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Declaring Open Season: The Outbreak of Violence against Undocumented Immigrants by Vigilante Ranchers in South Texas.

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DECLARING OPEN SEASON: THE OUTBREAK OF VIOLENCE AGAINST UNDOCUMENTED IMMIGRANTS BY VIGILANTE RANCHERS IN SOUTH TEXAS

SARA A. MARTINEZ†

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† St. Mary's University School of Law, Candidate for J.D., May 2005; Texas A&M University, College Station, B.B.A. in Finance, May 2000. I wish to thank my family and friends for all of their patience, love and support. To my parents, Alberto and M^a Cristina Martinez, and my sister, Lucy, your perpetual faith continues to inspire me. Everything that I have become and ever will be is due to you and your sacrifices. To my *abuela*, Sofía G. de Villarreal, thank you for your endless prayers and lighting of *velas* for me. Sincere gratitude goes to my editor, James R. Walker, for his guidance, encouragement, and confidence in me. I would also like to thank the Staff Writers and Editors of *The Scholar* for their time and diligence spent on refining this comment, especially Nohl Bryant, Nikki Hearon, J.J. Zamora and Kate Kilanowski. Your input and hard work have been invaluable to me and is greatly appreciated. Special thanks to Professor José Roberto Juárez, for encouraging me to address this issue, Professor Reynaldo Anaya Valencia, for providing me with valuable resources for this topic, and Professor Plácido Gómez, for proofreading this comment. To my *bisabuelos*, for moving their families from Mexico to Laredo, Texas, this is my tribute to you.

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The first shot struck near his right foot, kicking up a spray of dirt as Javier Sanchez ran for his life through a thicket of cedar and sage. When the second shot rang out, he looked back to see his companion fall.

Sanchez took cover in the brush. The old man with the gun lit a pipe and sat down for a smoke. A few hundred feet from where Sanchez hid, Eusebio de Haro lay bleeding in a clump of cactus — shrieking in pain, pleading for water.

Water was all they had wanted in the first place.

According to investigators and the story Sanchez recounted for lawyers, he and de Haro had hiked nearly two days to this isolated homestead 45 miles north of the border. The day before had been 105 degrees. While the temperature had dipped, the men were tired and thirsty, their water jugs almost empty.

“Excuse me, please,” Sanchez had called out to the house trailer, an oasis in this arid patch of South Texas range. A woman came to the door. And in his best English, Sanchez implored: “Could we get some water?”

But the woman refused. Instead, she cried out to her husband: “Call the Border Patrol!”

Sanchez and de Haro took off down the road; the couple followed in their truck. When they spotted the two men, they got out and ordered them to sit tight; the Border Patrol was on its way.

That’s when Sanchez spotted the gun and fled.

Hiding now in the brush, Sanchez saw the woman approach de Haro, who begged for help. She suggested he stick his finger in the bullet hole to stop the bleeding.

Five minutes passed. Ten. Twenty. Finally, de Haro fell silent.

Sanchez crept away. The next day, when he turned himself in, authorities confirmed what he'd known in his heart: In that clump of Texas cactus, Eusebio de Haro bled to death.

The shooter claimed self-defense, but authorities dismiss that. De Haro, they note, was shot in the back of the leg as he ran.¹

I. INTRODUCTION

Each year, over one million undocumented immigrants make their way across the U.S.-Mexican border.² Like the original European settlers, they come to America in search of a better life.³ Their efforts reflect the desperate situations that they are fleeing—war, oppression, corruption, and starvation.⁴ Many face the unpleasant task of leaving behind their families.⁵ When they leave, their families wait anxiously for news of their loved one's well being. Often, this good news comes along with money.⁶ For example, Eusebio de Haro, the eldest of fourteen children, looked to the north because of his longing for a better life.⁷ In the central Mexican town of San Felipe, he helped harvest corn as a boy on his family's ranch and worked at his father's fireworks factory.⁸ When he decided to go,

1. Pauline Arrillaga, *Violence Raises Tensions, Stakes Along South Border*, LAREDO MORNING TIMES, Aug. 20, 2000, at 19A.

2. See generally Olga R. Rodriguez, *Hoping for Work Visas: Number of Migrants Trying to Cross Illegally Spikes*, LAREDO MORNING TIMES, April 28, 2004, at 1A.

3. See Victor C. Romero, Note, *Whatever Happened to the Fourth Amendment?: Undocumented Immigrants' Rights after INS v. Lopez-Mendoza and United States v. Verdugo-Urquidez*, 65 S. CAL. L. REV. 999, 1000 (1992) (stating that the reasons for undocumented immigrants coming into America are similar to those of the original settlers from Europe).

4. Katherine L. O'Connor, Regional Reports, *An Overview of Illegal Immigration Along the United States-Mexican Border*, 4 J. INT'L L. & PRAC. 585, 588 (1995) ("Corruption, starvation, and nonexistent basic services are problems that most of Mexico's population has to deal with every day."); Romero, *supra* note 3, at 1000 (stating that undocumented immigrants entering the United States come as "refugees of war, oppression, and poverty").

5. See generally Arrillaga, *supra* note 1.

6. A poll sponsored by the Inter-American Development Bank stated that nearly one out of five Mexicans regularly get money from their relatives employed in the United States. Ginger Thompson, *Money Sent Home is Now Mexico's No. 2 Cash Source*, SAN ANTONIO EXPRESS-NEWS, Oct. 28, 2003, at 1A. The poll stated that the money being sent home by Mexican immigrants would be \$14.5 billion in 2003; this amount exceeds direct foreign investment and tourism, becoming second to number one, oil, as Mexico's most important income source. *Id.*

7. Arrillaga, *supra* note 1.

8. *Id.*

Eusebio's father did not argue with him because he knew his son's earning potential would be much better in the United States.⁹

After Eusebio crossed the Texas-Mexican border, his chance for a better life was taken from him when, at the age of twenty-two,¹⁰ a Texas Rancher shot him to death for trespassing while he was looking for water.¹¹ The next day, the sheriff and paramedics found his body immersed in a pool of bloodstained dirt.¹² Cactus thorns stuck out of his right cheek and shoulder, and scattered on the ground next to him were his sustenance: cans of green beans, tuna fish, and cola.¹³

As Eusebio's story alludes, those who make the journey to the United States have much more to fear than being captured by the Border Patrol or the sweltering South Texas heat.¹⁴ Undocumented immigrants now must worry about death at the hands of Texas landowners. These ranchers are frequently reacting with extreme measures in protecting their property.¹⁵ Their actions, however, denote a darker subtext: anti-immigration sentiments and class-based animus.¹⁶

This comment will raise awareness of the outbreak of hostility and violence that has erupted in South Texas against undocumented immigrants. Specifically, the purpose of this comment is to educate readers about federal and state legal strategies that can combat this tide of violence.

II. BACKGROUND

A. *The Plight of Undocumented Immigrants*

Nuevo Laredo, Mexico - As blonde tourists sip frozen Margaritas in an open-air bar and line-dance to the Grease soundtrack, a few blocks away, another band of visitors huddle in the shadow of a bell tower.

9. It is thought that one can earn in one-hour in America the equivalent of one week's worth of earnings in Mexico. *Id.*

10. Sources differ as to de Haro's age. *See id.* (stating de Haro was twenty-two). *Contra Immigrant Shooting Trial Start Delayed*, LAREDO MORNING TIMES, March 27, 2001 at 6A (stating de Haro's was twenty-three).

11. Arrillaga, *supra* note 1.

12. *Id.*

13. *Id.*

14. *See generally Border Initiative to Save Lives*, LAREDO MORNING TIMES, Jan. 31, 2002, at 3A; Dane Schiller, *Border Deaths on the Decline*, LAREDO MORNING TIMES, Jan. 12, 2003, at 1A (stating that heat exposure is the number one cause of border deaths).

15. *See generally* Arrillaga, *supra* note 1; Tricia Cortez, *Lawsuit Claims Vigilantes Operating in Jim Hogg*, LAREDO MORNING TIMES, May 30, 2003, at 1A; *see also* Robert F. Castro, *Exorcising Tombstone's Evil Spirits: Eradicating Vigilante Ranch Enterprises Through Public Interest Litigation*, 20 LAW & INEQ. 203, 204 (2002) (stating that the vigilante ranchers in Arizona use "highly controversial tactics" to protect their property).

16. Castro, *supra* note 15, at 204.

To weekenders from the United States, this congested city on the southern bank of the Rio Grande is a landlocked party town where tequila flows for 75 cents a shot, Pancho Villa T-shirts are always on sale and the famed Boys' Town red-light district is a cab ride away.

To others, who come from the heart of this impoverished country looking for someone to smuggle them across the Texas-Mexico border, it's where a trip through familiar country ends and a voyage of fear begins.

"Of course I am nervous," said a Mexican man in his 20's who sat near the tower in a New York Giants T-shirt, jeans and leather sandals. "The currents of the river can betray you and sweep you away. I am nervous about that but I am mostly nervous about being caught."

