relief appear limited. In *Religious Technology Center v. Wollersheim*,<sup>151</sup> the Ninth Circuit ruled that injunctive remedies are only available in criminal RICO actions.<sup>152</sup> Where RICO falls short, other statutes provide relief to plaintiffs, with fewer obstacles.

## 2. Federal Anti-Conspiracy Laws

The Federal Anti-Conspiracy Statute, codified at 42 U.S.C. § 1985(3), prohibits conspiracies between two or more individuals meant to deprive persons of equal protection of laws.<sup>153</sup> To state a cause of action under § 1985(3), a plaintiff must prove three elements. First, plaintiffs must prove that a conspiracy existed that aimed to deprive them of equal protection of the laws or of their privileges and immunities under law.<sup>154</sup> Second, plaintiffs must show an act occurred that furthered these conspiratorial

148. See *id.* at 10, 13.

149. See Robert G. Blakey & Brian Gettings, *Racketeer Influenced and Corrupt Organizations (RICO): Basic Concepts—Criminal and Civil Remedies*, 53 *TEMPLE L.Q.* 1009, 1042 (1980).

150. *Lancaster Cmty. Hosp. v. Antelope Valley Hosp. Dist.*, 940 F.2d 397, 404 (9th Cir. 1991). The information supporting this citation was born out of the mutual work that Stacy Tolchin and I did for a final class project. Drawing upon my earlier work on border violence, Stacy and I wrote a mock federal complaint for a public interest litigation course taught by Professor Mark Rosenbaum at UCLA School of Law during the Fall of 2000 [hereinafter *Mock Federal Complaint; Accompanying Text to Mock Federal Complaint*] (both on file with author).

151. 796 F.2d 1076 (9th Cir. 1986).

152. *Id.* at 1088-89.

153. 42 U.S.C. § 1985(3) (1994).

154. *Griffen v. Breckenridge*, 403 U.S. 88, 102-03 (1971).

objectives.<sup>155</sup> Lastly, plaintiffs must demonstrate that they sustained injury.<sup>156</sup> Plaintiffs must also prove that invidious discrimination was integral to the conspiracy and that the conspiracy targeted a class which the government has identified as warranting federal civil rights protection.<sup>157</sup> While this class can be comprised of a traditional suspect class or a quasi-suspect class,<sup>158</sup> case law is clear that class-based animus must be a central feature of the conspiracy.<sup>159</sup> 42 U.S.C. § 1985(3) reads in part:

If two or more persons in any state or territory conspire or go in disguise on the highway or on the premises of another, for the purposes of depriving, either directly or indirectly, any person or class of persons the equal protection of the laws or of equal privilege and immunities under the laws . . . the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.<sup>160</sup>

There is no state action requirement under § 1985(3), and individuals can be held liable for wholly private conspiracies.<sup>161</sup>

To state a cause of action under the Failure to Prevent Conspiracy Act, codified at 42 U.S.C. § 1986,<sup>162</sup> a plaintiff must first show that a conspiracy exists in accordance with the provisions of § 1985.<sup>163</sup> Once the existence of the conspiracy is established, plaintiffs are required to substantiate their action against public officials through a four-part proof structure. Plaintiffs must show that public officials had knowledge of the conspiracy; that they had power to prevent the conspiracy; that they neglected or refused to prevent the commission of conspiratorial acts; and finally, that wrongful acts were committed.<sup>164</sup> Public officials do not have to expressly agree to participate in the conspiracy.<sup>165</sup> Rather, if officials fail to enforce

155. *Id.* at 103.

156. *Scott v. Ross*, 140 F.3d 1275, 1284 (9th Cir. 1988).

157. *Sever v. Alaska Pulp Corp.*, 978 F.2d 1529, 1536-37 (9th Cir. 1987).

158. *Id.* at 1536.

159. *See Griffen*, 403 U.S. at 102.

160. 42 U.S.C. § 1985(3) (1994).

161. *Id.*; *United Bhd. of Carpenters, Local 610 v. Scott*, 463 U.S. 825, 832 (1983) (explaining that § 1985(3) has language similar to the Fourteenth Amendment but does not require state action).

162. 42 U.S.C. § 1986 (1994).

163. *Santiago v. Philadelphia*, 435 F. Supp. 136, 156 (E.D. Pa. 1977).

