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COMMENT

The Minuteman Project, Gone in a Minute or Here to Stay? The Origin, History and Future of Citizen Activism on the United States-Mexico Border

Peter Yoxall*

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I. INTRODUCTION

Legally, citizen activism rests on a continuum between clearly impermissible activity, such as lynch mobs, and clearly permissible activity, such as neighborhood watch groups.¹ Neighborhood watch groups represent the majority of citizen activist groups and arguably represent the least offensive groups.² Members of neighborhood watch programs contribute to crime prevention by serving as the eyes and ears of the police and reporting criminal activity to the authorities. Law enforcement officials often encourage neighborhood watch programs that facilitate police operations. In fact, one study found that communities that employed neighborhood watch programs achieved up to an 85% reduced crime rate.³ More active watch groups will conduct routine neighborhood automobile and foot patrols.⁴ However, tension arises when such groups exceed the bounds of their self-help privileges.⁵ As a result, government and law enforcement officials will distance themselves from such excessively active citizen groups⁶ out of fear that official recognition of such groups will make them *de facto* government agents subjecting the government to liability.

One region in which citizen activism is both historically and

1. Douglas I. Brandon, et al., *Self-Help: Extrajudicial Rights, Privileges and Remedies in Contemporary American Society*, 37 VAND. L. REV. 845, 890 (1984).

2. *Id.* at 894. Over two million Americans belong to neighborhood watch programs in the United States. Vicki Quade, *Our Neighbors' Keepers: Citizens Are Joining with Police to Cut Crime*, 69 A.B.A. J. 1805 (1983).

3. Vicki Quade, *For Neighborhoods, The Payoff is Safety*, 69 A.B.A. J. 1806 (1983).

4. For example, the "Guardian Angels," originated as a small group of youthful citizens who organized in 1978 to patrol the New York City subways and later increased to a national membership of over 2000 by late 1982, employed concepts of lawful self-help privileges of self-defense, defense of others, and crime prevention. Sandra Gardener, *Guardian Angels Get a Mixed Reception*, N.Y. TIMES, June 21, 1981, § 11, at 1.

5. Brandon, *supra* note 1, at 897-98; see also Judith Cummings, *Should Subway Angels Get a Halo?*, N.Y. TIMES, Dec. 21, 1980, § 4, at 6.

6. One Guardian Angels' group leader estimated that in late 1982, local police and thirty-eight to forty Angels' chapters did not cooperate with each other. *Connecticut Journal*, N.Y. TIMES, Dec. 19, 1982, § 11, at 3.

currently prevalent is the United States-Mexico border where citizen activism has scaled the entire continuum from permissible activity to impermissible activity. The United States-Mexico border is the most frequently crossed international border in the world, with some 350 million people crossing legally every year and many more millions crossing illegally.⁷ The current volatility on the United States-Mexico border has been brewing since its creation in 1848.⁸ Historically, the American response to this tension has been for citizens to actively participate in border control. However, this citizen activism has more often than not inevitably overflowed into impermissible violent vigilantism.⁹

Unfortunately, border violence and vigilantism is not a relic of the past. There has been a growing trend and movement towards border vigilantism.¹⁰ In the late twentieth century, vigilante ranchers gathered in California, Arizona, New Mexico, and Texas.¹¹ These vigilante groups often “operat[ed] in a legal and moral shade of grey.”¹² On the one hand, they acted within the legal framework of a citizen’s arrest while fulfilling a societal need that the government did not necessarily have the resources to provide. On the other hand, these groups were motivated by racist, xenophobic agendas, and often used violent and abusive tactics that were beyond any permissible self-help privileges.

The United States has now entered the twenty-first century in the wake of September 11th, and with a new sense of vigilance in the United States,¹³ citizen activism on the United States-Mex-

7. The United States-Mexico land border has the highest number of legal and illegal crossings in the world. The border extends over 1952 miles following the middle of the Rio Grande, from its mouth on the Gulf of Mexico a distance of 1254 miles to a point just upstream of El Paso, Texas, and Ciudad Juarez, Chihuahua, it then follows an alignment westward overland a distance of 533 miles to the Colorado River, then it follows the middle of that river northward a distance of twenty-four miles, and then it again follows an alignment westward overland a distance of 141 miles to the Pacific Ocean. The region along the boundary is characterized by deserts, rugged mountains, abundant sunshine and by the Colorado River and the Rio Grande. WIKIPEDIA, *United States-Mexico Border*, Mar. 12, 2006, http://en.wikipedia.org/wiki/U.S.-Mexico_border.

8. See Jessica Conaway, *Reversion Back to a State of Nature in the United States Southern Borderlands: A Look at Potential Causes of Action to Curb Vigilante Activity on the United States/Mexico Border*, 56 MERCER L. REV. 1419, 1419-1422 (2005).

9. See *id.*

10. Since the late 1980s and early 1990s, groups of concerned citizens have banded together to guard the United States-Mexico border. See *id.* at 1419-20.

11. *Id.*

12. *Id.* at 1421.

13. “On October 29, 2001, President George W. Bush called on the nation to be ‘vigilant’ against terrorism, a call that has reinvigorated ‘vigilante’ groups,

ico border has been revolutionized by a highly publicized and politicized citizen activist border group, the Minuteman Civil Defense Corps (MCDC) which is part of the Minuteman Project.¹⁴ The MCDC presents a political face to a group of citizens who believes that the government has failed to secure the borders of the United States of America and that they can make a difference.¹⁵ The MCDC emphasize that it has “no intention of doing any more than reporting immigrant sightings to the [United States] Border Patrol.”¹⁶ Moreover, the MCDC provide a Pledge¹⁷ and Guidelines,¹⁸ which outlines its commitment to act within the law.

Nevertheless, there has been great concern over the growth of citizen activist groups such as the MCDC, in particular by the Mexican government.¹⁹ Similarly, President George W. Bush

particularly near the United States southern border with Mexico . . .” See Brooke H. Russ, *Secrets on the Texas-Mexico Border: Leiva Et Al v. Ranch Rescue and Rodriguez Et Al v. Ranch Rescue and the Right of Undocumented Aliens to Bring Suit*, 35 U. MIAMI INTER-AM. L. REV. 405, 405 (2004) (citing Address to the Nation from Atlanta on Homeland Security, 2 PUB. PAPERS 1359, 1364 (Nov. 8, 2001)). “Before 9/11, Americans’ primary concern with the problem of illegal immigration was the economic effect of the poor, unskilled workforce entering the country by the hundreds of thousands. But since 9/11 the concern evolved and intensified with questions about who is crossing our southern border and what evil designs they have for our country. Only after 9/11 did it become evident to the Americans who do not live on the border that Mexicans are not the only ones who cross it.” Conaway, *supra* note 8, at 1420 (citing Nancy Gibbs, *Keep Out, You Tired, You Poor* . . ., TIME, Oct. 3, 1994, at 46; J. Zane Walley, Arab Terrorists Crossing the Border: Middle Eastern Illegals Find Easy Entrance into U.S. from Mexico, WorldNet Daily, Oct. 19, 2001, http://worldnetdaily.com/news/ARTICLE_ID=24987).

14. The Official Minuteman Civil Defense Corps, <http://www.minutemanhq.com/hq/index.php> (last visited Mar. 16, 2006).

15. See Chris Simcox, The Official Minuteman Civil Defense Corps: About Us, <http://www.minutemanhq.com/hq/aboutus.php> (last visited Mar. 16, 2006). (“We are three years post September 11, 2001, and still our government is more concerned with securing the borders of foreign lands than securing the borders of the United States. Enough is enough. I apologize for applying such a bromide, but when the going gets tough, the tough get going. I come from a generation that has lost the ideal that we are a ‘can-do nation.’ I cannot accept the weak excuse from our government that the problem is unsolvable. That mindset is un-American. We can and we will make a difference. We, as citizens, are the government, are acting within the social contract of our right to freedom, and we will apply our efforts within the limits of the laws we have created.”).

16. Vigilantes Set to ‘Confront’ Migrants on US Border, Mar. 31, 2005, <http://www.indybay.org/news/2005/03/1730556.php>.

17. The Minuteman Pledge, <http://www.minutemanhq.com/hq/mmpledge.php> (last visited Mar. 16, 2006) (a copy of this Pledge can be found at Appendix I).

18. Chris Simcox, Standard Operating Procedure for Minuteman Project, <http://www.minutemanhq.com/hq/sop.php> (last visited Mar. 16, 2006) (a copy of these Operating Procedures can be found at Appendix II).

19. See Vigilantes Set to ‘Confront’ Migrants on US Border, *supra* note 15 (stating

raised concerns stating, “[I]’m against vigilantes in the United States of America. I’m for enforcing law in a rational way. That’s why you got [sic] a Border Patrol, and they ought to be in charge of enforcing the border.”²⁰ Congress has also raised concerns, in two reports by the Congressional Research Service, regarding the legality of the MCDC and the practical effects that its operations may be having on the function of the border control.²¹ Without doubt, the MCDC represents a controversial development in the role of citizen activism on the United States-Mexico border.

This comment explores concerns that the MCDC, as a rapidly expanding, highly popular, and inherently racist group, represents a real threat to the stability of the United States. In order to quell this threat, I propose that legal action be taken, not necessarily against the MCDC, but in fact against the federal government, who would then be compelled to use their exclusive immigration power to curb and control the MCDC. In Part II of this paper, I analyze the history of violent vigilante groups on the United States-Mexico border and elucidate on the claimed reasons and justifications that have been given for the presence of the various groups. In Part III, I scrutinize the formation, the reasons and the justifications behind the MCDC and analyze whether the MCDC represents a permissible form of citizen activism or a continuation of the violent vigilantism that pervaded the history of the United States-Mexico border. In Part IV, I evaluate the need to curb and control the MCDC in light of the lessons learnt from the Ku Klux Klan, and then explore the possible legal measures that can be taken against the MCDC. In Part V, I will conclude

that Mexican President Vicente Fox has described the civilian border patrollers as “immigrant hunters” and the Mexican government sent a “diplomatic note” to the United States articulating its apprehension concerning the actions of American vigilante activist groups like MCDC.).

20. The President’s News Conference with President Vicente Fox of Mexico and Prime Minister Paul Martin of Canada in Waco, TX, 41 WEEKLY COMP. PRES. DOC. 509 (Mar. 23, 2005).

21. See STEVEN R. VINA, CRS REPORT FOR CONGRESS, PROTECTING OUR PERIMETER: ‘BORDER SEARCHES’ UNDER THE FOURTH AMENDMENT 17-18 (2005), <http://fpc.state.gov/documents/organization/48389.pdf> (raising Constitutional legal issues, such as the possibility that the volunteer group might become a *de facto* government agent, which could subject them to requirements and prohibitions of the Fourth Amendment); see also BLAS NUNEZ-NETO, CRS REPORT FOR CONGRESS, BORDER SECURITY: THE ROLE OF U.S. BORDER PATROL 31 (2005), <http://fpc.state.gov/documents/organization/47812.pdf> (reporting that there have been reports that United States Border Patrol officials have stated that the group has gotten in the way of their operations in a number of ways, including setting off sensors, thus causing United States Border Patrol agents to respond to false alarms).

with personal thoughts on the MCDC and the prospects it presents in the near future.

II. THE HISTORY OF CIVIL ACTIVISM ON THE UNITED STATES-MEXICO BORDER

A. *The Formative Trend of Frontier Violence*

The contentious issues that concern the MCDC are inherently woven into the history of citizen activism and vigilantism on the United States-Mexico border. Even before the creation of the United States-Mexico border there was tension between Americans and Mexicans. By the early 1800s, American settlers made their way into the Mexican province of Texas and by 1835 overran the Mexican garrison.²² The thirteen-day Battle of Alamo ensued in which Mexico was initially victorious; two months later, however, the United States fought back to victory.²³ In 1845, the United States Congress admitted Texas into the Union, which enticed a further confrontation from Mexico.²⁴ The United States responded by invading Mexico City.²⁵ As a result, Mexico surrendered and signed the Treaty of Guadalupe Hidalgo on February 2, 1848, selling California, Arizona, New Mexico, and Texas to the United States for 15 million dollars.²⁶

This bloody historical background formed the footprint from which the vigilante border groups flourished and grew.²⁷ Border violence was relentless between 1848 and 1928, resulting in the lynching of 597 Mexicans by vigilante mobs.²⁸ The minority Mexican population faced unparalleled dangers from mob violence when compared to African Americans.²⁹ Comparative data demonstrates that between 1848 and 1879 Mexicans were lynched at a rate of 473 per 100,000 of population. In comparison, African Americans lynched at a rate of 52.8 victims per 100,000 of population in Mississippi between 1880 and 1930 (the time period and

22. Jessica Conaway, *supra* note 8, at 1422 (citing ALAN RIDING, *DISTANT NEIGHBORS: A PORTRAIT OF THE MEXICANS* 35 (Vintage Books 2000) (1984)).

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.* at 1423 (citing William D. Carrigan & Clive Webb, *The Lynching of Persons of Mexican Origin or Descent in the United States, 1848 to 1928*, 37 J. SOC. HIST. 411, 413 (2003); Steven W. Bender, *Sight, Sound, and Stereotype: The War on Terrorism and its Consequences for Latinas/os*, 81 OR. L. REV. 1153, 1173 (2002)).