But death is the main concern for most.¹⁷

Indeed, undocumented aliens' fears that they might succumb to death at some point during their treacherous journey are not unreasonable. The death rate, according to the Mexican Government, for Mexicans illegally crossing the 2,000-mile U.S.-Mexico border, is at about one death per day, with at least 371 deaths reported in 2003 and another 371 in 2002.¹⁸ The U.S. Border Patrol's death statistics were slightly less for 2003 and 2002, with 340 and 320, respectively.¹⁹ These figures should not be considered an accurate reflection of the actual amount of undocumented immigrants who have died while making their trek north; the U.S. Border Patrol only counts the deaths along a narrow strip close to the border, and the Mexican Government only counts the deaths of Mexicans.²⁰ Furthermore, the reported figures reflect urban deaths, not rural deaths.²¹ For example, the Border Patrol Sector in Laredo, Texas reported twenty deaths for the year 2003²²—a decrease from forty-seven in 2000.²³

Again, those numbers only reflect a decrease in urban deaths. They do not account for the likely increasing number of rural deaths. The reason-

17. John Sevigney, *Risking it All: Crossing the Rio for a Better Life*, LAREDO MORNING TIMES, Apr. 12, 1999 at 1A.

18. Niko Price, *Tightening Border Security Very Costly*, at <http://madmax.1mtonline.com/mainnewsarchives/110203/s4.htm> (last visited Sept. 19, 2004).

19. *Id.*

20. *Id.*

21. Roma Khanna, *Deaths Up as Aliens Seek More Dangerous Routes*, LAREDO MORNING TIMES, Mar. 17, 2001, at 8A.

22. Erinn Taylor, *Border Patrol Sector Releases Local Stats*, LAREDO MORNING TIMES, Oct. 4, 2003, at 1A.

23. Laurel Almada, *Border Patrol Releases Fiscal Year 2002 Stats*, LAREDO MORNING TIMES, Dec. 31, 2002, at 3A.

ing behind this theory is that the statistics show that since the Border Patrol increased its efforts in monitoring borders in urban areas, undocumented immigrants have likely been drawn to rural paths, which are less policed and more dangerous.²⁴ Who is to say more have not died from dehydration,²⁵ starvation, sickness,²⁶ or worse yet, from the hands of angry ranchers that simply go unreported?²⁷ Obviously, deaths go unreported because bodies rot rapidly in the heat and bones can be quickly scattered.²⁸

As far as crimes not resulting in deaths are concerned, most migrants do not know that they have rights.²⁹ Even if they know of their rights, they mostly choose to remain silent because of their fears of being incarcerated while possible human rights violations are investigated.³⁰ In addition, those who are caught also tend to remain silent and cover up any abuse they might have sustained because, once caught, they are in a hurry to be processed, sent back to Mexico, and then cross over again.³¹

B. *Acts of Violence Against Undocumented Immigrants*

*"I ran because I was afraid they were hunting us. I felt I was some animal and they were hunting us down."*³²

One of the most unbridled acts of violence against illegal immigrants in South Texas surfaced in 1972, where on Thanksgiving Day in Freer, Texas, the infamous Kenneth Adami killed five illegal Mexican immigrants who had sought shelter in his abandoned hunting shack.³³ Because

24. Khanna, *supra* note 21.

25. *See generally* Man, Woman Die in Texas Summer Heat, LAREDO MORNING TIMES, June 6, 2001, at 8A.

26. *See generally* Searchers Find Body of Illegal Worker, LAREDO MORNING TIMES, May 11, 2000, at 7A (reporting that a Durango native died while sitting against a tree trunk after he complained of chest pains and it took ten days of searching before Border Patrol agents found his decomposed body).

27. *See* Bob Moser, *Vigilante Violence: Crimes Against Border-Crossers are Hard to Detect in the Lonely Arizona Desert—but Suspicious Incidents Keep Cropping Up*, at <http://www.splcenter.org/intel/intelreport/article.jsp?sid=9> [hereinafter Moser] (last visited Sept. 19, 2004).

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. Laurel Almada, *Former Ranch Employee tells of Immigrant Tracking*, LAREDO MORNING TIMES, Aug. 13, 2004, at 5A (testimony of Jose Sandro Olmos, an undocumented person who was with Juan Jesus Barrerra Vasquez when he was shot and killed after allegedly being mistaken as a wild hog).

33. Hector Saldana, *Texas Town Still Shudders at '72 Thanksgiving Massacre*, LAREDO MORNING TIMES, Nov. 18, 2001, at 17A.

November of that year brought freezing temperatures and rain, the immigrants chose to eat, rest, and warm themselves in Adami's boarded-up hunting shack.³⁴ That night, when Adami patrolled his ranch, he saw a light coming from the abandoned shack.³⁵ Armed with a .257 Weatherbee magnum rifle,³⁶ he saw the men through the window eating canned food; one of the victims wore Adami's jacket.³⁷ Adami, claiming to have been in fear for his safety, broke a window and started firing at the men as they ran for cover.³⁸ After sleeping near their bodies, Adami checked his victims' jugular veins the next morning.³⁹ He then turned himself in, confessing to two Border Patrol agents what he had done.⁴⁰

At the crime scene, authorities discovered that one of the victims had been shot in the head while the rest died of multiple bullet wounds.⁴¹ It was obvious that the victims posed no threat; one was found under a kitchen table and another behind a portable kitchen sink.⁴² A deputy sheriff, who observed the crime scene, remarked, "You could see from their expressions and from their hands up that they were begging for mercy. The guy knew what he was doing. It was a bolt action. Every time he shot one, he had to pull it back, put in (a bullet), and boom, shoot another one."⁴³ A newspaper from Nuevo Laredo, Mexico reported: "The bodies were piled . . . on top of each other. Others showed convulsory [signs] of pain on their faces. They were shot at close range inside a rat hole."⁴⁴

A Webb County jury convicted Adami as a result of his brutal acts, sending a message that "the Laredo Community would not tolerate the use of deadly force against undocumented immigrants when it was not justified."⁴⁵ After twenty-seven years in prison and being denied parole thirteen times, Adami, at the age of eighty-eight was finally set free in 2001.⁴⁶ It was subsequently reported that his release was in large part a

34. *Id.*

35. *Id.*

36. *Id.*

37. Robert Garcia, *Old Case Highlights Stance on Deadly Force*, LAREDO MORNING TIMES, May 23, 2000, at 1A.

38. *Id.*

39. Saldana, *supra* note 33.

40. *Id.*

41. Garcia, *supra* note 37.

42. *Id.*

43. Saldana, *supra* note 33.

44. *Id.*

45. Garcia, *supra* note 37.

46. Saldana, *supra* note 33.

“direct result of his age.”⁴⁷ The assistant district attorney commented that Adami’s twenty-seven year-old conviction “makes it very clear that while the community does not condone anyone breaking into a home and stealing, neither does it condone the taking of someone’s life for such reasons.”⁴⁸

Twenty-six years after Adami’s conviction, the issue resurfaced in May 2000 when seventy-five year-old Samuel Blackwood shot and killed Mexican national Eusebio de Haro after he and his companion stopped at Blackwood’s ranch to ask for some water.⁴⁹ Blackwood, who claimed self-defense, was originally charged with murder, but his charge was later downgraded to the third-degree felony of deadly conduct.⁵⁰ Seconds after he was shot, Blackwood’s victim asked, “Why did you do that? I didn’t do nothing.”⁵¹ At trial, the prosecutor pleaded to the jury that they must deliver a statement about such violence.⁵² Borrowing one of the derogatory terms used to refer to illegal immigrants by some local ranchers, he stated, “You’ve got to send a message that it’s not OK to shoot illegal aliens in the back. Please, do not declare open season on them simply because they are wetbacks.”⁵³ The Kinney County jury took eighty minutes to find Blackwood guilty; his punishment—a \$4,000 fine and 180 days probation.⁵⁴ The other terms of the sentence required Blackwood to pay “restitution for the emergency care, autopsy and funeral of Eusebio [d]e Haro.”⁵⁵ In addition, the court ordered Blackwood to report to a community supervision officer in Brackettville on a monthly basis, have written permission before leaving the county, contact the U.S. Border Patrol when he suspects that undocumented immigrants are near his ranch, and post a warning in Spanish stating that his ranch is under orders of the court to report any “sightings of suspected illegal immigrants.”⁵⁶

The violence had already begun to swell even before the murder of Eusebio de Haro. In Del Rio, Texas, Patrick Bordelon was charged with

47. The cost to house an inmate at the Texas Department of Corrections is \$40.65 a day; housing an elderly prisoner requires an additional \$5.63. *Id.*

48. Garcia, *supra* note 37.

49. *Immigrant Shooting Trial Start Delayed*, *supra* note 10.

50. *Id.*

51. John MacCormack, *Rancher’s Self-defense Claim Hit*, SAN ANTONIO EXPRESS-NEWS, Aug. 23, 2001, at 1A.

52. John MacCormack, *Rancher Guilty in Shooting*, SAN ANTONIO EXPRESS-NEWS, Aug. 25, 2001, at 1A.

53. *Id.*

54. *Id.*

55. John Gonzalez, *Rancher Convicted in Immigrant’s Death*, HOUS. CHRON., Aug. 25, 2001, www.commondreams.org/headlines01/0825-01.htm (last visited Sept. 19, 2004).