164. *Id.*

165. *See Dickerson v. U.S. Steel Corp.*, 439 F. Supp. 55, 67 (E.D. Pa. 1977). ("If a party has the potential to stop illegal activity but fails to act to do so, and sits idly

the laws by stopping the commission of illegal acts, they have implicitly agreed to participate in these illegal conspiracies.<sup>166</sup> 42 U.S.C. § 1986 reads in part:

Every person who, having knowledge that any of the wrongs conspired to be done . . . are about to be committed, and having the power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented . . . .<sup>167</sup>

Police agencies, in particular, have been found liable under § 1986 for failure to enforce laws meant to prevent crimes or conspiracies.<sup>168</sup> In *Anderson v. Creighton*,<sup>169</sup> the U.S. Supreme Court ruled that courts must use objective standards in determining what a "reasonable police officer" would have done under the same circumstances.<sup>170</sup>

To successfully collect damage awards from local government entities like Cochise County, plaintiffs must demonstrate that these entities had a policy or custom of ignoring rancher offenses.<sup>171</sup> There are several advantages to filing a § 1985(3) action. Unlike RICO, the anti-conspiracy statute requires that plaintiffs demonstrate proof of non-economic harm as a result of the defendant's conspiratorial activities.<sup>172</sup> Additionally, anti-conspiracy laws permit civil suits between private parties and against private parties who conspire with state actors to violate a plaintiff's civil rights.<sup>173</sup> Moreover, permanent injunctive relief is

by, then that party may be said to have impliedly conspired in such illegalities.")

166. See *Waller v. Butovitch*, 584 F. Supp. 909, 943 (M.D.N.C. 1984) (holding that officials have a duty to take reasonable steps to prevent a § 1985(3) conspiracy and that their status as officials "obviates the need for much specificity" as to whether they had the power to prevent the conspiracy); *Bergman v. United States*, 579 F. Supp. 911, 934-35 (W.D. Mich. 1984) (stating that the U.S. was negligent per se because it violated its statutory duty under 42 U.S.C. § 1986).

167. 42 U.S.C. § 1986 (1994).

168. See cases cited *supra* note 166; see also *Symtowski v. Miller*, 294 F. Supp. 1214 (E.D. Wis. 1969) (holding that plaintiff stated a cause of action against the officers who allegedly witnessed plaintiff being beaten and failed to act to prevent or stop it).

169. 483 U.S. 635 (1987).

170. *Id.* at 640.

171. See *Luke v. Abbott*, 954 F. Supp. 202, 203 (C.D. Cal. 1997).

172. See *supra* text accompanying notes 147-149.

173. *Griffen v. Breckenridge*, 403 U.S. 88, 104 (1971) (holding that 42 U.S.C. § 1985(3) permits civil suits between private parties); see also Scott Moriarity, *Other Rising Legal Issues: Responding to the Issue of "Driving While Black": A Plan for Community Action Through Litigation and Legislation* 27 WM. MITCHELL L. REV.

available.<sup>174</sup>

### 3. Arizona State Law

Arizona state laws also offer a deep reservoir of litigation possibilities to address tortious offenses committed by ranchers against migrant crossers. There are significant opportunities for legal action under state law, including assault,<sup>175</sup> aggravated assault,<sup>176</sup> endangerment,<sup>177</sup> assault by vicious animal,<sup>178</sup> threatening or intimidating,<sup>179</sup> unlawful imprisonment,<sup>180</sup> and kidnapping.<sup>181</sup>

#### *B. Application of Federal and State Law to VRE Violence in Arizona*

The artful use of litigation against VRE networks offers great hope for stopping rancher violence against migrant crossers. To this end, the bulk of legal action should be brought in federal court. The application of public interest strategies against VREs in federal court is strategic in three important ways. First, it removes the issue from locally biased decision-makers that appear overly sympathetic to ranch owners, by placing litigation in a more insulated federal arena. Second, none of the federal statutes suggested<sup>182</sup> expressly require that plaintiffs be U.S. citizens to have standing. Rather, plaintiffs need only satisfy the specific standing and proof structures relative to each cause of action.<sup>183</sup> Third, the elasticity of federal anti-conspiracy laws better captures the covert and clandestine nature of CCCC's conspiratorial activities.<sup>184</sup>

Initially, lawyers will need to make important tactical choices about what types of legal claims to bring against CCCC. This

2031, 2054-58 (2001) (42 U.S.C. § 1985(3) permits civil suits against private parties who conspire with state actors to violate civil rights).

174. *Santiago v. Philadelphia*, 435 F. Supp. 136, 155 n.7 (E.D. Pa. 1977); *Action v. Gannon*, 450 F.2d 1227 (8th Cir. 1971).