28. Carrigan & Webb, *supra* note 27, at 413.

29. *Id.* at 414.

state in which African American lynchings were most rife).³⁰ After 1880, there was a decline in the lynchings of Mexicans. Yet there were still 27.4 Mexican lynching victims per 100,000 of population, which exceeded the number of African Americans lynched in some of the southern states.³¹ The terrorizing of Mexicans by border vigilante groups continued into the twentieth century,³² with the last recorded lynching of a Mexican in the United States occurring on November 16, 1928.³³

B. The Claimed Reasons and Justifications Behind the Formative Trend of Frontier Violence

Explanatory models portray the early frontier violence as an essential function of the country's border.³⁴ According to scholarly interpretation, "the economic and demographic development of the frontier rapidly outpaced the growth of legal and governmental institutions," thus, forcing frontiersmen to legitimately take the law into their own hands.³⁵ This social constructive model proffered that historical frontier vigilantism served a legitimate purpose in preserving the order and security of frontier communities, which paved the way for the establishment of a formal legal system.³⁶

Although lawless frontier conditions may have somewhat cultivated vigilante efforts to maintain peace, to legitimize this argument would unjustifiably promote lynch mobs to tribunals who upheld the law.³⁷ Furthermore, vigilantes persisted in their activ-

30. *Id.*

31. "[T]he figure of 27.4 Mexican lynching victims per 100,000 of population for that period exceeds the statistics during the same time for black victims in some southern states and nearly equals that in others." *Id.*

32. For example, on October 18, 1915, Mexican outlaws derailed a train traveling towards Brownsville, killing several passengers, in response the Rangers exacted brutal revenge, shooting two Mexican passengers aboard the train and later executing eight suspected Mexican criminals along the banks of the Rio Grande. *Id.* at 417.

33. Rafael Benavides had been admitted to the hospital with a serious gun wound which had been inflicted by a sheriff's posse pursuing him for an assault upon a farmer's wife; however, less than twenty-four hours later Rafael Benavides was taken by four masked men from his hospital bed and hanged from a locust tree. *See id.* at 411.

34. *Id.* at 415.

35. *Id.*

36. *Id.* (Stating that in Richard Maxwell Brown's opinion; vigilantism "was a positive facet of the American experience. Many a new frontier community gained order and stability as the result of vigilantism that reconstructed the community pattern and values of the old settled areas, while dealing effectively with crime and disorder.").

37. Only "64 out of a total of 597 [lynched Mexicans] met their fate at the hands of

ities long after the arrival of the law courts.³⁸ The lynching of many Mexicans occurred in areas where there was a fully operating legal system and often involved the active collusion of law officers.³⁹ These mobs in fact often showed disdain for the due process of law by taking Mexican suspects from police custody and lynching them.⁴⁰

It has also been suggested that vigilante violence against Mexicans was caused by economic rivalry and jealousy.⁴¹ Americans considered Mexicans unworthy rivals in the quest to enjoy the economic success, wealth, and potential of the United States.⁴² It could also be argued that diplomatic tensions may have also encouraged vigilante violence. Diplomatic tensions between Mexico and the United States continued well after the signing of the Treaty of Guadalupe Hidalgo and the subsequent creation of the United States-Mexico border.⁴³ It is no coincidence that the most serious outbreaks of vigilante violence occurred during the 1850s, the 1870s, and the 1910s, which were also periods of heightened diplomatic tension between Mexico and the United States.⁴⁴ For example, in the 1870s the creation of a free trade zone invoked raids by Mexicans in March 1875, which led to American vigilantes terrorizing local Mexican settlers by burning their homes, and shooting them.⁴⁵ Similarly, during the Mexican Revolution there

vigilante committees/tribunals acting in the absence of a formal judicial system. Most were summarily executed by mobs that denied the accused even the pretense of a trial." *Id.* at 416.

38. *Id.* at 416 (citing John W. Caughey, "Their Majesties the Mob: Vigilantes Past and Present", PAC. HIST. REV., XXVI (1957)).

39. "The most systematic abuse of legal authority was by the Texas Rangers. Their brutal repression of the Mexican population was tantamount to state-sanctioned terrorism," with historians estimating hundreds and even thousands were killed by the Rangers. *Id.* at 416-17.

40. For example, in June 1874, Jesus Romo, who was arrested for robbery and attempted murder, was grabbed from the arresting officer by a gang of masked men who then lynched him. In a similar incident, in April 1877, Andres Martinez and Jose Maria Cordena, who were arrested for horse theft, were seized from the custody of the authorities by ten masked men and shot dead. *Id.* at 416.

41. *Id.* at 421.

42. During the California Gold Rush "as many as 25,000 Mexicans migrated to the mining regions of California between 1848 and 1852." The Mexicans' rapid prosperity aroused bitter animosity, envy and jealousy. The introduction of a Foreign Miners' Tax in April 1850 fed racial prejudice and jealousy, allowing the expulsion of foreign miners who could or would not pay. "In total, at least 163 Mexicans were lynched in California between 1848 and 1860." *See id.* at 422.

43. *Id.*

44. *Id.*

45. *Id.* at 422. "In total, at least 147 Mexicans were lynched during the 1870s . . ." *Id.* at 423.

was another resurgence of violence initiated by incursions into Texas by Mexican vigilantes, which was followed by a series of brutal counter-offensives by American vigilante groups.⁴⁶

One of the most potent reasons and primary forces behind the frontier vigilantism was racial prejudice.⁴⁷ The bitter racial hostility that paved the history of the formation of the United States-Mexico border maintained an enduring legacy long after the border had been created.⁴⁸ Vigilante violence against Mexicans was used to assert continued sovereignty and racial hierarchy.⁴⁹ Although the law classified Mexicans as white, Mexicans were considered an inferior race by many on the United States side of the border.⁵⁰ In particular, lower classes of Mexicans were portrayed as a hybrid of Anglo, Indian, Spanish and African blood.⁵¹ Consequently, Mexican lynching victims consisted overwhelmingly of members from the impoverished laboring class.⁵² The racist nature of the vigilante groups is emphasized by the acts of ritualized torture and sadism that were involved in many Mexican lynchings⁵³ and by the high number of multiple lynchings that were intended to punish because of race rather than culpability.⁵⁴ Seemingly, racial prejudice was the core reason and justification for the formative trend of vigilante violence on the United States-Mexico border.

C. The Modern Trend of Frontier Violence

Although, the last recorded lynching of a Mexican occurred in

46. *Id.* at 423. "Between 1911 and 1920, [American vigilante groups] lynched at least 124 Mexicans." *Id.*

47. *Id.* at 417.

48. *Id.* at 417-18.

49. *See id.*

50. In the 1920s, a track foreman interviewed in Dimmit County, Texas stated, "[t]hey are an inferior race. I would not think of classing Mexicans as whites." Pringle Shaw observed that "[t]he Spanish Americans are held in sovereign contempt by citizens, and are stigmatized with being filthy, ignorant, lazy and vicious." *Id.* at 418-19.

51. "Their impure status pushed them to the margins of whiteness, precluding their entitlement to many of its social privileges." *Id.* at 418.

52. *See id.*

53. Fifty-two of the Mexican lynching victims suffered some act of physical mutilation mainly being burned and shot after they had already been hanged; for example, in February 1856, a Mexican horse thief had been shot four times, hacked by a knife blade, and his tongue cut out. *Id.* at 419.

54. In total, of the 285 acts of mob violence analyzed by Carrigan and Webb, 113 involved multiple lynchings. For example, in July 1877, vigilantes in Texas avenged the murder of Lee Rabb by randomly lynching as many as forty Mexicans. *Id.*

1928,⁵⁵ border vigilantism has continued well into the late twentieth century. One of the most treacherous acts of vigilante violence occurred in 1972 when Kenneth Adami willfully killed five undocumented Mexican immigrants who had sought shelter from freezing temperatures in his abandoned hunting shack.⁵⁶

The battle over the border heated up again in the late 1980s and early 1990s.⁵⁷ In El Paso, Texas during the early 1990s, the United States Border Patrol took action to curb undocumented immigration by initiating "Operation Hold the Line" and forming a twenty-four hour blockade along the Rio Grande.⁵⁸ Meanwhile, in California, concerned citizens participated in the "Light Up the Border" campaign, in which citizens would form a line with their cars and shine their lights towards the border.⁵⁹ Citizen activists in California also formed the "Airport Posse" in which citizens patrolled the airports for "suspicious" people.⁶⁰

President Clinton responded to the growing concerns in California by instituting a new border policy called "Operation Gatekeeper," resulting in an increase in the resources and number of United States Border Patrol agents in San Diego, as well as the construction of a ten foot wall covered in lights along fourteen

55. *Id.* at 411.

56. Because of "freezing temperatures and rain, the immigrants chose to eat, rest, and warm themselves in Adami's boarded-up hunting shack When Adami patrolled his ranch, he saw a light coming from the abandoned shack. Armed with a .257 Weatherbee magnum rifle . . . [and] claiming to have been in fear for his safety, [he] broke a window and started firing at the men as they ran for cover. After sleeping near their bodies, Adami checked his victims' jugular veins the next morning. He then turned himself in, confessing to two Border Patrol agents what he had done. . . . Authorities discovered that the victims had posed no threat; one was found under a kitchen table and another behind a portable kitchen sink," and that they appeared to have been begging for mercy. See Sara A. Martinez, *Declaring Open Season: The Outbreak of Violence Against Undocumented Immigrants by Vigilante Ranchers in South Texas*, 7 SCHOLAR 95, 100-101 (2004) (internal citations omitted). A Webb County jury convicted Adami, and he served twenty-seven years in prison. *Id.*

57. Conaway, *supra* note 8, at 1423.

58. In 1993, Silvestre Reyes launched Operation Hold-the-Line sending 400 of El Paso's 650 U. S. Border Patrol agents to the banks of the Rio Grande to repair the fences and lines along a 20-mile stretch of the border. Gabriela A. Gallegos, *Border Matters: Redefining the National Interest in US-Mexico Immigration and Trade Policy* *Border Matters: Redefining the National Interest in US-Mexico Immigration and Trade Policy*, 92 CALIF. L. REV. 1729, 1734-35 (2004). The operation was successful, resulting in a drop in illicit traffic across the border. Jessica Conaway, *supra* note 8, at 1423.

59. Although the campaign was successful, immigration activists retaliated by wielding mirrors and tin foil reflecting the light straight back at the citizen activists. Conaway, *supra* note 8, at 1423.

60. *Id.* at 1423-24.

miles of the border.⁶¹ Subsequent border-control initiatives soon followed in the form of "Operation Safeguard" in Nogales, Arizona and "Operation Rio Grande" in McAllen and Laredo, Texas.⁶²

Furthermore, after the North American Free Trade Agreement (NAFTA) was formed, creating a "free trade zone" in the United States, Canada, and Mexico, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), which focused on "(1) restoring credibility to the U.S. system of enforcement against illegal migration, and (2) setting priorities for legal immigration that are in accord with the national interest."⁶³ With regards to immigration, the national interest involved maintaining Mexico's status as an attractive trading partner. Hence, the immigration policy had to assure that Mexico would not lose its comparative advantage in cheap labor by means of undocumented Mexicans immigrating to the United States. Thus, the intensified border control policies of IIRIRA and the recent commitment by President Bush to maintain strong border control were essential to protect this national interest.⁶⁴

As a result of the more intensified border controls in urban areas, undocumented immigrants diverted their routes through the vast desert land and ranches of southern Arizona, causing hundreds of deaths each year from exposure, heat exhaustion, and dehydration.⁶⁵ Reported deaths of undocumented immigrants in the Arizona border region rose from approximately twenty in 1998 to almost sixty by June 2000.⁶⁶ Moreover, in 1999 the United States Border Patrol rescued 236 distressed immigrants in the Tucson area of Arizona and by July 2000, United States Border

61. *Id.* at 1424.

62. Gallegos, *supra* note 58, at 1735.

63. *Id.* at 1713-36.

64. *See, e.g., id.* at 1736 (stating that 1996 reforms in IIRIRA included extensive changes that focused on the prevention and punishment of illegal immigration); Address Before a Joint Session of Congress on the State of the Union, 42 WEEKLY COMP. PRES. DOC. 145, 149-50 (Jan. 31, 2006) (stating that although the "economy could not function without [immigrants]. . . . Keeping America competitive requires an immigration system that upholds our laws, reflects our values, and serves the interests of our economy. Our nation needs orderly and secure borders. To meet this goal, we must have stronger immigration enforcement and border protection.").

65. Conaway, *supra* note 8, at 1424-25; *e.g.,* Robert F. Castro, *Exorcising Tombstone's Evil Spirit: Eradicating Vigilante Ranch Enterprises Through Public Interest Litigation*, 20 LAW & INEQ. 203, 206 (2002) (Recounting the death of nineteen-year-old Hugo Sanchez Acevedo, who died after experiencing chills and a headache while walking in the desert mountains northwest of Nogales, Arizona. Acevedo's desperate relatives had carried him for approximately three hours attempting to find a road to flag down help.).

66. Castro, *supra* note 65, at 206.

Patrol agents had already assisted 844 persons.⁶⁷ Overall, it is estimated that 500 Mexicans died trying to cross the border in 2005.⁶⁸ However, one must not underestimate these numbers; in fact, deaths can easily go unreported as the bodies decompose rapidly in the heat of the desert.⁶⁹

Diverting the flow of undocumented immigrants to the deserts in the late 1990s did more than increase the risk of death by dehydration it also promoted a new wave of vigilante violence in more rural desert regions.⁷⁰ It is almost impossible to know or even estimate how many crimes have been committed against undocumented immigrants passing through the rural desert.⁷¹ However, some crimes committed against undocumented immigrants have been reported.⁷² One of the most controversial and excessively violent crimes involved Eusebio de Haro, a twenty-two year old immigrant who lived in the United States undocumented for almost a year before he was deported to Mexico. De Haro recrossed the border to return to his wife and child.⁷³ Sanchez, who had been accompanying De Haro, recounted that they had hiked for nearly two days in temperatures of 105 degrees when the men approached the house trailer of Samuel Hale Blackwood asking for water. Blackwood's wife immediately refused and called her husband and Sanchez and De Haro ran away.⁷⁴ However, the Blackwoods followed De Haro and Sanchez and Blackwood shot at

67. *Id.*

68. *Mexican Migrants to Get US Maps*, BBC NEWS, Jan. 25, 2006, <http://news.bbc.co.uk/2/hi/americas/4645782.stm>. The Mexican government reacted to the large number of deaths in the deserts by distributing at least 70,000 maps showing highways, rescue beacons and water tanks in the Sonoran Desert, which extends along the Mexican border with California and Arizona, to curb the number of deaths of those attempting to illegally cross the border.

