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Steven W. Bender

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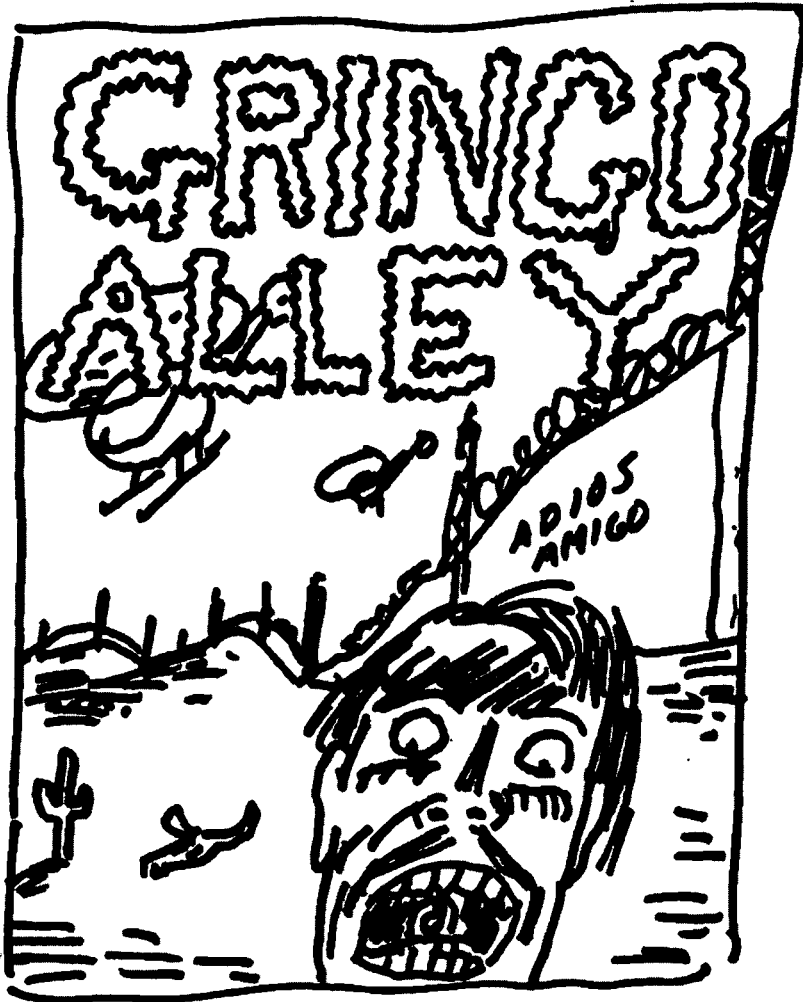


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Gringo Alley

*Steven W. Bender**

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INTRODUCTION

I shared much with my dear departed friend and colleague Keith Aoki that resonates with this piece. We traveled in some of the same scholarly and activist circles, particularly after Keith connected me to other scholars of color and helped me find my scholarly voice on the marginalization of Latinas/os. We shared a love of science fiction, in print and film,¹ particularly schlock dystopian films such as *Road Warrior* (1981), *C.H.U.D.* (1984), *Soylent Green* (1973), *Starship Troopers* (1997),² *They Live* (1988), and *The Terminator* (1984). We both applauded rebellious rage against an unjust system, actual and imagined, as when actor/writer/director Cheech Marin in *Born in East*

School of Law. Keith Aoki sketched the pen drawing that opens this Article in about five minutes during an otherwise unmemorable faculty meeting in which we passed notes with ideas for the Gringo Alley project I discuss below. Even in that sometimes stilted setting, Keith's creative flame was ever burning. Professor Sylvia Lazos, with whom we had co-authored an article on the 2003 California recall election, *Race and the California Recall: A Top Ten List of Ironies*, also agreed to participate in an early version of this project.

¹ Keith's love of science fiction infused several of his scholarly works. See, e.g., Keith Aoki, *Cities in (White) Flight: Space, Difference and Complexity in LatCrit Theory*, 52 CLEV. ST. L. REV. 211, 213-14 (2005) (describing James Blish's science fiction novels to introduce ideas related to topic of decentralization); Keith Aoki, *One Hundred Light Years of Solitude: The Alternate Futures of LatCrit Theory*, 54 RUTGERS L. REV. 1031 (2002) (introducing collection of writings on LatCrit Theory through comparisons with "alternate realities and parallel universes"); Keith Aoki, *P.I.E.R.R.E. and the Agents of R.E.A.S.O.N.*, 57 U. MIAMI L. REV. 743 (2003) (using science fiction inspired comic strip to address Peter Schlag's critique of legal scholarship); Keith Aoki & John Shuford, *Welcome to Amerizona — Immigrants Out!: Assessing "Dystopian Dreams" and "Usable Futures" of Immigration Reform, and Considering Whether "Immigration Regionalism" Is an Idea Whose Time Has Come*, 38 FORDHAM URB. L.J. 1, 15-17 (2010) (positing Arizona and more broadly current U.S. immigration policy, reliant on racial profiling and technology, as a dystopia and warning of a future of militarized surveillance and enforcement against undocumented immigrants and their U.S. born children).

² Keith would lament how the main character of Robert Heinlein's 1958 novel *Starship Troopers*, Juan "Johnny" Rico, of Filipino background, was de-raced in the film version as Johnny Rico and played by an Anglo actor. See *STARSHIP TROOPERS* (TriStar Pictures 1997) (featuring actor Casper Van Dien as "Johnny Rico").

L.A. (1987) railed against border enforcement by leading a hillside throng of undocumented laborers safely across the U.S. border.³ Many of our daily conversations over the years acknowledged the growing and horrific backlash against undocumented immigrants and Mexicans generally, a development we both felt would rank in history's dustbin with the internment⁴ and other regrettable government policies. We lamented California's election of the Governor⁵ — Arnold Schwarzenegger — who despite his own immigrant roots encouraged debasement of Latina/o undocumented immigrants.⁶ We were hopeful for transcendent social policy to emerge through activist movements valuing the contributions of immigrants and other marginalized groups.⁷ And we were both thrust into the molten core of an incendiary dean search at the University of Oregon School of Law that challenged our optimism while it emboldened our scholarly resolve.