56. *Id.*

attempted murder for a June 1999 shooting of Ivan Sepulveda, a sixteen year-old Mexican.⁵⁷ The youth was shot three times as he swam in the Rio Grande, attempting to retrieve his two wandering dogs.⁵⁸ Bordelon was subsequently cleared of the attempted murder charge but was found guilty on two counts for the aggravated assault of Sepulveda.⁵⁹ Later that year, Bordelon faced murder charges for a November 1999 incident where he killed Mexican teenager Luis Armando Chavez Vaquera while fleeing to Mexico after an attempted burglary of Bordelon's home.⁶⁰ In the November incident, the sixteen year-old from Ciudad Acuna, Mexico was shot in the head while apparently escaping through the Rio Grande.⁶¹ His body was recovered eleven days later, in the river.⁶² Bordelon, having already been sentenced to thirty months for his aggravated assault conviction, plea-bargained to manslaughter and received a seven-year prison sentence.⁶³

More occurrences continued to take place a little over a year later, after Blackwood's conviction. For instance, in January 2001, Ramon Flores Hernandez of Guanajuato was shot in the leg while on a Zavala County ranch.⁶⁴ The owner of the ranch, Patrick McCarty, was charged and then indicted for aggravated assault with a deadly weapon.⁶⁵ Then, in April 2001, Juan Mauricio Gonzalez was shot in the buttocks in Edwards County after he and his companion were told to leave the premises.⁶⁶ Coy Brown, the property owner, was charged with aggravated assault.⁶⁷

Occasionally these deaths are accidental. A June 1, 2003 hunting trip forty-six miles east of Laredo, Texas turned deadly when Juan Garza Mendoza shot forty year-old Jesus Barrera Vasquez from Guanajuato,

57. John MacCormack, *Shootings, Thefts Keep Border Simmering*, SAN ANTONIO EXPRESS-NEWS, Sept. 10, 2001, at 4A.

58. John MacCormack, *Victim Denies Touching Shore: Shooting Suspect to Testify Today*, SAN ANTONIO EXPRESS-NEWS, Dec. 12, 2001, at 1B.

59. Bonnie Pfister, *Landowner Convicted: Man Claimed Youth He Shot Trespassed*, SAN ANTONIO EXPRESS-NEWS, Dec. 15, 2001, at 1C.

60. MacCormack, *supra* note 57; *see also River Shooting Ruled Homicide*, LAREDO MORNING TIMES, Dec. 4, 1999, at 7A.

61. *River Shooting Ruled Homicide*, *supra* note 60; *see also Harry Thomas, Other Immigrant Shootings on the Border*, SAN ANTONIO EXPRESS-NEWS, Aug. 25, 2001, at 9A.

62. Thomas, *supra* note 61; *see also River Shooting Ruled Homicide*, *supra* note 60.

63. *See* John MacCormack, *Texan Gets 7 Years in Slaying on Border: Man Plea Bargains to Manslaughter*, SAN ANTONIO EXPRESS-NEWS, May 8, 2002, at 1A.

64. Thomas, *supra* note 62.

65. *Id.*

66. *Id.*

67. *Id.*

Mexico, believing that he was aiming at a wild hog.⁶⁸ The combination of the victim being crouched behind a huisache tree while wearing dark colored clothing and the low light at dusk gave Mendoza the impression that he was shooting at a wild hog.⁶⁹ The victim was struck in his abdomen by the slug of a .44-caliber Magnum rifle.⁷⁰ When Mendoza found the victim, he called 911 to report the incident and attempted to follow instructions given to him by the 911 operator.⁷¹ Mendoza was charged with manslaughter, and faced the possibility of twenty years imprisonment.⁷² However, the case was dismissed six months later by the Webb County District Attorney and is pending reindictment.⁷³

The latest installment to the stream of violence occurred in March 2003 in Jim Hogg County, where undocumented immigrants—two Salvadoran and four Mexican—on separate occasions were abused and terrorized by South Texas rancher, Joe Sutton, along with volunteers from the paramilitary group known as Ranch Rescue.⁷⁴

C. *Ranch Rescue*

You and the vast majority of your fellow dog turds are ignorant, uneducated, and desperate for a life in a decent nation because the one you live in is nothing but a pile of dog shit made up of millions of worthless little dog turds like you. You stand around your entire lives, whining about how bad things are in your dog of a nation, waiting for the dog to stick its ass under our fence and shit each one of you into our back yards.

68. Laurel Almada, *341st Grand Jury Indictments*, LAREDO MORNING TIMES, Aug. 28, 2003, at 3A; Robert Garcia, *Man in Custody After Ranch Shooting Incident*, LAREDO MORNING TIMES, June 3, 2003, at 1A.

69. Garcia, *supra* note 68.

70. John MacCormack, *Immigrant Shot to Death on Ranch: Webb County Sheriff Rules it an Accident*, SAN ANTONIO EXPRESS-NEWS, June 3, 2003, at 5B.

71. Garcia, *supra* note 68.

72. Almada, *supra* note 68.

73. Laurel Almada, *District Attorney Nixes Hunting Accident Case*, LAREDO MORNING TIMES, Nov. 18, 2003, at 10A. Nonetheless, the victim's family won a \$20 million verdict in a wrongful death suit against Mendoza, the ranch company, and its owner. Laurel Almada, *Jury Awards \$20 Million to Illegal Immigrant's Family*, LAREDO MORNING TIMES, Aug. 24, 2003, at 1A [hereinafter Almada, *Jury Awards \$20 Million*]. This suit is discussed *infra*, notes 195-99 and accompanying text.

74. John MacCormack, *Suit Aims to Bankrupt Border Watchers: Civil Rights Lawyers Say Racial Hatred Fuels 'Ranch Rescue'*, SAN ANTONIO EXPRESS-NEWS, May 30, 2003, at 12A.

*Just be careful where the dog shits pal, because sooner or later we will be there.*⁷⁵

1. Background

Ranch Rescue describes itself as an organization made up of volunteers who believe that they should take measures into their own hands whenever there is a failure or refusal to act by the government.⁷⁶ They are concerned with the rights of landowners who live in counties along the southern borders of Arizona, Texas, New Mexico, and California.⁷⁷ The ranchers claim to be victims of threats, harassment, intimidation, burglary, and assault by the actions of “thousands of criminal trespassers.”⁷⁸ In their flier, Ranch Rescue states that they are “through waiting for government to do something substantial about the crime that has engulfed our border counties.”⁷⁹ The flier also states, “Either government will keep these criminals off our property or we will.”⁸⁰ After conducting a four-month investigation, the Southern Poverty Law Center, based in Alabama, concluded that Ranch Rescue was a “vigilante organization with ties to anti-government groups.”⁸¹ The organizer of the Texas Branch of Ranch Rescue is Jack Foote, a man described as a conspiracy-oriented anti-immigration activist.⁸²

The birth of vigilante organizations such as Ranch Rescue began in Arizona in 1999.⁸³ Described as “the Wild West all over again,” citizens came together to patrol their land in efforts of deterring “illegal invaders.”⁸⁴ The inception of such vigilante groups is especially attributable to

75. Bob Moser, *Open Season: As Extremists Peddle Their Anti-immigrant Rhetoric Along the Troubled Arizona border, a Storm Gathers* (2003) (quoting Jack Foote, organizer of Ranch Rescue) at <http://splcenter.org/intel/intelreport/article.jsp?pid=50> (last visited Oct. 31, 2004).

76. RANCH RESCUE, at www.ranchrescue.com (last visited Oct. 31, 2004).

77. *Id.*; see also Flier for Ranch Rescue Texas [hereinafter Flier] (on file with author).

78. RANCH RESCUE, *supra* note 76; see also Flier, *supra* note 77. Incidentally, they also claim to be unbiased against race, color, creed, or religion. *Id.*

79. Flier, *supra* note 77.

80. *Id.*

81. Evelyn Nieves, *U.S. Border Crossings Spark Civilian Patrols: Ariz. Groups Aim to Stop Illegal Immigrants*, WASH. POST, Jan. 12, 2003, available at 2003 WL 2367639.

82. *U.S. Hate-mongers Turn Up Anti-Immigrant Vitriol, Violence* (May 20, 2001), at http://tolerance.org/news/article_hate.jsp?pid=114 (last visited Sept. 19, 2004).

83. See generally Castro, *supra* note 15, at 207-09. Specifically, the emergence of Ranch Rescue occurred in April 2000, when a flier for the organization circulated in southeastern Arizona. *Id.* at 210. The Texas branch of Ranch Rescue, in particular, was organized in June 2000. *Concern Raised Over Civilian Patrol Intentions*, LAREDO MORNING TIMES, at <http://madmax.lmtonline.com/mainnewsarchives/120300/s10.htm> (last visited Oct. 28, 2004).

84. Nieves, *supra* note 81.

fifty-seven year-old Roger Barnett, a retired deputy sheriff turned cattleman.⁸⁵ He originally spearheaded a drive locally, organizing and mobilizing fellow ranch owners against “the influx of undocumented migrants traveling through the area.”⁸⁶ Ranch owners then began to militarize their properties.⁸⁷ They stalked and detained persons who they suspected were illegal aliens.⁸⁸ In particular, the Barnett family, is famous for its actions and rhetoric against undocumented immigrants:

The Barnett boys never miss a chance to go hunting on their older brother’s 22,000-acre cattle ranch at Sierra Vista, which skirts the frontier between Mexico and Arizona. For more than a year, the *Sunday sport of choice* for dozens of ranchers around arid Conchise County has been to stalk undocumented migrants, round them up with trained dogs, then—at gunpoint—hand the scared Mexicans to the nearest U.S. Border Patrol. “Humans. That’s the greatest prey on earth,” said Roger Barnett. . . .⁸⁹

2. Current Litigation

*“If vigilante groups like Ranch Rescue and the ranchers who conspire with them are forced to pay money damages for their unlawful actions, they will think twice before taking the law into their own hands and attacking peaceful, unarmed migrants in the future.”*⁹⁰

To stop the efforts of Ranch Rescue and similar interest groups, “illegal immigrants are challenging the legality of armed civilian patrols and their ability to detain people.”⁹¹ In one suit, four Mexicans and two Salvadorans are suing the Texas branch of Ranch Rescue, Joe Sutton, Jacke Foote, and two other Ranch Rescue volunteers claiming variously that they “were detained at gunpoint, interrogated, threatened with death, forced to walk barefoot along a highway, and in one case, pistol-

85. See Castro, *supra* note 15, at 207-09; Jan McGirk, *Blood and Bullets Along the Border as Arizona’s Private Posses Hunt Mexican Migrants for Sport*, INDEP. UK, May 6, 2000 (on file with author).

