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### A Dry Hate: White Supremacy and Anti-Immigrant Rhetoric in the Humanitarian Crisis on the U.S.-Mexico Border

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**A DRY HATE:  
WHITE SUPREMACY AND ANTI-IMMIGRANT RHETORIC IN THE  
HUMANITARIAN CRISIS ON THE U.S.-MEXICO BORDER**

*Kristina M. Campbell\**

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\* Associate Professor of Law and Director, Immigration and Human Rights Clinic, University of the District of Columbia David A. Clarke School of Law. I would like to thank the organizers of the 2015 Mid-Atlantic People of Color Conference (MAPOC), the West Virginia University College of Law, and the editors of the *West Virginia Law Review* for the opportunity to participate in this year's conference and for selecting my Article for publication in the *Law Review*. This Article is dedicated to the women and children seeking asylum who have been or are currently being detained by the United States Department of Homeland Security in Artesia, New Mexico; Karnes, Texas; and Dilley, Texas.

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## I. INTRODUCTION

Beginning with the passage of its anti-immigrant “Show-Me-Your-Papers” law in April 2010, S.B. 1070,<sup>1</sup> much has been written about the hostile political climate toward noncitizens in the State of Arizona specifically and the United States-Mexico border generally.<sup>2</sup> However, the recent influx of refugees from Central America to the United States has caused a resurgence in the anti-immigrant rhetoric, which is particularly disturbing because a large percentage of the individuals fleeing violence and poverty are children.<sup>3</sup> In this vein, one aspect of the genesis of S.B. 1070 and other anti-immigrant laws that have not received a great deal of attention is the significant presence—and the startling growth of—white supremacist and Neo-Nazi groups throughout Arizona and the Southwest in the years leading up to the introduction and passage of S.B. 1070 and its predecessor laws.<sup>4</sup> While groups such as the Southern Poverty Law Center (SPLC) and the Anti-Defamation League (ADL) have monitored and

<sup>1</sup> S.B. 1070, 49th Leg., 2d Sess. (Ariz. 2010).

<sup>2</sup> See, e.g., Marisa S. Cianciarulo, *The “Arizonafication” of Immigration Law: Implications of Chamber of Commerce v. Whiting for State and Local Immigration Legislation*, 15 HARV. LATINO L. REV. 85 (2012).

<sup>3</sup> See Danielle Renwick, *The U.S. Child Migrant Influx*, COUNCIL ON FOREIGN REL. (Sept. 1, 2014), <http://www.cfr.org/immigration/us-child-migrant-influx/p33380>.

<sup>4</sup> See Cristina Costantini, *Anti-Latino Hate Crimes Rise as Immigration Debate Intensifies*, HUFFINGTON POST (Apr. 3, 2013, 1:26 PM), [http://www.huffingtonpost.com/2011/10/17/anti-latino-hate-crimes-rise-immigration\\_n\\_1015668.html](http://www.huffingtonpost.com/2011/10/17/anti-latino-hate-crimes-rise-immigration_n_1015668.html).

documented the rise of anti-immigrant hate groups in the Southwest over the past decade, the correlation between the activities of these organizations, anti-immigrant activism, and the passage of state laws designed to intimidate, threaten, and harass noncitizens and other people of color living and working in Arizona and the American Southwest has not been fully explored in the mainstream political and legal media.

This Article examines the growth of the white supremacist movement in Arizona and other southwestern states and argues that the influence of these groups plays a significant role in the caustic rhetoric we are currently witnessing in the humanitarian crisis on the United States-Mexico border and in the flurry of anti-immigrant laws approved by the state legislature and the electorate since the early 2000s. Part I discusses the growth of some of the most prominent white supremacist and Neo-Nazi groups currently operating in Arizona and other states along the United States-Mexico border during the 1990s and early 2000s. Part II provides an overview of some of the prominent politicians and citizens in the Southwest who have been linked to these extremist and racist groups and how their affiliations impacted the spread of anti-immigrant rhetoric into the cultural mainstream, as well as the introduction and passage of state anti-immigrant laws and policies. Part III discusses the current humanitarian crisis on the border and profiles some of the most notorious recent incidents of anti-immigrant sentiment tied to white supremacists—such as the murders of Raul and Brisenia Flores by border vigilantes in 2009 and the murderous rampage of Neo-Nazi J.T. Ready in 2011—and examines how the anti-immigrant and racist rhetoric of these groups contribute to the ongoing violence against and scapegoating of migrants seeking refuge in the United States. The Article concludes with Part IV, which argues that unless and until the white supremacist roots of anti-immigrant rhetoric is acknowledged, the southern border of the United States will continue to be a flashpoint in which hate groups can continue to implement their extremist agenda against noncitizens and people of color.

## II. THE GROWTH OF HATE AND EXTREMIST GROUPS IN THE SOUTHWEST IN THE 1990S AND EARLY 2000S

It can be argued that the rise of the American Southwest as a Mecca of sorts for white supremacists began in the mid-1990s when Timothy McVeigh, the man who bombed the Murrah Federal Building in Oklahoma City in 1995, and his accomplices, Michael Fortier and Terry Nichols, set up the base for their terrorist operation in Kingman, Arizona.<sup>5</sup> Inspired by the white supremacist

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<sup>5</sup> See Howard Witt, *In Arizona Town, Oklahoma Bombing Casts Dark Shadow: Unwanted Fame Because Suspect Once Lived There*, CHI. TRIB., June 18, 1995, [http://articles.chicagotribune.com/1995-06-18/news/9506180344\\_1\\_timothy-mcveigh-mcveigh-and-fortier-michael-fortier](http://articles.chicagotribune.com/1995-06-18/news/9506180344_1_timothy-mcveigh-mcveigh-and-fortier-michael-fortier).

manifesto *The Turner Diaries*,<sup>6</sup> McVeigh stored the explosives used in the Oklahoma City bombing in Kingman in the months prior to carrying out the attack, and he lived there intermittently while plotting the attack in 1994–1995.<sup>7</sup> Kingman was well-known in white supremacist circles as the location of a compound run by Jack Maxwell Oliphant, an early organizer of paramilitary efforts in Arizona, on his ranch outside Kingman.<sup>8</sup>

However, Kingman is far from the only location that has been a magnet for individuals sympathetic to right-wing organizations with extremist agendas. The states of the American Southwest—California, Arizona, New Mexico, and Texas—have been at the heart of the rise of white supremacists and Neo-Nazi groups in the late 20th and early 21st century.<sup>9</sup> Although not all hate groups in the Southwest are focused on immigration, the sharp rise of anti-immigrant

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<sup>6</sup> *The Turner Diaries*, authored by Neo-Nazi National Alliance leader William Pearce, chronicles the events of a white supremacist uprising in the United States. As described by the Anti-Defamation League:

The scene is chillingly familiar: a rented truck filled with cases of dynamite and sacks containing a mixture of ammonium nitrate fertilizer and heating oil blows up in front of a federal government building shortly after 9 a.m., killing hundreds of people.

Most people would recognize this as the deadliest domestic terrorist act in American history: the 1995 Oklahoma City bombing. But before this bombing ever took place, it was first depicted in *The Turner Diaries* (1978), an apocalyptic, violently anti-Semitic and racist novel that has achieved cult status among far-right extremists.

*Extremism in America: The Turner Diaries*, ANTI-DEFAMATION LEAGUE, [http://archive.adl.org/learn/ext\\_us/turner\\_diaries.html?LEARN\\_Cat=Extremism&LEARN\\_SubC at=Extremism\\_in\\_America&xpicked=5&item=22](http://archive.adl.org/learn/ext_us/turner_diaries.html?LEARN_Cat=Extremism&LEARN_SubC at=Extremism_in_America&xpicked=5&item=22) (last visited Feb. 26, 2015).

<sup>7</sup> Witt, *supra* note 5 (“McVeigh, most unsuspecting residents of Kingman soon discovered to their dismay, had been their intermittent neighbor during the last year. He had lived for a time at a local trailer park and two motels, worked for a few months at a local hardware store and used a Kingman postal box as a mail drop. He was also an Army buddy and close friend of a Kingman resident, Michael Fortier, who authorities allege had some knowledge of the bombing plot.”).

<sup>8</sup> See Tony Perry, *Godfather of Arizona’s Militiamen: Oklahoma City Bombing Puts Jack Oliphant, an Ex-Con and Survivalist, Back in Limelight*, L.A. TIMES, May 21, 1995, [http://articles.latimes.com/1995-05-21/news/mn-4474\\_1\\_oklahoma-city-bombing](http://articles.latimes.com/1995-05-21/news/mn-4474_1_oklahoma-city-bombing) (“Jack Maxwell Oliphant, who hates people of color, Israel, politicians of any party, informers, the Federal Reserve Board, the federal government, the court and monetary systems, and agents of the FBI, IRS, and ATF, swerves his truck on a rutted road leading to his mountain hideaway to miss a rattlesnake. Oliphant, a survivalist and spiritual godfather of the Arizona militia movement, likes rattlesnakes. He points out to a visitor who has ventured to his tiny compound in the desert outback 50 miles from Kingman that the slow-moving snake is a female, probably waiting to unload a litter of baby rattlesnakes judging from the bulge in its belly.”).

<sup>9</sup> See *Hate Map*, S. POVERTY L. CENTER, <http://www.splcenter.org/get-informed/hate-map> (last visited Feb. 26, 2015) (documenting 77 hate groups in California, 20 hate groups in Arizona, 6 hate groups in New Mexico, and 57 hate groups in Texas).

extremist groups in the mid-2000s—an increase of 40% from 2000 to 2007<sup>10</sup>—is directly linked to “hate groups’ exploitation of the issue of illegal immigration, which most Americans see as a pressing concern.”<sup>11</sup> As the Southern Poverty Law Center explained: “[T]he United States has seen the breathtakingly rapid rise of a right-wing anti-immigration movement . . . . In just the last two years, some 250 new nativist organizations have sprung up, some of them armed and engaged vigilante round-ups of undocumented Latino immigrants.”<sup>12</sup>

The changing racial demographics of the United States—which indicate that by 2044, whites will be a minority of the overall population<sup>13</sup>—has been a major factor in the recent explosion of hate groups in the last several decades.<sup>14</sup> The fear and loathing of Latino immigrants in particular—which has seen a resurgence due to the humanitarian refugee crisis on the United States-Mexico border in 2014—is one of the primary reasons so many racist and white

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<sup>10</sup> Heidi Beirich et al., *The Year in Hate: Hate Groups Grow Steadily As the Anti-Immigration Movement Swells; 40% Rise Reported Since the Start of the Millennium*, INTELLIGENCE REP., Spring 2007, at 48 [hereinafter Beirich et al., *The Year in Hate*], available at <http://www.splcenter.org/get-informed/intelligence-report/browse-all-issues/2007/spring/the-year-in-hate>.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Howard Hogan et al., *Projecting Diversity: The Methods, Results, Assumptions and Limitations of the U.S. Census Bureau’s Population Projections*, 117 W. VA. L. REV. (forthcoming May 2015) (“These projections show that the total population will become less than 50% non-Hispanic White around 2044.”).

<sup>14</sup> See Heidi Beirich, *Essay: The Anti-Immigrant Movement*, S. POVERTY L. CENTER, <http://www.splcenter.org/get-informed/intelligence-files/ideology/anti-immigrant/the-anti-immigrant-movement> (last visited Mar. 10, 2015) [hereinafter Beirich, *Anti-Immigration Movement*] (“Since the late 1990s, the United States has experienced an explosive rise in nativism, or anti-immigrant sentiment, to a level of intensity not seen in nearly a century.”); see also Colleen Curry, *Hate Groups Grow as Racial Tipping Point Changes Demographics*, ABC NEWS (May 18, 2012), <http://abcnews.go.com/US/militias-hate-groups-grow-response-minority-population-boom/story?id=16370136> (“The number of radical hate groups and militias has exploded in recent years in reaction to the changing makeup of America, and new census figures showing the majority of babies born in 2011 were non-white could fuel those simmering tensions, experts who track hate groups warned. . . . The census found that 50.4 percent of births in 2011 were of Hispanic, black, Asian, and other minority children. White babies accounted for 49.5 percent of the country’s newborns. In addition, more than 49 percent of all children under 5 years old are minorities, the report said.”); Lorraine Devon Wilke, *Shifting Demographics: Census Shows Asians Fastest Growing Group, Whites Soon the Minority*, ADDICTING INFO (June 14, 2013, 4:19 AM), <http://www.addictinginfo.org/2013/06/14/new-census-benchmark-whites-are-dying-faster-than-theyre-being-born/> (“The Census Bureau tells us the fastest growing population is Asian (grew by 2.9 percent), with Hispanics not far behind (grew by 2.2 percent); blacks at 1.3 percent. Whites . . . just 0.09 percent. Clearly the die is cast. Which will cause everything from cultural stress to deep ethnic anger.”).

supremacist groups have chosen the Southwest as the hub of their recent expansion efforts.<sup>15</sup>

A. *The 1990s: The Burgeoning Nativist Anti-Immigrant Movement in the Southwest*

1. California Proposition 187

In 1994, California drew nationwide attention with the passage of Proposition 187, an anti-immigrant ballot initiative that prohibited persons without legal immigration status from receiving a variety of public services and accommodations such as health care and education.<sup>16</sup> Despite never being enforced after being ruled unconstitutional in United States District Court by United States District Judge Mariana Pfaelzer in 1997,<sup>17</sup> Proposition 187 set the stage for decades to come in how state and local governments would choose to respond to their growing immigrant populations, separate and apart from the

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<sup>15</sup> See Lomi Kriel, *Anti-Illegal Immigration Groups Resurge on the Border*, HOUS. CHRON., Jan. 5, 2015, <http://www.houstonchronicle.com/news/houston-texas/houston/article/Anti-illegal-immigration-groups-resurge-on-border-5995324.php#0> (“The arrival of more than 63,000 Central American children in South Texas last year thrust immigration into the spotlight, making it a major political crisis. About 17 militia ‘teams’ are active on the Texas border, more than in any other state, according to the website Patriot Information Hotline, which helps recruit and organize groups. Many formed human chains blocking immigrants at the border. Two militia members were arrested for having explosives and possessing firearms as felons. And in July, Chris Davis of Von Ormy, a 37-year-old commander of the militia group ‘Operation Secure Our Border: Laredo Sector,’ said in a since-deleted YouTube video, ‘You see an illegal. You point your gun dead at him, right between his eyes, and you say, ‘Get back across the border or you will be shot.’”).

<sup>16</sup> See Marissa Cabrera, *The Impact of Prop. 187, 20 Years Later*, KPBS (Nov. 17, 2014), <http://www.kpbs.org/news/2014/nov/17/impact-prop-187-20-years-later/> (“The ballot initiative was aimed at prohibiting people living in California illegally from using health care, public education, or getting other social services.”).