175. See ARIZ. REV. STAT. § 13-1203 (2001).

176. See *id.* § 13-1204.

177. See *id.* § 13-1201.

178. See *id.* § 13-1208.

179. See *id.* § 13-1202.

180. See *id.* § 13-1303.

181. See *id.* § 13-1304.

182. See 18 U.S.C. §§ 1961-1962 (1994); 42 U.S.C. § 1985(3); 42 U.S.C. § 1986.

183. None of these statutes expressly stipulate that only U.S. citizens have standing to sue under them.

184. See *supra* Part III.A.2.

section evaluates three possibilities for compensatory relief: a civil RICO action under 18 U.S.C. § 1962; a conjoined federal action under both 42 U.S.C. § 1985(3) and 42 U.S.C. § 1986; and an action under Arizona state law. There are risks inherent within each of these approaches, but the exact degrees of risk differ depending upon the types of action chosen.

1. Migrant Plaintiffs May Be Entitled to Relief Under RICO

*a. Prong 1: CCCC Is an Enterprise Affecting Interstate Commerce*

CCCC constitutes an enterprise within the meaning of 18 U.S.C. § 1962, as evidenced by several points.<sup>185</sup> First, its members have created a cogent organizational identity (CCCC) and have developed an internal leadership structure.<sup>186</sup> Second, it has expressed a shared group agenda: the violent infliction of racketeering offenses against migrant crossers, under the guise of protecting property.<sup>187</sup> Third, it has developed a discernable structure distinct from that inherent in the pattern of their racketeering activities. This discernable structure is found in CCCC's ability to use the group's organizational nucleus to do several things. Its structure permits solicitation of resources and materials from out-of-state benefactors to repair ranch damage allegedly caused by migrant crossers.<sup>188</sup> Additionally, the structure permits CCCC to advocate for more federal and state assistance to enforce immigration laws. Finally, the structure facilitates their ability to negotiate and conspire with other like-minded groups in other states.<sup>189</sup> While the U.S. Supreme Court has ruled that defendant enterprises need not be economically motivated,<sup>190</sup> CCCC clearly realizes an economic benefit from their racketeering activities. Its members have accepted volunteer armed security and raw materials to make repairs and upgrades to their ranch properties.<sup>191</sup>

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185. See *Simon v. Value Behavioral Health*, 208 F.3d 1073 (9th Cir. 2000) (describing elements of 18 U.S.C. § 1962); *McDonough v. Nat'l Home Ins. Co.*, 108 F.3d 174, 175 (8th Cir. 1997).

186. See *supra* note 58 and accompanying text.

187. See *supra* note 68-76 and accompanying text.

188. See *supra* notes 69-88, 116 and accompanying text.

189. See *supra* note 116 and accompanying text.

190. See *NOW v. Scheidler*, 50 U.S. 249 (1994).

191. These economic benefits are reaped in a manner that would not otherwise



The solicitation of resources and the movement of materials across state lines, through plans like Operation Raven and Falcon, provides strong probative evidence that CCCC's activities make use of and affect interstate commerce in two distinct yet related, ways. First, to facilitate the commission of predicate acts, ranch members have solicited out-of-state resources.<sup>192</sup> These out-of-state materials are used by ranchers to commit violent offenses against migrant victims.<sup>193</sup> Second, these same raw materials are also utilized to make repairs and upgrades to ranch property upon which ranchers commit their violent offenses.<sup>194</sup> Raw materials, acquired and shipped across state lines, to be used later in furtherance of violent conspiratorial activities, transforms interstate facilities into part of the criminal machinery that ranch conspirators rely on to carry out their predatory offenses. RICO was expressly created to combat such unlawful use of interstate facilities.<sup>195</sup> Thus, migrant plaintiffs in the present case will be able to satisfy the first element of the RICO claim.

*b. Prong 2: Individual CCCC Members Are Engaged in Conduct That Affects Interstate Commerce*

CCCC members work collaboratively in support of CCCC's goals. Even prior to CCCC's formal development, members of the local ranch community were acting in concert towards shared objectives.<sup>196</sup> An important example lies in the March 1999 proclamation that ranchers sent to public officials outlining rancher intentions to use force and detailing the distinct potential for harm to migrant victims.<sup>197</sup>

The facts prove that CCCC has conspired and carried out multiple acts of racketeering violence against migrant sojourners. While individual ranchers commit these predicate acts, their conspiratorial partners have provided the labor, materials, and financial opportunities for ranchers to continue their violent

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be available to ranchers, but for their racketeering activities. The xenophobic and racial hysteria generated by CCCC's vigilante activism has created an economic windfall for CCCC members.