86. Castro, *supra* note 15, at 207.

87. *Id.*

88. *Id.* at 208.

89. McGirk, *supra* note 85.

90. Statement by the Southern Poverty Law Center regarding the lawsuit filed by undocumented immigrants against a South Texas rancher and the paramilitary group he hired to patrol his property. *Leiva v. Ranch Rescue: Ranch Rescue Case*, at <http://www.splcenter.org/legal/docket/files.jsp?cdrID=44> (last visited Aug. 17, 2004).

91. Charlie LeDuff, *Illegal Immigrants File Suit Against Vigilante Patrols*, N.Y. TIMES, May 30, 2003, at A20.

whipped.”⁹² Laredo attorney Ricardo de Anda, Austin attorney John Judge, and the organizations of the Southern Poverty Law Center (SPLC) and the Mexican American Legal Defense and Educational Fund (MALDEF) have teamed up to represent the migrants.⁹³ According to De Anda, “[I]t’s perfectly legal for citizens to dress like soldiers and patrol private property with guns. What people cannot do is terrorize other people, and that’s what this lawsuit is about. We want to stop this terrorizing of migrants simply because they’re walking through someone’s land.”⁹⁴

The legal strategy adopted by Sutton and Ranch Rescue is similar to tactics used by the Klu Klux Klan and other hate groups.⁹⁵ A representative from the SPLC, a group that has battled hate groups in court over the years, stated: “‘The Neo-Nazis, the Klan and the Aryan Nation have always claimed they took only defensive actions, they were trying to defend the interests of white people, they were not violent and they followed the law. But it’s just a facade.’”⁹⁶ Ultimately, the suit aims to put the border watchers in bankruptcy.⁹⁷

The original petition, captioned *Leiva Medina v. Ranch Rescue* (hereinafter, the “Ranch Rescue case”), documents two incidents that occurred in March 2003.⁹⁸ The first attack took place on or about March 7, when four Mexicans were “assaulted, physically detained at gunpoint, interrogated, terrorized, robbed and threatened with death.”⁹⁹ Specifically, the plaintiffs alleged that when traveling through Sutton’s ranch, they were caught and detained at gunpoint.¹⁰⁰ Shortly after being told to remove their shoes, which contained a total of \$3000 cash, Sutton arrived, loaded his gun and told the plaintiffs that he could kill them without their deaths ever being discovered.¹⁰¹ Eventually, Sutton forced the plaintiffs to walk barefoot for seven miles through cactus and rattlesnake-infested country until a local law enforcement officer picked them up.¹⁰² The deputy took

92. *Profile: Activist Groups on the US-Mexico Border could Spur More Violence with Illegal Immigrants* (NPR broadcast, Sept. 16, 2003) [hereinafter *Profile*] (transcript on file with author).

93. Cortez, *supra* note 15.

94. *Profile*, *supra* note 92.

95. MacCormack, *supra* note 74.

96. *Id.*

97. *Id.* In fact, Sutton is on the verge of losing his ranch. LeDuff, *supra* note 91.

98. Pls. Original Pet., Disc. Plan, and Req. for Disclosure, *Leiva v. Ranch Rescue* Texas (229th Dist. Ct., Jim Hogg County, Tex. May 29, 2003) (No. CC-03-77) [hereinafter *Original Pet.*] (on file with author).

99. *Id.*

100. LeDuff, *supra* note 91; *Original Pet.*, *supra* note 98.

101. LeDuff, *supra* note 91.

102. *Id.*

them to the border patrol station where Sutton had already dropped off the immigrants' shoes, emptied of their money.¹⁰³ As to individual causes of action, the original petition included the following: assault, false imprisonment, intentional infliction of emotional distress, negligence *per se*, negligence and gross negligence, and theft.¹⁰⁴

The second incident, involving two Salvadorans, Fatima del Socorro Leiva Medina and Edwin Alfredo Mancía Gonzalez, took place on or about March 18, 2003.¹⁰⁵ On that date in question, the plaintiffs alleged that they were "assaulted, physically detained at gunpoint, terrorized, interrogated, and threatened with death."¹⁰⁶ One of the plaintiffs was struck on the back of his head by a handgun and was attacked by a Rottweiler.¹⁰⁷ With the exception of robbery, the causes of action for this second incident were identical to those in the first incident.¹⁰⁸ In response to the plaintiffs' request for attorney's fees, damages, statutory remedies, court costs, and litigation expenses,¹⁰⁹ Sutton denied all allegations.¹¹⁰

D. Perspectives

1. The Mexican Perspective

When asked whether the outbreaks of violence against migrants would dissuade them from future crossings, the resolve of many migrants remains steadfast. A thirty-one year-old frequent border-crosser stated, "We know there are dangers. There are snakes, you run out of water, somebody can come and kill you. I've crossed six or seven times. And I'll do it six or seven times more. It's what you have to do if you want to get ahead."¹¹¹ As far as justice is concerned, the perspective of most Mexicans living in the United States is that "the scales of justice do not give equal weight to everyone."¹¹²

103. *Id.*

104. Original Pet., *supra* note 98.

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.* The plaintiffs later amended the original petition to include only the events that occurred on March 18, 2003, dropping the claims for theft and negligence *per se*. Pls.' Fourth Am. Pet., *Leiva v. Ranch Rescue Texas* (229th Dist. Ct., Jim Hogg County, Tex. June 26, 2003) (No. CC-03-77) [hereinafter Am. Pet.] (on file with author).

109. Original Pet., *supra* note 98.

110. Def., Joseph Sutton's Original Answer, *Leiva v. Ranch Rescue Texas* (S.D. Tex. 2003) (No. L-03-84) (on file with author).

111. Bonnie Pfister & John MacCormack, *Looking For Some Justice: Mexicans Angry Over Rancher's Sentence*, SAN ANTONIO EXPRESS-NEWS, Sept. 1, 2001, at 1A.

112. *See id.*

In general, Mexicans living in their home country also doubt that justice is applied equally in the United States.¹¹³ For instance, when news of Samuel Blackwood's suspended sentence was received in San Felipe, Eusebio de Haro's family experienced feelings of anger and helplessness.¹¹⁴ One family member stated, "The law is not applied equally. It's different for Latinos [verses] Americans—white Americans."¹¹⁵ The Mexican government also objected to Blackwood's sentence. Marco Antonio Fraire, a spokesman for the Mexican Consulate said the outcome of Blackwood's criminal proceeding was "enormously discouraging."¹¹⁶ Further, he stated, "It is unacceptable to the Mexican government that a judicial system can allow a person who has shot someone from behind to walk away without the jail sentence such a crime deserves."¹¹⁷

2. The American Perspective

With regard to Blackwood's suspended sentence, the public's reaction was immediate.¹¹⁸ Some Texans were appalled by the outcome.¹¹⁹ One Mexican-American went so far as to call for the return of the Brown Berets, a militant group from the 1970s, in an effort to protect the undocumented immigrants.¹²⁰ Others wrote their opinions on the matter to local newspapers. Brian Stanton, for example, stated:

The court system has once again proved justice will prevail. American justice, that is. Well, really, white justice. The message to others? Well, that depends. Whites can shoot from the hip with near impunity. But Mexicans beware. The precedent won't hold for you. American arrogance has hit a new low.¹²¹

Still others, such as Oscar Byington, reacted by asserting private property rights. He stated, "People in this country have the right to defend their property. Where does it say U.S. citizens have to bend over backward for our Mexican neighbors? Mexican immigrants pay no mind to

113. *Id.*

114. *Id.*

115. *Id.*

116. MacCormack, *supra* note 52.

117. *Id.*

118. *See* MacCormack, *supra* note 57.

119. *See id.*

120. *Id.*

121. Brian Stanton, Editorial, *Arrogant Justice*, SAN ANTONIO EXPRESS-NEWS, Sept. 2, 2001, at 5G.

U.S. law. Let's keep in mind that the U.S. government does not owe the Mexican people anything."¹²²

Thus, there are two differing attitudes in regards to migrant crossers.¹²³ While some ranchers are enraged about the increasing presence of migrants, others continue to support the crossers.¹²⁴ One reason for such support is the sense that United States border towns along the Rio Grande Valley still feel like a part of Mexico.¹²⁵ For example, people rarely converse in English, and both ranchers and farmers "often speak of migrants as *nuestra gente*—'our people.'"¹²⁶ Many residents in the area are descendants of undocumented immigrants; they feel privileged in comparison to the plighted migrants and thus feel compelled to help them.¹²⁷ These ranchers "offer the migrant crossers some food and water, then wish them good luck on their journey."¹²⁸

3. Resorting to Ranch Rescue

As far as the use of paramilitary patrols such as Ranch Rescue is concerned, not everyone approves of adopting such tactics. Robert Fulbright, a fourth generation rancher owning pastureland near Sutton's property, has had problems with illegal immigrants trespassing, leaving trash, and damaging fences.¹²⁹ Rather than adopting Sutton's extreme measures, he calls the Border Patrol.¹³⁰ In sum, Fulbright does not believe that violent tactics are the way to solve the problem.¹³¹

Joe P. Fulton, whose family owns a 7,800-acre ranch in Zavala County concurs.¹³² Over the years, he has noticed that the undocumented immigrants going across his property are increasingly carrying more backpacks with them—making them more suspicious.¹³³ Upon inspecting his fam-

122. Oscar Byington, Editorial, *No Respect for Law*, SAN ANTONIO EXPRESS-NEWS, Sept. 2, 2001, at 5G.

123. Hernan Rozemberg, *Ranchers on Front Lines: Unwelcome Visitors? South Texas Landowners Mixed on Migrants Who Cut Through*, SAN ANTONIO EXPRESS-NEWS, May 24, 2004, at 1B.