<sup>17</sup> *League of United Latin Am. Citizens v. Wilson*, 997 F. Supp. 1244, 1259 (C.D. Cal. 1997) (“Proposition 187, as drafted, is not constitutional on its face.”); see also Patrick J. McDonnell, *Prop. 187 Found Unconstitutional by Federal Judge*, L.A. TIMES, Nov. 15, 1997, <http://articles.latimes.com/1997/nov/15/news/mn-54053>. The law was never enforced, due to previous injunctions in 1994 and 1995. See LARRY EIG, CONG. RESEARCH SERV., 97-543, CALIFORNIA’S PROPOSITION 187: A BRIEF OVERVIEW (1999), available at <http://congressionalresearch.com/97-543/document.php?study=CALIFORNIA%26%23146%3BS+PROPOSITION+187+A+BRIEF+OVERVIEW> (“A federal district court temporarily halted Prop 187’s restrictions on benefits in December 1994, and this freeze was continued under a November 1995 preliminary injunction. This 1995 decision, *LULAC v. Wilson*, also overturned most of Prop 187’s enforcement procedures.”).

comprehensive regulatory scheme governing migration provided for in the Immigration and Nationality Act (INA).<sup>18</sup>

The anti-immigrant rhetoric surrounding the passage of Proposition 187 was fierce, and several influential anti-immigrant activists, such as Barbara Coe and Glenn Spencer, had been involved in drafting the initiative.<sup>19</sup> California Governor Pete Wilson (R) was one of the strongest proponents of the law, claiming that California's recession was caused by the state's large population of undocumented immigrants and the revenue expended on providing them social services.<sup>20</sup> Governor Wilson's scapegoating of the federal government in 1993 for failing to enforce federal immigration law foreshadowed Arizona's battle against unauthorized migration nearly twenty years later, when he sued the United States government and argued that "Washington was responsible for reimbursing California for the cost of state services to illegal aliens."<sup>21</sup> The preamble to Proposition 187 was also startlingly similar in nature to Arizona's notorious anti-immigrant law S.B. 1070, passed into law and signed by Governor Jan Brewer in April 2010:<sup>22</sup>

[T]he People of California find and declare as follows: That they have suffered and are suffering economic hardship caused by the presence of illegal aliens in this state. That they have suffered and are suffering personal injury and damage caused by the criminal conduct of illegal aliens in this state. That they have a right to the protection of their government from any person or persons entering this country unlawfully.<sup>23</sup>

The drafters of Proposition 187 claimed to have written the law with the specific intent of overturning the landmark 1982 United States Supreme Court

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<sup>18</sup> See Kriel, *supra* note 15 (After Prop 187 was found unconstitutional, "Arizona has taken the lead in pushing for tough anti-immigration laws, including one in 2010 requiring police to determine someone's immigration status if there's 'reasonable suspicion' they're here illegally.").

<sup>19</sup> See Beirich, *Anti-Immigration Movement*, *supra* note 14 ("Coe and Spencer had earlier played critical roles in drawing up and successfully campaigning for Proposition 187, a referendum on a proposed harsh anti-immigrant measure in California.").

<sup>20</sup> See Edwin S. Rubenstein, *Remembering Proposition 187*, SOCIAL CONTRACT, Winter 2012, at 3, available at [http://www.thesocialcontract.com/pdf/twentytwo-two/tsc\\_22\\_2\\_rubenstein.pdf](http://www.thesocialcontract.com/pdf/twentytwo-two/tsc_22_2_rubenstein.pdf) ("Over the 1991–94 period [the California] state government revenues declined by over 25 percent while social program caseloads rose dramatically. At its worst, the state deficit equaled one-third of California's general fund budget. . . . Gov. Pete Wilson blamed illegal immigration. In his view, the chronic fiscal crisis was caused by a jurisdictional dysfunction: the federal government required California to provide services to illegal aliens, who were state residents only because that same federal government failed to prevent them from crossing the border.").

<sup>21</sup> *Id.*

<sup>22</sup> See *infra* Section III.B.2.

<sup>23</sup> Illegal Aliens, § 1, 1994 Cal. Legis. Serv. Prop. 187 (West).

case *Plyler v. Doe*,<sup>24</sup> which struck down a Texas statute requiring children who were not lawfully present in the United States to pay tuition in order to receive a publicly funded education.<sup>25</sup> However, the United States Supreme Court never considered the constitutionality of Proposition 187, as Pete Wilson's successor, Governor Gray Davis, declined to defend the law in court and entered into a settlement agreeing to void its provisions in 1999.<sup>26</sup>

Despite the ultimate failure of Proposition 187, former Governor Wilson remains convinced that the law was a step in the right direction for immigration reform and control. In 2002, he stated that he was right to support the law and does not regret doing so.<sup>27</sup> Wilson also contends that many Republicans only distanced themselves from Proposition 187 and other similar measures because they "have been intimidated because they don't want to be attacked as being racist"<sup>28</sup> and that his critics have unfairly ignored his support for legal immigration.<sup>29</sup>

## 2. The Emergence of Nativist and Extremist Anti-Immigrant Groups

Proposition 187 was merely the beginning of the anti-immigration firestorm that would come to consume the Southwest for decades. In the late 1990s, "populist anti-immigrant anger began spreading across the nation."<sup>30</sup> Around this time, Cochise County, Arizona, ranchers Roger and Donald Barnett

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<sup>24</sup> 457 U.S. 202 (1982).

<sup>25</sup> Karen Brandon & Hugh Dellios, *Legal Battle In California Begins Over Proposition 187*, CHI. TRIB., Nov. 10, 1994, [http://articles.chicagotribune.com/1994-11-10/news/9411100140\\_1\\_illegal-immigrants-republican-challenger-michael-huffington-senate-race](http://articles.chicagotribune.com/1994-11-10/news/9411100140_1_illegal-immigrants-republican-challenger-michael-huffington-senate-race) ("Backers crafted the measure to challenge a 5-4 U.S. Supreme Court decision in a 1982 Texas case that forbid states from cutting off education to the children of illegal immigrants.").

<sup>26</sup> See *Court Settlement Hails End to California's Anti-Immigrant Law Prop. 187*, AM. CIVIL LIBERTIES UNION (Sept. 13, 1999), <https://www.aclu.org/immigrants-rights/court-settlement-hails-end-californias-anti-immigrant-law-prop-187> ("A U.S. District Court Judge today approved a mediated settlement of an American Civil Liberties Union challenge to a state anti-immigrant law, confirming that no children in California can be deprived of an education or stripped of healthcare due to their place of birth. The court-approved settlement, agreed to in July, also made clear that the state cannot regulate immigration, a job clearly assigned by the United States Constitution and federal law to the national government.").

<sup>27</sup> See John Harwood, *Wilson Defends Immigration Stance That Alienated Hispanic Population*, WALL ST. J., May 3, 2002, <http://www.wsj.com/articles/SB1020387913752951040> ("Mr. Wilson, in his first extensive interview on the subject since going into political exile here, rejects being scapegoated by Republicans, saying many of them privately agree with him but have been 'intimidated' by criticism from Democrats and the media. . . . 'I was right then,' says Mr. Wilson, who was elected to two terms each as the state's governor and U.S. Senator, in a three-hour interview. 'I'm right now. I think time has proven me right.'").

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Beirich, *Anti-Immigration Movement*, *supra* note 14.

gained notoriety for their vigilantism against migrants crossing their properties.<sup>31</sup> The Barnetts “boasted of rounding up thousands of migrants at gunpoint and handing them over to the authorities. The brothers—who were lauded as heroes by most immigration-restriction groups—even took reporters from around the world on weekend ‘missions’ to ‘hunt’ their human prey”<sup>32</sup> and claim to have captured more than 2,000 migrants on their ranch over the years.<sup>33</sup> The Barnetts’ vigilantism drew the attention of prominent activists in California affiliated with hate groups, Barbara Coe of the California Coalition for Immigration Reform and Glenn Spencer of the American Border Patrol.<sup>34</sup> Coe and Spencer later organized an event supporting and celebrating the Barnetts in Sierra Vista, Arizona—which was attended by members of former KKK leader David Duke’s nativist group, the National Organization for European American Rights<sup>35</sup>—in which Coe spoke about the threat posed to the United States by “alien savages” who “bring[] in communicable diseases . . . smuggl[e] deadly drugs . . . [and] rob, rape and murder innocent U.S. citizens.”<sup>36</sup>

At the rally in Sierra Vista, Glenn Spencer also showed his anti-immigrant propaganda film entitled “Immigration: Threatening the Bonds of Our Union,” which “outlined an imaginary Latino conspiracy to ‘reconquer’ the Southwest for Mexico.”<sup>37</sup> Spencer’s group, the American Border Patrol, is now headquartered in Sierra Vista but was founded in California in 1992 as “Voices of Citizens Together.”<sup>38</sup> Described by the ADL as a “virulently anti-Hispanic group,”<sup>39</sup> the American Border Patrol “has warned for more than a decade of a plan by Mexicans to ‘invade’ and ‘conquer’ the Southwestern U.S.”<sup>40</sup> Spencer also claims to have proven that the government of Mexico is “sponsoring the

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Press Release, Anti-Defamation League, ADL Says Armed Anti-Immigration Groups in Arizona Share Ties to White Supremacists (May 6, 2003) [hereinafter Anti-Defamation League], available at [http://archive.adl.org/presrele/extremism\\_72/4255\\_72.html#.VKB7scQA](http://archive.adl.org/presrele/extremism_72/4255_72.html#.VKB7scQA).

<sup>34</sup> Beirich, *Anti-Immigration Movement*, *supra* note 14 (noting that both the California Coalition for Immigration Reform and the American Border Patrol have been listed as hate groups by the Southern Poverty Law Center since 2001).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> See Anti-Defamation League, *supra* note 33.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

invasion of the United States with hostile intent”<sup>41</sup> and warned (incorrectly, as it would turn out) that a second Mexican-American war would break out in 2003.<sup>42</sup>

Another anti-immigrant group to gain prominence during the 1990s in California and elsewhere was the Federation for American Immigration Reform (FAIR). Although founded in 1979 in Washington, D.C. by known white supremacist John Tanton,<sup>43</sup> FAIR was a prominent proponent of California’s Proposition 187 during the 1990s, purchasing air time on California radio stations shortly before the issue was to be considered by voters in 1994.<sup>44</sup> Additionally, FAIR’s lobbyist in California’s state capitol, Sacramento, co-wrote Proposition 187—although the Executive Director of FAIR, Dan Stein, had previously denied that FAIR had any involvement in drafting the initiative.<sup>45</sup> FAIR was also criticized during the Proposition 187 campaign for receiving donations from the Pioneer Fund, which was described by the *Los Angeles Times* as “a group that has also sponsored research by various scientists, including the late William B. Shockley, who contended that African Americans are inherently intellectually inferior to whites.”<sup>46</sup>

During the 1990s, anti-immigrant organizations began to grow and strengthen due in large part to their decision to adopt a restrictionist agenda with nativist and racist overtones. The decision to affiliate with white supremacist and Neo-Nazi organizations, along with their increasingly explicit xenophobic tone,

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<sup>41</sup> *Id.*; see also *John Tanton Is the Mastermind Behind the Organized Anti-Immigration Movement*, 106 INTELLIGENCE REP., Summer 2002 [hereinafter *John Tanton is the Mastermind*], available at <http://www.splcenter.org/get-informed/intelligence-report/browse-all-issues/2002/summer/the-puppeteer?page=0,1> (“[A]nti-immigration activists increasingly came to embrace conspiracist ideas like the notion pushed by [Glenn] Spencer and [Barbara] Coe of a Mexican plot to reconquer the American Southwest.”).

<sup>42</sup> Anti-Defamation League, *supra* note 33.

<sup>43</sup> See *Extremist Files: Federation for American Immigration Reform*, S. POVERTY L. CENTER, <http://www.splcenter.org/get-informed/intelligence-files/groups/federation-for-american-immigration-reform-fair> (last visited Feb. 26, 2015) [hereinafter *Extremist Files*] (“FAIR’s founder, John Tanton, has expressed his wish that America remain a majority-white population: a goal to be achieved, presumably, by limiting the number of nonwhites who enter the country.”).

<sup>44</sup> See Paul Feldman, *Dispute Flares over Planned Radio Spot for Prop. 187*, L.A. TIMES, Oct. 27, 1994, [http://articles.latimes.com/1994-10-27/local/me-55283\\_1\\_radio-ad](http://articles.latimes.com/1994-10-27/local/me-55283_1_radio-ad) (“With less than two weeks remaining before Election Day, the battle over Proposition 187 continued to heat up Wednesday with controversy erupting over a planned last-minute pro-187 radio ad campaign by a national immigration reform organization. . . . The radio flap concerns purchase of ad time by the Washington-based Federation for American Immigration Reform, a group known as FAIR that previously had indicated it was making no financial contributions in support of Proposition 187.”).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*; see also *John Tanton Is the Mastermind*, *supra* note 41 (stating that the Pioneer Fund is “an outfit once described by eugenics expert Barry Mehler as a ‘neo-Nazi organization, tied to the Nazi eugenics program in the 1930s, that has never wavered in its commitment to eugenics and ideas of human and racial inferiority and superiority’”).

set the stage for the coming battle over the direction of national migration policy and enforcement of federal immigration law during the 2000s.

*B. The 2000s: The Southwest Becomes the Flashpoint for the Nativist Anti-Immigrant Movement*

In the mid-2000s, both the pro-immigrant and anti-immigrant movements were energized with the introduction in the 109th Congress of H.R. 4437, Border Protection, Antiterrorism and Illegal Immigration Control Act of 2005.<sup>47</sup> Also known as the Sensenbrenner-King Bill after its sponsors, Representative James Sensenbrenner (R-WI) and Representative Peter King (R-NY), the bill passed in the House of Representatives on December 16, 2005, by a vote of 239 to 182.<sup>48</sup> The Sensenbrenner-King Bill was almost immediately both criticized and lauded for its enforcement-heavy focus on reforming current federal immigration laws.<sup>49</sup> After large-scale protests in many cities across the

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<sup>47</sup> H.R. Res. 4437, 109th Cong. (2005), available at <https://www.congress.gov/109/bills/hr4437/BILLS-109hr4437rfs.pdf>.

<sup>48</sup> 151 CONG. REC. H12013 (2005); see also *Border Protection, Antiterrorism and Illegal Immigration Control Act of 2005, H.R. 4437*, NAT'L CONF. OF ST. LEGISLATURES, <http://www.ncsl.org/research/immigration/summary-of-the-sensenbrenner-immigration-bill.aspx> (last visited Feb. 26, 2015).

<sup>49</sup> See, e.g., Timothy H. Edgar, *ACLU Memo to Interested Persons Regarding Concerns in H.R. 4437, the "Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005,"* AM. CIVIL LIBERTIES UNION (Dec. 7, 2005), <https://www.aclu.org/national-security/aclu-memo-interested-persons-regarding-concerns-hr-4437-border-protection-antiterr>. Among other provisions, H.R. 4437 would have expanded the criminal grounds of immigration violations—including unlawful presence—and provided that states have an “inherent authority” to “investigate, identify, apprehend, detain, or transfer to Federal custody aliens in the United States . . . for the purposes of assisting in the enforcement of immigration laws . . .” H.R. 4437 § 220; see also *House Debates Bill To Rewrite Immigration Laws, Includes Provision That Makes It a Felony To Be an Undocumented Worker*, DEMOCRACY NOW! (Dec. 16, 2005), [http://www.democracynow.org/2005/12/16/house\\_debates\\_bill\\_to\\_rewrite\\_immigration](http://www.democracynow.org/2005/12/16/house_debates_bill_to_rewrite_immigration) (“The legislation makes it a felony [for] an undocumented worker to be in the United States without authorization and requires all employers to verify the legal status of their workers.”).

United States—including Los Angeles, Chicago, and New York<sup>50</sup>—the bill died in Congress and never became law.<sup>51</sup>

Despite its failure, H.R. 4437 revived the anti-immigrant sentiments stirring in the Southwest since the 1990s. Even before the Sensennbrenner-King Bill was introduced in 2005, the Anti-Defamation League (ADL) noted the startling rise of armed anti-immigrant vigilante groups in Arizona in May 2003.<sup>52</sup> Bill Straus, ADL Arizona Regional Director, stated that:

Anti-immigration groups are engaged in a campaign of vigilantism and intimidation, and their ideology has all the hallmarks of the hateful rhetoric promoted by anti-Semites and racists. We are greatly concerned that the collusion of anti-immigration groups and their extremist sympathizers is

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<sup>50</sup> See Rachel L. Swarns, *Immigrants Rally in Scores of Cities for Legal Status*, N.Y. TIMES, (Apr. 11, 2006), <http://www.nytimes.com/2006/04/11/us/11immig.html?pagewanted=1&r=2> (“No rally was more diverse than New York’s, where the thousands who converged at City Hall Park were greeted in Spanish, Chinese, French and Korean, and heard invocations by a rabbi and the leader of a Buddhist temple.”); Nathan Masters, *3 Protests from L.A. History That Got the Public’s Attention*, KCET (Oct. 27, 2011, 3:45 PM), [http://www.kcet.org/updaily/social\\_focus/history/la-as-subject/occupy-la-3-protests-from-la-history-that-got-the-publics-attention.html](http://www.kcet.org/updaily/social_focus/history/la-as-subject/occupy-la-3-protests-from-la-history-that-got-the-publics-attention.html) (“On March 25, 2006, 500,000 Latino immigrants marched through the streets of downtown Los Angeles, chanting ‘Si se puede!’ They marched in protest of H.R. 4437, an immigration reform bill passed the previous December by the U.S. House of Representatives. The legislation would have made undocumented immigration a felony, imposed stiffer penalties on employers of illegal immigrants, and required churches to check the immigration status of parishioners before providing them with aid. Already one of the largest protests in Los Angeles history, the March 25 event inspired organizers to stage an even bigger march just weeks later. On May Day, as Latino immigrants across the country boycotted the U.S. economy to demonstrate their collective economic clout, an estimated one to two million immigrants marched from down Wilshire Boulevard.”); Oscar Avila & Antonio Olivo, *A Show of Strength: Thousands March to Loop for Immigrants’ Rights, Workers, Students Unite in Opposition to Toughening Law*, CHI. TRIB., Mar. 11, 2006, [http://articles.chicagotribune.com/2006-03-11/news/0603110130\\_1\\_immigration-debate-pro-immigrant-illegal-immigrants](http://articles.chicagotribune.com/2006-03-11/news/0603110130_1_immigration-debate-pro-immigrant-illegal-immigrants) (“In a show of strength that surprised even organizers, tens of thousand[s] of immigrants poured into the Loop Friday, bringing their calls for immigration reform to the heart of the city’s economic and political power. What started as a word-of-mouth campaign, then spread through the foreign language media, grabbed the attention of the entire city by midday, as a throng 2 miles long marched from Union Park on the Near West Side to Federal Plaza. Police estimated the crowd as large as 100,000, making it one of the biggest pro-immigrant rallies in U.S. history, according to national advocates.”).