192. See *supra* notes 69-88, 114-119 and accompanying text.

193. See *supra* note 116. For example, Operation Raven solicited materials and manpower to make repairs and upgrades to ranch properties. Sources cited *supra* note 116. Moreover, volunteers were invited to Arizona ranchers to help "protect" private property against alien trespassers. Sources cited *supra* note 116.

194. See *supra* note 116.

195. 18 U.S.C. § 1962 (1994).

196. See *supra* notes 44-47 and accompanying text.

197. See *supra* notes 44-47 and accompanying text.

racketeering activities.<sup>198</sup> The fact that all of CCCC's partners did not directly commit racketeering offenses does not absolve these agents of culpability with regard to CCCC's conspiracies.<sup>199</sup>

*c. Prong 3: The Participation of Ranch Members  
Constitutes a Pattern of Racketeering Activity*

CCCC members have directly participated in an uninterrupted stream of violent predicate acts against migrants from 1999 to the present.<sup>200</sup> The pattern of abuse is usually the same: CCCC's infliction of violent predicate acts, under the guise of protecting ranch property, precedes a forced transfer of migrant victims to INS officers. This forced transfer prevents migrant victims from reporting the brutal crimes that ranchers have committed against them to the proper authorities.

*d. Plaintiffs' Attorneys Must Be Creative to Successfully  
Assert Standing*

Perhaps the most challenging aspect of successfully initiating a civil RICO action is the proof of standing that all plaintiffs must offer. Standing in a RICO action can only be proven upon a showing of harm to plaintiff's business or property.<sup>201</sup> This is a problem for migrant persons who are often impoverished and lack property resources that can be damaged. Thus, counsel for plaintiffs must be creative in finding appropriate standing for migrant plaintiffs to sue under RICO. The following section suggests three possibilities for establishing standing against ranchers, given the unique circumstances of this situation. These suggestions include forced breach of contract, unwarranted business interruption, and misuse of public lands.

Many immigrants travel to the United States with labor contracts from U.S. employers already in hand.<sup>202</sup> When ranchers

198. CCCC's conspiratorial partners include: 1) certain local public officials who condone and support rancher vigilantism through their failure to enforce the law, *see supra* notes 121-122; and 2) out-of-state benefactors who donate time, resources, and money to facilitate CCCC's commission of violent predicate acts, *see supra* notes 116-120.

199. *See Salinas v. United States*, 522 U.S. 52, 63-64 (1997).

200. *See supra* notes 40-110 and accompanying text.

201. *NOW v. Scheidler*, 50 U.S. 249, 255-56 (1994).

202. For example, a federal indictment has recently been issued alleging that Tyson Corporation has participated in smuggling undocumented persons into the United States to supplement Tyson's workforce. *See Kevin Sack, Under the Counter, Grocer Provided Workers*, N.Y. TIMES, Jan. 14, 2002, at A13; Harry Austin, *Traffic in Illegal Workers*, CHATTANOOGA FREE PRESS, Dec. 24, 2001, at B6.

abduct migrants, they force them to breach those employment agreements. Both employers and employees sustain economic loss as a result of this contractual breach. The resulting economic loss would provide grounds for standing for both employers and their would-be migrant employees in a civil RICO action against groups like CCCC. While economic loss is one way to prove standing, *NOW v. Scheidler* makes clear that a RICO defendant's activities do not have to be economically motivated.<sup>203</sup> Thus an organizational plaintiff, like a church, may be able to successfully argue that the abduction of migrants by ranchers substantially interferes with church duties involving the offering of sanctuary and aid to persons in distress. This, in turn, results in an unwarranted business interruption. Third, if ranch land is being leased from the state of Arizona, a taxpayers' group may assert standing by arguing that vigilante rancher activities are a misuse of public lands. Should state or federal authorities file criminal charges against ranchers for their participation in unlawful racketeering activities, the ranchers' land is at risk of criminal forfeiture.<sup>204</sup> Taxpayers may be affected by such a forfeiture because substantial portions of ranch properties are actually public trust lands. As a result of criminal forfeiture, grazing subsidies supported through state tax funds would be lost, the land devalued for its misuse, and what is essentially public land is put at risk of forfeiture. Lastly, Mexican officials in the United States may argue that the ranchers' activities interfere with the ability of the officials to perform their duties. As ranchers unlawfully abduct Mexican migrants, they prevent those migrants from accessing their national ambassadorial grounds, ultimately preventing those Mexican citizens from seeking political refuge or reporting crimes committed against them by vigilante ranchers.