124. *E.g.*, *id.*

125. *Id.*

126. *Id.*

127. Dane Schiller, *Living on the Edge: More Stress is Expected in a Border Area Where Tensions Run High*, SAN ANTONIO EXPRESS-NEWS, Sept. 30, 2001, at 1A; *see also* Rozemberg, *supra* note 123.

128. Rozemberg, *supra* note 123.

129. *Profile*, *supra* note 92.

130. *Id.*

131. *Id.*

132. Interview with Joe Fulton, in San Antonio, Tex. (Sept. 17, 2003) [hereinafter Interview] (transcript on file with author).

133. *Id.*

ily's land, Fulton has found trash left behind by the migrants.¹³⁴ In response, he stated, "It's frustrating that the illegal immigrants are littering more so now than in the past, but it's not the end of the world."¹³⁵ He said it is just an understanding that, for the most part, illegal aliens will be traveling across the property and most of the time they pose no threat.¹³⁶

It is also a common understanding that if you are courteous by leaving sustenance for undocumented travelers, they too, are courteous in return by tidying up after themselves while making their way through your land.¹³⁷ Fulton mentioned, however, that, "over the past 30 years relations between ranchers and traveling illegal aliens have become strained due to drug smuggling and burglary by some illegal aliens."¹³⁸ Ultimately, though, he expressed his rejection to the use of violence by groups such as Ranch Rescue against migrant crossers.¹³⁹

Others disagree. For instance, South Texas rancher, Memo Benavides, commented that many illegal immigrants are indeed dangerous.¹⁴⁰ He and his ranch manager understand Joe Sutton's desperation and ultimate resort to soliciting Ranch Rescue's help.¹⁴¹ He stated that crossings over private ranch land by illegal aliens and drug smugglers have increased throughout the past ten years.¹⁴² Benavides claims that violent illegal immigrants destroyed one of their hunting camps for no reason whatsoever, and that this incident was not isolated.¹⁴³

Frustrated like Benavides, Joe Sutton expressed that the motive for his measures was desperation.¹⁴⁴ Sutton's outreach to Ranch Rescue was triggered by his discovery of a naked woman shampooing her hair in his cows' water tank.¹⁴⁵ He stated:

134. *Id.*

135. *Id.*

136. *Id.*

137. To illustrate, in Webb County, ranch owner Luis Dovalina "counts his blessings and tries to get along with the immigrants." Schiller, *supra* note 127. He keeps a handwritten sign, in Spanish, outside a ranch-building telling immigrants to "[p]lease sleep, rest and eat, but don't destroy our property" followed by a "[t]hank you very much for your respect." *Id.* Once Dovalina even found a note stuck to the refrigerator saying "[g]racias. Tanks. [sic]". *Id.*

138. Interview, *supra* note 132.

139. *Id.*

140. Tricia Cortez, *District Attorney Investigating Assault of Illegal Immigrants*, LAREDO MORNING TIMES, March 22, 2003, at 3A.

141. *Id.*

142. *Id.*

143. *Id.*

144. *Profile*, *supra* note 92.

145. *Id.*

[The immigrants] don't care like they used to a few years ago. If they can't get water, they're going to break a pipe. And if they're still hungry, they're gonna kill a head of cattle as they have done before, or they're going to break into the chicken pen and they're gonna kill my chickens.¹⁴⁶

III. LEGAL ANALYSIS

A. Overview of Undocumented Immigrants' Legal Rights

Contrary to popular opinion, and despite the fact that they are not legal residents or citizens of the United States, undocumented immigrants possess Constitutional rights.¹⁴⁷ The U.S. Supreme Court, in *Yick Wo v. Hopkins*, held that the term "persons" under the meaning of the Fourteenth Amendment included aliens, noting that:

The Fourteenth Amendment to the Constitution is not confined to the protection of citizens. It says: "Nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." These provisions are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality; and the equal protection of the laws is a pledge of the protection of equal laws.¹⁴⁸

Furthermore, in *Mathews v. Diaz*, the U.S. Supreme Court enabled undocumented persons to sue in court.¹⁴⁹ Acknowledging that "[t]here are literally millions of aliens within the jurisdiction of the United States," the Court stated that both the Fifth and Fourteenth Amendments "protect[] every one of these persons from deprivation of life, liberty, or property without due process of the law. Even one whose presence in this country is unlawful, involuntary, or transitory is entitled to that constitutional protection."¹⁵⁰ Additionally, the Supreme Court in *Wong Wing v. United States* held that the Fifth and Sixth Amendments protect aliens in criminal cases.¹⁵¹

146. *Id.*

147. Jesus A. Trevino, Comment, *Border Violence Against Illegal Immigrants and the Need to Change the Border Patrol's Current Complaint Review Process*, 21 HOUS. J. INT'L L. 85, 106 (1998).

148. *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) (quoting U.S. CONST. amend. XIV).

149. *Mathews v. Diaz*, 426 U.S. 67, 77 (1976).

150. *Id.*

151. See *Wong Wing v. United States*, 163 U.S. 228, 238 (1886) (holding undocumented persons have a right to petition courts for habeas corpus review); see also *United*

B. *State Strategies*

1. Civil Liability

Undocumented aliens injured by landowners have several civil remedies at their disposal. As done in the Ranch Rescue case, they may utilize the common law of the State of Texas for assault, false imprisonment, intentional infliction of emotional distress, negligence *per se*, negligence and gross negligence.¹⁵² The following is a summary of the above-mentioned torts and their required elements under Texas law.

Assault

An assault is the “invasion of private rights constituting a civil wrong.”¹⁵³ The definition of assault is the same in both civil and criminal law.¹⁵⁴ Thus, an assault is committed when a person “(1) intentionally, knowingly, or recklessly causes bodily injury to another[;] (2) intentionally or knowingly threatens another with imminent bodily injury[;] or (3) intentionally or knowingly causes physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative.”¹⁵⁵ Although bodily injury is not required, there must be some sort of act or movement by the defendant,¹⁵⁶ words alone are insufficient.¹⁵⁷ What is required is that the act must show that the defendant has the present, apparent ability to bring about contact with the plaintiff,¹⁵⁸ and the act must place the plaintiff in apprehension of unwanted physical contact.¹⁵⁹ Additionally, the assault must be committed “intentionally, knowingly, or recklessly.”¹⁶⁰

States v. Brignoni-Ponce, 422 U.S. 873, 884 (1975) (holding that undocumented persons are protected from unreasonable searches and seizures under the Fourth Amendment).

152. See Original Pet., *supra* note 98. Note that negligence *per se* was removed as a count against the defendants in the plaintiff’s Fourth Amended Petition. Am. Pet., *supra* note 108.

153. 20 WILLIAM V. DORSANEO III, TEXAS LITIGATION GUIDE § 330.01[1] (2004).

154. Tex. Bus Lines v. Anderson, 233 S.W.2d 961, 964 (Tex. Civ. App.—Galveston 1950, writ ref’d. n.r.e.).

155. TEX. PENAL CODE ANN. § 22.01(a) (Vernon 2003).

156. 20 DORSANEO, *supra* note 153, § 330.01[1]; see Foye v. Montes, 9 S.W.3d 436, 441 (Tex. App.—Houston [14th Dist.] 1999, pet. denied) (“[W]hile proof of injury or intent to injure may be a requirement under other provisions of the penal code, actual injury is not required under section 22.01(a)(3).”).

157. LaBella v. Charlie Thomas, Inc., 942 S.W.2d 127, 138 (Tex. App.—Amarillo 1997, pet. denied).

158. See Foye, 9 S.W.3d at 441.

159. See Fisher v. Carrousel Motor Hotel, Inc., 424 S.W.2d 627, 629 (Tex. 1967).

160. 20 DORSANEO, *supra* note 153, § 330.01[3]; see also TEX. PENAL CODE ANN. § 22.01(a)(1) (Vernon 2003).

Traditionally, an assault was “either an attempt to commit a battery or a threatening gesture that showed . . . an immediate intention and ability to commit a battery.”¹⁶¹ A battery was traditionally known as “the use of any unlawful violence against another person.”¹⁶² Both concepts are now included in the statutory definition of assault.¹⁶³ Thus, to state a claim for assault, the plaintiff must show the following: (1) contact to the plaintiff’s body or something so attached to be considered part of his or her body,¹⁶⁴ or some sort of motion or act on the part of the defendant;¹⁶⁵ (2) the contact to the plaintiff’s person or act of the defendant must be offensive or harmful;¹⁶⁶ and (3) the defendant must have had the intent to bring about the offensive or harmful contact to the person’s body.¹⁶⁷

False Imprisonment

While “rooted in the constitutional guarantee of freedom,” the tort of false imprisonment is the safeguard for the right to be free from an unlawful arrest or detention.¹⁶⁸ The elements essential for the establishment of a claim for false imprisonment are: “(1) willful detention; (2) without [the] consent [of the plaintiff]; and (3) without authority of law.”¹⁶⁹ Detentions by the armed militant groups are without authority of law because carrying a weapon in an effort to enforce the law requires certification as a peace officer.¹⁷⁰ A license is needed as well if operating as private security.¹⁷¹

The law of false imprisonment varies among states.¹⁷² For example, citizens can detain trespassers in Arizona.¹⁷³ They may not point weap-

161. 20 DORSANEO, *supra* note 153, § 330.01[2].