In early 2006, in the throes of that dean search, we began to collaborate on an article⁸ that would channel into print our anger and disappointment over the institutional marginalization of Latinas/os. As I prepared for a faculty visit to UNLV and Keith relocated to the University of California, Davis, which would become his scholarly home, we exchanged ideas to sketch through art and words a dystopian immigration vision centered in the Southwestern United

³ Keith loved this film and would emulate some of its dialogue and scenes. What depressed us, though, was the realization that border dynamics changed after its release; rather than an urban crossing en masse near San Diego, many of today's undocumented laborer crossings are in isolated and perilous desert locations in small groups, braving the elements and other hazards of a crossing far from population centers.

⁴ See generally Keith Aoki, "Foreign-ness" & Asian American Identities: *Yellowface, World War II Propaganda, and Bifurcated Racial Stereotypes*, 4 ASIAN PAC. AM. L.J. 1, 40 (1996) (connecting the stereotype of Japanese Americans as racially foreign with their internment during World War II). Keith's father was interned at the Gila River Internment Camp in Arizona.

⁵ *Governator Definition*, URBAN DICTIONARY, <http://www.urbandictionary.com/define.php?term=governator> (last visited Feb. 2, 2012) ("A machine sent back in time to terminate Gray Davis and become GOVERNER [sic] of CALEEFORNIA.").

⁶ See Bender et al., *Race and the California Recall: A Top Ten List of Ironies*, 16 BERKLEY LA RAZA L. REV. 11, 20 (2005).

⁷ See generally Steven W. Bender & Keith Aoki, *Seekin' the Cause: Social Justice Movements and LatCrit Community*, 81 OR. L. REV. 595 (2002) (addressing LatCrit and Latina/o antisubordination movements in introduction to symposium cluster).

⁸ Among the projects I discussed with Keith that our crowded schedules did not allow us to undertake or complete is a book titled "Reel Property" that would address cinematic treatment of property law issues.

States, titled “Gringo Alley.”⁹ With the upheaval of our respective moves and packed scholarly agendas, we never completed the project, despite returning to it several times in subsequent years.¹⁰

In this tribute Article, I sketch the plot and themes of Gringo Alley as we envisioned its gauntlet of borderland hyper-security. I also confront some of the frightening developments in immigration policy we failed to anticipate in imagining a dystopian near future of immigration policy. In some ways, these developments approach or match the exaggerated treachery we foresaw in Gringo Alley. Finally, I struggle to find optimism in the form of resistance to the anti-immigrant backlash — some hero or heroine or strategy or convergence that would have supplied (and may still supply) a meaningful counterpunch to the horrors we sketched.

I. GRINGO ALLEY’S DYSTOPIA

At the time we first conceived Gringo Alley in early 2006, vigilantes and other crude approaches to border security dominated debates on U.S. immigration policy. Initiated in 2005, the Minuteman Project brought armed volunteers to the U.S.–Mexico border in an attempt to self-enforce immigration laws.¹¹ Although then-Governor Schwarzenegger hailed this citizen militia as doing a “terrific job,”¹² Keith and I saw the Minutemen as an ominous force that helped foster the current public perception that undocumented immigrants pose unchecked threats to our safety and well being. Reacting to this

⁹ Among the other titles we considered were “Hasta Las Vegas Baby,” “Escape from LA,” “Escape from Mexifornia,” and “Remember the Alamo.” “Gringo Alley,” among other uses, appeared in a 1996 *New York Times* article as a reference to the contemptuous architecture of Manhattan’s Sixth Avenue. Russell Baker, *Observer; Over on Gringo Alley*, N.Y. TIMES, Oct. 1, 1996, at A25. Previously, Keith had lived in New York City and written a song, *Catfish Willie*, about his experiences there that included a reference to a neighborhood: Gringo Alley. Audio tape: *Catfish Willie* (on file with author).

¹⁰ Part of the reason the project remained unfinished is that it brought painful memories of that dean search to the surface. Similarly, I failed to finish a book project that stemmed from that experience and which aimed to lift my spirits from those miserable doldrums and lack of faith. Perhaps in the aggregate these projects served their purpose as outlets for our shared and individual anger-mixed-with-hope that racial embarrassments would diminish in society over time, particularly within our academic homes.

¹¹ STEVEN W. BENDER, *ONE NIGHT IN AMERICA: ROBERT KENNEDY, CÉSAR CHÁVEZ, AND THE DREAM OF DIGNITY* 114 (2008).

¹² Peter Nicholas & Robert Salladay, *Gov. Praises “Minuteman” Campaign*, L.A. TIMES (Apr. 29, 2005), available at <http://articles.latimes.com/2005/apr/29/local/megovernor29>.

sentiment, in December 2005 Congressional lawmakers in the House passed a draconian bill titled the Border Protection, Antiterrorism, and Illegal Immigration Control Act¹³ that, among other things, would have made it a felony offense to assist an undocumented immigrant — perhaps even by supplying food, water, or shelter to an imperiled immigrant. Although this portion of the bill was defeated, its anti-immigrant and border security imperatives led Congress to enact the Secure Fence Act in 2006, which authorized 700 miles of border fencing.¹⁴

Gringo Alley's plot came together in this toxic climate of vigilantes marauding in the desert accompanied by calls to wall off our entire southern border. Using the medium of comic art, by which Keith had indelibly marked legal academia,¹⁵ we set our story of risk and resistance in 2013, then two Presidential elections forward. President Schwarzenegger took office earlier that year after states rushed to ratify a constitutional amendment allowing long-time U.S. residents, even if European-born (but not Spanish), to qualify for the U.S. presidency. Los Angeles and Washington, D.C., remained restricted zones after terrorist nuclear attacks devastated both cities in 2011, leading to the establishment of a temporary White House in the commandeered Luxor hotel in Las Vegas. In this climate of hyper-suspicion of Latinas/os,¹⁶ Schwarzenegger had won the election