*e. Limits to the Use of Civil RICO Against Arizona VREs*

Given the patterns of abuse that ranchers have committed over time, nothing less than a permanent injunction against all vigilante activity will suffice. For all of its potential, however, a civil RICO action may not be the most effective use of plaintiffs' legal resources. In *Lancaster County Hospital v. Antelope Valley Hospital District*,<sup>205</sup> the Ninth Circuit held that RICO claims against government entities failed because those "entities are

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203. *NOW*, 50 U.S. at 257-62.

204. See 18 U.S.C. §§ 1963(a)(1)(2), (b), (c) (1994).

205. 940 F.2d 397 (9th Cir. 1991).

incapable of forming a malicious intent" as required.<sup>206</sup> However, not suing such high-profile defendants at all sends the wrong message to these defendants and to the general public regarding the need for strong accountability when official misconduct occurs. Moreover, the inability to obtain permanent injunctive relief against CCCC undercuts the central reason for initiating action against it to stop the brutal violence by ranchers upon migrant victims.

## 2. Migrant Plaintiffs Are Entitled to Relief Under Federal Anti-Conspiracy Laws

Powerful facts support initiating a § 1985(3) action against CCCC. First, multiple conspiracies grounded in class-based animus have already been executed.<sup>207</sup> These conspiracies are meant to deprive migrant victims of their civil rights rather than protect private property rights, as ranchers claim.<sup>208</sup> The unbroken stream of rancher violence against migrants since 1999 provides ample proof of CCCC's organizational conspiracies, fulfilling the first element necessary to prove a § 1985(3) action.<sup>209</sup> CCCC has committed several related acts in furtherance of its organizational conspiracies by undertaking repeated assaults, strategic planning, mobilizing efforts, and interstate involvements to further its unlawful conspiracies, fulfilling the second element.<sup>210</sup> Also, migrants will easily prove the third element, as they have suffered severe injuries—assaults, beatings, kidnappings, gunshot wounds, and animal maulings—as a direct result of CCCC's conspiratorial activities.<sup>211</sup>

It is clear that class-based animus, rather than private property rights, lay at the heart of CCCC's unlawful conspiracies. For example, CCCC members and their affiliated ranch network have frequently made public statements dehumanizing and objectifying migrant persons because of their race and national origin. Roger Barnett has referred to migrant crossers as "prey,"<sup>212</sup> and VCT characterizes migrants as "alien savages."<sup>213</sup>

206. *Id.* at 404.

207. *See supra* notes 117-120 and accompanying text.

208. *See supra* notes 69-70, 113 and accompanying text.

209. *See supra* notes 69-88, 114-119 and accompanying text.

210. *See supra* notes 69-88, 114-119 and accompanying text.

211. *Supra* notes 60-67 and accompanying text.

212. *See Zarembo, supra* note 54, at 36.

213. VCT, *supra* note 116.

Even more telling, CCCC's harsh rhetoric and activities have attracted the attention and support of traditional hate groups like the KKK, who share CCCC's discriminatory beliefs.<sup>214</sup>

Such compelling evidence confirms the existence of conspiracies that violate § 1985(3). Equally powerful evidence reveals that local officials have aided CCCC's commission of these unlawful conspiracies in violation of § 1986. Public officials had express knowledge of its plans and motives. Intense newspaper coverage; television news stories; federal inquiries; Senator Jon Kyl's press release; Attorney General Janet Reno's public admonition; CCCC's resolutions, flyers, websites, and rallies; and the dramatic nature of injuries suffered by migrants at the hands of ranchers make it impossible for local officials to claim that they were unaware of CCCC's conspiracies.

Despite having the authority and power to stop rancher conspiracies, Cochise County officials failed to do so.<sup>215</sup> The absence of arrests or serious criminal investigations into CCCC activities provides ample proof that local officials have neglected or refused to prevent CCCC's commission of conspiratorial acts. Also, CCCC's unlawful conspiracies have sparked multiple wrongful acts that have denied migrants equal protection of laws.<sup>216</sup> Given the great weight of this evidence, local officials cannot even begin to justify their inaction.

Federal anti-conspiracy laws may offer several advantages over a civil RICO action with regard to the VRE networks operating in southeastern Arizona. The non-economic injury stipulation of these laws better fits the types of harms that migrants are suffering because of rancher assaults. However, making a § 1985(3) claim alone would severely limit the type and number of offenses actionable against CCCC conspiracies. The U.S. Supreme Court recently ruled that while these claims may extend to solely private conspiracies, the types of offenses actionable under § 1985(3) are limited to infringements on the right of interstate travel or on the right to be free from involuntary servitude.<sup>217</sup> Conversely, the intra-corporate conspiracy doctrine

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214. See *supra* note 79 and accompanying text.