162. *Id.*

163. *Id.*

164. *See Carrousel Motor Hotel*, 424 S.W.2d at 629 (“[A]ctual physical contact is not necessary to constitute a battery so long as there is contact with clothing or an object closely identified with the body.”).

165. *LaBella v. Charlie Thomas, Inc.*, 942 S.W.2d 127, 138 (Tex. App.—Amarillo 1997, writ denied).

166. *See Bailey v. C.S.*, 12 S.W.3d 159, 162 (Tex. App.—Dallas 2000, no pet.) (“A person commits a battery if he intentionally or knowingly causes physical contact with another when he knows or should reasonably believe the other person will regard the contact as offensive or provocative.”).

167. *Id.*

168. *Whirl v. Kern*, 407 F.2d 781, 793-94 (5th Cir. 1968).

169. *Sears, Roebuck & Co. v. Castillo*, 693 S.W.2d 374, 375 (Tex. 1985).

170. *Cortez*, *supra* note 140.

171. *Id.*

172. *Arrillaga*, *supra* note 1.

173. *Id.*

ons or use force, however, unless they fear for their safety.¹⁷⁴ Conversely, such detentions may be false imprisonments in Texas.¹⁷⁵

Intentional Infliction of Emotional Distress

The Texas Supreme Court, in *Twyman v. Twyman*, adopted the tort of intentional infliction of emotional distress as formulated in Section 46 of the Second Restatement of Torts.¹⁷⁶ As per the Restatement, a plaintiff can establish intentional infliction of emotional distress if he or she can show: (1) intentional or reckless behavior on the part of the defendant, (2) extreme and outrageous conduct, (3) a casual connection between the defendant's behavior and the plaintiff's emotional distress, and (4) the emotional distress suffered was severe.¹⁷⁷ The Restatement illustrates that "only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community" should liability for outrageous conduct be found.¹⁷⁸

Negligence per se

The negligence *per se* doctrine states that civil law condones behavior that meets the minimum standards as indicated by penal statutes.¹⁷⁹ Conversely, as a matter of law, a violation of a legislatively-imposed standard of conduct will result in civil liability.¹⁸⁰ Generally, a plaintiff alleging negligence *per se* must take on the burden and prove a statutory violation.¹⁸¹ They must establish: (1) the violated statute, ordinance, or regulation contemplated the particular injury and tried to prevent it; (2) the plaintiff belongs to the class of individuals that the statute was trying to protect; and (3) the violation was a proximate cause of the plaintiff's injury.¹⁸² This cause of action can be particularly applied to paramilitary units that terrorize migrants under section 431.010 of the Texas Government Code.¹⁸³ Section 431.010 provides that a "body of persons other than the regularly organized state military forces or the troops of the

174. *Id.*

175. *Id.*

176. *Twyman v. Twyman*, 855 S.W.2d 619, 622 (Tex. 1993).

177. *Id.* at 621 (Tex. 1993); RESTATEMENT (SECOND) OF TORTS § 46 (1965).

178. *Twyman*, 855 S.W.2d at 621 (citing RESTATEMENT (SECOND) OF TORTS § 46 (1965)).

179. *Howsley v. Gilliam*, 517 S.W.2d 531, 533 (Tex. 1975).

180. *Id.*

181. *Moughon v. Wolf*, 576 S.W.2d 603, 604 (Tex. 1978).

182. *Id.*

183. Original Pet., *supra* note 98.

United States may not associate as a military company or organization or parade in public with firearms in a municipality of the state.”¹⁸⁴

Negligence and Gross Negligence

Under the common law doctrine of negligence, a “defendant may be held liable for damages suffered by the plaintiff that were proximately caused by the breach of a duty owed by the defendant to the plaintiff.”¹⁸⁵ Therefore, a “negligence cause of action consists of: (1) a legal duty owed by one person to another; (2) a breach of that duty; and (3) damages proximately resulting from the breach.”¹⁸⁶

In Texas, possessors and owners of land have a duty to use due care in the use of their property to avoid injuries to others.¹⁸⁷ However, because migrant crossers are trespassers, due care merely entails not injuring them willfully, wantonly, or through gross negligence.¹⁸⁸ Gross negligence occurs when: (1) viewed objectively from the actor’s standpoint, the act or omission involved “an extreme degree of risk, considering the probability and magnitude of the potential harm to others,” and (2) the actor had “actual, subjective awareness of the risk involved,” but nevertheless proceeded with “conscious indifference to the rights, safety, or welfare of others.”¹⁸⁹ Conscious indifference occurs when a defendant, while knowing about a risk, did not care about its potential consequences.¹⁹⁰ Thus, under such concepts, if a trespassing person is injured by the landowner’s gross negligence, the landowner is liable.¹⁹¹

Additionally, landowners are responsible for reasonably foreseeable injuries caused by the tortious acts of third parties.¹⁹² In these situations, traditional principles of negligence govern.¹⁹³ This has become important for undocumented immigrants. For example, the family members of Jesus Barrera Vasquez—the undocumented immigrant shot to death in Webb County after allegedly being mistaken for a wild hog—successfully brought a wrongful death suit against the ranch hand, the ranch company,

184. TEX. GOV’T CODE ANN. § 431.010(a) (2003).

185. 19 WILLIAM V. DORSANEO, III, TEXAS LITIGATION GUIDE § 290.01[1] (2004) (citing *El Chico Corp. v. Poole*, 732 S.W.2d 306, 311 (Tex. 1987)).

186. *Firestone Steel Prod. Co. v. Barajas*, 927 S.W.2d 608, 613 (Tex. 1996).

187. 19 DORSANEO, *supra* note 185, § 310.01[1].

188. *Tex. Utils. Elec. Co. v. Timmons*, 947 S.W.2d 191, 193 (Tex. 1997).

189. *Transp. Ins. Co. v. Moriel*, 879 S.W.2d 10, 23 (Tex. 1994).

190. *Burk Royalty Co. v. Walls*, 616 S.W.2d 911, 922 (Tex. 1981).

191. *Timmons*, 947 S.W.2d at 193.

192. 19 DORSANEO, *supra* note 185, § 310.06[1].

193. *Id.*

and the landowner.¹⁹⁴ Finding each defendant partially responsible, the jury awarded the victim's family twenty million dollars.¹⁹⁵

Specifically, the jury found the ranch hand who shot the migrant twenty-five percent responsible and the ranch company seventy-five percent responsible.¹⁹⁶ The ranch company's liability arose out of its failure "to supervise [the ranch hand] and for [its] lack of policies and procedures regarding weapons and emergency situations."¹⁹⁷ Additionally, the jury found the death resulted from malice, and, therefore, awarded the family punitive damages.¹⁹⁸

2. Criminal Liability

Criminal liability should also be imposed on those who commit acts of violence against innocent immigrants. The list of charges is endless, but, depending on the specific violent act, may include: assault, aggravated assault, murder, and attempted murder. The State of Texas actively prosecutes offenders in cases involving violence against undocumented immigrants, but they are hampered by the lack of reporting.¹⁹⁹ Examples of such prosecutions include those previously discussed, such as Patrick Bordelon's aggravated assault and manslaughter convictions,²⁰⁰ as well as Samuel Blackwood's deadly conduct conviction.²⁰¹ Another notable prosecution stems from the pistol-whipping incident involving a Salvadoran migrant and a Ranch Rescue volunteer.²⁰² Casey Nethercott was charged with aggravated assault with a deadly weapon along with being a felon in possession of a firearm by the Jim Hogg County District Attorney's office.²⁰³ If convicted, Nethercott may be imprisoned for life.²⁰⁴ He also faces the civil lawsuit seeking damages for the migrants.²⁰⁵

194. Almada, *Jury Awards \$20 Million*, *supra* note 73.

195. *Id.*

196. *Id.*

197. Laurel Almada, *Ranch Owner Provided Weapon Used in Killing*, LAREDO MORNING TIMES, Aug. 14, 2004, at 1A.

198. Testimony at trial revealed that paramedics were not contacted until two and a half hours after the incident. Almada, *Jury Awards \$20 Million*, *supra* note 73. This evidence was contrary to what the ranch hand initially claimed. Garcia, *supra* note 68.

199. *See generally*, Moser, *supra* note 27.

200. *See* MacCormack, *supra* note 63.