69. See Martinez, *supra* note 56, at 100.

70. See *id.*

71. There are other reasons why it is almost impossible to know how many crimes are committed against illegal immigrants crossing through the desert: (1) bodies rot faster in the desert, and bones are quickly scattered; (2) migrants that do survive may not know their rights in the first place and if they do they keep quiet to avoid incarceration in the United States; and (3) there is no incentive for vigilantes to confess to crimes. See BOB MOSER, S. POVERTY L. CTR., INTELLIGENCE REPORT: VIGILANTE VIOLENCE, CRIMES AGAINST BORDER-CROSSERS ARE HARD TO DETECT IN THE LONELY ARIZONA DESERT - BUT SUSPICIOUS INCIDENTS KEEP CROPPING UP (Spring 2003), <http://www.splcenter.org/intel/intelreport/article.jsp?sid=9>.

72. See *id.* See *infra* Appendix III, for a list of some of those reported incidents of less extreme vigilante behavior.

73. John MacCormack, *Open Season*, DALLAS OBSERVER, May 30, 2002, at 5, available at <http://www.dallasobserver.com/issues/2002-05-30/news/feature2.html>.

74. Pauline Arrillaga, *Border War*, PORTSMOUTH HERALD, Aug. 20, 2000, at http://www.seacoastonline.com/2000news/8_20_w1.htm.

them hitting De Haro in the back of the foot, causing him to bleed to death.⁷⁵ There was some controversy as to whether Blackwood had shot in self defense; however, the State Court of Appeals determined that Blackwood had discharged a firearm at or in the direction of De Haro.⁷⁶ He was thus convicted of misdemeanor deadly conduct and given a suspended sentence, probation and a fine of 4,000 dollars.⁷⁷

The rise in immigration through southeastern Arizona has particularly heightened tensions between migrants and ranchers.⁷⁸ Roger Barnett, a former Cochise County Deputy Sheriff who owned Cross Rail and Lee Station ranches, was among the first to react to the undocumented immigrants by carrying assault weapons, wearing military clothing and using hunting dogs to track migrants crossing his ranch.⁷⁹ Barnett was a key figure in the drive to organize and mobilize ranch owners and form a vigilante citizen activist group called the Cochise County Concerned Citizens Group (CCCC).⁸⁰ In April 2000, the CCCC began circulating a flyer entitled "Ranch Rescue" that encouraged vigilante involvement by providing an open invitation for volunteers to camp out with local ranchers to help "protect" their property rights.⁸¹ A second flyer was soon sent out announcing the development of the "Neighborhood Ranch Watch," soliciting volunteers to militarize local ranch properties and create plans in conjunction with local law enforcement.⁸² Consequently, the CCCC and its affiliate ranch network became more aggressive and violent.⁸³

The largest and most active vigilante border groups became the "Ranch Rescue" and the "Barnett Boys".⁸⁴ These vigilante

75. *Id.*

76. *Blackwood v. State*, 2002 WL 31253536 *2 (Tex. Ct. App. Oct. 9, 2002).

77. *Id.*; MacCormack, *supra* note 73.

78. Castro, *supra* note 65, at 207.

79. *Id.* at 207.

80. *Id.* at 207-10.

81. *Id.* at 210.

82. "The plan calls for the use of cell phones to coordinate ranch patrols with local sheriff's patrols, trip wires to discharge signal flares for the spotting of migrants, hunting dogs to track down crossing migrants, and infrared night sight devices . . . [while also] propos[ing] that local ranchers be deputized as volunteer officers . . ." *Id.* at 212.

83. *See id.* at 212-14. For example, on May 21, 2000, two horsemen dressed in black shot Miguel Angel Palafox in the neck. Amazingly he managed to crawl to safety. In another incident, Barnett was patrolling the highways, pulled over a vehicle, and held immigrants at gun point until the border patrol arrived. In the spring of 2000, Barnett also physically assaulted one migrant as he attempted to flee Barnett's unlawful detention. *Id.* at 213-14.

84. Conaway, *supra* note 8, at 1425. *See also*, Martinez, *supra* note 56, at 105-6.

groups were a force to be reckoned with until the leaders of the Ranch Rescue, Casey Nethercott and Jack Foote, were successfully sued by two undocumented immigrants who were illegally detained and assaulted by the Ranch Rescue.⁸⁵ As a result of this suit, the vigilante ranch groups have taken a back seat and have been replaced by the rapidly growing MCDC.

D. The Claimed Reasons and Justifications Behind the Modern Trend of Frontier Violence

Most of the vigilante ranch groups that formed during the late 1990s had similar requisite characteristics, claimed justifications and reasons.⁸⁶ In fact, many of their reasons, justifications and characteristics bear similar relations to the early historical vigilante groups that patrolled the United States-Mexico border.

The ranch groups reason that their actions were justified to avoid the deterioration and ultimate loss of American society.⁸⁷ When the CCCC initially formed, the "Ranch Rescue" flyer stated, "[t]he problem is in southern Arizona now. Help us put a stop to it before it reaches our ranches and farms elsewhere in the USA."⁸⁸ Furthermore, Foote, one of Ranch Rescue's leaders, stated that the undocumented immigrants crossing the border are "wrestling" away from Americans their "property rights and way of life," while Nethercott, a fellow leader of Ranch Rescue, claimed that "[w]e've got about five more years and this country is ruined . . . illegals are destroying our fabric of life."⁸⁹ This social constructive rationale has also been voiced in the mainstream. For example, Pat

The Barnett Boys were known for spending Sundays stalking undocumented migrants, rounding them up with trained dogs, and then taking them to the border patrol at gunpoint. *Id.* at 106.

85. *Immigrants Win Arizona Ranch*, S. POVERTY L. CTR., Aug. 19, 2005, http://www.splcenter.org/legal/news/article.jsp?aid=125&site_area=1. Fatima Leiva and Edwin Mancia were among a group of immigrants traveling on foot when members of Ranch Rescue captured and detained them. *Id.* During the detention, Nethercott struck Mancia on the back of his head in addition to allowing his rottweiler to attack him. *Id.* Leiva and Mancia successfully obtained judgments totaling \$1 million against Nethercott and Foote. *Id.* Additionally, Leiva and Mancia have subsequently seized Nethercott's property which was the Ranch Rescue's headquarters. See Andrew Pollack, *2 Illegal Immigrants Win Arizona Ranch in Court Fight*, NY TIMES, Aug. 19, 2005, at A16. Morris Dees, Jr., a representative of the two immigrants in their lawsuit, said that the loss of the ranch would "send a pretty important message to those who come to the border to use violence." *Id.*

86. Conaway, *supra* note 8, at 1426-27.

87. *Id.*

88. Castro, *supra* note 65, at 211.

89. Conaway, *supra* note 8, at 1427.

Buchanan suggested on Hardball that “we [are] losing our country.”⁹⁰

Economic rivalry and jealousy may have also influenced the ranch group’s activist behavior.⁹¹ For example, CCCC flyers specifically mentioned the economic threat that undocumented immigrants presented to the livelihood of ranchers.⁹² The alleged economic burden that undocumented immigrants impose on the state and federal governments may be in itself enough to have fueled vigilante ranch groups.⁹³

The vigilante ranch groups also share racially motivated, xenophobic ideologies and agendas, similar to the racist ideologies of the early vigilante groups. Racist motivations have been apparent since the formation of the CCCC. For example, on May 13, 2000 the CCCC held a public rally which was attended by the Ku Klux Klan, the Voices of Citizens Together, and David Duke’s National Organization for European American Rights.⁹⁴ Moreover, “Ranch Rescue” completely embodied a racial agenda. Foote in an internet forum wrote:

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 that you live in is nothing but a pile of dog shit, made up of millions of 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. Just be careful where the dog shits, pal, because sooner or later we will be there.⁹⁵

Other modern citizen activist groups such as the “United States Border Control” have festered racist motives stating that:

90. *Id.*

91. See ZOE HAMMER-TOMIZUKA & JENNIFER ALLEN, BORDER ACTION NETWORK, HATE OR HEROISM: VIGILANTES ON THE ARIZONA-MEXICO BORDER, 12, available at <http://www.borderaction.org/PDFs/BAN-Vigilante%20Report.pdf>. Many incorrectly assume that Mexicans are using U.S. social services without contributing to the system and that Mexican workers are “taking” American jobs. *Id.*

92. Castro, *supra* note 65, at 210.

93. Conaway, *supra* note 8, at 1428.

94. Castro, *supra* note 65, at 211-12.

95. Thomas Korosec, *Soldiers of Misfortune*, DALLAS OBSERVER, September 11, 2003. Jack Foote also blames the fact that the “Ranch Rescue” has not been well received by law enforcement in Jim Hogg County, Texas on the lack of “white people” in the sheriff’s department, claiming the “county has been ethnically cleansed” of Caucasians and Foote refers to the sheriff’s department as the “Texas Taliban.” Conaway, *supra* note 8, at 1427-28.

There are real problems with you illegals today. You have all sorts of diseases. Terrible diseases. These diseases are so bad that the Border Patrol Agent will always wear gloves when he is near you. But your breath might be far more deadly than it smells. Not to worry! The portable prison has a very complete HEPA air filtration system so that the air the Agent breathes (up front) is completely filtered and he can't get whatever you are pumping from your lungs — *including smallpox*⁹⁶

There is no doubt that racist motives and reasoning underly much of the vigilantism inherent in the ranch citizen activist groups. Clearly, statements like the ones above are designed to humiliate Mexicans, reinforcing racial hierarchies that seemingly have existed since the first vigilante citizen activists that lined the border over 150 years ago.

Evidently, the modern trend of vigilante violence has followed almost a single continuum from the early border vigilante groups. Accordingly, the modern groups have maintained the same ideologies of social constructivism, economic competition, and racism. With the rapid emergence of the MCDC, one issue remains: whether the MCDC represents a continuation of the impermissible vigilante groups that have existed on the border since its creation, or whether the MCDC truly represents a new and original concept of citizen activists that employs permissible activities.

III. SCRUTINIZING THE MINUTEMAN CIVIL DEFENSE CORPS

A. *The Formation and Function of the Minuteman Civil Defense Corps*

The MCDC is a citizen activist group founded by Chris Simcox, a former kindergarten teacher in California, and Jim Gilchrist, a retired accountant and Vietnam veteran from California.⁹⁷ The MCDC promises to provide the world's largest neighborhood watch group.⁹⁸ The MCDC began its first "neighborhood watch" operation on the Arizona-Mexico border from April, 1

96. United States Border Patrol, *Smuggling You Here*, at <http://www.usborderpatrol.com/borderframe62.htm> (last visited Mar. 16, 2006). Despite its name, this organization is in not an official entity of the US government.

97. David Holthouse, *Arizona Showdown: High-Powered Firearms, Militia Maneuvers and Racism at the Minuteman Project*, S. POVERTY L. CTR: INTELLIGENCE REPORT, Summer 2005, at <http://www.splcenter.org/intel/intelreport/article.jsp?aid=557>.

98. *Vigilantes Set to 'Confront' Migrants on US Border*, *supra* note 16.

2005 through April 30, 2005.⁹⁹ Organizers reported that nearly 900 volunteers worked at least one eight-hour shift in the field.¹⁰⁰ During the operation, all volunteers were rigidly instructed to have no interactions with suspected undocumented immigrants or to detain any suspect in any way.¹⁰¹ Further, they were told the use of firearms was only permitted if the volunteer faced an imminent, deadly threat and could not retreat.¹⁰² However, the presence of guns was widespread and in no way discouraged by the MCDC leaders.¹⁰³ During the operation approximately two-thirds of personnel were armed with handguns and more than half of the participants were ex-military.¹⁰⁴ Consequently, with the proliferation of guns among the MCDC and the threat of Mexican gangs such as MS-13 ordering their members to teach the MCDC a "lesson," there is now a danger that citizen activism by the MCDC could ultimately turn into gang-warfare.¹⁰⁵ Nevertheless, the first MCDC operation passed without any major incidents.¹⁰⁶

The MCDC leaders claim that the first operation successfully resulted in the arrests of 335 undocumented immigrants,¹⁰⁷ with their website proudly showing pictures, reportedly of individuals captured because of the operations of the MCDC.¹⁰⁸ Subsequently, the organizers went on to patrol four states, Arizona, Texas, California, and New Mexico, for the entire month of October,¹⁰⁹ and they also planned to expand the mission to parts of the Canadian border.¹¹⁰ While some critics, such as the Washington Times,

99. CHARLIE NORWOOD, FIELD REPORT TO THE CONGRESSIONAL IMMIGRATION REFORM CAUCUS, RESULTS AND IMPLICATIONS OF THE MINUTEMAN PROJECT 3-4 (2005), http://www.minutemanhq.com/pdf_files/norwood_minuteman_report_61705.pdf.

100. *Id.* at 4. See also *'Minutemen' End Unofficial Border Patrol, but Plan to Return*, N.Y. TIMES, May 1, 2005, at A36.

101. NORWOOD, *supra* note 99, at 7.

102. *Id.* "They [the MCDC] say they are not vigilantes and will try to enforce a strict 'no contact' rule in approaching Mexicans." Timothy Egan, *Wanted: Border Hoppers. And Some Excitement, Too*, N.Y. TIMES, Apr. 1, 2005, at A14.

103. See Egan, *supra* note 102; Patriot Outfitters, <http://www.patriotoutfitters.com/scripts/pr.exe/sbproc?action=indexPage=PA14798> (last visited Mar. 16, 2006).

104. NORWOOD, *supra* note 99, at 6.

105. *Vigilantes Set to 'Confront' Migrants on US Border*, *supra* note 16.