215. See *supra* notes 121-122 and accompanying text.

216. See *infra* notes 219-227 and accompanying text.

217. See *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 278 (1993); see also *Brokaw v. Mercer County*, 235 F.3d 1000, 1024 n.20 (7th Cir. 2000) (citing *Bray*).

may preclude filing a suit against local officers under § 1985(3).<sup>218</sup>

Nonetheless, a § 1985(3) claim in conjunction with a § 1986 claim would dramatically broaden opportunities to litigate CCCC's offenses in a federal court because it would acknowledge that public officials are integral to the unlawful conspiracy by virtue of their knowledge, assistance, and failure to act. A conjoined § 1985(3) and § 1986 suit would avoid many of the problems associated with filing either action alone. A suit that combines both statutes would better hold accountable private citizens and public officials who have conspired to victimize migrant crossers.

A federal court should find a conjoined § 1985(3) and § 1986 action a compelling claim given the highly probative facts that underlie this situation. In the present context, private individuals and public officials have conspired to deprive migrants of protections they possess under federal and state laws. Federal courts have long recognized that migrant persons have important liberty interests,<sup>219</sup> cannot be detained for unreasonable lengths of time,<sup>220</sup> have a right to be secure in their bodily integrity,<sup>221</sup> and possess valid claims under the Fourteenth Amendment.<sup>222</sup>

218. The intra-corporate conspiracy doctrine states that "a corporation's employees, acting as agents of the corporation, are deemed incapable of conspiracy among themselves or with the corporation." *Dickerson v. Alachua County Comm'n*, 200 F. 3d 761, 768 (11th Cir. 2000).

219. *See, e.g., Mathews v. Diaz*, 426 U.S. 67, 77 (1976) (the due process clauses of the Fifth and Fourteenth Amendments protect undocumented persons from deprivations of life, liberty, or property); *United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975) (undocumented persons are protected from unreasonable searches and seizures under the Fourth Amendment); *Wong Wing v. United States*, 163 U.S. 223, 237-38 (1896) (undocumented persons have the right to petition courts for habeas corpus review).

220. *See, e.g., Zadvydas v. Davis*, 121 S. Ct. 2491, 2498 (2001) (INS cannot indefinitely detain migrant persons while attempting to facilitate their removal); *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892) (aliens have rights to petition for habeas corpus review).

221. *See, e.g., United States v. Otherson*, 637 F.2d 1276, 1283 (9th Cir. 1980) (undocumented persons are protected against bodily injury as provided under 18 U.S.C. § 242).

222. The litigation surrounding California's Proposition 187 is instructive on this point. Passed by California voters, Proposition 187 denied persons suspected of being illegal immigrants access to basic social services, public education, and health care. *See League of United Latin Am. Citizens v. Pete Wilson*, 908 F. Supp. 755, 763 (C.D. Cal. 1995). In 1995, however, U.S. District Court Judge Marian R. Pfaelzer relied on the Fourteenth Amendment to invalidate large segments of Proposition 187. *See id.* at 785 (citing *Plyler v. Doe*, 457 U.S. 202, 205 (1982)). Moreover, in *League*, Judge Pfaelzer expressly ruled that "the authority to regulate immigration belongs exclusively to the federal government." *Id.* at 786. Thus, ranch conspirators and their state co-conspirators have violated a basic axiom of U.S. federalism by privately enforcing federal immigration laws. *See also Yick Wo*

Moreover, Arizona law expressly protects the rights of citizen and non-citizen crime victims.<sup>223</sup>

By conspiring to use vigilantism to unlawfully enforce immigration laws, even though federal immigration officers are lawfully designated to enforce such laws, ranchers deprive migrants of their right to equal protection of laws in violation of the Fourteenth Amendment to the U.S. Constitution.<sup>224</sup> Strict scrutiny would be triggered because such conspiracies were driven by discriminatory race and national origin animus.<sup>225</sup> Ranch conspirators and their agents conspired to commit violent acts against migrant persons because the distinct morphological and cultural traits that migrant persons possess identified them as being non-white and non-citizens.<sup>226</sup> Thus, migrant persons were victimized by ranch conspirators as a direct result of these concrete physical differences. Moreover, the consistent failure of Arizona public officials to act against known conspiracies perpetuated a pattern of willfully ignoring equal protection violations. This subjected the class of migrant victims to ongoing

v. Hopkins, 118 U.S. 356, 369 (1886) (stating that aliens are persons under the Fourteenth Amendment and are entitled to constitutional protection).