201. MacCormack, *supra* note 52.

202. Jesse Bogan, *Immigrant Asks Jury for Justice*, SAN ANTONIO EXPRESS-NEWS, June 16, 2004, at 1B.

203. *Id.*

204. *Id.*

205. *Hebbronville Vigilante Case Ends in Mistrial*, LAREDO MORNING TIMES, at <http://madmax.lmtonline.com/mainnewsarchives/061804/s2.htm> (last visited Oct. 31, 2004). Incidentally, the assault case ended in a mistrial but Nethercott was nonetheless convicted for possessing a firearm. *Id.*

3. Defenses

In the interest of fairness, there are situations where ranchers should be allowed to rely on justifiable defenses when protecting their property. In general, force or deadly force can be used to protect one's property, recover one's property, or both so long as it is reasonable under the circumstances.²⁰⁶ The following statutes and case law are applicable and support the rights of ranchers:

Protection of One's Property

Section 9.41(a) of the Texas Penal Code provides that a person who possesses land lawfully is "justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to prevent or terminate the other's trespass on the land or unlawful interference with the property."²⁰⁷ However, if the accused approaches someone on his land and kills that person for simply being there and for not leaving upon demand, the accused cannot claim self-defense.²⁰⁸ Most important for ranchers is that, as lawful possessors of the property, they have a right to arm themselves against trespassers and to approach a trespasser and ask them to leave the property.²⁰⁹ If the trespasser refuses to vacate the premises, the armed landowner can "use all reasonable means to compel him to leave, using no more force than is reasonably necessary."²¹⁰ If the landowner is attacked, the landowner can, in such circumstances, "meet force with force."²¹¹

Deadly Force to Protect Property

Section 9.42 of the Texas Penal Code provides that deadly force can be used to protect one's property if justified under the provisions set out in section 9.41 (discussed above), and when the landowner reasonably believes the use of deadly force is "immediately necessary."²¹² There are two requirements for the "immediately necessary" element.²¹³ The use of deadly force must reasonably be immediately necessary to "prevent the other's imminent commission of arson, burglary, robbery, aggravated robbery, or theft during the nighttime, or criminal mischief during the

206. 6 MICHAEL B. CHARLTON, TEXAS PRACTICE SERIES: TEXAS CRIMINAL LAW § 7.8 (2d ed. 2001).

207. TEX. PENAL CODE ANN. § 9.41 (Vernon 2003).

208. *Humphrey v. State*, 73 Tex. Crim. 433, 165 S.W. 589 (1914).

209. *Vann v. State*, 43 Tex. Crim. 244, 64 S.W. 243, 244-45 (1900).

210. *Id.*

211. *Id.*

212. TEX. PENAL CODE ANN. § 9.42 (Vernon 2003).

213. *Id.*

nighttime” or “to prevent the other who is fleeing immediately after committing the burglary, robbery, aggravated robbery, or theft during the nighttime from escaping with the property.”²¹⁴ Furthermore, the landowner must reasonably believe that “the land or property cannot be protected or recovered by any other means” or “the use of force other than deadly force to protect or recover the land or property would expose the actor or another to a substantial risk of death or serious bodily injury.”²¹⁵

Returning to the incident involving the shooting of the Mexican teenager who attempted to burglarize Patrick Bordelon’s home, Bordelon might have been justified in using deadly force under the above provision.²¹⁶ In contrast, the shooting of Eusebio de Haro was not justified under the above defense because he posed no threat and did not refuse to depart from the premises.²¹⁷

C. Federal Strategies

In addition to the state common law and statutory causes of action discussed above, there are several federal statutes that may provide relief for undocumented immigrants. For example, in Robert F. Castro’s law review article, *Exorcising Tombstone’s Evil Spirits: Eradicating Vigilante Ranch Enterprises Through Public Interest Litigation*, he proposes a choice of different federal claims in which public interest litigation could result in “winning symbolic as well as pragmatic victories” against Arizona vigilante groups.²¹⁸ These claims include the Racketeer Influenced and Corrupt Organizations Act (RICO),²¹⁹ the Federal Anti-Conspiratory Statute,²²⁰ and the Failure to Prevent Conspiracy Act^{221, 222} Additionally, immigrants may benefit from the Deprivation of Rights under Color of Law Act.²²³

1. Racketeer Influenced and Corrupt Organizations Act (*RICO*)

RICO, originally intended to combat organized crime networks, makes it unlawful for a person who has directly or indirectly received income from racketeering activity to use such income in an establishment that

214. *Id.*

215. *Id.*

216. *See generally* MacCormack, *supra* note 57.

217. *See generally* Arrillaga, *supra* note 1.

218. *See* Castro, *supra* note 15, at 218.

219. 18 U.S.C. § 1962 (2000).

220. 42 U.S.C. § 1985(3) (2000).

221. 42 U.S.C. § 1986 (2000).

222. Castro, *supra* note 15, at 205.

223. 18 U.S.C. § 242 (2000).

affects interstate or foreign commerce.²²⁴ Because Ranch Rescue behaves similar to an organized crime network, “they should be treated as such.”²²⁵ Thus, asserting a RICO claim against Ranch Rescue would be appropriate.²²⁶

To succeed in a RICO civil action, the plaintiff must establish and prove three elements.²²⁷ First, the plaintiff must show that the defendant’s enterprise affects interstate commerce.²²⁸ Second, the plaintiff must show that at least one individual defendant is employed or associated with such enterprise.²²⁹ Finally, the plaintiff must prove that the “defendant’s participation in the organizational activities of the enterprise constitutes a pattern of racketeering activity.”²³⁰

2. Federal Anti-Conspiracy Statute

Because “clandestine conspiracies” created by members of vigilante organizations like Ranch Rescue are “grounded in racial and xenophobic animus,” the injuries caused by these organizations “should be actionable under anticonspiratory statutes originally created to suppress organized KKK violence.”²³¹ Therefore, it is appropriate to make claims against present and potential ranch networks under the Federal Anti-Conspiracy Laws.²³²

Codified in 42 U.S.C. § 1985(3), the Federal Anti-Conspiracy Statute prohibits two or more persons from conspiring for the purposes of depriving any class of persons equal protection of the law.²³³ To state a cause of

224. 18 U.S.C. § 1962.

225. Castro, *supra* note 15, at 218.

226. *Id.*

227. *Id.* at 219.

228. *Id.*

229. *Id.* at 219-20. 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,” and that although work may be divided between conspirators, “each [person] is responsible for the acts of each other.” *Id.* (referring to *Salinas v. United States*, 522 U.S. 52, 63 (1997)). Also, “[i]f 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.” *Id.*

230. *Id.* at 220. “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.” *Id.* (citing *H.J. Inc. v. N.W. Bell Tele. Co.*, 492 U.S. 229, 239 (1989)). Further, to determine whether acts are related, the Court stated 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.” *Id.*

231. *Id.* at 218.

232. *Id.*

233. 42 U.S.C. § 1985(3).

action, the plaintiff must prove four elements.²³⁴ The plaintiff must demonstrate: (1) that a conspiracy existed (2) for the purpose of depriving the plaintiff of equal protection or his or her privileges and immunities, (3) that the defendants made some act in furtherance of their conspiratorial objectives, and (4) the plaintiffs suffered an injury as a result of those acts.²³⁵ The statute, which reaches private actions, also requires that there be “some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators’ action.”²³⁶

3. Failure to Prevent Conspiracy Act

The establishment of a Section 1985 conspiracy limits liability to private entities.²³⁷ However, other parties, such as government officials acting in their official capacity, may be held liable for conspiracies under 42 U.S.C. § 1986.²³⁸ In other words, the Failure to Prevent Conspiracy Act makes it unlawful for any public official or entity to knowingly fail to prevent acts in furtherance of a conspiracy.²³⁹ Further, the Act holds that the public officials and entities shall be liable to any person injured as a result of the acts in furtherance of the conspiracy.²⁴⁰ This statute is pertinent in situations where a police department, for example, is aware of vigilante patrols against undocumented travelers and consciously chooses not to take action to prevent the conspiracy.²⁴¹

To establish a cause of action under this Act, the plaintiff must first show that a conspiracy under Section 1985 existed or continues to exist.²⁴² Second, the plaintiff must prove: (1) that the defendants were aware of the conspiracy; (2) the defendants had the power to prevent it;

234. Griffin v. Breckenridge, 403 U.S. 88, 102-03 (1971).

235. *Id.*

236. *Id.*

237. Scott Moriarity, Student Article, *Responding to the Issue of “Driving While Black”: A Plan for Community Action through Litigation and Legislation*, 27 WM. MITCHELL L. REV. 2031, 2055 (2001) (“[I]t should be emphasized that Section 1985(3) acts against public officials in their individual capacity.”).

238. *Id.* at 2056 (citing to actions against members of city governments, police departments, a mayor, and other city officials).

239. 42 U.S.C. § 1986; *See Owen v. Independence*, 445 U.S. 622, 671-72 (Powell, J., dissenting) (“The final version [of 42 U.S.C § 1986] applie[s] not just to local governments but to all ‘persons,’ and it impose[s] no liability unless the defendant knew that a wrong was ‘about to be committed.’”).

240. 42 U.S.C. § 1986.

241. Castro, *supra* note 15, at 223 (“Police agencies . . . have been found liable under § 1986 for failure to enforce laws meant to prevent crimes or conspiracies.”).

242. *Id.* at 222.

(3) the defendants refused or neglected to prevent it, and (4) wrongful acts were committed by the conspiracy.²⁴³

4. Deprivation of Rights under Color of Law

Undocumented persons are protected against bodily injury as provided under 18 U.S.C. § 242.²⁴⁴ The statute provides that if a person operating under color of law willfully deprives another person of his or her rights, privileges, and immunities, or subjects that person to different pains or penalties because that person is an alien, or of a different color or race, that person will be fined or imprisoned.²⁴⁵

The significant factor in applying this statute is the “color of law” issue. The accused does not have to be an officer of the state to act “under color.”²⁴⁶ It is simply “enough that he is a willful participant in joint activity with the state or its agents.”²⁴⁷ By its language, though, it does require that at least one participant *be* acting under color of law. This statute is most pertinent to situations where undocumented immigrants are abused by members of the Border Patrol or other officials.²⁴⁸

D. Social Strategies

1. Good Samaritan Patrols

Potential social strategies that have been proposed, and in some cases implemented, can also be used to minimize the occurrences of violence against undocumented immigrants. For example, Arizona has groups known as “Good Samaritan Patrols.”²⁴⁹ As armed vigilantes track immigrants in the deserts of Arizona, doctors and nuns come to their aid offering water and medical supplies.²⁵⁰ They know too well that “[w]ith its bugs, coyotes, turkey vultures and heat so intense it can melt the soles of tennis shoes, the desert can turn an 180-pound body into a skeleton in

243. *Id.*; Moriarity, *supra* note 237, at 2056.