<sup>51</sup> *Text of the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005*, GOVTRACK.US, <https://www.govtrack.us/congress/bills/109/hr4437/text> (last visited Feb. 26, 2015) (“This bill was introduced in a previous session of Congress and was passed by the House on December 16, 2005 but was never passed by the Senate.”).

<sup>52</sup> Anti-Defamation League, *supra* note 33.

contributing to the growing climate of intolerance, lawlessness and violence along the Arizona-Mexico border.<sup>53</sup>

In 2005, the ADL updated its alert about extremist anti-immigrant groups in Arizona active since the turn of the century, noting that:

Extremist groups along the Arizona-Mexico border use radical tactics, including armed vigilante action, to promote an extreme anti-immigrant agenda. In addition to openly inviting people to “patrol” the borders using weapons and surveillance technology, new groups are forming and activity overall is expanding. Several members belonging to active vigilante groups, including their leadership, have been arrested on weapons charges and white supremacist and anti-governments groups continue to express interest and take part in organized “patrols” of the border.<sup>54</sup>

Among the armed vigilante border groups profiled by the ADL was the Civil Homeland Defense, which was founded by Chris Simcox<sup>55</sup> in 2003 and shortly thereafter joined forces with Jim Gilchrist of the Minuteman Project to patrol the United States-Mexico border.<sup>56</sup> Like many other anti-immigrant groups, the Civil Homeland Defense border patrol project was “[h]ighly publicized among right-wing extremists ranging from militia groups to white supremacist organizations, [and] the Minuteman Project has attracted a variety of extremists and anti-immigration activists of all types.”<sup>57</sup>

Another armed border group profiled by the ADL was the Arlington, Texas based organization Ranch Rescue, which was inspired by the vigilante activity of the Barnett brothers in Arizona and formed in June 2000 by Jack Foote.<sup>58</sup> Claiming to have membership chapters in six states—including the Southwestern states of California, New Mexico, and Texas—Ranch Rescue organized patrols of the United States-Mexico border in defense of what Foote also claims is a conspiracy “deliberately encouraged by the Mexican government

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<sup>53</sup> *Id.*

<sup>54</sup> *Armed Vigilante Activities in Arizona*, ANTI-DEFAMATION LEAGUE (Apr. 25, 2005), <http://www.adl.org/combating-hate/domestic-extremism-terrorism/c/armed-vigilante-activities-in.html>.

<sup>55</sup> *Id.* Simcox, a former elementary school teacher who was also the founder and publisher of the Arizona newspaper the *Tombstone Tumbleweed*, was later arrested and charged with child molestation and sexual contact with a minor by Arizona law enforcement in 2013. Jorge Rivas, *Minutemen Cofounder Arrested for Child Molestation*, ABC NEWS (June 20, 2013), [http://abcnews.go.com/ABC\\_Univision/News/anti-immigration-minutemen-cofounder-chris-simcox-arrested-child/story?id=19445695](http://abcnews.go.com/ABC_Univision/News/anti-immigration-minutemen-cofounder-chris-simcox-arrested-child/story?id=19445695).

<sup>56</sup> Rivas, *supra* note 55.

<sup>57</sup> *Armed Vigilante Activities in Arizona*, *supra* note 54.

<sup>58</sup> See Anti-Defamation League, *supra* note 33.

to undermine the U.S.”<sup>59</sup> In the early 2000s, Ranch Rescue organized several operations—including “Operation Hawk” in October 2002 and “Operation Falcon” in March 2003—designated as “field missions” designed to detain individuals attempting to cross private property they claimed was outside the jurisdiction of the federal government to patrol.<sup>60</sup> Like other border vigilante groups, Ranch Rescue also has ties to white supremacist, neo-Nazi, and anti-Semitic organizations.<sup>61</sup>

In the years that followed, more than 300 new Minuteman-style anti-immigrant vigilante border patrol groups were founded across the United States, including groups like the San Diego Minutemen, who were known for “engag[ing] in threatening confrontations with Latino day laborers and others.”<sup>62</sup> These “civilian patrols” were known for “confront[ing] Latino immigrants congregated at day labor centers or informal roadside pick-up sites . . . conduct[ing] surveillance of apartment houses, private homes or encampments where homeless immigrants live . . . [and] disseminat[ing] vicious, immigrant-bashing propaganda.”<sup>63</sup> This startling rise in anti-immigrant sentiment had an impact on the landscape of the Southwest that would be felt for years, as politicians, media figures, and others sought to capitalize on the xenophobic fervor sweeping the country.

### III. WHITE SUPREMACY AND ANTI-IMMIGRANT RHETORIC IN THE POLITICS OF

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<sup>59</sup> *Id.*

<sup>60</sup> *Id.* During “Operation Falcon,” two Ranch Rescue volunteers were charged with aggravated assault and unlawful detention in connection with the pistol-whipping and detention of two Salvadorans near Hebronville, Texas. *Id.*

<sup>61</sup> *Id.* (“Foote has reached out to a variety of white supremacists, and his interview with the neo-Nazi National Alliance was recently posted on the Web site of Resistance Records, a hate-music distributorship run by the NA. Foote has promoted his organization on the shortwave radio program of Clay Douglas, the editor of the *Free American*, a New Mexico-based anti-government and anti-Semitic publication.”). In March 2004, Foote also promoted Ranch Rescue and solicited volunteers on the radio show of Hal Turner, a known white supremacist. *See* Anti-Defamation League, *supra* note 33.

<sup>62</sup> *See* Beirich, *Anti-Immigrant Movement*, *supra* note 14. Day laborers were often a target for anti-immigrant groups due to the public nature of their job searching and the fact that most of the individuals seeking employment are or appear to be of Hispanic descent. *See, e.g.*, Heidi Beirich, *The Year in Nativism*, 137 INTELLIGENCE REP., Spring 2010, available at <http://www.splcenter.org/get-informed/intelligence-report/browse-all-issues/2010/spring/the-year-in-nativism> (“Day laborers continued to be targeted, as the largest hard-line nativist group, the Federal Immigration Reform and Enforcement (FIRE) Coalition, held regular protests against day laborers, often sending videographers to day laborer centers to intimidate contractors and workers alike. The videos were then posted on anti-immigrant websites.”).

<sup>63</sup> Beirich, *Anti-Immigrant Movement* *supra* note 14.

## THE AMERICAN SOUTHWEST

A. *California*

## 1. The Legacy of Proposition 187

The anti-immigrant rhetoric employed by those who lobbied for the passage of Proposition 187 in 1994 would return a decade later, when state and local governments in California once again began to try to implement their own immigration enforcement schemes. Proposition 187 had been nicknamed the “Save Our State” initiative,<sup>64</sup> and in 2004, an anti-immigrant group calling itself “Save Our State” (SOS) was established in San Bernardino County, California by Joseph Turner.<sup>65</sup> On its website, SOS lists a number of right-wing extremist groups that it considers to be “partner organizations,” including the well-known anti-immigrant hate group FAIR.<sup>66</sup> Turner was also briefly affiliated with FAIR, serving as its western field representative from 2006 to 2007.<sup>67</sup>

Turner made no secret of his disdain for immigrants to the United States and made clear his belief that increased migration would have a detrimental effect on the country. The Anti-Defamation League explains:

Turner has disseminated a xenophobic ideology. Like other anti-immigrant activists, Turner does not merely stand against

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<sup>64</sup> See Cabrera, *supra* note 16 (“Proposition 187 was also known at the time as the ‘Save Our State’ initiative.”).

<sup>65</sup> *Anti-Immigrant Leader Joe Turner Begins Job for San Bernardino County*, ANTI-DEFAMATION LEAGUE (Apr. 7, 2009), <http://www.adl.org/civil-rights/immigration/c/california-anti-immigrant-joe-turner.html> [hereinafter *Joe Turner*] (“In late March 2009, Joseph Turner, who founded and leads Save Our State (SOS), a California-based anti-immigrant group, assumed the post of special projects coordinator for Neil Derry, a San Bernardino County Supervisor. . . . Since founding SOS in 2004, Turner has made statements that promoted violence on the group’s forum.”).

<sup>66</sup> *Id.* (“[T]he Save Our State Web site speaks to Turner’s views and affiliations. The site provides a list of links to ‘Partner Web Sites,’ which includes several border vigilante Minutemen groups, xenophobic organizations, the racist VDare Web site, and California Coalition for Immigration Reform, a group run by racist Barbara Coe. The list also includes a link to the Web site of the Federation for American Immigration Reform (FAIR), the largest anti-immigrant group in the country.”). FAIR has also been designated a hate group by the Southern Poverty Law Center (SPLC). Leah Nelson, *How Do We Know FAIR Is a Hate Group? Let Us Count the Ways*, S. POVERTY L. CENTER HATEWATCH BLOG (Aug. 10, 2012, 8:51 AM), <http://www.splcenter.org/blog/2012/08/10/how-do-we-know-fair-is-a-hate-group-let-us-count-the-ways/> (noting that the SPLC has designated FAIR a hate group since 2008 due to its “virulent and false attacks on non-white immigrants”).

<sup>67</sup> *Extremist Files*, *supra* note 43. (“In late 2006, FAIR hired Joseph Turner as its western field representative after Oltman departed. . . . [Turner] left FAIR in December 2007 shortly after the SPLC, in tandem with publishing an extensive report on the group’s racism that included Turner’s inflammatory comments, designated FAIR as a hate group.”).

undocumented immigration. His statements and activism target undocumented immigrants as criminals that will sully the United States. He has expressed these sentiments on the SOS forum. In one post, he wrote, “I’ll be damned if I am going to sit back and watch my state turn into a third world cesspool.”<sup>68</sup>

The anti-immigrant message of SOS also attracted white supremacists and Neo-Nazis to its cause. Members of well-known racist groups, such as the Golden State Skinheads (GSS), and the National Vanguard both promoted and attended several events organized by SOS between 2005 and 2007.<sup>69</sup> As the ADL notes, “SOS events have attracted the attendance and support of white supremacists, who have been drawn to the group’s xenophobic, bigoted message.”<sup>70</sup>

## 2. Local Immigration Control Ordinances

In 2006, Turner spearheaded a local anti-immigrant ordinance in San Bernardino.<sup>71</sup> The San Bernardino ordinance is notable because it was the first local immigration control law to be passed nationwide, paving the way for even harsher anti-immigrant proposals—like the one later that year in Hazleton, Pennsylvania—to become law.<sup>72</sup> The San Bernardino law, called the Illegal Immigration Relief Act, prohibited landlords from renting to undocumented individuals and prohibited the hiring of undocumented workers in the City of San Bernardino.<sup>73</sup> Punishment for violating the law would be up to a \$1,000 fine for

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<sup>68</sup> *Joe Turner, supra* note 65.

<sup>69</sup> *Id.* (“Racists have promoted SOS events on Stormfront, the largest and most popular white supremacist Internet forum, and many went beyond promoting SOS activity and actually attended the protests, where they networked with one another and supported the group’s message. In September 2007, members of the Golden State Skinheads (GSS), a California-based neo-Nazi skinhead group, attempted to participate in a Save Our State rally in Simi Valley. . . . [In June 2005] a Save Our State rally at a Home Depot in Victorville, California, attracted the attendance of members of Stormfront and several members (including the leader) of the Las Vegas chapter of National Vanguard, a now defunct neo-Nazi group. The National Vanguard members took the opportunity to distribute racist propaganda.”).

<sup>70</sup> *Id.*

<sup>71</sup> John Ryan Syllaos, *The Future of Discriminatory Local Ordinances Aimed at Regulating Illegal Immigration*, 16 WASH. & LEE J. CIVIL RTS. & SOC. JUST. 639, 643 & n.19 (2010) (citing Cindy Chang, *California City Council Rejects Anti-Immigration Legislation*, N.Y. TIMES, May 16, 2006, at A21 (stating that the initiative submitted by activist Joseph Turner to the city council contained 3,000 signatures)).

<sup>72</sup> *Id.* at 641–42 (discussing the “City of Hazleton Illegal Immigration Relief Act Ordinance,” which was passed by the Hazleton City Council on July 13, 2006).

<sup>73</sup> John Ydstie, *California Town Aims to Bar Illegal Immigrants from Renting*, NPR (May 12, 2006, 6:00 AM), <http://www.npr.org/templates/story/story.php?storyId=5400392>.

either offense, and “[e]mployers could also have their cars impounded, if they transport an undocumented worker to a work site.”<sup>74</sup>

Turner’s stated goal in pressing the San Bernardino ordinance was to start a trend in California and elsewhere in favor of local anti-immigrant ordinances. Shortly before the San Bernardino measure was approved, Turner stated:

If something [like] this can pass in the city of San Bernardino, then it can probably pass anywhere. And I’m hoping that this will be a landmark development in the illegal immigration debate. And if we’re successful, it should prove to elected officials that they can run on this issue.<sup>75</sup>

On that score, the San Bernardino ordinance was a smashing success—following Turner’s lead in San Bernardino, other state and local politicians across the country were quick to embrace the anti-immigrant rhetoric of nativist groups in order to win election.<sup>76</sup> In May 2007—just one year after the San Bernardino ordinance was enacted—more than 90 cities and towns nationwide had proposed anti-immigrant ordinances of their own, with 35 of them passing.<sup>77</sup> Although the San Bernardino ordinance was ultimately defeated,<sup>78</sup> conservative talk radio picked up the issue and promoted the idea of local immigration regulation on the airwaves.<sup>79</sup>

After San Bernardino, state and local anti-immigrant ordinances attempting to restrict housing, employment, and education to undocumented individuals were implemented with alarming frequency<sup>80</sup> and gave rise to a great

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<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> LEAH NELSON ET AL., WHEN MR. KOBACH COMES TO TOWN: NATIVIST LAWS AND THE COMMUNITIES THEY DAMAGE 5 (Mark Potok & Booth Gunter eds., 2011), available at [http://www.splcenter.org/sites/default/files/downloads/publication/Kobach\\_Comes\\_to\\_Town.pdf](http://www.splcenter.org/sites/default/files/downloads/publication/Kobach_Comes_to_Town.pdf) (“The municipal response began with a proposed 2006 law aimed at punishing undocumented immigrants in San Bernardino, Calif., and quickly metastasized into scores of similar proposals, many in communities with just a handful of immigrants, that would sanction employers, landlords and the immigrants themselves.”).

<sup>77</sup> *Proliferation of Local Anti-Immigrant Ordinances in the United States: Hearing Before Jorge Bustamante, The United Nations Special Rapporteur on the Human Rights of Migrants*, May 12, 2007 [hereinafter Testimony on Local Anti-Immigration Ordinances], available at <http://www.nyclu.org/content/proliferation-of-local-anti-immigrant-ordinances-united-states> (Statement of Udi Ofer, Legislative Counsel, New York Civil Liberties Union).