106. See generally NORWOOD, *supra* note 99, at 8.

107. *'Minutemen' End Unofficial Border Patrol, but Plan to Return*, *supra* note 100.

108. See Minuteman Civil Defense Corps, Pictures of MCDC Activities, <http://www.minutemanhq.com/hq/pictures.php> (last visited Mar. 16, 2006).

109. See Press Release, Minuteman Civil Defense Corps, Minuteman Civil Defense Corps Begins Expanded 24/7 Border Watch October 1st (Sept. 29, 2005), <http://www.minutemanhq.com/hq/article.php?sid=31>.

110. *'Minutemen' End Unofficial Border Patrol, but Plan to Return*, *supra* note 100; see also Rick Docksai, *Minuteman Project Expands to Northern Border*, CNS NEWS,

claim that the MCDC's first operation closed down the twenty-three mile stretch of the United States-Mexico border for a thirty day period,¹¹¹ others described the event as a "failure," "fiasco," and "an unmitigated flop," reporting that "only eighteen days into the month-long project, the effort collapsed."¹¹² In fact, a Congressional Report stated that United States Border Patrol officials reported that the MCDC got in the way of their operations by setting off sensors.¹¹³ In addition, another Congressional Report mentioned that the United States Border Patrol officially attributes any and all decreases in undocumented immigration to their own efforts to increase enforcement, primarily by bringing in additional seasoned officers the week before the MCDC kicked off.¹¹⁴ However, officers that spoke off-the-record said that undocumented immigration had virtually stopped in the sector patrolled by the MCDC and that the MCDC had actually made a valuable contribution.¹¹⁵ In fact, the MCDC claims that the number of United States Border Patrol apprehensions of suspected undocumented immigrants in the MCDC enforcement zone dropped by almost 90% during the month of April 2005, compared to previous years.¹¹⁶

On first impression, the MCDC represents a passive form of citizen activism different from the violent vigilante groups that have historically pervaded the border. Nevertheless, much of the driving force, justifications, and reasoning behind the formation of the MCDC remains deeply rooted in the inherent ideologies of past vigilante border groups.

Sept. 16, 2005, <http://www.cnsnews.com/ViewNation.asp?Page=%5CNation%5Carchive%5C200509%5CNAT20050916a.html>

111. Jerry Seper, *Thousands to Join Vigil Along Both U.S. Borders*, THE WASHINGTON TIMES, Jul. 15, 2005, at A1.

112. Marc Cooper, Op-Ed., *Thinking Out Loud / Immigration: The 15-Second Men*, L. A. TIMES, May 1, 2005, at M2.

113. See BLAS NUNEZ-NETO, *supra* note 21, at 35. The MCDC took ten vehicles out on an overnight exercise at Hunter Canyon, in which they stopped and milled about for about 45 minutes, testing radios, flashlights, opening and closing car doors and activating interior lights, and conversing, all which rendered the operation useless if they were trying to surprise drug smugglers. Moreover, during the exercise they were pulled over by the United States Border Patrol. NORWOOD, *supra* note 99, at 10-11.

114. NORWOOD, *supra* note 99, at 13.

115. *Id.* at 14.

116. David Holthouse, *supra* note 97, at 3.

B. The Claimed Reasons and Justifications Behind the Minuteman Civil Defense Corps

The MCDC uses the same “social constructive” and “economic rivalry” rhetoric that past vigilante border groups proclaimed. The MCDC claims it is saving society from an invasion by “enemies.”¹¹⁷ Moreover, the MCDC also justifies its actions by arguing that the undocumented immigrants are economic rivals, thus the MCDC claims to protect the United States from “people who wish to take advantage of a free society.”¹¹⁸ Yet, the most controversial and imbedded reasoning and motivation behind the formation of the MCDC may indeed be racism.

The reality is that the MCDC may be riddled with racism, violence and abuse.¹¹⁹ Although the MCDC leaders, Gilchrist and Simcox, claimed that forty per cent “of their volunteers would be minorities, including, according to their website, ‘American-Africans,’ ‘American-Mexicans,’ ‘American-Armenians,’ four paraplegics and six amputees,” the enlistees were nearly all white.¹²⁰ Simcox also claimed that he would refuse to allow extremist groups to join the campaign.¹²¹ Nevertheless, the project immediately attracted the support of groups such as the Aryan Nation.¹²² When the leaders were pressed on how they were going to ban white supremacists from the MCDC, they stated that they were working with the Federal Bureau of Investigation to carefully check the backgrounds of all potential volunteers.¹²³ The reality was that the self-funded nature of the MCDC did not allow for any background investigations to be conducted on volunteers except for self-paid background checks provided by the volunteers themselves. Instead, the leadership claimed that they could simply use “gut instinct.”¹²⁴ Unfortunately, gut instinct was not enough to avoid racist groups from infiltrating the MCDC with

117. See Simcox, *supra* note 15. A prominent MCDC volunteer, Glenn Spencer, wrote “[t]hanks to the gross malfeasance of our government, Americans are going to be fighting for their nation on the streets of their own cities.” Holthouse, *supra* note 97, at 3.

118. Simcox, *supra* note 15.

119. See generally Holthouse, *supra* note 97, at 1.

120. *Id.*

121. Egan, *supra* note 102.

122. *Id.* The Aryan Nation website said that the Minuteman Project “is a call for action on the part of all Aryan soldiers.” *Id.*

123. Holthouse, *supra* note 97.

124. NORWOOD, *supra* note 99, at 5. The MCDC leadership determined that the smaller groups were likely racist in nature, and were accordingly not allowed to participate in the project. *Id.*

ease.¹²⁵ It has been reported that at least one member of the Aryan Nation and two members of the Phoenix chapter of the National Alliance were successful in joining as MCDC volunteers.¹²⁶ Moreover, a report from David Holthouse, who gained access to the MCDC, suggested that some of the racists, who had infiltrated the MCDC, would fantasize about murder, saying “[i]t should be legal to kill illegals.”¹²⁷ The suggestion only stopped short of decapitating Mexicans and putting their heads on pikes, with one of the racists suggesting he respected the lives of stray cats and dogs more than undocumented immigrants.¹²⁸

The leadership of the MCDC itself also appears to be racist. Gilchrist, on the one hand compares himself and volunteers to “white Martin Luther Kings,” yet on the other hand he is a member of the California Coalition for Immigration Reform, “a hate group whose leader routinely describes Mexicans as ‘savages.’”¹²⁹ Meanwhile Simcox has likened immigrants to insects by referring to Mexico and immigrants as “a swarm of uncontrolled refugees fleeing a Marxist structured government that refuses to take care of its own citizens.”¹³⁰ Additionally, if you investigate one of the two MCDC websites you find that the site provides links to other websites of controversial racist groups such as “Ranch Rescue” and “United States Border Control.”¹³¹ It appears that MCDC may simply represent the political face of a global network of vigilante groups that share the same racial and xenophobic motives and goals that have been prevalent on the border since its creation.

Although the MCDC may be embedded with racism, the law does not punish or prevent prejudicial thoughts, it only prevents illegal acts. Seemingly, the MCDC avoids all contact with undocumented immigrants and does not even venture to use its possible privilege of citizen’s arrest. The MCDC claims to be a placid neighborhood watch performing permissible citizen activism. Nevertheless, the embedded racism of the MCDC alongside its gun-slinging nature provides a dangerous combination in light of the inherent violent nature and history of the border. Further-

125. Holthouse, *supra* note 97.

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

130. HAMMER-TOMIZUKA & ALLEN, *supra* note 91, at 6.

131. Minuteman Project, at <http://www.minutemanproject.com/links.html> (last visited Mar. 16, 2006).

more, the MCDC's rhetoric of "imminent harm" combined with the exigency of the circumstances involved in border control may promote an air of extremism which will ultimately affect its judgment.¹³² Therefore, there should be concern, not necessarily with the MCDC right now, but with the threat that it poses to the future. Correspondingly, I will explore whether it may be necessary to curb and control the rapid expansion of the MCDC.

IV. CURBING AND CONTROLLING THE MINUTEMAN CIVIL DEFENSE CORPS

A. *The "Urgency" and "Necessity" to Curb and Control the Minuteman Civil Defense Corps, in the Historical Context of the Ku Klux Klan*

In order to fully comprehend the "urgency" and "necessity" to curb and control the rapid growth of the MCDC, we can look to learn from the disastrous "hands off" approach that was initially taken against the First Ku Klux Klan (KKK).

The KKK derived from similar origins as the MCDC and followed a similar pattern of rapid growth and political popularity that underlines the progression of the MCDC. The vigilante violence that was the hallmark of the KKK originated from the early vigilante border groups and their form of "frontier violence."¹³³ Similarly, just as the MCDC formed in the aftermath of a civil disaster in the form of 9/11, the KKK formed due to the repercussions of a civil disaster in the form of the Civil War.¹³⁴ The Civil War and the Reconstruction that followed represented a bitter defeat for white Southerners, a defeat not only of their armies but also of their economic and social way of life.¹³⁵ As a result, the KKK grew rapidly out of Tennessee, and quickly established itself in nearby counties and then in North and South Carolina.¹³⁶ There was little desire to control the KKK, particularly when the KKK began to delve into the political scene. For example, John B.

132. See Kelly D. Hine, *Vigilantism Revisited: An Economic Analysis of the Law of Extra-Judicial Self-Help or Why Can't Dick Shoot Henry for Stealing Jane's Truck?*, 47 AM. U. L. REV. 1221, 1249-50 (1998).

133. S. POVERTY L. CTR., A HUNDRED YEARS OF TERROR, <http://www.iupui.edu/~aaof/klk.html> (last visited Mar. 16, 2006).

134. See *id.*

135. *Id.* "The most 'offensive' blacks of all seemed to be those who achieved a modicum of economic success, for, as a white Mississippi farmer commented, the Klan 'do not like to see the negro go ahead.'" ERIC FONER, *RECONSTRUCTION: AMERICA'S UNFINISHED REVOLUTION, 1863-1877* 429 (1988).

136. S. POVERTY L. CTR., *supra* note 133.

Gordon, a KKK member, became Georgia's Democratic candidate for governor in 1868.¹³⁷ In effect, the KKK developed into a violent vigilante force that served the political interests of the Democratic Party and all those that desired the restoration of white supremacy.¹³⁸ Ultimately, in many states the KKK became the *de facto* government and law.¹³⁹ This allowed KKK violence to escalate unabated.

Finally, the violence and atrocities committed by the KKK became so widespread that radical legislatures throughout the states began to ask the President for military aid to subdue the KKK.¹⁴⁰ The request was referred to the War Department which indicated that troops could be pre-positioned in trouble spots and then when there were KKK depredations, pursuant to the *posse comitatus* doctrine, the President could order troops to help the State if it requested aid.¹⁴¹

Although the states often requested military to help with the KKK, further extreme Congressional legislation soon followed in the form of the Ku Klux Klan Act of 1871.¹⁴² The Ku Klux Klan Act designated certain crimes committed by individuals as offenses punishable under federal law, including conspiracies to deprive citizens of the right to vote, hold office, serve on juries, and enjoy the equal protection of the law.¹⁴³ However, the Ku Klux Klan Act was an extreme measure, at the outer limits of the constitution, providing the President with the power to suspend the writ of *habeas corpus* when necessary.¹⁴⁴

Ultimately, President Grant suspended the writ of *habeas corpus* by proclamation in certain affected counties of South Carolina on October 17, 1871, ordering commanders to conduct massive arrests and trials for violations of the Fourteenth and Fifteenth Amendments.¹⁴⁵ By permitting troops to detain suspects for several weeks without indictment, the Ku Klux Klan Act made

137. See FONER, *supra* note 135, at 432-33.

138. *Id.* at 425.

139. See S. POVERTY L. CTR., *supra* note 133.

140. ROBERT W. COAKLEY, *THE ROLE OF FEDERAL MILITARY FORCES, 1789-1878* 300-01 (1988).

141. *Id.* (explaining that the doctrine of *posse comitatus* gave United States marshals and county sheriffs the right to command all necessary assistance within their respective districts, drawing on both military and civilian alike to serve on the *posse comitatus* to execute legal process).

142. *Id.* at 301-10.

143. FONER, *supra* note 135, at 454-55.

144. *Id.* at 455.

145. COAKLEY, *supra* note 140, at 312.

it possible to obtain numerous confessions in exchange for promises of immunity and light treatment.¹⁴⁶ It was only through this extreme power of suspending *habeas corpus* that the government was able to curb and control the KKK.¹⁴⁷ Eventually, Congress saw fit to check the *posse comitatus* power pursuant to the Posse Comitatus Act of 1878.¹⁴⁸ The Congressional intent was to limit the use of the army only for the restricted purpose of suppressing insurrection.¹⁴⁹

Evidently, once Congress had allowed the KKK to expand and commingle with the political power of the states, Congress was left with no options but to take the extreme measure of providing the President with the power to suspend *habeas corpus* in order to curb and control the growth of the extremist KKK. Clearly, such a culmination of events should be avoided at all possible costs. Thus, there should be great concern and consternation that in the little time in which the MCDC has developed it has followed a similar political progression and expansion to the KKK. The MCDC has developed into an interstate group spreading throughout the several states. In addition, the MCDC has also diversified by forming an intrastate entity which is referred to as the Minuteman Project (MP). The MP has formed chapters in cities across the United States empowering operations where the MP videotapes, photographs, and documents the activities of employers who employ undocumented immigrants and then send the documentation to the Internal Revenue Service.¹⁵⁰ Most concerning is

146. *Id.*

147. *See id.*

148. John Flock, *The Legality of the United States Military Operations Along the United States-Mexico Border*, 5 SW. J. L. & TRADE AM. 453, 458 (1998) (citing 18 U.S.C. § 1385 (2005) ("Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both.")).