223. In Arizona, non-citizens and undocumented aliens have the same victims' rights as citizens. See E-mail from Victim's Services, Arizona Dept' of Public Safety, to Robert Castro (Dec. 5, 2001) (on file with author); ARIZ. REV. STAT. § 13-4401.19 (2001) (defining victims as persons against whom a criminal offense has been committed); *Id.* § 13-4401.6 (defining a criminal offense as conduct that gives a peace officer or prosecutor probable cause to believe that a felony or misdemeanor involving physical injury, threat of physical injury, or sexual offense has occurred). Section A of the Arizona Victims' Bill of Rights (VBR), provides that all crime victims have a right to justice, due process, and are "to be treated with fairness, respect and dignity, and to be free from intimidation, harassment or abuse, throughout the criminal justice process." ARIZ. CONST. art. II, § 2.1(A). Moreover, Congress has recently passed national legislation that extends federal protection to migrant crime victims regardless of political status. See Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, § 107, 114 Stat. 1479 (2000) (codified as amended in scattered sections of U.S.C.); Violence Against Women Act of 1994 [VAWA I] Pub. L. No. 103-322, § 40001, 108 Stat. 1902 (1994). For an insightful discussion on VAWA I and its subsequent developments, see Jennifer R. Hagan, *Can We Lose the Battle and Still Win the War? The Fight Against Domestic Violence After the Death of Title III of the Violence Against Women Act*, 50 DEPAUL L. REV. 919 (2001).

224. U.S. CONST. amend. XIV, § 1.

225. Mock Federal Complaint, *supra* note 150, at 45.

226. While migrant crossers may be of mixed or pure Indian heritage, they nonetheless possess certain physical and cultural taxonomies—dark skin hue, hair color, facial features—that identify them as non-white and thus triggering discriminatory animus in the hearts and minds of ranch conspirators. Discrimination based upon the perception of an individual's membership in a non-white group is actionable under 42 U.S.C. § 1985(3). See *Jatoi v. Hurst-Eules-Bedford Hosp. Auth.*, 807 F.2d 1214, 1218 (5th Cir. 1987).

equal protection violations as targets of vigilante justice, and thus a constitutional violation of 42 U.S.C. § 1986.<sup>227</sup>

Given the intense controversies surrounding rancher actions, local officials would be hard-pressed to successfully argue that they believed rancher violence against unarmed migrant peasants was lawful and justified. The inability of local officials to explain their inaction would result in a decisive ruling against CCCC, its affiliated ranch networks, and local officials, for violating 42 U.S.C. § 1985(3) and 42 U.S.C. § 1986. Given the compelling facts documented in this article, plaintiffs counsel should have little difficulty meeting this burden.

### 3. Arizona Tort or Civil Racketeering Laws

Interestingly, Arizona has passed a state RICO statute<sup>228</sup> that offers many of the same advantages as its federal predecessor. For instance, it allows civil suits against unlawful racketeering enterprises and permits treble damages.<sup>229</sup> Unlike federal RICO, Arizona RICO permits recovery by plaintiffs who have sustained personal injuries as well as harm to their property or business interests.<sup>230</sup> Thus, under Arizona RICO, migrant victims would be able to sustain a legal action based on the physical injuries they have suffered as a direct result of rancher violence. Additionally, this would permit private counsel to litigate against local officials and all of CCCC's intrastate networks. Unfortunately, a state RICO action would not allow plaintiffs to pursue CCCC's interstate partnerships with VCT or Ranch Rescue.<sup>231</sup>

The Arizona statute defines racketeering as certain criminal acts "committed for financial gain."<sup>232</sup> Thus, plaintiffs must prove an economic motivation driving CCCC's activities. While it is clear that discriminatory animus is the chief factor fueling rancher actions, counsel may convincingly establish that ranchers have realized substantial economic benefit as a result of their racketeering activities. First, ranchers have excluded persons who they claim have damaged their private properties; hence, they

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227. See Mock Federal Complaint, *supra* note 150, at 46.

228. ARIZ. REV. STAT. §§ 13-2301 to 13-2317 (2001).

229. See *id.*

230. See *Acolla v. Peralta*, 721 P.2d 1162, 1164 (Ariz. Ct. App. 1986).

231. Interstate networks could not be sued under Arizona RICO because Arizona's racketeering statute only applies to intrastate racketeering enterprises.