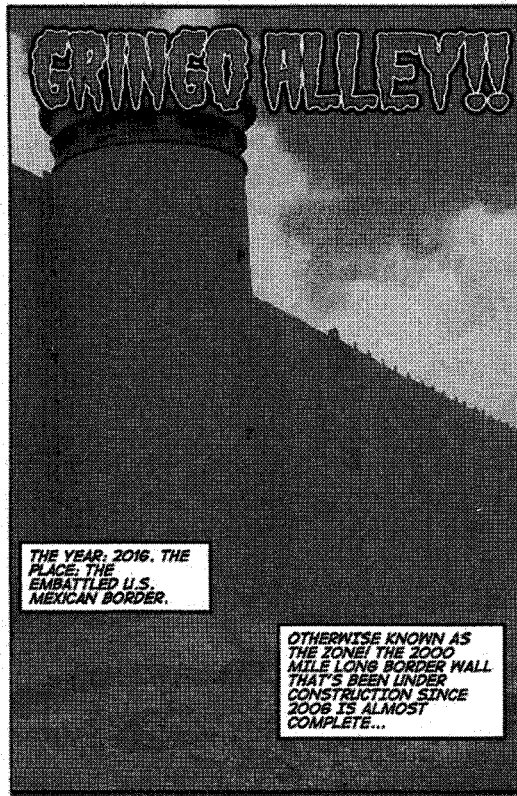
¹³ Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005, H.R. 4437, 109th Cong. (2005).

¹⁴ See Secure Fence Act of 2006, Pub. L. No. 109-367.

¹⁵ Keith's legal scholarship employing the medium of comic book art includes KEITH AOKI ET AL., *BOUND BY LAW?: TALES FROM THE PUBLIC DOMAIN* (2006), Aoki, *P.I.E.R.R.E.*, *supra* note 1, Keith Aoki, *Pictures Within Pictures*, 36 OHIO NORTHERN U. L. REV. 805 (2010) and Keith Aoki & Garrett Epps, *Dead Lines, Break Downs & Troubling the Legal Subject or "Anything You Can Do, I Can Do Meta,"* 73 OR. L. REV. 551 (1994). Embodying Keith's aim to expand the public domain, his co-authored comic book on copyright law, *Bound by Law?*, is available for free at <http://www.thepublicdomain.org/wp-content/uploads/2009/04/bound-by-law-duke-edition.pdf>. When I suggested to Keith in 2007 that he create a website for his comic works to make them available for purchase, and on which to post our Gringo Alley project and its subsequent iterations, he replied with his usual vigor and disdain for self-promotion that he drew comics for amor, "not filthy lucre." Email from Keith Aoki to author (Jan. 29, 2007, 18:18 PST) (on file with author).

¹⁶ Latinas/os played no role in planning or executing these fictional attacks. See generally Steven W. Bender, *Sight, Sound, and Stereotype: The War on Terrorism and Its Consequences for Latinas/os*, 81 OR. L. REV. 1153 (2002) [hereinafter *Sight, Sound, and Stereotype*] (suggesting the ways in 9/11's wake by which Latinas/os might be constructed as potential terrorists or as aligned to aid terrorist causes despite the utter absence of Latina/o involvement in those attacks).

handily.¹⁷ His success was ensured when federal agents arrested his Democratic challenger Antonio Villaraigosa, former mayor of Los Angeles, and sent him to Guantánamo Bay as a suspected enemy combatant for his affiliation with the MEChA student organization.¹⁸



¹⁷ Alternatively, we supposed that Schwarzenegger might have simply seized power in the wake of the post-apocalypse chaos and declared himself president for life, with our storyline set instead in 2016 as reflected in some sketches Keith undertook later in 2006, one of which is reproduced here (drawn on or about July 14, 2006).

¹⁸ This plot wrinkle stemmed from a charge leveled by a national conservative radio commentator, Lars Larson, who interviewed me on-air in 2002 as a faculty advisor to the University of Oregon's MEChA (Movimiento Estudiantil Chicano de Aztlán) chapter. Larson sought to construct this academic organization, dedicated to academic success and equality, as a terrorist group, aligned with violent tactics in the Middle East, by asking me the outrageous question, "When will the suicide bombings start in Aztlán?" See Bender, *Sight, Sound, and Stereotype*, *supra* note 16, at 1158. For more background on Lars Larson's Show, see generally <http://www.larslarson.com/> site.

We assumed Congress, by means of what we named the “Save America Wall Act,” had mandated construction of a border wall that spanned the entire U.S.–Mexico border — which the actual Secure Fence Act of 2006 partially implemented. Although our storyline predicted, again accurately, that construction of the wall/fence would languish,¹⁹ we supposed that the 2011 terrorist attacks would jumpstart construction. By the date of our storyline in 2013, a 200-mile stretch remained unbuilt in the most isolated terrain in Arizona. Gringo Alley referred to this territory of desolation and desperation where undocumented immigrant laborer entry was focused.²⁰

As we initially conceived the piece, vigilante Minutemen patrolled Gringo Alley in packs of weapons-laden dune buggies and superchopped hogs inspired by *Road Warrior*. Despite the gauntlet faced by immigrants in this treacherous pathway to U.S. jobs, employers kept calling and immigrants kept coming. Neither President Schwarzenegger nor his vice president, Tom “Tank” Tancredo, could fathom why immigrants continued to risk passage through the hazardous borderlands,²¹ but they pledged a military solution against

¹⁹ The Secure Fence Act authorized construction of 700 miles of double-reinforced fencing to augment and extend the mostly urban border walling and fencing previously in place. But a subsequent amendment eliminated the double-fencing requirement and only a few miles of double fencing resulted. See Jim DeMint, *Finish the Border Fence Now*, JIM DEMINT (May 17, 2010), http://demint.senate.gov/public/index.cfm?p=OpEds&ContentRecord_id=1773c842-ebe8-4aae-b2a3-2846545bdae5&ContentType_id=1b1318b3-cb83-47e4-9ad1-749dd7a5da53&Group_id=2506c6ce-d09f-4843-9b28-306230cf8ec6. In October 2011, presidential hopeful Michele Bachmann attempted to revive her failing campaign by pledging to support completion of double-fencing along the entire border by the end of 2013. Seema Mehta, *Bachmann Signs Pledge to Finish Border Fence: Struggling to Regain Traction in the GOP Race, She Toughens Her Line on Immigration.*, L.A. TIMES, Oct. 16, 2011, at 18. She was the first candidate to sign the “Fence By Date Certain Pledge” proposed by the group Americans for Securing the Border. *Congresswoman Michelle Bachmann Signs Americans for Securing the Border “Pledge.”* AMS. FOR SECURING BORDER (Oct. 15, 2011), <http://americansforsecuringtheborder.com/congresswoman-michele-bachmann-signs-americans-for-securing-the-border-pledge/>.