149. Flock, *supra* note 148, at 458 (1998).

150. The Washington Post has made a series of reports on the MP chapter in Herndon, Virginia, where the MP have been videotaping, taking pictures and documenting the activities of employers who employ illegal immigrants since the middle of October, which has resulted in multiple confrontations. *See* Timothy Dwyer, *Day Laborers Being Photographed, Followed in Va.*, WASH. POST, Nov. 8, 2005, at B1. *See also* *Minutemen, Go Home*, WASH. POST, Nov. 13, 2005, at B6; Timothy Dwyer, *Meeting in D.C. Signals Concern for Day Laborers' Lot*, WASH. POST, Nov. 18, 2005, at B3; N.C. Aizenman and Timothy Dwyer, *In Herndon, Only Feet Away but Worlds Apart*, WASH. POST, Dec. 9, 2005, at B1; Timothy Dwyer, *Where Laborers Go, They Will Follow*, WASH. POST, Dec. 13, 2005, at B3; *see also* Elissa Silverman, *Herndon Dulles Chamber Takes On Immigration Policy*, WASH. POST, Dec. 15, 2005, at T8; N.C. Aizenman & Timothy Dwyer, *Harsh Words Fly at Va. Site For Day Labor*,

the fact that the MCDC has also expanded into the political arena. In December, Gilchrist ran for Congress in California and received nearly 25% of the votes.¹⁵¹ The MCDC have become embedded in politics, receiving support from the Congressional Immigration Reform Caucus (CIRC), composed of seventy-one members of the House of Representatives (sixty-nine Republicans and two Democrats),¹⁵² and from state political figures such as California Governor Arnold Schwarzenegger.¹⁵³ Further, there has been concern that some states may in fact become so involved with the MCDC that they become a laboratory for unauthorized militia.¹⁵⁴

Although the MCDC currently remains “passive” as an organization, it has expanded rapidly and embedded itself into the politics of many states. Arguably, it may not be long before the MCDC becomes uncontrollable and follows the natural progression and tendency towards violence and militarization that was inherent in historical vigilante border groups and in the KKK. Therefore, it is urgent and necessary to take legal measures now, in order to avoid the possibility of having to use extreme remedial legal measures in the future.

B. Legal Measures to Curb and Control the Minuteman Civil Defense Corps

There are several creative legal approaches which can be used to try to curb and control the MCDC. On the one hand undocumented immigrants, with the help of pro bono groups such as the Southern Poverty Law Center, can bring civil suit against the MCDC, a method which effectively checked the actions of the

WASH. POST, Dec. 15, 2005, at B1; see also Timothy Dwyer, *From Segregation to Immigration*, WASH. POST, Jan. 15, 2006, at C5.

151. *Spokane Mayor Out; GOP Wins Calif. Seat*, WASH. POST, Dec. 8, 2005, at A3. Jim Gilchrist finished third in the race for California's United States House Representative, with 23,237 votes, nearly 25% of the votes. *Id.*

152. See Joe Anthony, *Vigilantes Patrol US Border: the Politics of the Minuteman Project*, May 20, 2005, <http://www.wsns.org/articles/2005/may2005/minu-m20.shtml>.

153. Dean E. Murphy, *Schwarzenegger's Star Dipping As Californians Feel Its Singe*, N.Y. TIMES, May 2, 2005, at A1. Governor Arnold Schwarzenegger praised the private “Minuteman” campaign saying that “[t]hey’ve cut down the crossing of illegal immigrants a huge percentage. So it just shows that it works when you go and make an effort and when you work hard. It’s a doable thing.” Peter Nicholas & Robert Salladay, *Gov. Praises ‘Minuteman’ Campaign*, L.A. TIMES, Apr. 29, 2005, at B1.

154. Brenda Sapino Jeffreys, *Watching the Watchers; Civil-Rights Groups to Monitor Minutemen on Texas Border*, TEX. LAWYER., Aug. 29, 2005, at 1. United States House Representative Sheila Jackson Lee, who toured the United States-Mexico border and said that Governor Perry of Texas is “making a misstep for allowing his state to be a laboratory for unauthorized militia.” *Id.*

Ranch Rescue.¹⁵⁵ On the other hand the MCDC could be prosecuted under state or federal law where or if appropriate. Ultimately, the most effective method of controlling the MCDC may be to actually target the federal government itself.

1. Civil Liability of the Minuteman Civil Defense Corps

In some areas, undocumented immigrants are recognized under the laws and Constitution of the United States to the same degree as United States citizens.¹⁵⁶ The United States Supreme Court has held that aliens as “persons” fall under the Fourteenth Amendment and therefore have Due Process rights within the United States.¹⁵⁷ Thus, the Fifth and Fourteenth Amendments protect undocumented immigrants “from deprivation of life, liberty, or property without due process of law.”¹⁵⁸ Clearly undocumented immigrants have the right to bring civil actions against the MCDC, but what actions can they bring?

Unlike previous vigilante border groups, the MCDC has approached citizen activism with legal liability in mind, using legal terminology throughout its website to try and protect itself from liability.¹⁵⁹ However, the MCDC is not defined by its words but by its actions. So far the MCDC’s limited operations have passed without any major problems and the MCDC has stayed true to its proclaimed “hands off” approach. Nevertheless, when considering that the MCDC is a descendent of the historically violent vigilante border groups and retains an undercurrent of racial hatred and jealousy, it is foreseeable that sooner rather than later the MCDC’s actions will result in circumstances that would allow

155. See *Immigrants Win Arizona Ranch*, *supra* note 85.

156. Michael J. Nunez, *Violence at Our Border: Rights and Status of Immigrant Victims of Hate Crimes and Violence Along the Border Between the United States and Mexico*, 43 HASTINGS L. J. 1573, 1604 (1992).

157. *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) “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.” *Id.*

158. *Matthews v. Diaz*, 426 U.S. 67, 77 (1976).

159. See *The Minuteman Pledge*, *supra* note 17 (“A Minuteman upholds the Constitution of the United States of America . . . A Minuteman believes that just as ethnicity, race, religion and all such factors are incidental and do not affect our God-given, constitutional equality as American citizens, such factors are also irrelevant in the debate over illegal immigration. There is no tolerance among Minutemen for racism or bigotry - E Pluribus Unum - Out of Many, One.”).

undocumented immigrants to bring a civil action against the MCDC, either for assault, intentional infliction of emotional distress, negligence per se or false imprisonment.

For example, in Texas an assault could be claimed even when there is no bodily injury. The Plaintiff must simply claim that the Defendant had the ability and desire to bring about contact with the Plaintiff.¹⁶⁰ A claim for intentional infliction of emotional distress could be brought if the Plaintiff can show intentional or reckless behavior on the part of the Defendant that was extreme and outrageous enough to cause the Plaintiff emotional distress.¹⁶¹ In addition, a claim for negligence per se could also be applied to the actions of the MCDC in Texas if it can be determined that the MCDC is a paramilitary group. According to section 431.010 of the Texas Government Code a "body of persons other than the regularly organized state military forces or the troops of the United States may not associate as a military company or organization or parade in public with firearms in a municipality of the state." It is even possible that a suit for false imprisonment could also be brought if the MCDC willfully detained an undocumented immigrant without the consent of the immigrant¹⁶² and without legal authority.¹⁶³

The MCDC's most likely defense to civil actions would be to assert the common law self-help privilege of citizen's arrest. The common law accords a private person extensive power to make a citizen's arrest without a warrant for felonies, misdemeanor breaches of the peace, and on probable cause that a felony has been committed.¹⁶⁴ For a misdemeanor breach of the peace, the

160. TEX. PENAL CODE ANN. § 22.01(a) (2005) (An assault is 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.").

161. *Twyman v. Twyman*, 855 S.W.2d 619, 622 (Tex. 1993) (adopting the tort of intentional infliction of emotional distress as formulated in Section 46 of the Second Restatement of Torts).

162. See AMERICAN FRIENDS SERVICE COMMITTEE, IMMIGRATION/BORDER PROGRAM RESPONSE TO THE MINUTEMAN PROJECT, <http://www.afsc.org/az/immigration-border.htm> (last visited Mar. 26, 2006) ("A major fear of human rights groups is that the Minutemen are violating the false imprisonment law . . . which states that it is unlawful to detain a person against their will, either through physical force, intimidation, or deception.").

163. See *Conaway*, *supra* note 8, at 1439-46. The author points out that once there is legal authority to make a citizen arrest this privilege can be used as an affirmative defense to a civil action. See *Id.* at 1439.

164. See RESTATEMENT (SECOND) OF TORTS § 119 (1965) (A private person is

four states that border Mexico generally follow the common law directly or indirectly through their own codified versions. A misdemeanor breach of the peace occurs when the misdemeanor occurs in the presence of the arrestee **and** where it amounts to a public offense where the misdemeanor amounts to a public offense (California), or a breach of the peace (New Mexico and Arizona) or an offense against the public peace (Texas).¹⁶⁵ Under federal law, 8 U.S.C. § 1325, where there is no evidence of prior undocumented entry, a first violation is deemed a misdemeanor.¹⁶⁶ However, depending on the particular state, the misdemeanor may not

privileged to arrest another without a warrant for a criminal offense, (a) if the other has committed the felony for which he is arrested, or (b) if an act or omission constituting a felony has been committed and the actor reasonably suspects that the other has committed such act or omission, or (c) if the other, in the presence of the actor, is committing a breach of the peace or, having so committed a breach of the peace, he is reasonably believed by the actor to be about to renew it, or (d) if the other has attempted to commit a felony in the actor's presence and the arrest is made at once or upon fresh pursuit, or (e) if the other knowingly causes the actor to believe that facts exist which would create in him a privilege to arrest under the statement in Clauses (a) to (d)).

165. See CAL. PENAL CODE § 837 (1985) (A private person may arrest another: (1) For a public offense committed or attempted in his presence; (2) When the person arrested has committed a felony, although not in his presence; (3) When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it); *Downs v. Garay*, 742 P.2d 533, 535 (N.M. Ct. App. 1987) (New Mexico follows the common law standard that a private person could arrest for a breach of the peace committed in his presence, as well as for a felony); ARIZ. REV. STAT. ANN. § 13-3884 (2001) (A private person may make an arrest: (1) When the person to be arrested has in his presence committed a misdemeanor amounting to a breach of the peace, or a felony; (2) When a felony has been in fact committed and he has reasonable ground to believe that the person to be arrested has committed it); TEX. CODE CRIM. PROC. ANN. art. 14.01 (Vernon 2005) (A peace officer or any other person, may, without a warrant, arrest an offender when the offense is committed in his presence or within his view, if the offense is one classed as a felony or as an offense against the public peace).

166. *Gonzalez v. City of Peoria*, 722 F.2d 468, 475 (9th Cir. 1983) (overruled on other grounds). See also 8 U.S.C. § 1325 (2000)

(a) Improper time or place; avoidance of examination or inspection; misrepresentation and concealment of facts.

Any alien who (1) enters or attempts to enter the United States at any time or place other than as designated by immigration officers, or (2) eludes examination or inspection by immigration officers, or (3) attempts to enter or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact, shall, for the first commission of any such offense, be fined under Title 18 or imprisoned not more than 6 months, or both, and, for a subsequent commission of any such offense, be fined under Title 18, or imprisoned not more than 2 years, or both.

(b) Improper time or place; civil penalties

Any alien who is apprehended while entering (or attempting to

amount to a breach of the peace. For example, "[i]n New Mexico a breach of the peace is considered 'a disturbance of public order by an act of violence, or by any act likely to produce violence, or which, by causing consternation and alarm, disturbs the peace and quiet of the community.'"¹⁶⁷ In contrast, Texas courts have determined that a breach of the peace means all violations which cause disquiet and disorder, and which threaten danger and disaster to the community, even where no actual personal violence is employed.¹⁶⁸ Evidently, the privilege of a citizen arrest over a misdemeanor breach of the peace is to be determined on a case by case analysis. In the case of the MCDC, the privilege to use citizen's arrest would depend on its presence during the misdemeanor and whether the differing State courts would determine that a violation of 8 U.S.C. §1325 satisfies their definitions of a misdemeanor breach of the peace. Therefore, any claim to a privilege of citizen arrest by the MCDC would be debatable and speculative. Thus, there is a good possibility that civil actions by undocumented immigrants would still be successful.

Nevertheless, undocumented immigrants are unlikely to bring individual civil suits against the MCDC because they either do not realize the rights that they possess, or they fear the consequences of admitting to officials the illegality of their initial presence. Conversely, suing MCDC may not be the most effective deterrent.¹⁶⁹ It has been contended that when groups are driven by racially motivated xenophobia, their actions will run contrary to the American legal system,¹⁷⁰ thus, the most effective method of dealing with such groups may be to prosecute the MCDC through federal and state laws.

enter) the United States at a time or place other than as designated by immigration officers shall be subject to a civil penalty of—

(1) at least \$50 and not more than \$250 for each such entry (or attempted entry); or

(2) twice the amount specified in paragraph (1) in the case of an alien who has been previously subject to a civil penalty under this subsection).

167. *State v. Arroyos*, 115 P.3d 232, 234 (2005) (quoting *State v. Florestedt*, 419 P.2d 248, 249 (1966)).

168. *United States v. Sealed Juvenile 1*, 255 F.3d 213, 218 (5th Cir. 2001) (citing *Ruiz v. State*, 907 S.W. 2d 600, 603 (1995)).

169. *Conaway*, *supra* note 8, at 1448.

170. *See id.* at 1447-52.

2. Federal and State Criminal Liability of the Minuteman Civil Defense Corps

State law could be used to prosecute MCDC actions. Both Arizona and Texas could implement their anti-militia laws and thereby curb the activities of the MCDC, which often acts as militia by dressing in military gear and carrying guns.¹⁷¹ Arizona's anti-militia law makes it a felony for a "person, partnership or corporation [to] . . . maintain troops under arms."¹⁷² Meanwhile, Texas prohibits "a body of persons other than the regularly organized state military forces or the troops of the United States . . . [from] associate[ing] as a military company or organization or parade in public with firearms in a municipality of the state."¹⁷³ Such laws could at least force the MCDC to demilitarize, reducing its potential for violence.