<sup>78</sup> *Id.* (“[I]mmigrants’ rights and civil rights advocates eventually defeated the San Bernardino ordinance.”).

<sup>79</sup> *Id.* (“[S]imilar proposals began to spring up throughout the country, much of it thanks to conservative talk radio and television programs that touted the ordinances.”).

<sup>80</sup> See Michael A. Olivas, *Immigration-Related State and Local Ordinances: Preemption, Prejudice, and the Proper Role for Enforcement*, 2007 U. CHI. LEGAL F. 27, 31 (“With a torrent of

deal of litigation in the lower state and federal courts.<sup>81</sup> This movement, which began in post-Proposition 187 California, would end with the United States Supreme Court's decision *United States v. Arizona* at the start of the next decade, which reaffirmed the principle of immigration federalism and put a halt (for now) to sub-federal regulation of immigration.<sup>82</sup>

### B. Arizona

Although a young state,<sup>83</sup> Arizona has seen more than its fair share of political scandal and corruption in its 100 years of statehood.<sup>84</sup> Perhaps due to its proximity to Mexico, Arizona has also been a hotbed of nativist and racist activity of late, in addition to being the center of the state and local "attrition through enforcement" immigration law movement.<sup>85</sup>

#### 1. State Anti-Immigrant Ballot Initiatives and Legislation Before S.B. 1070

Even before the Support Our Law Enforcement and Safe Neighborhoods Act—more commonly known as S.B. 1070<sup>86</sup>—was passed by the Arizona State Legislature and signed into law by Arizona Governor Jan Brewer in 2010, there were several anti-immigrant amendments to the Arizona State Constitution since

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state legislation related to immigration, it is clear that the polity is more concerned with localized conditions than with foreign relations or demi-sovereignty. One indicator of this trend can be seen in the work of the National Conference of State Legislatures ('NCSL'). The NCSL tracks immigration legislation, and noted that from January through June, 2006, almost 500 immigration-related bills had been introduced in state legislatures, and 44 had been enacted, in 19 states.").

<sup>81</sup> See CATHOLIC LEGAL IMMIGRATION NETWORK, STATE AND LOCAL ANTI-IMMIGRATION LEGISLATION LITIGATION UPDATE 1-4 (2008), available at <http://www.ailadownloads.org/advo/CLINICLitigationUpdateOct2008.pdf>.

<sup>82</sup> 132 S. Ct. 2492 (2012).

<sup>83</sup> Arizona was the last of the 48 continental states to receive statehood, in 1912. *New Mexico and Arizona Statehood Anniversary (1912-2012)*, NAT'L ARCHIVES, <http://www.archives.gov/legislative/features/nm-az-statehood/> (last visited Mar. 3, 2015).

<sup>84</sup> See, e.g., *A History of Arizona Political Scandals of the Past 25 Years*, ARIZ. REPUBLIC (May 19, 2012, 11:24 PM), <http://www.azcentral.com/news/politics/20120519arizona-scandals-history-timeline.html> (noting that "[i]n the past 25 years, Arizona politicians have been swept up in more than a dozen scandals.").

<sup>85</sup> *Arizona*, 132 S. Ct. at 2497.

<sup>86</sup> See Kristina M. Campbell, *The Road to S.B. 1070: How Arizona Became Ground Zero for the Immigrants' Rights Movement and the Continuing Struggle for Latino Civil Rights in America*, 14 HARV. LATINO L. REV. 1, 1 (2011) [hereinafter Campbell, *The Road to S.B. 1070*] (discussing the history behind the introduction and passage of S.B.1070 in 2010); see also Kristina M. Campbell, *Rising Arizona: The Legacy of the Jim Crow Southwest on Immigration Law and Policy After 100 Years of Statehood*, 24 LA RAZA L.J. 1, 33-34 (2014) [hereinafter Campbell, *Rising Arizona*].

2004.<sup>87</sup> Like California, Arizona is one of several states that allows the people to amend the state constitution through ballot initiatives approved by a majority of the electorate.<sup>88</sup> Through this method, anti-immigrant activists successfully lobbied for amendments to the Arizona State Constitution that denied social services to undocumented persons (Proposition 200), denied bail to persons in criminal cases who are alleged to be undocumented (Proposition 100), and denied in-state tuition at Arizona state colleges and universities for students without lawful immigration status (Proposition 300).<sup>89</sup> The main proponent of the anti-immigrant ballot initiatives—as well as a flurry of anti-immigrant legislation introduced in the Arizona statehouse—was Russell Pearce, a long-term Republican State Senator from the Phoenix suburb of Mesa.<sup>90</sup>

## 2. S.B. 1070 and *United States v. Arizona*

Russell Pearce was finally able to accomplish his goal of a statewide omnibus anti-immigration bill when, in 2009, Democratic Governor of Arizona Janet Napolitano stepped down to become the Secretary of Homeland Security and Republican Jan Brewer, then the Arizona Secretary of State, assumed the governor's office by operation of law.<sup>91</sup> The comprehensive, controversial law—known by its number in the state senate, S.B. 1070—was an amalgamation of anti-immigrant laws that previously passed the Arizona statehouse but were later vetoed by then-Governor Napolitano before they could become law.<sup>92</sup> Over the years, Russell Pearce:

[Has] supported Nuremberg-style legislation that would prohibit hospitals from issuing birth certificates to children born of undocumented immigrants, and a law that would not allow people to marry without providing proof of U.S. citizenship and social security numbers. . . . Pearce [also] wants to eliminate the Fourteenth Amendment. And he supported the bill that has

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<sup>87</sup> See Campbell, *The Road to S.B. 1070*, *supra* note 86, at 2.

<sup>88</sup> ARIZ. CONST. art. IV, § 1; *see also* Campbell, *Rising Arizona*, *supra* note 86.

<sup>89</sup> Campbell, *The Road to S.B. 1070*, *supra* note 86, at 3–8.

<sup>90</sup> *Id.* at 5.

<sup>91</sup> Article 5, Section 6 of the Arizona State Constitution states in part:

In the event of the death of the governor, or his resignation, removal from office, or permanent disability to discharge the duties of the office, the secretary of state, if holding by election, shall succeed to the office of governor until his successor shall be elected and shall qualify.

ARIZ. CONST. art. V, § 6.

<sup>92</sup> See Campbell, *The Road to S.B. 1070*, *supra* note 86, at 11–14.

eliminated ethnic studies in Arizona public schools and colleges and universities.<sup>93</sup>

However, with Brewer in the Arizona Governor's Mansion, there was little opposition to Pearce's anti-immigrant agenda, and the bill became law in April 2010.<sup>94</sup>

It is interesting to note that despite receiving a great deal of press in the intervening years on its way to the United States Supreme Court in 2012,<sup>95</sup> with the notable exception of the Phoenix alternative media publication *The Phoenix New Times* and other alternative media, not much attention has been paid to Russell Pearce's extensive ties to anti-immigrant hate groups and the for-profit private prison industry.<sup>96</sup> Writer and human rights activist David A. Love explains the anti-immigrant link between hate groups and the private prison industry and how their interests converged in the creation and passage of S.B. 1070:

Klannish hate groups and prison companies worked together to pass an atrocious, twisted and unconstitutional law. The former hates Latinos and thinks they are inferior, and would love nothing more than to throw them all behind bars for good. Meanwhile, the latter wants to profit from locking up as many immigrant detainees as possible. Just to top it off, both groups collaborated with their tools in the Arizona legislature and that horrid governor's office to make it all happen. This is Juan Crow in action.<sup>97</sup>

In addition to suggesting the tie to the African-American civil rights movement by naming the effort to pass S.B. 1070 in Arizona "Juan Crow," Love then states explicitly how anti-immigrant laws like S.B. 1070 and the Jim Crow laws of the segregated south are alike:

[T]his reminds me of the days of Jim Crow, after slavery, when segregationist state and local governments enacted laws to maintain blacks in a state of virtual bondage. Laws targeted

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<sup>93</sup> David A. Love, *Hate Groups and Prison Profiteers Wrote Arizona's Juan Crow Law*, HUFFINGTON POST (May 25, 2011, 5:20 PM), [http://www.huffingtonpost.com/david-a-love/hate-groups-prison-profit\\_b\\_684217.html](http://www.huffingtonpost.com/david-a-love/hate-groups-prison-profit_b_684217.html).

<sup>94</sup> See Randal C. Archibold, *Arizona Enacts Stringent Law on Immigration*, N. Y. TIMES, Apr. 23, 2010, <http://www.nytimes.com/2010/04/24/us/politics/24immig.html>.

<sup>95</sup> See *infra* Part III.B.2.

<sup>96</sup> See Love, *supra* note 93; see also Beau Hodai, *Ties That Bind: Arizona Politicians and the Private Prison Industry*, IN THESE TIMES, June, 21, 2010, [http://inthesetimes.com/article/6085/ties\\_that\\_bind\\_arizona\\_politicians\\_and\\_the\\_private\\_prison\\_industry](http://inthesetimes.com/article/6085/ties_that_bind_arizona_politicians_and_the_private_prison_industry).

<sup>97</sup> Love, *supra* note 93.

African-Americans specifically by going after offenses for which freedmen were presumed more likely to be charged, such as petty theft, vagrancy, burglary and bigamy. Under the convict lease system, an overwhelmingly black prison population provided free labor to the plantations, railroads and mining companies. . . . Of course, the ideological justification for the Jim Crow legal regime was that black people were inferior, and posed a racial, sexual, criminal, political and economic threat to whites.

And today, there is profit in prisons, with whole industries that make their bread and butter over the warehousing of warm bodies -including some of the prisons themselves. . . .

. . . And in Arizona, a group of greedy, unscrupulous folks got together with professional racists to criminalize the Latino community and make a buck at the same time.<sup>98</sup>

By shedding light on the genesis of S.B. 1070 and naming the motivation for the passage of the law—hate and white supremacy—the ties between the anti-immigrant movement and the African-American civil rights movement, and their shared import as human rights issues in the United States, become clearer.

Additionally, two high-level staffers in Governor Brewer's administration—Paul Senseman and Chuck Coughlin—also have ties to two of the biggest for-profit prisons responsible for housing individuals in immigration detention:<sup>99</sup>

Senseman, the governor's deputy chief of staff, is a former lobbyist for Corrections Corporation of America, or CCA. And his wife presently is a lobbyist for the company. Meanwhile, Chuck Coughlin is one of the governor's policy advisers and her campaign chairman. Coughlin's firm, HighGround Public Affairs Consultants, currently lobbies for CCA. CCA and rival prison company Geo Group are members of the American Legislative Exchange Council, where they ensured passage of the insidious bill.<sup>100</sup>

CCA and the Geo Group, Inc., have not only profited from the passage of anti-immigrant laws and increased immigration enforcement in Arizona, but the two groups have been the administrators of the three Department of Homeland Security (DHS) family detention centers in Texas—T. Don Hutto

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<sup>98</sup> *Id.*

<sup>99</sup> *Id.* (“Paul Senseman and Chuck Coughlin [] have financial ties to the private prison industry, and stand to benefit personally from S.B. 1070. After all, private prisons lock up the immigration detainees in that state . . . so the new law is good for business.”).

<sup>100</sup> *Id.*

(Austin, CCA), Karnes County Residential Facility (Karnes, Geo Group, Inc.), and the South Texas Residential Facility (Dilley, CCA).<sup>101</sup> These connections to the private prison industry—which some believe to be a conflict of interest for the Governor’s office<sup>102</sup>—cast the eagerness of Governor Brewer to sign S.B. 1070 into law in an unflattering light.

Following the signing of S.B. 1070 into law in April 2010, several lawsuits were immediately filed by various individuals and civil rights groups seeking to prevent the anti-immigrant law from going into effect, claiming that it violated the civil rights of Latinos and other people of color in Arizona who were likely to be racially profiled as noncitizens.<sup>103</sup> However, all of these lawsuits were put on hold when the United States Department of Justice (DOJ) filed its own lawsuit against the State of Arizona on July 6, 2010, asserting that S.B. 1070 was preempted by the Immigration and Nationality Act (INA) and, therefore, unconstitutional.<sup>104</sup> Three of the four sections of the law considered by the Court were struck down as unconstitutional,<sup>105</sup> and as of this writing, S.B. 1070 has rarely, if ever, been enforced.<sup>106</sup>

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<sup>101</sup> See *infra* Part III.C.1.

<sup>102</sup> *Conflict of Interest Scandal Brewing for Top Aides in Arizona Governor’s Office*, GOV’T SECURITY NEWS, [http://www.gsnmagazine.com/article/21312/conflict\\_interest\\_scandal\\_brewing\\_top\\_aides\\_arizon](http://www.gsnmagazine.com/article/21312/conflict_interest_scandal_brewing_top_aides_arizon) (last visited Mar. 3, 2015) (“Recent local and national media reports have revealed that two of Arizona Governor Jan Brewer’s top advisors have lobbying connections to the Corrections Corporation of America (CCA), a private prison management company which would benefit financially from an influx of prisoners who were turned over to the federal government as illegal immigrants.”).

<sup>103</sup> See, e.g., Complaint at ¶¶ 185–90, 204–08, 215–18, *Friendly House v. Whiting*, 846 F. Supp. 2d 1053 (D. Ariz. 2012) (No. CV 10-1061-PHX-SRB), 2010 WL 2019492.

<sup>104</sup> Complaint ¶¶ 61–68, *United States v. Arizona*, 703 F. Supp. 2d 980 (D. Ariz. 2010) (No. 2:10CV01413), 2010 WL 2653363, *aff’d*, 641 F.3d 339 (9th Cir. 2011), *aff’d in part rev’d in part*, 132 S. Ct. 2492 (2012).

<sup>105</sup> *Arizona v. United States*, 132 S. Ct. 2492 (2012). The one section of the law that the Court did not strike down was the infamous “show me your papers” provision. See *id.* at 2507–10; see also Adam Liptak, *Blocking Parts of Arizona Law, Justices Allow Its Centerpiece*, N.Y. TIMES, June 25, 2012, [http://www.nytimes.com/2012/06/26/us/supreme-court-rejects-part-of-arizona-immigration-law.html?\\_r=1&hp](http://www.nytimes.com/2012/06/26/us/supreme-court-rejects-part-of-arizona-immigration-law.html?_r=1&hp) (“The court unanimously sustained the law’s centerpiece, the one critics have called its ‘show me your papers’ provision, though they left the door open to further challenges. The provision requires state law enforcement officials to determine the immigration status of anyone they stop or arrest if they have reason to suspect that the individual might be in the country illegally.”).

<sup>106</sup> In September 2014, the American Civil Liberties Union (ACLU) filed a lawsuit alleging that an Arizona woman had been unlawfully detained pursuant to S.B. 1070 in September 2012. See *ACLU Files First Lawsuit Challenging Officers’ Use of SB 1070 “Show Me Your Papers” Law*, AM. CIVIL LIBERTIES UNION (Sept. 25, 2014), <https://www.aclu.org/immigrants-rights/aclu-files-first-lawsuit-challenging-officers-use-sb-1070-show-me-your-papers-law> (“The American Civil Liberties Union filed a lawsuit today in federal court in Phoenix on behalf of an Arizona woman who spent five days in the custody of immigration authorities after a Pinal County Sheriff’s deputy

### C. Texas

Recently, Texas has become the focus of anti-immigrant activism due to the humanitarian crisis on the southern border involving the large number of Unaccompanied Alien Children (UACs) seeking refuge in the United States. This shift is noteworthy because compared to other southwestern states, Texas has not engaged in anti-immigrant activism on the state and local level:

[Governor Rick Perry] supported—and continues to defend—the groundbreaking 2001 state law allowing qualified illegal immigrants to pay low in-state tuition rates at Texas colleges.

....