244. This statute is commonly known as Deprivation of Rights Under Color of Law.

245. 18 U.S.C. § 242.

246. *United States v. Price*, 383 U.S. 787, 794 (1966).

247. *Id.*

248. See Associated Press, *Border Patrol Agent Indicted in Immigrant Assault*, LAREDO MORNING TIMES, Nov. 15, 2000, at 6A (stating that a Border Patrol agent was facing a count of deprivation of rights under color of law for assaulting a Mexican man by hitting him with a flashlight after arresting him); see also Associated Press, *Agent Convicted in Immigrant Assault*, LAREDO MORNING TIMES, Mar. 28, 2001, at 6A (discussing that the Border Patrol agent was ultimately convicted of the violation).

249. Michael Riley, *More Mexicans Losing Desert Trek's Harsh Gamble*, LAREDO MORNING TIMES, available at <http://madmax.lmtonline.com/mainnewsarchives/102003/s4.htm> (last visited Oct. 29, 2004).

250. *Id.*

less than three weeks.”²⁵¹ Humane Borders is another group of good Samaritans that help out illegal immigrants.²⁵² Based in Tucson, they “carr[y] as much as 500 gallons of water for 41 desert aid stations each week for immigrants who can’t physically carry enough liquid to sustain them through the trek.”²⁵³ The mere physical presence of these “Good Samaritan” organizations may also serve as a deterrent to vigilante violence.

2. Trek Survival

In an effort to save lives, the Mexican government decided in 2001 to offer trek survival to potential crossers.²⁵⁴ Their objective is to train “potential undocumented migrants on how to survive hazardous treks across the U.S.-Mexico border.”²⁵⁵ In 2001, about “3,000 volunteers in select, rural regions of Mexico” were “trained in survival techniques and given basic medical kits equipped with snake-bite antidotes, bandages and medicines to treat dehydration, diarrhea and other ailments.”²⁵⁶ The kits may have also included “dried meat, other emergency food, condoms, and birth control pills.”²⁵⁷ Perhaps among their curriculum, the would-be immigrants should be taught how to safely approach apprehensive ranchers to ask for help, without posing a threat.

3. Border Safety Initiative

In an effort to prevent the unnecessary deaths of illegal immigrants crossing the border, dignitaries and law enforcement from the United States and Mexico are joining forces.²⁵⁸ The goal of this bi-national effort

251. *Id.* The stories recounted by the patrols of the undocumented immigrants are “a litany of misfortune and hope:” a sixteen year-old girl who convinced her parents that she had a better life waiting for her working in a butcher shop in Kentucky than a small village in Mexico died far from either; a young Mexican man who safely made the crossing, who later helped authorities find the body of a friend who died in his arms, a victim of dehydration and heatstroke; an eighty year-old great-grandmother who survived the desert while her daughter, a woman in her mid-forties, did not. *Id.*

252. *Id.*

253. *Id.* Rescuers from the organization have said that they have found groups of migrants who, after circling the same area for days lost in their delusions, eat dirt under the belief that they were drinking water. *Id.* Others had resorted to drinking their urine to preserve moisture. *Id.*

254. Susan Ferriss, *Mexicans Learning Trek Survival*, LAREDO MORNING TIMES, May 19, 2001, at 1A.

255. *Id.*

256. *Id.*

257. *Id.*

258. Laurel Almada, *Agencies Join Forces to Save Lives*, LAREDO MORNING TIMES, Feb. 1, 2002 at 3A (“U.S. Border Patrol, U.S. Customs, Immigration and Naturalization Service, U.S. and Mexican consular officials, the cities of Laredo and Nuevo Laredo and

is to not only prevent illegal immigration, but to provide life saving services in the event people decide to cross the border under dangerous conditions.”²⁵⁹ Mexico’s contribution toward prevention includes “placing posters warning citizens of the dangers of illegal crossings as well as airing television and radio messages advising the people of the risks involved.”²⁶⁰ Like trek survival, Mexico’s warning efforts can increase immigrants’ safety.

4. Other Strategies

Professor Wayne Cornelius, Director of the Center for Comparative Immigration Studies at the University of California in San Diego, does not foresee a decrease in immigrant deaths at the border.²⁶¹ The only forces that he feels could possibly bring down the death toll are “a fundamental change in the U.S. Border enforcement strategy, . . . a dramatic improvement in economic opportunities on the Mexican side of the border, . . . and a step-level increase in the enforcement of U.S. immigration laws in the workplace to bring down the demand for undocumented labor.”²⁶² Professor Cornelius asserts that neither strategy is likely to happen unless “a major effort by the U.S. and Mexican governments to stimulate development” or Congress decides to move in the direction of enforcing labor laws.²⁶³

Contrary to Professor Cornelius’ forecast, changes may take place sooner than expected. On January 7, 2004, President George W. Bush unveiled his changes to the current immigration policy.²⁶⁴ The proposal came about after Mexican President Vicente Fox toured the United States in November 2003 to promote his legislative priority of “giving millions of Mexicans the opportunity to legally work in the United States.”²⁶⁵ As soon as pending legislation takes effect, the Bush plan could grant an estimated eight million undocumented workers in the United States, as well as persons abroad, legal status.²⁶⁶ The “temporary

their respective firefighters came together to publicize their Border Safety Initiative, now in its third year.”).

259. *Id.*

260. *Id.*

261. *Analysis: Dangers of Illegal Border Crossings* (NPR broadcast, Sept. 10, 2003) (transcript on file with author).

262. *Id.*

263. *Id.*

264. John King et al., *Bush Calls for Changes on Illegal Workers* (Jan. 8, 2004), at www.cnn.com/2004/ALLPOLITICS/01/07/bush.immigration/index.html.

265. Guillermo X. Garcia, *Fox Finally Makes His Way to Texas*, SAN ANTONIO EXPRESS-NEWS, Nov. 6, 2003, at 1A.

266. Associated Press, *Details of Proposed Immigration Changes*, LAREDO MORNING TIMES, Jan. 7, 2004, at 11A.

worker program” would allow them to apply for a three-year temporary work visa, renewable once for an additional three years.²⁶⁷ At the end of the term, the worker must return to his home country.²⁶⁸ If an applicant for the program is already in the United States, he or she must pay an unspecified registration fee²⁶⁹ as well as provide evidence of employment.²⁷⁰ Prospective immigrants must similarly show that an American employer has extended them a job offer,²⁷¹ although they would not have to pay a fee.²⁷² Once an employer shows that it could not fill the position with a U.S. citizen, the immigrant worker would benefit from the same protections afforded to American workers.

Importantly, the Bush plan also allows immigrants to petition for their dependents upon a showing that the immigrant worker can support those dependents, and allows workers to move freely between the United States and their home country.²⁷³ As an incentive for workers to return to their home countries, the plan includes the promise of access to retirement benefits as well as new tax savings accounts.²⁷⁴

Professor Cornelius has displayed apprehension towards the proposed changes, stating that in order to stimulate worker participation, the program must provide incentives.²⁷⁵ “The existing, informal, unauthorized labor market with job offers being arranged before migration by relatives and friends already working in the U.S. works very efficiently and to the benefit of both workers and employers,” Cornelius said.²⁷⁶ “What’s in the new system for them?”²⁷⁷

As to whether the proposed changes will decrease the number of boarder-deaths, Claudia Smith, director of an immigration advocacy group, doubts that there would be a reduction.²⁷⁸ Specifically, she contends that “[i]t will have some impact but there is no way [the] guest worker program can be big enough to meet the needs of Mexicans seeking work or the demand in the United States for undocumented labor.”²⁷⁹

267. King, *supra* note 264.

268. *Details of Proposed Immigration Changes*, *supra* note 266.

269. *Id.*

270. King, *supra* note 264.

271. *Id.*

272. *Details of Proposed Immigration Changes*, *supra* note 266.

273. *Id.*

274. *Id.*

275. *Border Residents Question Immigration Proposal* (Jan. 7, 2004), at www.cnn.com/2004/ALLPOLITICS/01/07/elec04.prez.immigration.fears.ap/index.html.

276. *Id.*

277. *Id.*

278. *Id.*

279. *Id.*

IV. CONCLUDING REMARKS

President Kennedy once stated, “There is no part of our nation that has not been touched by our immigrant background. Everywhere immigrants have enriched and strengthened the fabric of American life.”²⁸⁰ Unfortunately, organizations such as Ranch Rescue see otherwise. Nonetheless, the artful pleading of federal and state claims can give terrorized undocumented immigrants the justice that a family such as Eusebio de Haro’s has longed for.²⁸¹ In so doing, we must always remember, “America is a nation of immigrants and their descendants.”²⁸² Those of us here today are fortunate that our ancestors made the triumphant journey, despite the adversities of nature and man.

280. President John F. Kennedy quoted in *The Tarnished Golden Door: Civil Rights Issues in Immigration* (United States Commission on Civil Rights), Sept. 1980 at 1 [hereinafter *The Tarnished Golden Door*].

281. See generally Castro, *supra* note 15, at 235-36.

282. *The Tarnished Golden Door*, *supra* note 280, at 1.