²⁰ See generally STEVEN W. BENDER, *RUN FOR THE BORDER: VICE AND VIRTUE IN U.S.–MEXICO BORDER CROSSINGS* (December 2011) (forthcoming 2012) 129–32 (unpublished manuscript, on file with author) [hereinafter *Run for the Border*] (discussing the U.S. border enforcement policy, known as Operation Gatekeeper in the San Diego area, that armored urban entry points and similarly deflected and channeled undocumented immigrants into perilous desert routes far from the concentrated enforcement efforts).

²¹ Cf. KEVIN R. JOHNSON, *OPENING THE FLOODGATES: WHY AMERICA NEEDS TO RETHINK ITS BORDERS AND IMMIGRATION LAWS* 201 (2007) (“In our heart of hearts, we all know the answer [to why undocumented immigrants would risk their lives to come here]. Immigrants come in pursuit of the American Dream. They come for jobs. They come to join family members. Indeed, even for the undocumented, the United States is

what they called an “invasion.”²² Heading in a convoy of Hummers²³ to what they called the front line of the war on terror,²⁴ Arnold and Tank, along with War Secretary, rocker Ted Nugent,²⁵ joined the Minuteman patrols. Once there, Schwarzenegger transformed into a merciless cyborg, the Mexterminator, killing any immigrants he encountered.

Actual developments in immigration policy and practice shaped our story over time. Foremost, technology began to eclipse human intervention. By 2007, the Minuteman Project devolved into control struggles and litigation.²⁶ In April of that year, the *New York Times* reported that the Department of Homeland Security was constructing nine 100-foot towers in Arizona near the border to be equipped with radar-activated cameras that would convey images of undocumented immigrants to border agents.²⁷ This vision of a virtual border led me to propose a new narrative in which killer cyborgs or robots, equipped with similar on-board technology, completely replaced the then-feuding Minutemen and human border guards.²⁸

Additional technological advancements quickly morphed science fiction into reality. Later in 2007, Fox News reported on prototypes of

a land of great opportunity.”).

²² See Gringo Alley plot summary (on file with author). Among those using the military metaphor of invasion to describe Mexican immigration into the United States is Pat Buchanan. See PATRICK J. BUCHANAN, *STATE OF EMERGENCY: THE THIRD WORLD INVASION AND CONQUEST OF AMERICA* 7-18 (2006).

²³ The ostentatious Hummer convoy we envisioned became more eco-friendly over time. See Arnold Schwarzenegger Orders “Pimp My Ride” Engine for His Hummer, FREE PRESS RELEASE CTR. (Apr. 15, 2007), <http://www.free-press-release-center.info/pr0000000000000000004349.html> (describing the outfitting of Schwarzenegger’s Hummer with a biodiesel engine in 2007).

²⁴ Relatedly, in the 2000 film *Traffic*, Michael Douglas, playing the role of the U.S. drug czar, headed to what he called the “front lines” of the drug war — the Mexican border. *TRAFFIC* (USA Films 2000).

²⁵ Renowned for his hunting skills and love of weaponry, rocker “Terrible” Ted Nugent (author of *God, Guns, & Rock’N’Roll*) made clear his views on assimilation of Mexican immigrants while touring in Texas during 2000, telling a concert audience, “If you’re not gonna speak English, get the fuck out of America.” John Nova Lomax, *Racket: The Nudge Keeps on Offending All Sorts of People*, HOUS. PRESS (July 5, 2001), <http://www.houstonpress.com/2001-07-05/music/racket/>.

²⁶ See generally *Minuteman Project*, WIKIPEDIA, http://en.wikipedia.org/wiki/Minuteman_Project (last visited Feb. 18, 2012) (describing organization, including “internal strife”).

²⁷ Randal C. Archibold, *28-Mile Virtual Fence Is Rising Along the Border*, N.Y. TIMES, June 26, 2007, at A12.

²⁸ Revelations of U.S. border agent cruelty that came to light in 2011 suggest that perhaps human border agents are no more compassionate than cyborgs or robots would be. See *A CULTURE OF CRUELTY*, <http://www.cultureofcruelty.org/> (last visited Feb. 3, 2012) (detailing abuse documentation).

fruit-picking robots with near-human limbs for use in California grape fields and agriculture, deploying these map-guided robots to gently pluck grapes deemed ripe by digital imaging technology.²⁹ Presumably these robots might ultimately replace decades of U.S. immigrant labor and, courtesy of NAFTA, might be built in borderland maquiladora factories with Mexican labor. Robot laborers might appease agribusiness as they are complacent and will neither organize into unions nor demand higher (i.e., fair) wages. The robot laborer would not desire citizenship nor bring children who need local services such as public education.³⁰ Robotic technology, as portended by *RoboCop* (1987), also had security application, even military value, against those immigrants lured across the border for jobs technology couldn't replace. By 2010, South Korea had deployed robotic border guards capable of detecting and killing unwanted entrants.³¹ Equally chilling, the European Union is currently developing hi-tech border enforcement through drone planes and even combat robots.³² Along the U.S.–Mexico border, the U.S. Customs and Border Protection now deploys pilotless drones equipped with infrared cameras and radar, and controlled by flight crews in command centers, to detect unlawful ground entry.³³ Will ground combat robots be far behind?

²⁹ *Farmers Mull Replacing Illegal Workers with Robots*, FOXNEWS.COM (Sept. 6, 2007), <http://www.foxnews.com/story/0,2933,295965,00.html> (noting that growers of low- and mid-grade grapes are using mechanical harvesters, but premium grape picking still demands human fingers that the robotic technology hopes to replace).