More than other border states, Texas traditionally has had a live-and-let-live attitude toward peaceful illegal immigration, which has helped shape its culture and its economy. The Lone Star State has never experienced anything like the backlash that led to California's passage in 1994 of Proposition 187, denying public services to illegal immigrants, or the 2010 Arizona law that gave police broad powers to stop and detain people suspected of lacking documentation.<sup>107</sup>

Despite Texas' relatively sanguine reputation toward migrants, even before the migrant surge in 2014, politicians in Texas were engaging in the kind of anti-immigrant rhetoric traditionally engaged in by racist, xenophobic groups on the border.<sup>108</sup> For instance, Governor Perry has been particularly vocal about

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“cited and released” her following a traffic stop, then instructed another sheriff's deputy to transport her to a nearby Border Patrol station. The lawsuit brings a Fourth Amendment claim against the deputies for prolonging her detention solely based on a suspicion that she was an undocumented immigrant. At the time of her detention, the woman, Maria Cortes, had a pending U-visa application stemming from her status as a victim of domestic violence.”). The lawsuit was settled in December 2014. *ACLU Obtains Judgment Against Arizona Sheriffs and Pinal County Based on Officers' Use of SB 1070 "Show Me Your Papers" Law*, AM. CIVIL LIBERTIES UNION (Dec. 18, 2014), <https://www.aclu.org/immigrants-rights/aclu-obtains-judgment-against-arizona-sheriffs-and-pinal-county-based-officers-use>.

<sup>107</sup> See Karen Tumulty, *Rick Perry's Immigration Record: A Hard Line at the Border, a Softer Touch in Austin*, WASH. POST, Sept. 14, 2014, [http://www.washingtonpost.com/politics/rick-perrys-immigration-record-a-hard-line-at-the-border-a-softer-touch-in-austin/2014/09/14/3cd7adc4-3518-11e4-9e92-0899b306bbea\\_story.html](http://www.washingtonpost.com/politics/rick-perrys-immigration-record-a-hard-line-at-the-border-a-softer-touch-in-austin/2014/09/14/3cd7adc4-3518-11e4-9e92-0899b306bbea_story.html).

<sup>108</sup> Kriel, *supra* note 15 (“Unlike previous high-profile immigration clashes focused on California and Arizona, Texas now is the battle's center stage. ‘Arizona pretty much replaced California as the hot spot for several years but Texas is so much bigger and once Texas takes on something big it just kind of takes over the room,’ said Roy H. Beck, who heads NumbersUSA, an advocacy group focused on reducing immigration. ‘I'd say on this immigration fight that's happening.’ It's a marked shift for the state, as for decades Texas Republicans were GOP outliers on immigration, allowing, for instance, in-state public college tuition for youth here illegally, approved by Gov. Rick Perry. . . . Meanwhile Texas Republicans' stance on immigration has moved right. In the last eight years, Perry, a likely 2016 presidential contender, has spent more

his disdain for undocumented migrants crossing the United States-Mexico border, even sending National Guard troops to provide additional “security” on the border:

The National Guard was dispatched to the border with great fanfare by Texas Gov. Rick Perry (R), who declared in July that he was forced to act because of a string of failures by the federal government in addressing drug smugglers and an influx of unaccompanied Central American minors who had flooded across the border in recent months.

....  
The rollout of the troops has offered Perry a chance to strike a tough tone on illegal immigration as he ponders a run for president in 2016. . . .

....  
. . . Now, as he presides over his state’s National Guard deployment and blasts President Obama’s record on border security, Perry is positioning himself as a border hawk with views closely aligned with the core Republican voters who will play a big role in choosing the party’s 2016 White House nominee.

....  
. . . Perry in June launched “Operation Strong Safety,” an \$18 million-per-month effort to boost the law enforcement presence near the border.<sup>109</sup>

Even prior to his decision to send National Guard troops to the border, Governor Perry already had a reputation for being an immigration hardliner.<sup>110</sup> This reputation came about in large part due to Perry’s unwavering support of the private prison industry and its cash cow—civil detention of immigrants in removal proceedings awaiting their hearings.

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than \$800 million on beefed-up border security, touting it as an example of his leadership. Gov.-elect Greg Abbott is leading the charge to unravel Obama’s executive action by challenging its legal authority. New Lt. Gov. Dan Patrick has pledged border security as his top priority, and has warned immigrants ‘are bringing Third World diseases with them.’ In all, the new state Legislature, convening in January, is more conservative on immigration than it has ever been.”)

<sup>109</sup> Antonio Olivo, *Deployed by Gov. Rick Perry, National Guard Adjusts to Its New Role on the Texas Border*, WASH. POST, Sept. 1, 2014, [http://www.washingtonpost.com/national/deployed-by-gov-rick-perry-national-guard-adjusts-to-its-new-role-on-the-texas-border/2014/09/01/24968056-2f90-11e4-994d-202962a9150c\\_story.html](http://www.washingtonpost.com/national/deployed-by-gov-rick-perry-national-guard-adjusts-to-its-new-role-on-the-texas-border/2014/09/01/24968056-2f90-11e4-994d-202962a9150c_story.html).

<sup>110</sup> See Tumulty, *supra* note 107.

### 1. The Private Prison Industry and Immigrant Detention in Texas

Prior to being shut down in 2009, the biggest family detention facility in the United States, the T. Don Hutto Residential Center, had been located outside Austin, Texas.<sup>111</sup> Governor Perry has long been on record as a supporter of the privatization of both prisons and civil detention facilities in Texas throughout his tenure as governor.<sup>112</sup> This history, along with the fact that Texas is within the jurisdiction of the notoriously conservative United States Court of Appeals for the Fifth Circuit,<sup>113</sup> undoubtedly contributed to the Department of Homeland Security's (DHS) decision to locate two new family detention facilities, Karnes and Dilley, in Texas as a response to the UAC crisis in 2014.

#### *i. The Karnes County Residential Center*

The Karnes County Residential Center is a detention facility in Karnes, Texas, which is currently being used by Immigration and Customs Enforcement (ICE) to house a large number of UACs and families from Central America seeking asylum.<sup>114</sup> Built and managed by a for-profit corrections corporation, The Geo Group, Inc.,<sup>115</sup> the prison is within the jurisdiction of the ICE San

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<sup>111</sup> Wil S. Hylton, *The Shame of America's Family Detention Camps*, N.Y. TIMES MAG., Feb. 8, 2015, [http://www.nytimes.com/2015/02/08/magazine/the-shame-of-americas-family-detention-camps.html?\\_r=0](http://www.nytimes.com/2015/02/08/magazine/the-shame-of-americas-family-detention-camps.html?_r=0) (“[I]n 2005, the administration of George W. Bush decided to deny [court-ordered] protections to refugee children traveling with their parents. Instead of a ‘general policy favoring release,’ the administration began to incarcerate hundreds of those families for months at a time. To house them, officials opened the T. Don Hutto Family Detention Center near Austin, Tex. Within a year, the administration faced a lawsuit over the facility’s conditions.”).

<sup>112</sup> See Tim Murphy, *Flush with Prison Industry Dollars, Rick Perry Pushed Privatized Prisoner Care*, MOTHER JONES (Sept. 1, 2011, 5:00 AM), <http://www.motherjones.com/politics/2011/09/rick-perry-prison-privatization> (“Private prisons are a big business in Texas, where the combination of federal immigration policies and one of the nation’s largest inmate populations has led to a boom in construction over the last two decades.”).

<sup>113</sup> See, e.g., Mark Curriden, *Meet the Chief Judge of the Nation’s Most Divisive, Controversial, and Conservative Appeals Court*, 100 A.B.A. J. 52 (Feb. 2014), available at [http://www.abajournal.com/magazine/article/meet\\_the\\_chief\\_judge\\_of\\_the\\_nations\\_most\\_divisive\\_controversial/](http://www.abajournal.com/magazine/article/meet_the_chief_judge_of_the_nations_most_divisive_controversial/) (profiling Carl Stewart, the first African-American Chief Judge of the United States Court of Appeals for the Fifth Circuit).

<sup>114</sup> Hylton, *supra* note 111.

<sup>115</sup> *Locations: Karnes County Residential Center*, GEO GROUP, <http://www.geogroup.com/maps/locationdetails/23> (last visited Apr. 16, 2015) (“In December 2010, The GEO Group, Inc. (GEO) was selected by Karnes County, Texas to design, build, finance, and manage a new detention facility under an intergovernmental service agreement with Immigration and Customs Enforcement (ICE).”).

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Antonio Field Office<sup>116</sup> and currently has room for approximately 500 detainees.<sup>117</sup>

Despite the filing of complaints in 2014 by female detainees alleging sexual assault by guards at the Karnes detention facility,<sup>118</sup> ICE transferred hundreds of immigrant women and children to the Karnes County Residential Center from the now-closed family detention center in Artesia, New Mexico in December 2014.<sup>119</sup> As reported by *The New York Times Magazine*, the decision to quickly transfer the women and children detained at Artesia to Karnes left the lawyers for the detainees scrambling:

As the pro bono project in Artesia continued into fall, its attorneys continued to win in court. By mid-November, more than 400 of the detained women and children were free on bond. Then on Nov. 20, the [Obama] administration suddenly announced plans to transfer the Artesia detainees to the ICE detention camp in Karnes, Tex., where they would fall under a new immigration court district with a new slate of judges.

. . . .  
By mid-December, most of the Artesia detainees were in Karnes. . . .

. . . .  
[At the Immigration Court in San Antonio, there] were just a few of the Karnes detainees, linked by video feed to the

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<sup>116</sup> *Detention Facilities: Karnes County Residential Center*, U.S. IMMIGR. & CUSTOMS ENFORCEMENT, <https://www.ice.gov/detention-facility/karnes-county-residential-center> (last visited Mar. 5, 2015).

<sup>117</sup> See Jessie Degollado, *Opinions Split Over Expanding Karnes Co. Family Detention Center*, KSAT (Dec. 4, 2014 7:14 PM), <http://www.ksat.com/content/pns/ksat/news/2014/12/04/opinions-split-over-expanding-karnes-co-family-detention-center.html> (“The GEO Group is asking the Commissioners Court to amend its contract from 500-plus beds to as many as 1,300.”).

<sup>118</sup> See Vivian Kuo & Jason Hanna, *Women Allege Sexual Abuse at Texas Immigrant Detention Center*, CNN (Oct. 4, 2014, 4:14 PM), <http://www.cnn.com/2014/10/03/justice/texas-immigrant-detention-allegations/> (“Women detained at an immigrant holding facility in southern Texas allege workers there have sexually abused them, including by removing them from their cells at night for sex as well as fondling them in front of others, lawyers wrote in a letter to federal officials this week. . . . The allegations were detailed in a Tuesday letter from several immigrant advocacy groups to officials with U.S. Immigration and Customs Enforcement and the Department of Homeland Security, which had hired one of America’s for-profit prison operators to run the facility.”).

<sup>119</sup> See Jason Buch, *ICE Closing N.M. Family Detention Center*, SAN ANTONIO EXPRESS-NEWS (Nov. 18, 2014, 12:30 AM), <http://www.expressnews.com/news/local/article/Immigrant-families-in-New-Mexico-to-be-moved-to-5901358.php> (“U.S. Immigration and Customs Enforcement is closing its controversial detention center in Artesia, New Mexico, and will transfer the remaining families to centers in Karnes County and Dilley, south of San Antonio. . . . Along with the Artesia and Dilley facilities, ICE is holding 530 people at a facility in Karnes County that this summer was converted to detain families.”).

courtroom. Another 500 women and children were in the compound with them. There was no legal distinction between their cases and those of the women in Artesia; they had simply been sent to a different facility, weeks or months earlier. Each of them, like the women in Artesia, had already been through the early stages of the asylum process—presenting herself to immigration authorities, asking for refugee status and passing the “credible-fear interview” to confirm a basis for her claim. But the odds of release in Karnes were worse. One of McPhaul’s colleagues, Judge Gary Burkholder, was averaging a 91.6 percent denial rate for the asylum claims. Some Karnes detainees had been in the facility for nearly six months and could remain there another six.<sup>120</sup>

The decision by DHS to continue to hold families seeking asylum and UACs in detention facilities is a startling shift in immigration policy under the Obama Administration. Just five years earlier, in 2009, the government had shut down the Hutto family detention facility outside Austin,<sup>121</sup> leaving only one small family detention facility operating in rural Pennsylvania.<sup>122</sup> The Hutto facility—which had been run by the controversial for-profit Corrections Corporation of America (CCA)—was closed due to widespread reports of bad living conditions in the facility and sexual abuse of detainees.<sup>123</sup> According to a recent report by The Women’s Refugee Commission and the Lutheran Immigration and Refugee Service, many of the issues that led to Hutto’s closing five years ago are recurring in the Karnes detention center, including maltreatment and lack of proper medical care for children.<sup>124</sup>

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<sup>120</sup> See Hylton, *supra* note 111.

<sup>121</sup> See Ian Gordon, *Inside Obama’s Family Deportation Mill*, MOTHER JONES (Dec. 19, 2014, 6:15 AM), <http://www.motherjones.com/politics/2014/12/family-detention-artesia-dilley-immigration-central-america> (“In fiscal 2014, according to data from US Customs and Border Protection, these so-called family unit apprehensions nearly quadrupled. . . . In perhaps the biggest policy reversal since the surge began, the federal government has rebuilt the controversial family detention system it gutted only a few years ago, in no small part to send a message to would-be immigrants—even though 98 percent of those at one Texas detention facility were asylum seekers who claimed that they feared returning to their home countries.”).

<sup>122</sup> Tim Irwin, *In Rural Pennsylvania, a Model of Civil Immigration Detention*, UNHCR (Jan. 6, 2011), <http://www.unhcr.org/4d25c4fb6.html> (“There is little inside or outside the Berks County Family Shelter in rural Pennsylvania to indicate that it is a detention centre, the only one of its kind in the United States.”).

<sup>123</sup> See Gordon, *supra* note 121.

<sup>124</sup> *Id.* (“According to [the] report, some of the problems that led to Hutto’s closing are cropping up again. More than half of the 1,050 minors booked into family detention this year were six or younger, the report notes. At the Karnes City facility . . . women reportedly had to carry their infant children incessantly—no crawling was allowed. Many children were depressed and lost weight. . . ICE officials wouldn’t let seven-year-old Nayely Bermúdez Beltrán leave the Karnes City

Despite this, there does not appear to be any plans to cease the detention of women and children refugees at the Karnes facility any time soon, as the Executive Office for Immigration Review (EOIR) recently expanded its legal orientation program for detainees to the Karnes Residential Center beginning November 1, 2014.<sup>125</sup> Shortly thereafter, officials from the Department of Homeland Security (DHS) announced plans to expand the Karnes detention facility to grow to approximately 1,100 beds.<sup>126</sup>

ii. *The South Texas Family Residential Center*

Located a mere 70 miles from San Antonio, Texas,<sup>127</sup> the South Texas Family Residential Center became the largest family detention center ever when it opened in Dilley, Texas on December 15, 2014.<sup>128</sup> Known colloquially as the Dilley detention center, the facility will be able to house 2,400 people, and has been specially designed to house women and children seeking asylum.<sup>129</sup> At the opening of the facility, Secretary of Homeland Security Jeh Johnson had a message for asylum seekers applying for refuge in the United States: “It will now be more likely that you will be detained and sent back.”<sup>130</sup>

Stating that the Dilley center is necessary to house what the government calls “family units” seeking asylum,<sup>131</sup> the Obama Administration has defended

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detention center to see a doctor, despite a malignant brain tumor that required immediate treatment.”).

<sup>125</sup> See Susan Carroll, *Feds To Start Legal Orientation Program at Immigrant Detention Center in Texas*, HOUS. CHRON. (Oct. 22, 2014, 3:55 PM), <http://www.houstonchronicle.com/news/houston-texas/houston/article/White-House-to-start-legal-orientation-at-5839971.php> (“Obama administration officials today announced plans to start a legal orientation program at a family detention center south of San Antonio where immigrant advocates have complained of due process concerns. . . . The government-funded orientation program at the Karnes City detention center will start Nov. 1, and will provide groups of immigrants with information on how the U.S. immigration court system works and explain the types of legal relief available.”).

<sup>126</sup> Hylton, *supra* note 111.

<sup>127</sup> See Gordon, *supra* note 121.