The Racketeer Influence and Corrupt Organizations Act is an example of a federal law which could creatively be used to prosecute the MCDC.¹⁷⁴ To succeed the Plaintiff must demonstrate: (1) that the MCDC is an enterprise affecting interstate commerce; (2) that one or more individual in the MCDC are employed or associated with an enterprise whose activities affect interstate commerce; and (3) MCDC's participation in the organizational activities of the enterprise constitutes a pattern of racketeering activity, which constitutes activity that must be related and continuous.¹⁷⁵ Although, the MCDC is making money for its work through donations and the sales of memorabilia through its website, it would be difficult to prove a pattern of racketeering activity. Pursuant to the statute, the only activity which could be deemed racketeering from its actions is kidnapping.¹⁷⁶ Considering the MCDC's current "hands off" approach and the extreme nature of a kidnapping, it is extremely unlikely that the MCDC would undertake multiple kidnappings in the near future.

On the other hand, the Federal Anti-Conspiracy Statute may be more appropriate for the MCDC. The Federal Anti-Conspiracy Statute prohibits two or more persons from conspiring for the purpose of depriving any class of person equal protections of the

171. *See id.*, *supra* note 8, at 1452-53.

172. ARIZ. REV. STAT. ANN. § 26-123 (2000).

173. TEX. GOV'T CODE ANN. § 431.010 (Vernon 2005).

174. Castro, *supra* note 65, at 219.

175. *Id.* at 219-20.

176. Conaway, *supra* note 8, at 1447.

law.¹⁷⁷ It is foreseeable, pursuant to the racist animus that has already been discussed, that a number of MCDC operations could take place that could be classified as conspiracies grounded in class and race-based animus resulting in non-economic injury. If a charge was brought under the Federal Anti-Conspiracy Statute it might ensure that the MCDC strictly enforce background checks and firmly enforce a “no respect” attitude to racism among its volunteers.

Nonetheless, it is clear that the success of these civil and criminal suits is certainly not guaranteed and hinges on the ability to creatively litigate such cases. The reality is that the law as it stands does not provide effective methods to directly tackle inherently racist groups such as the MCDC. However, the approach that I advocate is to actually bring suit against the federal government for the impermissible actions of the MCDC, thus, forcing the government to curb and control the MCDC in order to avoid liability.

3. Federal Government Liability for the Minuteman Civil Defense Corps

Arguably the MCDC have commingled with the federal government to such an extent that the MCDC has now become a *de facto* government agent. The CIRC has explicitly supported the MCDC and has conducted formal meetings with the MCDC.¹⁷⁸ On April 27, at a meeting between the CIRC and the MCDC, CIRC Chairman Tom Tancredo congratulated the MCDC stating: “I would like to thank the Minutemen on behalf of the millions of Americans who can’t be here with you today. You have the courage to say to the government of the United States, ‘Do your duty! Protect our borders! Protect our communities! Protect our families! Protect our jobs!’ You are good citizens who ask only that our laws be enforced. When did that become such a radical idea?”¹⁷⁹

177. See 42 USC § 1985(3) (2000). There are four elements to the charge: “(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 an act in furtherance of their conspiratorial objectives, and (4) the plaintiffs suffered an injury as a result of those acts.” Martinez, *supra* note 56, at 121.

178. Press Release, Cong. Immigration Reform Caucus, Comments from CIRC Members on Minutemen (Apr. 27, 2005), <http://tancredo.house.gov/press/pressers/04.27.05%20CIRC%20MM%20Presser.htm>.

179. See *id.* Many other CIRC members also congratulated the MCDC: **Congressman Lamar Smith** said, “When the federal government fails to do its job, we should not be surprised when law abiding citizens want to protect their property and our borders.”

Moreover, the United States Border Patrol use and respond to the MCDC who act as an extra set of eyes and ears on the border. In fact, individual officers were highly appreciative of the impact

Congressman Scott Garrett said, "We have taken many steps to tighten border security and immigration procedures in the last three years, but there is still much work to be done to keep America safe. This project is helping to keep national attention focused on the need for effective border security and immigration reforms."

Congressman J.D. Hayworth said, "What the Minutemen proved to the American people was this: the federal government CAN do something about illegal immigration other than to raise a white flag and surrender to the invasion. Now it is up to every American to get involved in this critical struggle to preserve our security and our sovereignty by demanding that this administration and this Congress stop thinking about amnesty and start enforcing our immigration laws."

Congressman Phil Gingrey said, "The Minuteman Project is a shining example of how community initiative and involvement can help make America a safer, better place to live. These brave men and women are standing up for our security, defending America from the illegal immigrants who are crossing our borders by the millions. As a proud member of the Immigration Reform Caucus, I encourage other citizens to support this cause and defend our nation."

Congressman Virgil Goode said, "I salute the Minutemen for assisting in a task which the government should be doing. They recognize the necessity of stopping illegal immigration. I hope that the President and a majority of the House and Senate will recognize that border security should be a top priority. I hope that they will support the legislation to authorize the use of U. S. troops on our border in peacetime to help with border security as needed."

Congressman Walter Jones said, "The federal government has not done its job in securing and protecting our borders. There are over 10 million illegal immigrants in this country, most of whom cross the Mexican border at a rate of about 16,000 per week." "My home state of North Carolina ranks 8th in the nation for its illegal immigrant population of over 300,000. These kinds of numbers do not come without a price to the American people. It is estimated that illegal immigrants account for *annual* costs of \$4 billion in healthcare, \$7 ½ billion in education, and almost another billion for federal prisons. It is true that we are a nation of immigrants, and that is what makes America great. But for the security and protection of all our citizens, we have to demand that those wanting to come here do so through proper, legal channels. It is time the federal government steps up to the plate to defend our borders so that private citizens like those here today don't have to."

Congressman Tom Price said, "The Minutemen truly are the nation's most successful neighborhood watch program. America is fortunate that so many citizens are willing to dedicate their time and energy to this effort. Their work should serve as a wakeup call to all those in Washington who've opposed our effort to strengthen our immigration and border policies and enforcement."

Congressman J. Gresham Barrett said, "I hope the Minutemen Project has raised awareness around the country for the need to reform our seriously flawed immigration system. Illegal immigration adversely impacts our job market, our education system and health care costs. Hard working American taxpayers are being forced to shoulder that burden placed on society. There is a right way to enter our country and a wrong way." "The Minutemen Project volunteers understand that we can no longer stick our head in the sand. We cannot go back to a pre-9/11 mentality that immigration concerns are not a matter of national security. And let's be clear, illegal immigration exposes us on a daily basis to an increased risk of another terrorist attack. The times in which we live today demand that matters of national security deserve more than political correctness." *Id.*

that the MCDC made; unofficially stating that they had good working relationships with the MCDC, and felt the MCDC “had made a valuable contribution to the cause of the rank-and-file officer – protecting the border against impossible logistical challenges.”¹⁸⁰ In fact, members of the MCDC even sell clothing that states that they are the “U.S. Border Patrol.”¹⁸¹ This extensive commingling of the United States Border Patrol and the MCDC has resulted in concern from Congress that the MCDC might become a *de facto* government agent.¹⁸²

In determining whether the MCDC is acting as an agent of the government, two critical factors are whether the government knew of and acquiesced in the conduct, and whether the party intended to assist law enforcement officials.¹⁸³ Clearly, there “is no bright line that distinguishes instances of ‘government’ conduct from instances of ‘private’ conduct.”¹⁸⁴ Nevertheless, regarding the relationships and support between the United States Border Patrol and the CIRC with the MCDC, one could argue that the federal government has known of and acquiesced in the MCDC’s conduct, and has in fact worked alongside the MCDC. Moreover, the intent behind the MCDC’s conduct has explicitly been to “assist” law enforcement in the conduct of their jobs.¹⁸⁵ If it is found, as the evidence suggests, that members of the MCDC are acting as *de facto* government agents, the federal government could be subject to suit and massive liability.

Congress has become particularly concerned with the possibility that the MCDC, if determined to be a government agent, will be subject to the requirements and prohibitions of the Fourth Amendment.¹⁸⁶ Searches and seizures made at the border, “pursuant to the long-standing right of the sovereign to protect itself by stopping and examining persons and property crossing into this country, are reasonable simply by virtue of the fact that they occur at the border”¹⁸⁷ While the legality of a border search or seizure “not made in the vicinity of the border is tested by the

180. NORWOOD, *supra* note 99, at 14.

181. John Waite, Minuteman Shirts, <http://members.aol.com/eagle1gold/minutemanshirts.htm> (last visited Mar. 16, 2006).

182. VINA, *supra* note 21, at 18.

183. *United States v. Malbrough*, 922 F.2d 458, 462 (8th Cir. 1990) (citing *United States v. Miller*, 688 F.2d 652, 657 (9th Cir. 1982)).

184. *Miller*, 688 F.2d at 656.

185. See the Minuteman Project Frequently Asked Questions, <http://www.minutemanproject.com/FAQ.html> (last visited Mar. 31, 2006).

186. VINA, *supra* note 21, at 18.

187. *United States v. Ramsey*, 431 U.S. 606, 616 (1977).

totality of the surrounding circumstances, including the elapsed time and distance as well as the manner and extent of surveillance.”¹⁸⁸ The Courts have determined that this type of “extended border” search and seizure is permissible if the government officials have (1) reasonable certainty or a “high degree of probability” that a border was crossed; (2) reasonable certainty that no change in the object of the search has occurred between the time of the border crossing and the search; and (3) “reasonable suspicion” that criminal activity was occurring.¹⁸⁹ If it is determined that the MCDC is acting as a government agent, the burden on the MCDC to avoid any incident that could be found to be an illegal search or seizure is much greater when the MCDC approaches an undocumented immigrant beyond the vicinity of the border. For example, if it was determined that the two minor incidents reported during the first MCDC operation, where volunteers gave water and assistance to undocumented immigrants until the United States Border Patrol arrived, occurred outside the vicinity of the border, these minor incidents could constitute illegal seizures.¹⁹⁰

Moreover, considering the MCDC’s racial and xenophobic tendencies, it may be tempted to rely on prohibited factors when targeting who to approach; such as, the person’s race, foreign appearance, or use of a foreign language. Such intentional racial profiling by the MCDC could comprise a Fourth Amendment violation.¹⁹¹ Furthermore, if such actions amount to a conspiracy pursuant to the Federal Anti-Conspiracy Statute, as suggested above, any federal officials that knew of this conspiracy based in racial animus may also be prosecuted as part of the conspiracy. In addition, pursuant to the Failure to Prevent Conspiracy Act, it would be unlawful for any public official or entity to knowingly fail to

188. *United States v. Delgado*, 810 F.2d 480, 484 (5th Cir. 1987) (quoting *United States v. Fogelman*, 586 F.2d 337 (5th Cir. 1978)).

189. *United States v. Cardenas*, 9 F.3d 1139, 1148 (5th Cir. 1993) (internal citations omitted) (holding that “reasonable certainty” is a standard which requires more than probable cause, but less than proof beyond a reasonable doubt, while determining whether there is a “reasonable suspicion” that criminal activity was occurring, each case “must turn on the totality of the particular circumstances.”).

190. There were two minor incidents during the first operation. In the first incident a volunteer gave a man water and assistance until Border Patrol agents arrived. In the second incident a volunteer again provided water, food and \$20 to a lost and desperate migrant in addition to taking a picture with the man before the Border Patrol agents arrived. NORWOOD, *supra* note 99, at 8.

191. See e.g. *United States v. Brignoni-Ponce*, 422 U.S. 873, 886-87 (1975) (holding that where Border Patrol stopped a vehicle and questioned the occupants based on their Mexican ancestry was a violation of the Fourth Amendment).

prevent such a conspiracy.¹⁹² The reality is that if the MCDC is determined to be a government agent, the federal government will find it hard to prove that it was not involved in the conspiracy or that it did not have knowledge of the conspiracy.

In addition, if the MCDC, acting as a government agent, commits any tortious acts when searching or seizing individuals, the federal government may also be liable under the Federal Tort Claims Act.¹⁹³ Clearly, any minor mistake or incident by the MCDC, could result in exposing the federal government to massive liability.

Overall, targeting the federal government might be the most effective method of focusing national attention on the MCDC in an effort to control and scrutinize its actions. In fact, the federal government is in the best position to actually begin to provide preventative measures against the MCDC. The federal government has a mandate to take measures against the MCDC. The Constitution mandates that the federal government provide exclusive and uniform enforcement of immigration laws.¹⁹⁴ The United States Supreme Court has compared the immigration power to the power to declare war and make treaties, and reasoned that because they all affect foreign policy, the powers belong exclusively to the federal government and are "incapable of transfer to any other parties."¹⁹⁵ Clearly, the presence and conduct of the MCDC has already severely soured foreign relations with Mexican

192. 42 U.S.C. § 1986 (2000).

193. 28 U.S.C. § 1346(b) (2000) (providing that the federal district courts are to have: "exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.").

194. Huyen Pham, *The Inherent Flaws in the Inherent Authority Position: Why Inviting Local Enforcement of Immigration Laws Violates the Constitution*, 31 FLA. ST. U. L. REV. 965, 987-988 (2004). The immigration power emanates from two sources: specific constitutional provisions and the nation's status as a sovereign entity. Both of these sources as they pertain to the immigration power are exclusively federal. The textual sources are the Naturalization Clause, the Foreign Affairs Clauses, and the Commerce Clause, which were intended to be and have been treated by courts as establishing exclusively federal powers. *Id.*

195. *Chae Chan Ping v. United States*, 130 U.S. 581, 609 (1889). *See also Ekiu v. United States*, 142 U.S. 651, 659 (1892) (holding that the immigration power was part and parcel of the federal government's authority over foreign affairs generally: "In the United States this [immigration] power is vested in the national government, to which the Constitution has committed the entire control of international relations, in peace as well as in war.").