³⁰ See generally Lolita K. Buckner Inniss, *Bicentennial Man — The New Millennium Assimilationism and the Foreigner Among Us*, 54 RUTGERS L. REV. 1101 (2002) (discussing through a LatCritical lens the film adaptation of science fiction writer Isaac Asimov's BICENTENNIAL MAN (1976) that situates an android as a domestic servant who lives to serve humans with none of the “negatives” associated with human help, such as an appetite and bathroom breaks).

³¹ *South Korea Deploys Robot Capable of Killing Intruders Along Border With North*, TELEGRAPH (July 13, 2010), <http://www.telegraph.co.uk/news/worldnews/asia/southkorea/7887217/South-Korea-deploys-robot-capable-of-killing-intruders-along-border-with-North.html>.

³² Ben Hayes, *The Robot Armies At Our Borders*, EUROPEANVOICE.COM (Feb. 12, 2010), <http://www.europeanvoice.com/article/imported/the-robot-armies-at-our-borders/69598.aspx> (suggesting that “the EU stands on the cusp of a shameful investment in a dystopia”).

³³ See Brad Watson, *Robot Aircraft Keeping Watch over Texas Border*, WFAA.COM (Oct. 11, 2010), <http://www.wfaa.com/news/texas-news/Robot-aircraft-keeps-watch-over-Texas-border-104752099.html> (announcing the deployment of a Predator drone in Texas, adding to the fleet of three drones based in Arizona); see also Rania Khalek, *The Rise of Killer Drones That Can Think for Themselves*, ABUNDANTHOPE.NET (Oct. 6, 2011), http://abundanthope.net/pages/Environment_Science_69/The-Rise-of-Killer-Drones-That-Can-Think-for-Themselves_printer.shtml (suggesting that the United States is only a decade or so away from the capability to deploy pilotless drones that

Concurrent with our menacing immigration portrayal, robotic technology infused other creative borderlands canvases. Described by the *New York Times* as “a dystopian fable,”³⁴ the 2008 science fiction film *Sleep Dealer* painted a grim future of Mexican laborers in borderlands cyber factories connected by nodes to manipulate robots undertaking U.S. work. Today’s coyote, leading immigrants across perilous desert passages on foot, was transformed into a “coyotek,” arranging the surgical implant of nodes into laborers. Once their nervous systems were connected to the global economy, these migrants could control U.S.-based robots performing high-rise construction in San Diego, picking oranges in Florida, or slaughtering livestock in Iowa.³⁵ At the same time as robots replaced immigrant labor within the United States, the border was effectively walled off from immigrant entry. When I saw this film in late 2010, I knew Keith would share my delight because it intelligently exposed U.S. prerogatives and preferences of cheap labor performing dangerous tasks, yet without those “damn immigrants.”³⁶ Moreover, as discussed below, the film supplied insight on how we might conclude our own dystopian legal fable.

II. DYSTOPIA IN THE U.S. SOUTHWEST

When we first conceived the Gringo Alley project in 2006, our plot of an immigration gauntlet was decidedly federal in orientation. It assumed that federal law, alone, might authorize and fund a border wall, and that the operatives of border enforcement would be federal officials, with citizen Minutemen acting in concert with them. As detailed below, Arizona’s subsequent experience has challenged those assumptions.

Keith’s views on the appropriate role of states and local government in immigration policy were usually peppered with optimism.³⁷ Despite

can seek and destroy military targets while collaborating with each other without the need for any concurrent human guidance).

³⁴ A.O. Scott, *Big Ideas in Deceptively Small Packages*, N.Y. TIMES, Mar. 26, 2008, at E1.

³⁵ Despite the perils of the maquiladora model of labor, which I detailed in *RUN FOR THE BORDER*, *supra* note 20, at ch. 3, in some ways the current miserable treatment of migrants who risk their lives to cross the border to work in dangerous jobs surpasses the dystopia imagined in *Sleep Dealer*. Surely remotely controlling a laboring robot is less risky than working in a scorching and pesticide-ridden field of U.S. dreams.

³⁶ Inspired by EDIBERTO ROMÁN, *THOSE DAMN IMMIGRANTS: AMERICA’S HYSTERIA OVER UNDOCUMENTED IMMIGRATION* (forthcoming 2012).

³⁷ See, e.g., Keith Aoki et al., *(In)visible Cities: Three Local Government Models and Immigration Regulation*, 10 OR. REV. INT’L L. 453, 492-95 (2008) (discussing

capping Arizona's swift descent into the cauldron of hate. That bill authorizes Arizona to pursue an interstate compact to erect a border fence and, failing such an agreement, to proceed unilaterally. Although lacking any appropriation, the law contemplates and allows private donations and prison labor. Unbelievably, an official state government website invites donations toward an Arizona border fence,⁴⁴ while one of the state senators who sponsored the legislation solicits donations of wire fencing.⁴⁵ Regarding prison labor, back in 2006, Keith and I had bemoaned California Congressman Dana Rohrabacher, who quipped in March that year, "I say let the prisoners pick the fruits," as he condemned comprehensive immigration reform offering a chance at legalization for millions of undocumented workers in the United States.⁴⁶ Prior to his comments we had assumed, ironically, that the labor force building the somehow impenetrable wall on either side of the entry to Gringo Alley would be largely Mexican. Yet, after Rohrabacher's remarks, we intended to depict the labor force as prisoners of all backgrounds. Arizona may ultimately blur reality and dystopian fiction.

State and local anti-immigrant laws are not limited to Arizona, however.⁴⁷ Notably, Alabama enacted legislation in 2011 to criminalize undocumented immigrant status,⁴⁸ and Hazleton, Pennsylvania

⁴⁴ The project website warns of the lack of border fencing. See BUILD THE BORDER FENCE, <https://www.buildtheborderfence.com/azborder/info.xhtml> (last visited Feb. 18, 2012) ("As of the effective date of this bill, July 20, 2011, only approximately 685 miles of the nearly 2,000 mile long border between the United States and Mexico is 'fenced.' The vast majority of this existing 'fence' however, consists of barbed-wire, vehicle barriers, and inadequate materials that have minimal effectiveness in stopping illegal crossings. The approximately 1,315 remaining miles of the border currently have no fencing at all." (emphasis removed)).