<sup>128</sup> See Julia Preston, *Detention Center Presented as Deterrent to Border Crossings*, N.Y. TIMES (Dec. 15, 2014), [http://www.nytimes.com/2014/12/16/us/homeland-security-chief-opens-largest-immigration-detention-center-in-us.html?\\_r=0](http://www.nytimes.com/2014/12/16/us/homeland-security-chief-opens-largest-immigration-detention-center-in-us.html?_r=0) (“Jeh C. Johnson, the secretary of Homeland Security, came to this South Texas outpost on Monday to open the country’s largest immigration detention facility and draw attention to border security measures that are part of President Obama’s fiercely debated executive actions on immigration.”).

<sup>129</sup> *Id.* (“The 50-acre center in Dilley . . . will hold up to 2,400 migrants who have illegally crossed the border and is especially designed to hold women and their children.”).

<sup>130</sup> *Id.*

<sup>131</sup> See Nick Valencia, *‘Unjust’: Rights Groups Slam Spread of Facilities for Immigrant Families*, CNN (Dec. 20, 2014, 1:40 PM), <http://www.cnn.com/2014/12/19/us/immigrant-family-detention-center/> (“The Department of Homeland Security this week announced it is opening the

its costly decision to incarcerate women and children refugees—it is estimated that the Dilley facility alone will cost taxpayers \$260 million dollars a year.<sup>132</sup> Secretary Johnson also believes that the detention center will cause asylum seekers to think twice about their plans to seek refuge in the United States, stating “I believe this is an effective deterrent. . . . Frankly, we want to send a message that our border is not open to illegal migration, and if you come here, you should not expect to simply be released.”<sup>133</sup>

The expansion of family detention by the Obama Administration has put Texas in the spotlight of immigration law and policy once again, as it finds itself in the crosshairs of a vigorous debate on both the merits and the efficacy of putting women and children fleeing gang violence and domestic abuse in prison-like settings for months at a time.<sup>134</sup> However, with the Secretary of Homeland Security insisting that family detention centers are necessary for “border security,”<sup>135</sup> the Dilley detention center seems not to be an anomaly, but rather a harbinger of things to come in migration policy for the remainder of the President’s administration. Indeed, Esther Olavarria, senior immigration counsel for the Obama Administration, has indicated that the President has no plans to curb the number of families detained on the border, and has in fact discussed preparations to detain up to 60,000 women and children on the border in the coming year.<sup>136</sup>

#### D. *New Mexico*

Unlike other states in the Southwest, New Mexico had remained largely immune from the influence of anti-immigrant rhetoric in its political climate until

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largest immigrant family detention facility in the United States, amid concerns from immigrant-rights groups. The center in Dilley, Texas, was opened on Monday to house the surge of ‘family units,’ or women and children who say they fled extreme violence in their native Central American countries to seek asylum in the United States.”).

<sup>132</sup> *Id.*; see also Preston, *supra* note 128. (“The Corrections Corporation of America, the private prison company that will run the center, estimates the cost at \$296 a day for each detainee, officials said.”).

<sup>133</sup> See Preston, *supra* note 128.

<sup>134</sup> *Id.* (“But the administration’s huge expansion of family detention has drawn similarly angry criticism from advocates, lawyers and faith leaders on the other side, who argue that prolonged confinement is inappropriate for young children and mothers who pose no security risks.”).

<sup>135</sup> *Id.* (“‘Everyone agrees that border security is important,’ Mr. Johnson said, addressing his comments to Congress. ‘Now it’s time to step up and partner with this department to help support that.’”).

<sup>136</sup> Hylton, *supra* note 111. (“Officials from the Department of Homeland Security say the facilities in Karnes and Dilley are still insufficient to house the detainees they expect to process in the coming year. ‘Last year, we saw 60,000 families come in,’ Olavarria said. ‘We’re hoping we don’t see those kinds of numbers this year, but even if we see half, those two facilities would hold a fraction of those numbers.’”).

the election of Governor Susana Martinez in 2010. Martinez, a Republican, quickly gained national attention as the first Hispanic female governor ever elected in the United States.<sup>137</sup> Despite her immigrant roots—and the fact that her paternal grandparents immigrated illegally to the United States<sup>138</sup>—Martinez showed herself to be no ally for pro-immigrant causes almost immediately, earning ire for her directive to New Mexico police officers to inquire about the immigration status of individuals under arrest.<sup>139</sup>

### 1. Driver's Licenses for Undocumented Immigrants

In what The *New York Times* called “one of the defining issues of her tenure” as Governor, Martinez has fought hard for the New Mexico legislature to repeal its law permitting individuals without lawful immigration status to receive driver's licenses.<sup>140</sup> Accused by opponents as “pander[ing] to the anti-immigrant sentiment in her party,”<sup>141</sup> Martinez has lobbied year after year against the New Mexico law permitting state residents without legal status to receive a state driver's license,<sup>142</sup> and has used the anti-immigrant platform to raise money

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<sup>137</sup> Mariela Rosario, *New Mexico's Susana Martinez Elected the First Latina Governor in the U.S.*, *LATINA* (Nov. 3, 2010, 12:00 PM), <http://www.latina.com/lifestyle/news-politics/new-mexicos-susana-martinez-elected-first-latina-governor-us>.

<sup>138</sup> Andrew Mach, *Susana Martinez: Can a Latina Governor Be Anti-Illegal Immigration?*, *CHRISTIAN SCI. MONITOR* (Sept. 13, 2011), <http://www.csmonitor.com/USA/2011/0913/Susana-Martinez-Can-a-Latina-governor-be-anti-illegal-immigration> (“The announcement last week by New Mexico Gov. Susana Martinez (R) that her paternal grandparents came to the US illegally brought national attention to a small but growing trend in American politics: the rise of the anti-illegal immigration Latino.”).

<sup>139</sup> Fernanda Santos, *Governor of New Mexico, and Now an Envoy for Republicans*, *N.Y. TIMES* (Feb. 24, 2013), [http://www.nytimes.com/2013/02/25/us/politics/gov-susana-martinezs-war-on-licenses-for-illegal-immigrants.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2013/02/25/us/politics/gov-susana-martinezs-war-on-licenses-for-illegal-immigrants.html?pagewanted=all&_r=0) (“While Ms. Martinez deplored Mitt Romney's suggestion of ‘self-deportation’ as a solution to illegal immigration, she also directed police officers in New Mexico to inquire about the immigration status of those arrested, a move described by one immigrants' advocate as ‘our mini S.B. 1070,’ a reference to Arizona's restrictive immigration law.”).

<sup>140</sup> *Id.* (“On one of the defining issues of her tenure, the fight to repeal the state's law allowing illegal immigrants to get a driver's license, her persistence — or intransigence, depending on whom you ask — may have paid off. She immediately embraced a bipartisan bill introduced on Feb. 13 that would do just that; though to hear her tell it, she also gave in by supporting an alternate driver's license for young immigrants benefiting from deferred deportation.”).

<sup>141</sup> *Id.*

<sup>142</sup> Reid Wilson, *“New Mexico's Martinez Targets Driver's Licenses for Illegal Immigrants*, *WASH. POST GOVBEAT* (Dec. 18, 2013), <http://www.washingtonpost.com/blogs/govbeat/wp/2013/12/18/new-mexicos-martinez-targets-drivers-licenses-for-illegal-immigrants/> (“In what has become something of an annual ritual, New Mexico Gov. Susana Martinez (R) said Tuesday she will renew a push to force the state legislature to repeal a 10-year-old law that allows undocumented immigrants to get driver's licenses. . . . Martinez has tried to pass the legislation before. It passed the state House with bipartisan support

for her political campaigns.<sup>143</sup> Because Governor Martinez is known for her “hawkish and populist stance on illegal immigration,”<sup>144</sup> “rescinding the driver’s license law is grist for the governor’s fundraising mill.”<sup>145</sup> Somos un Pueblo Unido, an immigrants’ rights group, has stated that Governor Martinez is “politicizing a question that’s already been settled in order to raise money for her campaign.”<sup>146</sup> Maricela Diaz of Somos un Pueblo Unido stated:

[I]t’s becoming increasingly obvious to the Legislature and hopefully to voters that this is nothing but a political game. [Governor Martinez] is trying to raise money on the backs of immigrants, and she’s trying to appeal to an anti-immigrant base. It’s a great wedge issue that she’s using as a fundraising ploy.<sup>147</sup>

In her fundraising on the driver’s license issue, Governor Martinez has claimed repeatedly that the New Mexico statute is a “dangerous law.”<sup>148</sup> At her State of the State address in January 2014, Governor Martinez again called on the legislature to repeal the driver’s license law, claiming that the state had recently “seen several fraud operations busted recently. Just last year, an elaborate scheme was uncovered in eastern New Mexico—where hundreds of driver’s licenses were sold to illegal immigrants. The ringleader bragged that he made \$30,000 a month.”<sup>149</sup>

In spite of her hardline reputation on immigration policy and the issue of undocumented migration to the United States, Governor Martinez appeared to soften her stance a bit when she toured the family detention facility opened by the Obama Administration to house women and children asylum seekers in

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last year, though it stalled in committee earlier this year. In 2012, the measure died in the state Senate, where President Tim Jennings (D) blocked it.”)

<sup>143</sup> Joan Friedland, *New Mexico Governor Uses Anti-Immigrant Driver’s License Proposal as Fundraising Tool*, IMMIG. IMPACT (Feb. 11, 2014), <http://immigrationimpact.com/2014/02/11/new-mexico-governor-uses-anti-immigrant-drivers-license-proposal-as-fundraising-tool/> (“For the fifth time in four years, New Mexico Gov. Susana Martinez is trying to get the legislature to repeal the 2003 law granting licenses to all eligible drivers, regardless of their immigration status.”).

<sup>144</sup> Daniel Libit, *The Man Who Discovered Susana Martinez Could Also Be Her Downfall*, NAT’L J. (Nov. 23, 2013), <http://www.nationaljournal.com/magazine/the-man-who-discovered-susana-martinez-could-also-be-her-downfall-20131121>.

<sup>145</sup> Friedland, *supra* note 143.

<sup>146</sup> Patrick Malone, “*Martinez Campaign Pushes Immigrant License Issue*,” SOMOS UN PUELO UNIDO (Feb. 22, 2014), <http://www.somosunpueblounido.org/DLNews/2014/02/martinez-campaign-pushes-immigrant-license-issue/>.

<sup>147</sup> *Id.*

<sup>148</sup> Walt Rubel, *Driver’s License Issue Moved to Tail End of State of the State*, LAS CRUCES SUN-NEWS (Jan. 25, 2014), [http://www.lcsun-news.com/las\\_cruces-news/ci\\_24993275/walt-rubel-drivers-license-issue-moved-tail-end](http://www.lcsun-news.com/las_cruces-news/ci_24993275/walt-rubel-drivers-license-issue-moved-tail-end).

<sup>149</sup> *Id.*

Artesia, New Mexico last summer.<sup>150</sup> She opined that the facility was “no place for young mothers and babies. One is just 11 months old.”<sup>151</sup> Governor Martinez, while expressing compassion for what she called “the humanitarian consequence of false beliefs that anyone can stay in the U.S.,”<sup>152</sup> remained resolute in her criticism of the Obama Administration’s overall immigration enforcement policies and lack of comprehensive immigration reform in Congress.<sup>153</sup>

## 2. Artesia Family Residential Center

During the humanitarian refugee crisis of 2014, no single event caused more outrage and shame for immigrants’ rights advocates than the opening of the Artesia Family Detention Center in Artesia, New Mexico. Described by some observers as “like Guantanamo,”<sup>154</sup> the Artesia detention center—which closed for good in December 2014 after much criticism from faith and civil rights groups<sup>155</sup>—had become notorious in the short time it was open for deplorable conditions, remote location, and lack of access to basic due process for detainees fighting to have their asylum claims heard by an immigration judge.<sup>156</sup> Lawyers representing detainees at Artesia complained that many of the women being held did not have access to counsel or translators, and that the \$20,000 and \$30,000 bonds being set for them by immigration judges appearing remotely from Arlington, Virginia—several thousand miles from Artesia—were not reasonable given their circumstances.<sup>157</sup>

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<sup>150</sup> Associated Press, *Governor Tours Artesia Immigrant Facility*, ALBUQUERQUE J. (July 20, 2014), <http://www.abqjournal.com/432265/news/governor-tours-artesia-immigrant-facility.html>.

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *Id.* (“The governor said a comprehensive immigration plan from Washington and the Obama administration is needed to stop the influx of immigrants. . . . She criticized what she called piecemeal efforts such as partial deportations or permanent residency for people illegally brought to the U.S. as children.”).

<sup>154</sup> Diana Washington Valdez, *Lawyer: ICE Facility in Artesia, N.M., Like Guantanamo*, EL PASO TIMES (Aug. 15, 2014), [http://www.elpasotimes.com/latestnews/ci\\_26342591/lawyer-ice-facility-artesia-n-m-like-guantanamo](http://www.elpasotimes.com/latestnews/ci_26342591/lawyer-ice-facility-artesia-n-m-like-guantanamo) (“Lawyer Pamela Muñoz, who works pro-bono, and other advocates at Las Americas Immigrant Advocacy Center in El Paso alleged that the migrants are being fast-tracked out of the United States under the guise that they pose threats to national security. Like inmates at Guantanamo, the said, they are detained in a legal limbo, without formal charges and without due process.”).

<sup>155</sup> Hylton, *supra* note 111.

<sup>156</sup> *See* Valdez, *supra* note 154.

<sup>157</sup> *Id.* (“‘Immigration judges are holding hearings remotely for some of the petitioners through videoconferencing on very small screens,’ Muñoz said. ‘The women don’t have access to translators, and their applications require that their police reports and other documents be translated into English. Some of them are given bonds that are unreasonably high — \$20,000 and \$30,000, for example.’”).

Human rights observers and immigrants' rights groups who provided assistance to the detainees at the Artesia facility reported conditions that shock the conscience:

The facility is a former federal law-enforcement training center hastily converted into makeshift living quarters. . . .

The average age of the children held inside Artesia is just 6 and a half. As we toured the facility, we saw many of them. We saw babies in diapers tottering around the facility's dirt paths and exhausted young children and mothers waiting in line for lunch in the sweltering heat. We saw two boys, about 7 years old, walking with a trash can, picking up garbage and dirty diapers off the floor. Every mother we spoke with expressed concern that their children were suffering from dietary problems due to malnutrition and depression, including diarrhea, loss of appetite, and/or severe weight loss.<sup>158</sup>

Julie Braker, an immigration attorney from Portland, Oregon who traveled to Artesia as a volunteer with the American Immigration Lawyers Association (AILA) Pro Bono Project to assist the women and children detained there, said that the detention center was "deportation machine":

We heard that there was this deportation machine basically that had been set up," said Julie Braker, an attorney from Portland, who has visited several immigration facilities. "This has been the worst detention facility I have seen in terms of inhumane conditions and in terms of due process issues. Almost every single child I saw there was sick, they had lost weight, they had had severe diarrhea, they had been vomiting, they had the flu, they had the cough and some of these kids were infants."

Braker added: "We also heard a lot of stories about guards trying to intimidate people into signing deportation orders and discouraging people from pursuing legitimate claims as refugees."<sup>159</sup>

The deplorable treatment of women and children at the Artesia detention facility drew national attention, and critics believe that the negative spotlight was key in the Obama Administration's decision to shut down the center at the end

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<sup>158</sup> See Wendy Cervantes & Madhuri Grewal, *Family Detention for Central American Refugees Is Inhumane*, NAT'L J. (Sept. 16, 2014), <http://www.nationaljournal.com/next-america/perspectives/family-detention-for-central-american-refugees-is-inhumane-20140916>.