President Vicente Fox, who has described the group as “immigrant hunters” and sent a diplomatic note to the United States expressing concern over such vigilante activities.¹⁹⁶

The strong constitutional mandate to provide an exclusive uniform immigration policy as well as the potential exposure to liability for the MCDC’s actions should provide the fuel for federal government to begin to provide measures in order to fully curb and control the MCDC. For example, the federal government, pursuant to the Property Clause, could enact regulatory measures preventing the MCDC from practicing on 45% of the United States border that constitutes federal lands.¹⁹⁷ The Supreme Court has held that pursuant to the Property Clause the federal government has power over federal lands without limitation.¹⁹⁸ Clearly, the federal government is best situated to use its extensive immigration power to curb and control the MCDC. However, as we learned through the lessons of the KKK, the federal government is unlikely to take action until it is too late, unless it is targeted and pressured by the prospect of massive civil liability.

V. CONCLUSION

The MCDC looks like it is here to stay! On its face, the MCDC appears to be a truly peaceful citizen activist group rapidly expanding and fulfilling its self-proclaimed role as the world’s biggest neighborhood watch across international borders and even within the several states. On the other hand, at its core, the MCDC is driven by deep-rooted racist and xenophobic ideologies that pervaded the past vigilante border groups.

However, the MCDC represents a new prospective threat distinct from the localized threat of past vigilante border groups and is in fact more akin to the national threat of the KKK. Unlike past vigilante border groups, the MCDC is well organized and politi-

196. Vigilantes Set to ‘Confront’ Migrants on US Border, *supra* note 16.

197. See U.S. – MEX. BORDER FIELD COORDINATING COMM., U.S. DEPT. OF THE INTERIOR, UNITED STATES – MEXICO BORDER AREA, AS DELINEATED BY A SHARED – WATER RESOURCES PERSPECTIVE (1996), http://www.doi.gov/fcc/english/water_fs-1.html (See *infra* Appendix IV for map of all the federal land owned on the border).

198. See *United States v. Gratiot*, 39 U.S. 526, 534 (1840) (holding that pursuant to the Property Clause, the disposal of federal land must be left to Congressional discretion); *Kleppe v. New Mexico*, 426 U.S. 529, 539-40 (1976) (holding that the power over public land thus entrusted to Congress is without limitation, the federal government doubtless has a power over its own property analogous to the police power of the several states, and the extent to which it may go in the exercise of such power is measured by the exigencies of the particular case).

cally powerful.¹⁹⁹ In the first year in which the MCDC had been active it had become relatively popular,²⁰⁰ making a name for itself throughout the United States from the Mexican to the Canadian border and in towns and cities throughout the several states. Moreover, it appears to be only a matter of time before the MCDC becomes politically powerful within both state and federal governments. This political power mixed with the racist and xenophobic tendencies that the MCDC projects may indeed bring violence to the border and even destabilize relationships within and among the states.

Therefore, in light of the lessons learnt from the past, it would seem advisable that we prepare reasonable, preventative measures to curb and control the growth of MCDC. To succeed, the federal government must be immediately stirred into preventative action in order to evade future violence and avoid the prospect of having to take extreme remedial measures in the future. If it can be determined that the MCDC is acting as a *de facto* government agent, the threat of massive, federal liability will force the federal government to use its exclusive immigration power to create preventative measures to curb and control the MCDC. Thus, a legal battle must now rage in the courtrooms to prevent the possibility of vigilante violence on the United States-Mexico border and even throughout the United States.

199. The MCDC returned to the United States-Mexico border on April 1, 2006, for a much larger effort, supported by political figures such as Don Goldwater, a Republican candidate for Arizona, who stated that he would put illegal immigrants in a tent city on the border and use their labor to build a wall that would add 700 miles of fences along the border. See *Minutemen Return to U.S. Border Watch*, CNN POLITICS, Apr. 1, 2006, <http://www.cnn.com/2006/POLITICS/04/01/minutemen.return.ap/index.html>.

200. In a recent poll of 93,902 people, 50% (46,784 people) said "Yes" when asked "[s]hould civilians help patrol the border?" and 50% (47,118) said "No" to the same question. *Should Civilians Help Patrol the Border?*, CNN QUICK VOTE, Apr. 1, 2006, <http://www.cnn.com/POLLSERVER/results/24127.exclude.html>.

VI. APPENDICES

APPENDIX I²⁰¹***The Minuteman Pledge***

- I. A Minuteman upholds the Constitution of the United States of America, and reveres the American Creed that unites us as one people, our Declaration of Independence.
- II. A Minuteman knows well America is a nation of immigrants, and realization of our national promise has always relied upon those who come to America from other countries to participate fully, with their children and descendants, as loyal and law-abiding U.S. citizens.
- III. A Minuteman believes that just as ethnicity, race, religion and all such factors are incidental and do not affect our God-given, constitutional equality as American citizens, such factors are also irrelevant in the debate over illegal immigration. There is no tolerance among Minutemen for racism or bigotry - E Pluribus Unum - Out of Many, One.
- IV. A Minuteman believes in a strong, safe and secure America that begins with borders open only to those who have a legal right to enter, and who have met all the lawful criteria to cross into our territory established by the sovereign American people.
- V. Minutemen vow to use every legal means at our disposal to assist law enforcement authorities in identifying and apprehending those who violate our borders, whether they are illegally trafficking people, weapons, arms, property, sexual slaves or any other contraband.
- VI. Minutemen vow to report to the proper authorities any business entity which knowingly recruits, facilitates or employs people who have entered America illegally, or which cooperates in any commercial activity which involves contraband smuggling or marketing of persons, products or materiel.
- VII. Minutemen promise to raise our voices — on cellular phones along the borders of America and in the halls of Congress — in the defense of the rule of law. The American people are firm but fair, and we share their great compassion for the many powerless victims of cruel, illegal human trafficking and labor exploitation. But we also support our citizens'

201. Excerpted from: The Minuteman Pledge, <http://www.minutemanhq.com/hq/mmpledge.php> (last visited Mar. 16, 2006)

adamant rejection of the blatant disregard for our laws and ordered liberty represented by the U.S. government's failure to secure our borders, enforce our nation's sovereignty and end the flood of illegal trafficking into American territory. I vow before God and my fellow Americans that these principles guide my actions as a Minuteman. "Eternal vigilance is the price of liberty. . ." And so I will stand watch on America's borders and in her sovereign interest until relieved from duty by my fellow countrymen.

APPENDIX II²⁰²***Standard Operating Procedure for Minuteman Project***

1. Minutemen are courteous to everyone with whom they come into contact, and never discriminate against anyone for any reason.
2. Minutemen do not respond to any taunts or harassment from outside agitators, and must *never* be present for duty or serve in *any* capacity if intoxicated.
3. Minutemen *Observe, Report and Direct* Border Patrol or other appropriate emergency or law enforcement agencies to suspected Illegal Aliens or Illegal Activities.
4. Minutemen do not verbally contact, physically gesture to or have any form of communications with suspected Illegal Aliens.
5. Minutemen follow the Standard Operating Procedures to the letter and spirit.
6. Minutemen follow all federal, state and local laws, understanding that we are being held to a higher standard by all.
7. Minutemen understand that, while our actions cannot stop illegal activities along the boarder, we can change world perception and national thought concerning Homeland and Border Security.
8. Minutemen monitor their behavior, the behavior of the people around them and the group as a whole to ensure compliance with the SOP and any instruction given by Minuteman Corps Leadership.
9. Minutemen leave no garbage behind and follow strict pack-in / pack-out procedures.
10. Minutemen respect the property rights of everyone, start no fires, never drive off road, and follow the directions of all law enforcement personnel.

Preface

You are reading this because you believe that you can actively participate in one of the most important, socially responsible, and peaceful movements for justice since the civil rights movement of the 1960s. You are considering joining in this activist protest

202. Excerpted from: Chris Simcox, *Standard Operating Procedure for Minuteman Project*, <http://www.minutemanhq.com/hq/sop.php> (last visited Mar. 16, 2006).

because you are done talking. You have debated, you have begged, you have pleaded with your government officials — public servants whom you trusted to stand by the oath they took when sworn into office to protect the United States from invasion by enemies foreign and domestic. The human flood breaching our Homeland Defense is not necessarily the enemy per se; drug dealers, criminals and potential terrorists are, and they should be the source of any ire you may be experiencing.

You are considering joining the Minuteman Project not because of bias towards people from another country, but rather because you feel your government owes the citizens of the United States protection from people who wish to take advantage of a free society. We demand that President Bush, members of Congress and the Senate maintain an orderly queue of entry into our country. We are three years post September 11, 2001, and still our government is more concerned with securing the borders of foreign lands than securing the borders of the United States. Enough is enough. I apologize for applying such a bromide, but when the going gets tough, the tough get going. I come from a generation that has lost the ideal that we are a “can-do nation.” I cannot accept the weak excuse from our government that the problem is unsolvable. That mindset is un-American. We can and we will make a difference. We, as citizens, are the government, are acting within the social contract of our right to freedom, and we will apply our efforts within the limits of the laws we have created. Regardless of whether we agree with the constraints on our limited ability to stem the flow of crime across our borders, we will display the highest level of restraint, thus proving we are responsible citizens and that our character is consistent with our ability to stay within the boundaries of the law.

Are you willing to sacrifice a few days, a week, a month to help do the job that the government should be doing? If you choose to make the sacrifice and become the active majority rather than the silent majority, you will have accomplished more in one month than the sum total of all your years of complaining and demanding action from your public servants who seem more interested in working for people from other countries than they are in working for us.

Our effort will be tangibly effective in supporting the defenders of our border, the patriotic men and women of the U.S. Border Patrol. You will offer your assistance and become force-multipliers

to assist their monumental task of turning back the tidal wave of people entering our country illegally.

You must be willing to accept the following plan, or you, as a segment of a larger group, are doomed to be remembered in history as representative not of the strongest character, but rather as the weakest link in our maligned and misunderstood group of truly patriotic nationalists. You must understand in the deepest ways the importance of our challenge.

You are here because you are willing to challenge our government to fulfill their constitutionally mandated responsibility, not because you want to fight them, but because you want to challenge them by fulfilling their obligation in their absence. You are willing to become force-multipliers in the absence of Congressional and Presidential will.

Composing letters, e-mails and faxes did not make an impression on our public servants. Now we will assert ourselves as citizen representatives of the government. We are citizens who set the example, of the people for the people and by the people.

We will succeed. If we are to send the message loud and clear to President Bush and Congress, it is imperative that we stay within the law. If one single individual steps over the line for their personal gratification, we are all stained with that irresponsible behavior, and labeled forever as a fringe element that embarrasses all who are counting on us to make this historic statement.

We must prevail, we will prevail. We shall overcome the effort by many to identify this movement as irresponsible; we will be victorious in proving the skeptics wrong. Our efforts will change the course of history and ignite others to stand with courage to make a change. Many are waiting for the outcome and will themselves be motivated with a new sense of activism; we will be leaders who will make a difference, role models who will influence future generations. Are you with us, Americans? If yes, then "let's roll"!

The Law

You must hold these truths to be self evident. There are restrictions and guidelines that must be followed to an absolute.

You will abide by the laws of Arizona. If you choose to arm yourself, you will do so for the purpose of self defense only; you will never have to take action to defend yourself, for you will abide by the rules of no contact and no engagement. (By the way, no weap-

ons are allowed in the Coronado National Park, but we will not be working there, so no need to go any further).

No weapons in the San Pedro Riparian area near the San Pedro River. n Pedro River. There are plenty of hilltops on which to perch, spot and report. Most of the time the illegal aliens will not even know you are there, and you always have the advantage of the high ground.

If challenged, you will physically remove yourself from the situation. At this point 'tis better to retreat and preserve the ability to return and fight another day. The idea is for your sidearm to remain holstered for the duration of your visit. There will be absolutely no need to ever remove your firearm from its holster - not for cleaning, not for show-and-tell, not for any reason. By never removing the firearm from the holster, never keeping it chambered and always keeping the safety on and keeping your hands away from it, there can be no accidents. End of discussion. Remove the firearm from the holster for any reason, and your group members will likely send you on your way back home.

Stun guns, mace, pepper spray are alternatives for personal safety, but remember you have agreed to abide by a no contact, no engagement policy, so your safety will never be an issue. Right?

Absolutely you will not bring handcuffs our other devices used for the physical restraint of human beings. You will not be coming to Arizona to engage in philosophical discussions. You will not be coming to Arizona to challenge anyone, any idea, any person — your challenge is with yourself. Your challenge will be, simplistically put, to behave yourself. The mission is clear - Restraint, Responsibility and Character are the qualities that will guarantee success.

A word of advice: you will be held responsible, not just by law enforcement, but by the rules of our society, of mankind. You can be guaranteed that the first response towards any irrational or illegal behavior will come from within your group of compatriots. We will hold each other accountable. Any volunteer who even hints at illegal activity will be quickly ostracized from the mission and will be reported to law enforcement. You will be removed from the mission and will have forever shamed yourself — you will not be allowed to shame the mission. Personal responsibility, accountability and temperament are the keys to success.

There has been much hand wringing, not just by the media but also from within the rank and file of potential volunteers.

Think about it this way. With the ideals explained in the previous paragraphs, anyone with the intention of stepping over the line will now realize they will not get away with it. Any possible racist, unstable or misguided element will now realize they will not succeed.

Why would anyone who does not agree with the tenets set forth even want to join the effort, knowing they will quickly be expelled from the activity? Those who disagree with the philosophy of this mission have now been dissuaded with caveats replete with everything they most likely despise. Those who don't agree are now making plans to stay home and cast doubt upon our efforts. Let them; for we are all better off without their participation, giving us yet another sense of gratification and desire for success.