⁴⁵ *Arizona Border Fence Could Start This Year, Lawmaker Says*, ASSOCIATED PRESSAZCENTRAL.COM (Sept. 3, 2011), <http://www.azcentral.com/news/articles/2011/09/03/20110903arizona-border-fence-construction-ON.html>.

⁴⁶ *Let Jailbirds Pick Fruit*, FOXNEWS.COM (Mar. 31, 2006), <http://www.foxnews.com/story/0,2933,189802,00.html>.

⁴⁷ See Aoki & Shuford, *supra* note 1, at 18 (stating that thousands of state legislative and local government proposals in recent years addressed immigration).

⁴⁸ Litigation challenging the law on preemption and other grounds has stalled implementation of Alabama's House Bill 56. See *United States v. Alabama*, No. 2:11-CV-2746-SLB, 2011 U.S. App. LEXIS 20942, at *20-21 (11th Cir. Oct. 14, 2011); Bill Mears, *Parts of Alabama Immigration Law Blocked by Federal Appeals Court*, CNN U.S. (Oct. 14, 2011), http://articles.cnn.com/2011-10-14/us/us_alabama-immigration-law_1_immigration-status-immigration-law-illegal-immigration?_s=PM:US (reporting on federal appeals court barring enforcement of provisions pending consideration by court of constitutional challenges). Other Southern states have targeted undocumented immigrants for draconian local policy, including Georgia's House Bill

enacted the Illegal Immigration Relief Act in September 2006⁴⁹ to outlaw employing undocumented laborers and renting housing to them. Still, Arizona remains the vortex of anti-immigrant policy and proposals. With the demise of the Minuteman Project and the squelching of some of Arizona's ranchers who literally hunted undocumented immigrants,⁵⁰ border crossers may no longer face the prospect of roving vigilantes aiming to intercept them.⁵¹ But the real life perils posed by a variety of threats, from drug cartels⁵² and the cruel elements of nature to Arizona tent prisons and the specter of state criminal sanctions, suggest that the reality of an Arizona border crossing today is no less risky than we imagined it in Gringo Alley.

Another dynamic we failed to anticipate in early 2006 was the mainstreaming of hate against undocumented immigrants, particularly politicians seemingly advocating the murder of border crossers. In depicting President Schwarzenegger murdering immigrants, we envisioned his transformation into a Mexterminator cyborg for that purpose. Even in the wasteland of our dystopic storyline, we couldn't fully imagine a human killing another simply for the crime of seeking economic survival. Yet in today's supercharged anti-immigrant climate, politicians can readily "joke" about the ways in which they would kill immigrant laborers crossing the border. Examples include

87 and South Carolina's Illegal Immigration Reform Act adopted in 2008, both embroiled in litigation. *See Georgia Latino Alliance for Human Rights v. Deal*, 793 F. Supp. 2d 1317, 1322, 1340 (N.D. Ga. 2011) (granting preliminary injunction against criminal enforcement provisions in sections 7 and 8 of Georgia immigration law); *United States v. South Carolina*, Nos. 2:11-cv-2958, 2:11-cv-2779, 2011 U.S. Dist. LEXIS 151549, at *77 (D.S.C. Dec. 22, 2011) (similarly granting preliminary injunction against some of the criminal enforcement penalties of South Carolina law).

⁴⁹ Although the Third Circuit had invalidated Hazleton's ordinances addressing employment of and rentals to undocumented immigrants, the Supreme Court remanded the case to the circuit court to consider the Court's decision upholding Arizona's e-verify employment law. *See City of Hazleton v. Lozano*, 131 S. Ct. 2958, 2958 (2011), *vacating* *Lozano v. City of Hazleton*, 620 F.3d 170 (3d Cir. 2010) (remanding in light of *Chamber of Commerce of United States v. Whiting*, 131 S. Ct. 1968 (2011)).

⁵⁰ *See* STEVEN W. BENDER, *TIERRA Y LIBERTAD: LAND, LIBERTY, AND LATINO HOUSING* 61-62 (2010) (describing lawsuits against border ranchers alleging excessive force).

⁵¹ Actor Steven Seagal, who once joined forces with Arizona's Sheriff Joe to capture undocumented immigrants, has since taken up arms at the U.S.-Texas border as a sheriff's deputy. *Steven Seagal: Gunning to Catch Illegal Aliens*, TMZ (Oct. 17, 2011), <http://www.tMZ.com/2011/10/17/steven-seagal-lawman-sheriffs-deputy-border-patrol-kill-puppy-guns-rifles/?adid=recentlyupdatedstories#.TqBN7s2HkhQ>.

⁵² *See generally* BENDER, *RUN FOR THE BORDER*, *supra* note 20, at ch. 9 (detailing threats posed by drug cartels against undocumented immigrants journeying through Mexico and the borderlands).

Kansas Republican lawmaker Virgil Peck, who equated hogs and immigrants by suggesting in 2011 that “if shooting these immigrating feral hogs [from helicopters] works [in Kansas], maybe we have found a (solution) to our illegal immigration problem.”⁵³ Later that year, Republican presidential hopeful Herman Cain proposed the murder of immigrant border crossers by different means in advocating a lethal electrified border fence.⁵⁴ Commenting on Cain’s ambivalence on whether his horrific remarks were a joke or an actual policy option, comedian Stephen Colbert quipped, “He’s joking, unless you’re into the idea, in which case he means it.”⁵⁵ Against this barbaric backdrop, Gringo Alley’s murderous cyborg seems almost human.

III. NINJAS IN DYSTOPIA

One familiar arc of dystopian stories and films is their hopelessness.⁵⁶ Often, the hero or heroine may survive, yet only to soldier on into the vast unknown of the tyrannical world. Still, most dystopian works we admired had a hero or heroine (particularly Linda Hamilton in *The Terminator*) who offered hope during at least the fleeting moment of resistance. In the context of our immigration odyssey set in Arizona’s Gringo Alley, we struggled to imagine from where that savior would emerge and what weaponry against the cruel system that savior would possess.