<sup>159</sup> Darren Hunt, *Attorneys Speak Out About Conditions in Artesia*, KVIA (Sept. 25, 2014, 8:01 PM), <http://www.kvia.com/news/attorneys-speak-out-about-conditions-in-artesia/27514952>.

of 2014.<sup>160</sup> In his essay titled *Ending Artesia*, Stephen Manning of the American Immigration Lawyers Association (AILA) Artesia Pro Bono Project reflected at length on the myriad human rights and civil rights violations he witnessed at Artesia in the short six-months between the time the facility opened on June 24, 2014, and the day it shut down, December 15, 2014. First, he reflected on the flawed and dangerous legal theory put forth by the Obama Administration in setting up the Artesia detention facility:

On June 24, 2014, Artesia opened. It was designed by the Obama Administration to deport rapidly. It was the Obama Administration's carefully orchestrated machine that had been efficiently built to effectuate "waves" of deportations—massive incidents of deportations occurring at a high velocity. Obama's officials explained that the detention center in Artesia was the tool to achieve the goal of "process[ing] the immigrants and hav[ing] them deported within 10 to 15 days to send a message back to their home countries that there are consequences for illegal immigration." The detention center, then, was really a deportation center.

. . . .  
[T]he Obama Administration engineered a no-release-detention policy. . . . The administration's theory was that if the government detains *these* women and children, then these women and children will give up and it will send a message to *other* women and children elsewhere in Central America not to seek asylum. The Fifth Amendment doesn't authorize that theory, of course.

To solve their Fifth Amendment problem the Obama Administration called on an immigration decision written by former U.S. Attorney General John Ashcroft called *Matter of D-J-*, 23 I&N Dec. 572 (AG 2003). Under *Matter of D-J-*, if there is a threat to national security, then the Executive Branch's initial decision to detain is effectively mandatory and permanent. *Matter of D-J-* originated in the atmospherics of September 11 and was predicated on the declaration of a national emergency related to national security terror threats. The thinking, it appears, was that if a national security threat

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<sup>160</sup> In particular, the contrast between the executive actions for undocumented immigrants announced by President Obama in November 2014 and the continuing detention of women and children asylum seekers in Artesia, was highlighted as one of the primary reasons behind the closure of Artesia in December 2014. See Hylton, *supra* note 111 ("[A]n organizer for AILA [American Immigration Lawyers Association] named Stephen Manning wrote, 'The disconnect from the compassionate-ish words of the president and his crushing policies toward these refugees is shocking.'").

rubric were deployed, then the Fifth Amendment problem posed by the detention-as-deterrent theory would vanish.<sup>161</sup>

Manning then turns his attention to the Artesia facility itself, and the deplorable conditions that the women and children were housed in while they were detained:

Structurally, the detention center consists of several corrugated metal trailers. The trailers are raised several feet above the ground because the area is prone to flash floods. The trailers themselves are indistinguishable from each other but for their numerical designations, like a home address, stenciled on the doors. ICE officers walk the streets and dirt “roads” that connect the trailers. They also drive golf carts. There are prison transport vans with metal cages, modified passenger vans without interior handles, and conventional passenger vans. The women and children slept in trailers that were called “dorms”. Some of the dorms had cribs for the infants and toddlers. All of them had bunks. On a tour, an ICE public relations officer lamented the presence of the cribs because “they take up so much space”.

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In the front half [of the law library], [a] volunteer lawyer sits on a chair in the middle of the space. A mother sits in a chair. There is no desk between them. “He is not eating,” the mother says to the lawyer, her eyes on her son. He is hanging on her neck. Another son lies on the floor between the lawyer and her client. The lawyer has crayons and paper to keep the children distracted. Crayon-gate hasn’t yet erupted. Her sons look lethargic. They look hungry. The lawyers cannot give food to the children. All the children are losing weight because they are not eating.

“They are so skinny now,” the mother says. Tears are forming in her eyes. The lawyer sets his pen down.

“Please don’t let them deport them. I came here to save them.” She is crying now. Fear walks across her face. She wrings her hands. The son on the floor rises to his knees and pats his mother to comfort her. The lawyer thinks that the son has maybe lost 20% of his body weight since his detention started. Her words crowd together as they escape between sobs, “You have to help him. Please. You have to help us, please.”

Help him. Help her. *Please*.<sup>162</sup>

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<sup>161</sup> Stephen Manning, *Ending Artesia*, INNOVATION L. LAB, <https://innovationlawlab.org/the-artesia-report/> (last visited Mar. 5, 2015) (emphasis in original).

<sup>162</sup> *Id.* (second and third alteration in original) (emphasis in original).

The campaign against the horrors witnessed in Artesia was successful in getting the facility closed. But, thanks to the new family detention facility in Karnes and the expansion of the facility in Dilley, it appears for the moment that the battle has been won, but the war has been lost.<sup>163</sup>

#### IV. “ILLEGAL ALIENS, DISEASES, AND CRIME”: THE HUMANITARIAN CRISIS AT THE BORDER, HATE SPEECH, AND VIOLENCE

In the summer of 2014, the United States saw an unprecedented influx of unaccompanied alien children (UAC) from Central America, primarily those countries in the Northern Triangle: El Salvador, Guatemala, and Honduras.<sup>164</sup> In the month of June 2014 alone, more than 10,000 UACs were apprehended by law enforcement at the United States-Mexico border,<sup>165</sup> and the total number of UACs apprehended in fiscal year 2014 was in excess of 68,000.<sup>166</sup> Of that number, more than 51,000 children were from the Northern Triangle of Central America.<sup>167</sup> Although the Obama Administration was quick to denounce many of the UACs seeking refuge in the United States as not eligible to seek asylum,<sup>168</sup> the William Wilberforce Trafficking Victims Protection Act of 2008 (TVPRA) requires that minors from countries that do not share a border with the United States be given the opportunity to apply for various forms of relief from removal—including asylum—before being returned to their country of origin.<sup>169</sup>

The TVPRA requires UACs in the custody of the Department of Homeland Security (DHS) whose country of origin is not Mexico or Canada to be transferred to the Office of Refugee Resettlement (ORR), which is a division of the United States Department of Health and Human Services (HHS), within

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<sup>163</sup> A recent development in the war against family detention is the February 2015 decision by Judge James E. Boasberg of the United States District Court for the District of Columbia in *R.I.L.R. v. Johnson*, a class-action lawsuit filed on behalf of the women and children detained at Karnes challenging DHS’s no-bond policy. No. 15-11, 2015 WL 737117 (D.D.C., Feb. 20, 2015) (memorandum opinion). Judge Boasberg issued an injunction prohibiting DHS from enforcing its no-bond policy, finding that the policy violated the Administrative Procedures Act (APA). *Id.*

<sup>164</sup> Dennis Stinchcomb & Eric Hershberg, *Unaccompanied Migrant Children from Central America: Context, Causes, and Responses* 1 (Am. Univ. Ctr. for Latin American and Latino Studies Working Paper No. 7, 2014), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2524001##](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2524001##).

<sup>165</sup> The official number of unaccompanied alien children apprehended at the United States-Mexico border in June 2014 is 10,622. *Id.* at 5.

<sup>166</sup> *Id.* at 6.

<sup>167</sup> *Id.*

<sup>168</sup> Press Release, Office of the Press Secretary, Press Briefing by Press Secretary Josh Earnest, 7/7/2014 (July 7, 2014), available at <http://www.whitehouse.gov/the-press-office/2014/07/07/press-briefing-press-secretary-josh-earnest-772014>.

<sup>169</sup> Pub. L. No. 110-457, § 235, 122 Stat. 5044, 5075 (codified as amended at 8 U.S.C. § 1232 (2013)).

72 hours.<sup>170</sup> In 2014, 85 percent of UACs in removal proceedings initiated by DHS were released by ORR to family members already physically present in the United States.<sup>171</sup> This provision of the TVPRA, and the government's compliance with it, gave rise to significant backlash by critics, who were quick to contend that the release of UACs into the interior of the United States would result in an increase in disease, crime, and place an unfair burden on the educational and social welfare systems in the U.S.<sup>172</sup> In addition to white supremacist and hate groups, among those contributing to the inflammatory rhetoric surrounding the humanitarian crisis on the border were leaders of major political parties, and influential voices in the national media.

A. *Rhetorical Response to the Humanitarian Refugee Crisis from Media and Political Figures*

Following the Obama Administration's announcement in June 2014 that the influx of UACs to the United States was a bona fide crisis,<sup>173</sup> some journalists and media commentators were quick to accuse the President of "manufacturing" the crisis for political gain.<sup>174</sup> Several commentators on Fox News—including Jeanine Pirro and Steve Doocy—opined that the UACs fleeing to the United States were gang members and drug dealers.<sup>175</sup> Conservative radio talk-show host Rush Limbaugh ran a report on his website entitled "Obama Regime Planned the Influx of Illegal Alien Children at the Border," and another

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<sup>170</sup> Stinchcomb & Hershberg, *supra* note 164, at 29.

<sup>171</sup> U.S. DEP'T OF HEALTH & HUMAN SERVS., OFFICE OF REFUGEE RESETTLEMENT, FACT SHEET 2 (2014).

<sup>172</sup> See, e.g., Press Release, Anti-Defamation League Anti-Immigrant Groups Borrow from Playbook of Hate Groups to Demonize Hispanics (Oct. 23, 2007), available at [http://archive.adl.org/presrele/cvLrt\\_32/5154\\_32.html#.VOt5JSzfjb4](http://archive.adl.org/presrele/cvLrt_32/5154_32.html#.VOt5JSzfjb4) ("The report cites several key tactics used by anti-immigrant groups, including . . . portraying immigrants as carriers of diseases like leprosy, tuberculosis, Chagas disease (a potentially fatal parasitic disease), dengue fever, polio, malaria, [and] [d]epicting immigrants as criminals, murderers, rapists, terrorists, and a danger to children and families.").

<sup>173</sup> Elise Foley, *Obama Requests \$3.7 Billion to Deal with Border Crisis*, HUFFINGTON POST (July 9, 2014, 1:59 AM), [http://www.huffingtonpost.com/2014/07/08/obama-border-crisis\\_n\\_5567258.html](http://www.huffingtonpost.com/2014/07/08/obama-border-crisis_n_5567258.html).

<sup>174</sup> See, e.g., Mark Potok, *Back to the Border*, INTELLIGENCE REP. (Winter 2014), <http://www.splcenter.org/Back-to-the-Border> ("Lou Dobbs said the crisis had been 'orchestrated' by the [Obama] administration, which he said was 'working in concert with the Central American governments.' Three congressmen— Steve King (R-Iowa), Steve Stockman (R-Texas), and John Culberson (R-Texas)—made similar allegations of a deliberate Obama conspiracy to bring in foreigners.").

<sup>175</sup> *Id.* ("Fox News guest host Jeanine Pirro . . . [said] she 'wouldn't be surprised if some of these kids are nothing more than fronts for drug dealers,' a comment echoed a few days later by Fox's Steve Doocy, who claimed that the Border Patrol was 'having to process members of known Mexican gangs' and 'give them a pass.'").

conservative talk-show host, Laura Ingraham, claimed that the large number of UACs in the United States would lead to “higher crime rates [and] higher gang activity.”<sup>176</sup> Additionally, David Horowitz—who is known chiefly for his involvement in anti-Muslim activities—asserted that the UACs were “seasoned criminals and gangbangers” and accused the Obama administration of “creating a passageway for terrorists along with ‘children.’”<sup>177</sup> The conspiratorial nature of this commentary, along with the overtly racist association of Central American children with criminal and gang activity, inflamed members of the American public already feeling threatened by the continued migration of non-White persons to the United States.

Several members of the media also made the unsubstantiated and inflammatory accusations that the UACs from Central America would bring communicable diseases into the country. On Fox News, Cal Thomas alleged that the children would contribute to the spread of “mumps, measles, rubella, tetanus, and diphtheria,” while another Fox News commentator, Dr. Elizabeth Lee Vliet, made the claim that such diseases were being “carried across the border by this tsunami of illegals.”<sup>178</sup> The hysteria expanded to include speculation that the UACs were also afflicted with other diseases, such as scabies, tuberculosis, and leprosy.<sup>179</sup> Additionally, the right-wing website *News With Views* opined that “hordes of uneducated, unskilled, and too many disease ridden [are] coming from El Salvador, Guatemala, and Nicaragua.”<sup>180</sup> Finally, talk-show host Laura Ingraham speculated:

[W]ho’s to blame if, heaven forbid, an American citizen dies of a communicable disease spread by these folks spreading all over the country? The government spreads the illegal immigrants across the country, and the disease is spread across the country. Who gets the blame here?”<sup>181</sup>

As disturbing as these comments are, the media was not alone in espousing inflammatory and racist anti-immigrant rhetoric in the face of the influx of UACs. Many national political figures, including members of Congress and state governors, engaged in “language that dehumanize[d]” when discussing

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<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> Devvy Kidd, *What Real Immigration Reform Means*, NEWSWITHVIEWS (June 22, 2004), <http://www.newswithviews.com/Devvy/kidd643.htm>.

<sup>181</sup> Press Release, Anti-Defamation League, ADL Calls for Civility in Conversation About the Humanitarian Crisis at the Border (July 23, 2014), *available at* <http://www.adl.org/press-center/press-releases/civil-rights/adl-calls-for-civility-in-conversation-about-the-humanitarian-crisis-at-border.html#.VJoU8cQA>.

the humanitarian crisis on the border.<sup>182</sup> The engagement of public figures in such rhetoric not only served to fan the flames of hysteria surrounding the humanitarian refugee crisis, but it also lent the hyperbolic, xenophobic paranoia espoused by anti-immigrant and racist organizations an air of legitimacy that was both undeserved and dangerous.<sup>183</sup>

*B. Rhetorical Response to the Humanitarian Refugee Crisis from Hate Groups, Militias, and Vigilantes*

The presence of vigilantes and militias in response to the increase in unauthorized migration on the United States-Mexico border is not new.<sup>184</sup> However, the large number of UACs fleeing to the United States during the summer of 2014 caused a resurgence of activity among various groups affiliated with the white supremacist and Neo-Nazi movements, many of them engaging in paramilitary tactics popular with militias and others who engage in vigilantism.<sup>185</sup> Indeed, Jim Gilchrest, founder of the anti-immigrant group Minuteman Project,<sup>186</sup> proclaimed that he would revive the organization with 3,500 new members.<sup>187</sup>

The Ku Klux Klan (KKK), notorious for its white supremacist violence against the African-American community,<sup>188</sup> has recently turned its attention to the influx of Central American UACs to the United States, stating that the large numbers of children seeking refuge in the United States poses a threat to a “white homeland.”<sup>189</sup> In a July 2014 interview with Al Jazeera America, Robert Jones,

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<sup>182</sup> *Id.*

<sup>183</sup> See, e.g., Alexa Ura & Morgan Smith, ‘Invasion’ Remarks Fuel a Heated Debate in a G.O.P. Race, N.Y. TIMES (Feb. 6, 2014), <http://www.nytimes.com/2014/02/07/us/invasion-remarks-fuel-a-heated-debate-in-a-gop-race.html> (discussing how Texas candidates for lieutenant governor have been “engaging in rhetoric that sounds like thinly veiled racism” when discussing the issue of undocumented migration).

<sup>184</sup> See Potok, *supra* note 174 (“[T]here is no doubt . . . [that this] looked like a possible resurgence of the vigilante extremist groups that swept the country between 2005 and 2011.”).

<sup>185</sup> *Id.* (“[D]emonstrations followed . . . where nativists carried AR-15s and handguns.”).

<sup>186</sup> About Jim Gilchrest, MINUTEMAN PROJECT, <http://minutemanproject.com/jim-gilchrist/> (last visited Mar. 6, 2015) (“Jim Gilchrist founded the multi-ethnic Minuteman Project on October 1, 2004 after years of frustrated efforts trying to get a neglectful U.S. government to simply enforce existing immigration laws.”).

<sup>187</sup> Potok, *supra* note 174.

<sup>188</sup> See, e.g., KLANWATCH PROJECT, S. POVERTY L. CTR., KU KLUX KLAN: A HISTORY OF RACISM AND VIOLENCE 1 *passim* (6th ed. 2011), available at <http://www.splcenter.org/sites/default/files/downloads/publication/Ku-Klux-Klan-A-History-of-Racism.pdf>.