232. ARIZ. REV. STAT. § 13-2301(D)(4) (2001).



have preserved the future value of their land with the aid of others. Second, ranchers have expressly solicited and accepted material resources to make repairs and upgrades to their ranches, which they could not have achieved but for their racketeering activities.

While there are strong advantages to using state law, there are equally powerful disadvantages that make such actions tactically problematic. Depending on the action employed, plaintiffs might not be able to stop all of CCCC's conspiratorial activities or hold local officials accountable for their misconduct.<sup>233</sup> There are substantial logistical challenges to consider as well. First, suing individuals under Arizona state law alone would require that these actions remain in state courts where local judges and juries might be overly sympathetic to rancher defenses. Second, legal teams would have to coordinate their efforts to ensure that all culpable defendants were being sued.

In defending their activities, ranchers may argue three main defenses: assumption of the risk, self-defense, and trespass.<sup>234</sup> The assumption of the risk argument will fail because it is not a valid defense to intentional torts like assault, aggravated assault, and assault by vicious animal.<sup>235</sup> It would also be difficult for ranchers to successfully argue a self-defense claim, given that ranchers accost unarmed migrants with assault weapons after tracking them with dogs. Likewise, trespass arguments will be unsuccessful because ranchers still have a duty to conduct their activities so as not to subject others to foreseeable or unreasonable risks.<sup>236</sup> The hyper-confrontational nature of rancher actions creates an unreasonable risk of harm to migrant crossers. Moreover, migrants are in transit across land holdings, rather than entering property for the express purpose of invading the land. The transitory nature of migrant crossings obviates any serious threats posed by traditional trespass concerns, such as adverse possession.<sup>237</sup>

Given that ranchers are forcefully transferring migrant

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233. Municipal officials may enjoy some form of qualified immunity from private tort actions.

234. See Accompanying Text to Mock Federal Complaint, *supra* note 150, at 25-26.

235. *Id.*

236. See *Newman v. Maricopa County*, 808 P.2d 1253, 1256 (Ariz. Ct. App. 1991); See also Accompanying Text to Mock Federal Complaint, *supra* note 150, at 25-26.

237. See 5 GEORGE W. THOMPSON, THOMPSON ON REAL PROPERTY, ch. 43, at 433-91 (1965 & supp. 1977).

victims to INS officials before migrants are able to file police reports about the crimes ranchers have committed against them, state prosecutors could also play an important role by filing criminal obstruction charges such as tampering with a witness,<sup>238</sup> tampering with physical evidence,<sup>239</sup> and obstructing a criminal investigation.<sup>240</sup> In light of Arizona's commitment to victims' rights, this would be an appropriate use of prosecutorial resources.<sup>241</sup>

Additional state claims include endangerment,<sup>242</sup> kidnapping,<sup>243</sup> assault,<sup>244</sup> aggravated assault,<sup>245</sup> and state racketeering.<sup>246</sup> An action that conjoins § 1985(3) and § 1986 claims, along with pendant state claims, may offer the best strategy for obtaining effective relief and ending vigilante violence against migrant persons. Applied to VREs, this combination has the potential to halt rancher violence and prevent the infliction of their hate-based activities well into the future.

Plaintiffs' lawyers might want to consider bundling their efforts through a select group of private law firms. Private law firms with a public interest orientation can play an important role in identifying and developing personal tort claims against individual ranchers by migrant victims. The most challenging aspect of these actions may be to coordinate efforts to ensure that all culpable defendants were being sued. Perhaps a local bar association or public interest group could facilitate these efforts.

#### IV. Exorcising Tombstone's Evil Spirits

This analysis suggests that the most pragmatic legal strategy may be to create a litigation package that conjoins a 42 U.S.C. § 1985(3) and a 42 U.S.C. § 1986 action, along with pendant state claims, in federal court. This would remove the dispute from locally biased conditions, offer strong possibilities for injunctive and declaratory relief, and provide substantial compensatory awards for migrant victims. Perhaps it is through the artful use of

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238. See ARIZ. REV. STAT. § 13-2804 (2001).

239. See *id.* § 13-2809.

240. See *id.* § 13-2409.

241. See discussion of Arizona's commitment to victim's rights *supra* note 223.

242. ARIZ. REV. STAT. § 13-1201 (2001).

243. *Id.* § 13-1304.

244. *Id.* § 13-1203.

245. *Id.* § 13-1204.

246. *Id.* § 13-2314.

federal and state claims that public interest lawyers can finally exorcise *Las Luces Fantasma*s that continue to haunt the parched deserts of Tombstone.