Keith envisioned a terrorist outfit, named Borders Libre, sabotaging the border wall akin to the environmental terrorists in *The Monkey Wrench Gang*.⁵⁷ Holed up in a tunnel near the border, these rebels adhered to the slogan he imagined: “As quick as the gringos build their wall, we blow it up.” Keith described the leader of Borders Libre

⁵³ Lynn Herrmann, *Kansas Lawmaker Compares Shooting Wild Hogs to Immigrants*, DIGITAL J. (Mar. 15, 2011), <http://digitaljournal.com/article/304685>.

⁵⁴ See Nia-Malika Henderson, *Herman Cain Meets with Sheriff Joe Arpaio, Stands by Electric Border Fence Comments*, WASH. POST (Oct. 18, 2011), http://www.washingtonpost.com/blogs/election-2012/post/herman-cain-meets-with-sherriff-joe-arpaio-stands-by-electric-border-fence/2011/10/18/gIQAju5luL_blog.html.

⁵⁵ The Colbert Report, *Indecision 2012 — Herman Cain’s Electrified Fence*, COLBERTNATION (Oct. 18, 2011), <http://www.colbertnation.com/the-colbert-report-videos/400077/october-18-2011/indecision-2012---herman-cain-s-electrified-fence> (including a video clip of Cain’s electrified fence proposal in which he suggests placing a sign on the Mexican side reading, presumably in Spanish, “It can kill you”). Our own conception of Gringo Alley assumed an electrified border fence (notes on file with author).

⁵⁶ See *Dystopia*, WIKIPEDIA, <http://en.wikipedia.org/wiki/Dystopia> (last visited Feb. 18, 2012).

⁵⁷ EDWARD ABBEY, *THE MONKEY WRENCH GANG* (1975).

as a spiky-haired, punk-tinged “anarchista” named Berta. In Keith’s rough sketches of *Gringo Alley*, Berta planned a surprise for President Schwarzenegger, who had descended on the border to celebrate what he thought was the demise of the rebels through public decapitations broadcast on Fox News, the sole authorized media outlet of the federal government. Although we never resolved the nature of her “surprise,” it likely would have involved a covert ninja attack, a tactic Keith would facetiously advocate in our conversations for widespread use in subverting abusive world governments to neutralizing perfidious law faculty.



I was hesitant about invoking Keith's Borders Libre model against U.S. violence directed at border crossers. I believed that "resistance is futile,"⁵⁸ at least when directly challenging U.S. military strength through targeted strikes. As I had written elsewhere, in the wake of the September 11 attacks, Latinas/os were somehow positioned in the American imagination as potential terrorists themselves or as aligned to aid terrorist causes.⁵⁹ Thus, border security-first advocates have invoked the war on terror as a convenient justification for armoring the border and abusing immigrant crossers.⁶⁰ Given the still-prevailing perception of Latinas/os as foreigners,⁶¹ and suspicions of their allegiance,⁶² I feared that armed resistance to U.S. border policy would unleash an armageddon of backlash against Latinas/os. Akin to the wholesale ousting of Mexicans and Mexican Americans during the Great Depression and later years when they were scapegoated for economic woes, with even citizen Latinas/os swept up in the frenzied enforcement net,⁶³ I worried that armed resistance might result in the annihilation of the Mexican people⁶⁴ and the internment of all U.S. residents of Mexican heritage. Relying on the false promise of superior power through ninja resistance, however precise and evasive, did not seem to offer hope of meaningful freedom from the dystopian Southwest we had depicted.

Rather than deploying violence against power, I favored relying on other familiar science-fiction tropes for inspiration. Among them are wiliness, discovering and then exploiting some weakness of the enemy,⁶⁵ and, my favorite, turning technology against itself. In this

⁵⁸ See *Borg* (*Star Trek*), WIKIPEDIA, [http://en.wikipedia.org/wiki/Borg_\(Star_Trek\)](http://en.wikipedia.org/wiki/Borg_(Star_Trek)) (last visited Feb. 18, 2012) (explaining the science-fiction origin of this catchphrase).

⁵⁹ See Bender, *Sight, Sound, and Stereotype*, *supra* note 16, at 1153-60.

⁶⁰ See Bender, *RUN FOR THE BORDER*, *supra* note 20, at ch. 9.

⁶¹ See BENDER, *GREASERS AND GRINGOS*, *supra* note 38, at 97-98.

⁶² See Bender, *Sight, Sound, and Stereotype*, *supra* note 16, at 1161-62.

⁶³ See BENDER, *RUN FOR THE BORDER*, *supra* note 20, at ch. 9.

⁶⁴ In this vein, Keith suggested that President Schwarzenegger eventually would declare war on Mexico as part of the ever-expanding war on terror and that the border, in addition to being a security zone, would become a war zone. In recent years, unabated U.S. drug demand and U.S. influence on Mexican drug enforcement, ultimately prompting horrific bloodshed, would supply another basis for military intervention in Mexico, aligned with the anti-immigrant forces. See *id.* Toward this aim, Presidential candidate Rick Perry suggested in 2011 that he was willing to employ U.S. troops to eradicate Mexican drug cartels. *Rick Perry Open to Sending U.S. Troops to Mexico to Battle Drug Cartels*, HUFFINGTONPOST (Oct. 1, 2011), http://www.huffingtonpost.com/2011/10/01/rick-perry-troops-mexico-drug-cartels_n_990419.html.