The volunteers who have led the way are the good citizens who have joined the efforts of Civil Homeland Defense and who have succeeded in assisting the Border Patrol with locating over 5,000 people entering our country illegally. The volunteers have never made a mistake leading to harm or arrest by law enforcement. We know how to get the job done, so please defer to our experience as your ultimate guide. Our reputation speaks for itself. Facing tremendous opposition and skepticism, we have prevailed. Yet we now risk everything we have worked to achieve during the past two years. If one individual puts their selfish desires before the mandate of the mission, we all lose. We cannot allow such petty individual desires to ruin years and thousands of hours of effort to be wasted at the hands of one self-serving fool.

Volunteers will maintain a strict code of ethics and behavior: you will adhere to a no contact policy. Spot, report and avoid any contact with people entering our country illegally. No exceptions.

Why risk going to jail and ruining the mission by engaging a group of illegals? The time for that is not yet upon us. Remember, this is activism, yet it is symbolic at best. We know millions of illegals are here, thousands continue to come and nothing short of military intervention will cease the flow.

It's no big deal to let a group get away, for every group you locate; there are ten more who are getting through. Face it: there is not much else we can do. The idea is to become force-multipliers for Border Patrol. Our effort will be a shock and awe to the President and to Congressional leaders. If you are coming here because you harbor ill feelings toward the illegals, if you feel uncontrolled

anger towards the government of Mexico or people who are fleeing economic disenfranchisement, you are advised to stay home.

Our efforts are not meant to stop illegals, our efforts are designed to send our elected officials a stiff reminder - they work for us first. Ignore us and we will continue to grow in numbers. We succeed this time and we will have thousands more who will follow our lead in future more interactive missions.

Experienced volunteers of Civil Homeland Defense (CHD) will be mentoring groups of novice border watchers who are here for the first time. CHD volunteers will consult, guide and share experience with new volunteers. CHD volunteers will continue to work in every way possible that will support the mission. Future efforts will likely involve the tracking and containment of groups of people who have entered our country illegally. For this mission, you will resist in every way confronting or attempting to make contact with illegals.

Every group of volunteers should have at least one video camera available and a person whose duty it is to operate it. The video camera is your insurance policy. Record any up-close encounter with the video camera. It is as much a tool for self defense as is your sidearm. If for any reason a group of people entering our country enters your area, you will politely wave, stand aside and watch them proceed on their journey. You may feel an overwhelming sense of frustration, but you will not act irrationally because of the feeling. Self restraint, discipline and personal responsibility must be uppermost in your mind. Be assured that every group you spot will be apprehended by the proper authorities. 99% of every group spotted by volunteers of CHD have been apprehended somewhere down the road. Your satisfaction comes from knowing you have located, reported and alerted the Border Patrol of illegal activity. The group will be caught and sent back across the border.

If a group or individual approaches you in need of assistance, provide it. Every group should have a first aid kit and extra water to offer a human being life- saving aid. Sometimes you may have a person come to you for protection or aid, offer them what they need, videotape everything. Assure them you mean them no harm and tell them you have contacted "La Migra" and that help is on the way. They are usually quite grateful for the assistance.

Patrols conducted during daylight are simple. Take shifts spotting with binoculars, spotting scopes etc. If you see a group, call Border

Patrol. For Naco Border Patrol, the district number is 520-432-512. Douglas Border Patrol dispatch number is 520-805-6900.

Identify yourself as a MMP volunteer. Give them your location. Report the group you have spotted in specifics. Example.

“Hello, good morning, this is Chris Simcox with the Minuteman Project. I am at mile marker 5.5 overlooking the border road. I have spotted a hard count of 15 people who just entered the country illegally. They have crossed the fence and are headed up a trail towards the interior. They look as if they are taking the trail toward the mountains. There are 13 men and 2 women. We will continue to watch them so we can give more specifics to the agent who arrives to track them. How long do you think it will take an agent to arrive? If you need to call me back my cell phone number is. . . Thanks for your help.”

When the agent on the ground arrives, give them the information and direct them towards the group. Other than that, stay out of their way and let them do their job.

If the agent apprehends the group and walks them back out past your location, stay out of the way. Video the group from a distance. You can protect the agent by not video taping his or her face. Do not approach the group even after they are in custody. If the agent asks for your help, provide it with caution. When interfacing with Border Patrol, remember, they are the good guys. Tell them you appreciate their duty to country. If they come back empty handed, tell them you hope they can catch the group farther up the trail. Never have a bad word for these guys and gals; remember they are attempting to do a job with one hand tied behind their backs. You will have to be satisfied that you can provide assistance with both hands tied behind your back. Spot and report; you are being affective just doing that.

Every team will consist of 4 to 8 volunteers. You will use FRS radios and cell phones. Hopefully each group will be provided a radio that will reach the command center. If not, use your cell phone to call Command and report how many people you counted, the time, the location and if Border Patrol responded. A log will be kept to prove our effectiveness and the effectiveness of Border Patrol. A compiled report will be shared with the media at the completion of the project.

Keep your radio transmissions to a minimum, no joking around or extraneous off-task comments. Stay calm, focused, stoic and on-task.

Spread out and maximize your personnel; take shifts spotting to relieve stress. Use the minimum number of radios possible to conserve batteries. Never stray out of radio contact with your group. Rotate the use of cell phones to conserve batteries. Your vehicles will be your command center. Bring DC connectors to re-charge batteries. Carry back-up batteries for radios.

Plan on no less than 8-hour shifts. We will organize relief shifts once we have a hard count of volunteers who have shown they will walk the walk, not just talk the talk.

Carry personal contact information in case of emergency. Ensure every person in your group is aware of any physical or health issues of individuals in your team. Plan for your comfort. Bring a camping chair or folding lawn chair -you will be sitting for hours on end.

Dress warmly, and layer for extremes from cold to hot. Bring plenty of water -2 gallons per person per day. Bring snacks and meals that can be prepared without fire. Hopefully everyone can stand to rough it for at least 8 hours a day: hats, sunscreen, medications for personal issues, tissues, toilet paper, a shovel for burying your waste. Respect the environment, clean up after the group. Make every effort to leave the land just as you found it or in better shape than you found it.

Never drive off-road. Stick to the roads and two-track paths. Park as close to the side of the road as possible, always leaving room for Border Patrol or emergency vehicle access.

Night Missions

Not everyone will be cut out for night missions. We will be looking for those few hardy volunteers who can stand the 12 hours of dusk to twilight. Auditory awareness is your tool for locating groups. Listening carefully while sitting quietly is the toughest aspect of night work. You will hear the group coming long before you can see them. Once you hear them, call them in to Border Patrol — get the Patrol rolling to your location as soon as possible. The groups move quickly through the night. Night vision devices can be useful but not necessary. Some groups will be assisted with thermal night scopes provided by CHD. We will try to rotate them from location to location so everyone gets in on the fun. At times, groups will walk within just feet of where you are sitting. You have two choices. Let them proceed past you while remaining silent, or, turn on a flashlight, inquire as to who is there and

watch them scatter. The latter tactic often helps to delay the group while you are waiting for Border Patrol to arrive. Under no circumstances are you to chase or attempt to give the group of illegal aliens any orders to sit down. The surprise of you being there with your lights is sufficient to send them a message that they should have taken another trail. Many times the group will scatter and run back to the border — mission accomplished!

Use ear phones for radios at night. Try to remain as quiet and stealthy as possible; sound travels great distances at night. A cough can travel a half-mile away. Remember, your mind can play tricks on you at night. The slightest sound will be cause for your imagination to run wild. Be assured, you will know a group is approaching by their distinct sound. Once you hear a group walking through the brush the sound is indelibly printed in your senses.

There will be more tactics and suggestions to come during the next few weeks. There have been many tidbits of suggestions for equipment and survival offered already. They will be available on the website.

The information provided here is not open for discussion — this is the way CHD has managed to work through 800-plus missions. This is the only way for these patrols to work this time around. If you feel this S.O.P. is too restrictive, then you know your limits and have taken the first step to insure the MMP is successful, by knowing you should not attend.

APPENDIX III²⁰³***Reported Acts of Vigilante Behavior***

APRIL 19, 1999 — Migrant Ramona Magana became separated from a group of border-crossers and approached a Hereford ranch owned by Ralph Berdyc, hoping to find food and water. As she drew near the house, she heard a man yelling and dogs barking. After she tried to explain her situation, Berdyc went back into his ranch house and, as Magana fled, fired three shots with a semiautomatic rifle. Berdyc told Border Patrol agents they were warning shots.

NOVEMBER 20, 1999 — Brandishing rifles, brothers Roger and Donald Barnett took seven illegal aliens into custody on their property, then transported them in their pickup truck to the Douglas Border Patrol station. The migrants said they felt threatened because the Barnetts were pointing their guns at them.

MARCH 18, 2000 — A remote Border Patrol cameraman watched as Douglas rancher Richard Puzzi pointed a rifle at six migrants and detained them in his yard. The migrants told Mexican officials they felt threatened because Puzzi kept his rifle pointed at them, sometimes shoving it in their faces, until they were picked up by Border Patrol agents. After Puzzi told a Cochise County sheriff's deputy he did not point his rifle at the migrants, the deputy decided not to file a criminal report.

APRIL 5, 2000 — A group of between 12 and 15 migrants was allegedly detained and held at gunpoint by Andreas Mueller, a professional dog trainer who had also fired a warning shot in the direction of 31 border-crossers in February 2000. One of the migrants, Bencomo Arreola, said Mueller threatened to shoot him. One of Mueller's German shepherds bit another man, who was taken to a hospital and treated for puncture wounds.

MAY 3, 2000 — Roger and Donald Barnett, accompanied by two unidentified women and a television news crew, used their dogs to apprehend nine migrants who were resting in the brush on the Barnetts' ranch. The migrants alleged that Roger Barnett, wearing a holstered pistol, sicced the dogs on the migrants, and Donald

203. Excerpted from: BOB MOSER, S. POVERTY L. CTR., INTELLIGENCE REPORT: VIGILANTE VIOLENCE, CRIMES AGAINST BORDER-CROSSERS ARE HARD TO DETECT IN THE LONELY ARIZONA DESERT - BUT SUSPICIOUS INCIDENTS KEEP CROPPING UP (Spring 2003), <http://www.splcenter.org/intel/intelreport/article.jsp?sid=9>.

Barnett ordered them to sit on the ground and wait for Border Patrol pickup.

MARCH 21, 2001 — Near the San Pedro River, nine migrants were crossing a ranch when an unnamed person emerged from a house, carrying a rifle and accompanied by a dog. When the man opened fire, six of the migrants ran and leaped over a fence, hiding in nearby bushes. The other three migrants, illuminated by the man's flashlight beam, threw themselves to the ground and felt at least three bullets pass over their heads. When the rancher got into his truck to look for the migrants, all nine fled, hearing more shots.

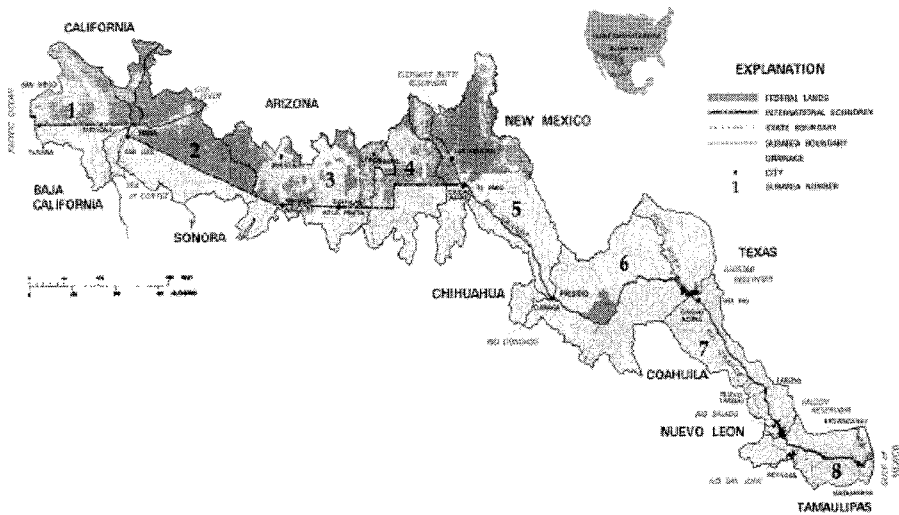
SEPTEMBER 20, 2002 — As they waited alongside Interstate 90 for a scheduled pickup, three migrants were allegedly apprehended by Henry Harvey, a volunteer "Hawkeye" for American Border Patrol. The migrants said Harvey pulled his SUV onto the side of the interstate and got out wearing a holstered side-arm pistol with a couple of extra clips, carrying a can of mace. They said he asked them if they had papers, then ordered them to keep still and stay down until an undercover Border Patrol agent came to pick them up.

OCTOBER 9, 2002 — A Mexican national was walking along the shoulder of Highway 92, near Sierra Vista, when a man driving a pick-up pulled over and asked the migrant if he was "illegal." When the migrant answered affirmatively, the man pulled out a handgun and pointed it at him. Ordering the migrant to lie on the ground, the man called Border Patrol agents, who came and took custody of the migrant.

JANUARY 19, 2003 — Rodrigo Quiroz Acosta, a migrant from Navajoa, Sonora, was approaching Highway 80 when a truck pulled over. A tall man dressed like a rancher got out of the vehicle and began to punch and kick Quiroz, who said he was also hit in the head with a flashlight and bitten by one of the man's dogs. After a woman emerged from the truck and intervened to stop the beating, Quiroz jumped a nearby barbed-wire fence but was caught by the man's dogs and soon arrested by Border Patrol agents.

APPENDIX IV²⁰⁴

FEDERAL LANDS ON THE UNITED STATES-MEXICO BORDER



204. U.S. – MEX. BORDER FIELD COORDINATING COMM., U.S. DEPT. OF THE INTERIOR, UNITED STATES – MEXICO BORDER AREA, AS DELINEATED BY A SHARED – WATER RESOURCES PERSPECTIVE (1996), http://www.doi.gov/fcc/english/water_fs-1.html.