⁶⁵ For example, the capture of a "brain bug" in the film version of *Starship*

vein, the advent of militarized border robots supplied an alternate ending I proposed to Keith in 2008 — the Mexico-built robots might be programmed to cooperate with border crossers or even to sabotage U.S. border forces. For example, given the reality that organized border crossers, whether smuggling drugs or immigrant laborers, often bribe U.S. border officials to facilitate these entries,⁶⁶ it made sense that robots might similarly be programmed surreptitiously to permit or overlook certain crossings.⁶⁷ *Sleep Dealer* supplied us with a more powerful model of resistance through technology. As depicted in *Sleep Dealer*, Mexican workers staffed U.S. jobs from the Mexican borderlands, while U.S. workers controlled drones to protect U.S.-financed infrastructure in Mexico, here a dam, from aqua-terrorists. At the movie's conclusion, a drone pilot, sympathetic to the resistance, deployed his drone weaponry to destroy a dam and free a Mexican town from an oppressive U.S. water monopoly. Presumably the drones protecting Gringo Alley's border wall could be commandeered through hacked technology to destroy the object of their protection — the border wall.⁶⁸

Still, the prospects for Mexican immigrants would remain bleak, as U.S. forces might gather in retaliation as they would against the Libre forces. At best, the resistance we envisioned in Gringo Alley would allow renewed but temporary passage through the gauntlet for laborers aiming to work in miserable jobs for low pay while perhaps avoiding the localized immigration enforcement nets that awaited them. Eluding us were long-term solutions to tear down the walls, both physical and otherwise, that separate the United States from Mexico and that can be found in cities and states far from the borderlands. Our inability to imagine relief from the anti-immigrant onslaught at the border, and beyond, stemmed from the source of the threat. Rather than some military force or security barricade that could be vanquished, the real threat faced by Mexican immigrants and those supporting them is far more insidious and seemingly permanent —

Troopers (TriStar Pictures 1997) and the subsequent probing of its stored knowledge for insight on how to destroy the bug population.

⁶⁶ See BENDER, RUN FOR THE BORDER, *supra* note 20, at ch. 9.

⁶⁷ Here I had in mind RoboCop's directive, programmed by his corrupt creators, rendering the cyborg cop unable to arrest them. See ROBOCOP (Orion Pictures 1987).

⁶⁸ As discussed in *supra* note 33, at present the drones guarding the U.S.-Mexico border are equipped with cameras and radar rather than weaponry. See also Abby Ohlheiser, *Computer Virus Reportedly Hits U.S. Drones*, SLATE (Oct. 7, 2011), http://slatest.slate.com/posts/2011/10/07/drone_virus_wired_reports_that_u_s_predator_and_reaper_drones_in.html (discussing a persistent virus tracking the remote commands as Nevada command center pilots fly drone missions).

the pervasive anti-immigrant sentiment in the United States. This sentiment in the hearts and minds of many, if not most, U.S. residents eludes our science fiction-steeped strategies of resistance, particularly those based on physical resistance that would only embolden the prevailing prejudices and fears. Engendering compassion or even tolerance for immigrant laborers needed in our workforce was perhaps a task too great for us to imagine or capture in the medium and message of *Gringo Alley*, and it awaits the efforts of immigration advocates in the years ahead.

CONCLUSION

Our *Gringo Alley* project painted a dim future for Latina/o immigrants seeking a chance at economic survival, and for those compassionate immigration reformists who appreciate their virtue. Yet the 2004 science fiction film *A Day Without a Mexican*⁶⁹ and demographic reality suggest an equally bleak future for all U.S. residents — the prospect of economic collapse in a landscape of stifled Mexican immigration coupled with an aging U.S. population.⁷⁰ With no one to pick rotting crops (save perhaps for a nimble robot),⁷¹ change the bedpans of crowded U.S. nursing homes, boost housing markets through immigrant demand, and perform other service industry and blue-collar tasks for which we generally rely on immigrants, the U.S. economy and standard of living will plummet and force policies that actively seek and recruit immigrant workers, wherever they can be found. Perhaps the happy ending will come from the widespread realization that artificial borders and the government's draconian enforcement-at-any-cost strategies are more likely to

⁶⁹ The film depicts the economic chaos that follows the disappearance of California's Mexican population when an eerie pink fog surrounds the state. Exposed to harsh realities of an agriculture-dependent state without Mexican labor, Californians triumphantly welcome the reappearance of Mexican laborers at the film's conclusion. *A DAY WITHOUT A MEXICAN* (Altavista Films 2004).

⁷⁰ See BENDER, *RUN FOR THE BORDER*, *supra* note 20, at 183-84. In addition to the prospect of an aging U.S. population, consider that Mexico's population is aging too, in large part driven by the decline of Mexico's birthrate — from 6.1 children per Mexican woman in 1974 to just 2.3 children on average by 2009. *Id.*

⁷¹ See Ashley Portero, *Illegal Immigrant Crackdown in Alabama Leads to Severe Agricultural Labor Shortage*, INT'L BUS. TIMES U.S. (Oct. 21, 2011), <http://www.ibtimes.com/articles/235590/20111021/alabama-immigration-law-agricultural-labor-shortage.htm?cid=2> (discussing the suffering of Alabama farmers as state law prompted undocumented laborers to flee).

impede than to foster the pursuit of utopia, or at least a “usable future.”⁷²

For all his fiery “moo ha ha,”⁷³ Keith Aoki was a gentle soul who relentlessly pursued equality of opportunity for our most vulnerable and exploited populations. He was genuinely disturbed by our deteriorating treatment of immigrants — a barometer of our (ill) regard for vulnerable populations generally.⁷⁴ Those of us continuing Keith’s work must channel his tireless drive, compassion, and immunity from discouragement, knowing our struggle ahead for immigrant dignity will be long and that we must “beat on, boats against the current.”⁷⁵

⁷² See Aoki & Shuford, *supra* note 1, at 30-34 (describing the concept of a “usable future” in the context of immigration).

⁷³ In our conversations, Keith routinely used the phrase “moo ha ha” in multiple dimensions, including as a form of evil laughter, as a noun for institutional gossip, and as a signifier for any chaos, upheaval, or targeted intervention.

⁷⁴ See, e.g., Robert S. Chang & Keith Aoki, *Centering the Immigrant in the Inter/National Imagination*, 85 CALIF. L. REV. 1395, 1396 (1997) (“How a nation treats the immigrant speaks volumes about the nation.”).

⁷⁵ F. SCOTT FITZGERALD, *THE GREAT GATSBY* 189 (1925) (cited in Keith Aoki, *Introduction: Language is a Virus*, 53 U. MIAMI L. REV. 961, 964 (1999)).