<sup>189</sup> See Keegan Hanks, KKK Joins Immigration Debate with Calls for “Corpses” on the Border, S. POVERTY L. CTR. HATEWATCH (July 31, 2014, 3:31 PM),

Imperial Wizard of the Loyal White Knights of the Ku Klux Klan, stated that “[i]f we can’t turn them back, I think if we pop a couple of them off and leave their corpses laying at the border maybe they’ll see we’re serious about stopping immigration.”<sup>190</sup> Perhaps most shocking, the KKK claims to be enlisting members of the African-American community in their anti-immigrant activities. According to Robert Jones

We’re starting to see the whites and African-Americans waking up to this illegal immigration problem . . . . We’re starting to reach out more to the African-American community and talk to them about the same issues, and they’re agreeing with the Klan that illegal immigration needs to stop.<sup>191</sup>

The Klan has been expanding its involvement in the anti-immigrant movement for several years, despite an overall decline in membership nationwide.<sup>192</sup> Various Klan chapters in the United States have engaged in racist and anti-immigrant rhetoric, and some have even been accused of committing racially motivated hate crimes against Latinos.<sup>193</sup> The Anti-Defamation League (ADL) reported as far back as 2007:

If any one single issue or trend can be credited with re-energizing the Klan, it is the debate over immigration in America. . . . Klan groups have witnessed a surprising and troubling resurgence by exploiting fears of an immigration explosion, and the debate over immigration has, in turn, helped to fuel an increase in Klan activity, with new groups sprouting in parts of the country that have not seen much activity.

The KKK believes that the U.S. is “drowning” in a tide of non-white immigration, controlled and orchestrated by Jews, and is vigorously trying to bring this message to Americans concerned or fearful about immigration.<sup>194</sup>

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<http://www.splcenter.org/blog/2014/07/31/kkk-joins-immigration-debate-with-calls-for-corpses-on-the-border/>.

<sup>190</sup> *Id.*

<sup>191</sup> *Id.*

<sup>192</sup> Beirich et al., *The Year in Hate*, *supra* note 10, at 50.

<sup>193</sup> *Id.* (“A recent IKA [Imperial Klans of America] pamphlet said that the huge pro-immigrant marches held last year showed that American cities are ‘terrorized by hateful, racist illegal aliens marching under a foreign flag.’ Not to be outdone, the BOK [Brotherhood of Klans] website, under the headline ‘REMEMBER THE ALAMO!’ announced this winter that it was time for white Americans ‘to declare war on these illegal Mexicans.’ [In 2006], two IKA members were indicted for allegedly beating a teenage boy they believed was Latino at a county fair.”).

<sup>194</sup> Press Release, Anti-Defamation League, Ku Klux Klan Rebounds with New Focus on Immigration (Feb. 6, 2007), *available at* [http://archive.adl.org/presrele/extremism\\_72/4973\\_72.html](http://archive.adl.org/presrele/extremism_72/4973_72.html).

As stated previously, the Minuteman Project has recently seen an increase in both membership and anti-immigrant activity due to the humanitarian refugee crisis on the United States-Mexico border in 2014.<sup>195</sup> On July 7, 2014, the Minuteman Project launched what it calls “Operation Normandy,” with the goal of recruiting 3,500 “non-militia volunteers” to “cover the porous areas of the 2,000-mile border from San Diego, Ca. to Brownsville, Texas” by “D-Day”—May 1, 2015.<sup>196</sup> The Minuteman Project describes “Operation Normandy” as follows:

If you are familiar with the Normandy invasion of France in 1944, then you have an idea how large and logistically complicated this event will be. However, there is one difference. We are not going to the border to invade anyone. We are going there to stop an invasion.

Our federal, state, and community governments have failed to address and fix this calamity. In the spirit of our nation’s Founding Fathers, it is once again time to bring unprecedented national awareness to the decades-long illegal alien crisis jeopardizing the United States.<sup>197</sup>

The rhetoric used in the description of this event—calling migration to the United States an “invasion” and comparing the vigilante activities of armed civilians to military action during the Second World War—is indicative of the hysteria and xenophobia surrounding the humanitarian refugee crisis on the southern border of the United States during the summer of 2014. Minuteman Project founder Jim Gilchrist has gone so far as to characterize the children fleeing violence and poverty in Central America as “human shields”:

No one who knows better about border issues and the illegal alien invasion than Jim Gilchrist, President and Founder of the Minuteman Project. Gilchrist firmly believes this is exactly what is taking place.

In an interview last week with America One news network, Gilchrist claimed that child refugees at the Mexican-U.S. border are being used as “human shields” in a concerted effort to evade and manipulate U.S. immigration enforcement.

Gilchrist warned that the United States is rapidly becoming a Latin American nation as Mexico and Central America

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<sup>195</sup> David Neiwert, *Jim Gilchrist Announces Grand Vision for New Minuteman Border Patrols in 2015*, S. POVERTY L. CENTER HATEWATCH (July 22, 2014, 2:13 PM), <http://www.splcenter.org/blog/2014/07/22/jim-gilchrist-announces-grand-vision-for-new-minuteman-border-patrols-in-2015/>.

<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

literally transfer their populations into the United States, without any conference with the electorate by the nation's political governors.

“It is very clever of the pro-illegal alien, anti-rule of law criminal elements in Mexico and the United States to use unwitting children as weapons in their assault upon the sovereignty of the United States,” Gilchrist said. “These criminals know very well that the U. S. Border Patrol will warmly welcome these children and essentially provide protective and privileged custody for them . . . indefinitely . . . until they are in the custody of someone, some organization, or some family in the United States. Once established in a household or an orphanage, each of the children will be followed by several dozen relatives and friends also from south of the border.”<sup>198</sup>

The characterization of children as “human shields” is yet another rhetorical attempt to portray the humanitarian refugee crisis as an “invasion,” and to frighten Americans with the unsubstantiated and fantastic claim that UACs are merely a diversion tactic for an upcoming hostile takeover of the United States. The truth of the matter is that the influx of Central American UACs is not part of a larger conspiracy to take over the United States—the mass migration experienced in the last year has its root causes in the high crime, poverty, gang violence, and scarce employment prospects in the Northern Triangle countries.<sup>199</sup> However, by casting the mass migration of children seeking opportunities for a better life and the chance to grow to adulthood as an “alien invasion”<sup>200</sup> anti-immigrant groups can capitalize on the paranoia and xenophobia of white supremacist and Neo-Nazi sympathizers, thus expanding their membership and furthering their agenda.

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<sup>198</sup> See Jim Gilchrist, *Illegal Alien Children Being Used as Political Human Shields*, TEAPARTY.ORG (July 7, 2014), [http://www.teaparty.org/jim-gilchrist-illegal-alien-children-used-political-human-shields-47103/?utm\\_source=facebook&utm\\_medium=cpc&utm\\_campaign=social](http://www.teaparty.org/jim-gilchrist-illegal-alien-children-used-political-human-shields-47103/?utm_source=facebook&utm_medium=cpc&utm_campaign=social).

<sup>199</sup> Eric Hershberg & Jayesh Rathod, *The Case for Protected Status for Central American Migrants*, ROLL CALL (Dec. 22, 2014, 5:40 PM), [http://www.rollcall.com/news/the\\_case\\_for\\_protected\\_status\\_for\\_central\\_american\\_migrants\\_commentary-238919-1.html](http://www.rollcall.com/news/the_case_for_protected_status_for_central_american_migrants_commentary-238919-1.html) (“In recent years, the United States has experienced a steady rise in unauthorized migration from Guatemala, El Salvador and Honduras, the ‘northern triangle’ countries of Central America. A crippling set of adverse conditions — including staggeringly high crime rates, weak government institutions and scarce employment opportunities — is fueling this trend. Transnational gangs are now a formidable political force in the region, generating protracted violence that has caused thousands to flee.”).

<sup>200</sup> The humanitarian refugee crisis has been routinely characterized as an “alien invasion” by the media and other commentators. See, e.g., Alan Caruba, *Obama's Illegal Alien Invasion*, TEAPARTY NEWS NETWORK (July 8, 2014), <http://www.tpnn.com/2014/07/08/obamas-massive-illegal-alien-invasion/>.

C. *The Effect of Anti-Immigrant Rhetoric on Violence Against Latinos and Persons of Color*

1. Hate Crimes

Even before the influx of UACs to the United States during the summer of 2014, anti-immigrant rhetoric had contributed to a variety of hate crime incidents over the past several years. Although not all of the victims of anti-immigrant hate crimes occurred along the United States-Mexico border,<sup>201</sup> some of the most violent and disturbing acts of violence occurred in the Southwest and were perpetrated by individuals with ties to white supremacist and/or Neo-Nazi organizations.

i. *The 2009 Murders of Brisenia and Raul Flores by Border Vigilante Shawna Forde*

On May 29, 2009, nine-year old Brisenia Flores and her father, Raul Flores, were murdered by armed intruders in their home in Arivaca, Arizona, about 60 miles northeast of Tucson.<sup>202</sup> Brisenia's mother, Gina Gonzales, was shot in the ambush but survived.<sup>203</sup> At the trial for the murders of her husband and daughter, she recounted the events of that terrible evening:

Gonzales testified that four people knocked on the door claiming to be law enforcement and border patrol. They said the house was surrounded as they had information that the family was harboring fugitives. Gonzales said her husband, Raul Flores, opened the door and allowed them inside. She said they knew immediately the people entering were not law enforcement at all. . . .

.....  
Gonzales says her daughter began to question why her mother and father were shot when the gunman reloaded his weapon. "I can hear her say 'Please don't shoot me,'" said Gonzales, wiping away tears and sobbing.

The gunman paid no attention to her pleas and fired two shots into Brisenia's head, causing the girl to fly back on the couch, Gonzales recounted.<sup>204</sup>

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<sup>201</sup> See *infra* Part IV.C.1.

<sup>202</sup> Ismael Estrada, *Who Killed Brisenia?*, CNN (Jan. 28, 2011, 3:09 PM), <http://ac360.blogs.cnn.com/2011/01/28/who-killed-brisenia/>.

<sup>203</sup> Nicholas Riccardi, *Mother Describes Border Vigilante Killings in Arizona*, L.A. TIMES, Jan. 25, 2011, <http://articles.latimes.com/2011/jan/25/nation/la-na-minutemen-murder-20110126>.

<sup>204</sup> Estrada, *supra* note 202.

The armed intruders who executed Brisenia were “well-placed in the border security movement”.<sup>205</sup>

Prosecutors say Shawna Forde, a vigilante anti-illegal immigration activist, was not only the woman described in the home, but was also the ringleader of the home invasion and murder.

Forde was once a member of the Minuteman Civil Defense Corps before being removed from the group for what members describe to CNN as unstable behavior. She formed a splinter group, Minutemen American Defense, and patrolled the Arizona-Mexico border armed with weapons. She led protests about the dangers and criminal activity along the porous border.

Prosecutors say Forde planned the raid and murders in an elaborate plan to steal drugs weapons and money to help fund her new anti-illegal immigration group. They allege her accomplices were Jason Bush and Albert Gaxiola. Bush, who is alleged to have been the gunman, was the National Director of Operations for the Minutemen American Defense.<sup>206</sup>

Although Jim Gilchrist and other members of the border vigilante groups whom Shawna Forde had associated with attempted to distance themselves from her after the Flores murders,<sup>207</sup> Gilchrist had previously defended Forde against her critics in a website post, saying: “In my experience with Ms. Forde I conclude that she is no whiner. She is a stoic struggler who has chosen to put country, community, and a yearning for a civilized society ahead of avarice and self-glorifying ego. The Minuteman Project is proud to be a supporter of Shawna Forde’s Minutemen (women) American Defense (M.A.D.).”<sup>208</sup>

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<sup>205</sup> See Tim Steller, *Woman Held in 2 Slayings an Outcast, Activists Say: But Shawna Forde Had High-Level Contacts in Minuteman Movement Despite Extreme Views*, ARIZ. DAILY STAR, June 28, 2009, [http://tucson.com/news/local/article\\_b25e446d-02c9-5ee5-afa8-e89d558a2130.html](http://tucson.com/news/local/article_b25e446d-02c9-5ee5-afa8-e89d558a2130.html) (“[I]nterviews with so-called Minutemen and their critics, as well as reviews of recently scrubbed Web sites, suggest Forde was well-placed in the border-security movement and represented a persistent radical wing. . . . As Forde made forays into other groups, she formed an association with Gilchrist, the founder of the Minuteman Project. She posted reports from the border on his Web site, and they defended each other publicly from critics. In July 2008, Forde wrote about Gilchrist, identifying herself as ‘Operations Director For The Project,’ and saying, ‘The Project has worked closely with MAD (Minutemen American Defense) for several years now.’”).

<sup>206</sup> Estrada, *supra* note 202.

<sup>207</sup> Riccardi, *supra* note 203 (“Shortly after [Forde’s] arrest, members of the Minutemen movement disavowed her, saying they did not trust her and that she had stayed on its fringes.”).

<sup>208</sup> See Steller, *supra* note 205.

On February 22, 2011, Forde was found guilty of capital murder by a jury in Arizona and sentenced to death.<sup>209</sup> While the activists affiliated with the same border vigilante groups as Forde may not have been personally involved in the murders of Brisenia and Raul Flores, the caustic racist and xenophobic rhetoric espoused by these groups is, in the opinion of some, a direct cause of Forde's and her accomplices brazen and callous actions.<sup>210</sup> What remains clear, however, is that the murders of Brisenia and Raul Gonzalez—motivated by Shawna Forde's desire to raise money for the group she founded, the Minutemen American Defense—would probably not have occurred in the absence of the growth of vigilantes like Forde who have decided to “take it upon themselves to patrol the border with Mexico and try to stop or apprehend illegal migrants.”<sup>211</sup>

ii. *The 2012 Mass Murder-Suicide of Neo-Nazi J.T. Ready*

One of the most frightening instances of violence perpetrated by a prominent border vigilante with Neo-Nazi ties was the May 2, 2012, mass murder and suicide of J.T. (Jason Todd) Ready in Gilbert, Arizona.<sup>212</sup> Prior to taking his own life, Ready murdered his live-in girlfriend and three other people, including his girlfriend's 15-month-old granddaughter.<sup>213</sup> While not a hate crime against immigrants, this disturbing event shed light on Ready's history of violence and the influence that his ties to white supremacist organizations had on his involvement in the border vigilante movement.

<sup>209</sup> CNN Wire Staff, *Jury Decides on Death Penalty for Woman Who Headed Vigilante Squad*, CNN (Feb. 22, 2011, 9:21 PM), <http://www.cnn.com/2011/CRIME/02/22/arizona.double.killing/?hpt=T2>.

<sup>210</sup> See Raul A. Reyes, *Brisenia Flores Was a Victim of Border Vigilantes and Media Indifference*, HUFFINGTON POST (Mar. 25, 2011, 6:35 PM), [http://www.huffingtonpost.com/raul-a-reyes/brisenia-flores-was-a-vic\\_b\\_832416.html](http://www.huffingtonpost.com/raul-a-reyes/brisenia-flores-was-a-vic_b_832416.html); see also Terry Greene Sterling, *The Minuteman Vigilante's Arizona Murder Trial*, DAILY BEAST (Jan. 26, 2011), <http://www.thedailybeast.com/articles/2011/01/26/minuteman-vigilantes-arizona-murder-trial-brisenia-flores-mother-testifies.html> (“Phoenix-based radio talk-show host Carlos Galindo . . . criticizes Latino leaders for failing to voice sufficient outrage. ‘This was a horrible, tragic, and absolutely race-based coldblooded murder,’ he says . . .”).

<sup>211</sup> David Osborne, *Border Vigilante Guilty of Murdering Nine-year-old*, INDEPENDENT (Feb. 16, 2011), <http://www.independent.co.uk/news/world/americas/border-vigilante-guilty-of-murdering-nineyearold-2216127.html> (“Shawna Forde . . . claimed to be the head of a group that would ‘kick down doors and change America[.]’”).

<sup>212</sup> Michael Muskal, *Border Guard Founder J.T. Ready Blamed in Arizona Murder-Suicide*, L.A. TIMES, May 3, 2012, <http://articles.latimes.com/2012/may/03/nation/la-na-nn-arizona-shooting-20120503> (“On Wednesday, Ready entered a Gilbert, Ariz., home and opened fire, killing four people, including a 15-month-old girl, said Gilbert Police Sgt. Bill Balafas. Ready then turned a handgun on himself, ending his life at age 39, the sergeant said.”).

<sup>213</sup> *Id.* (“Ready . . . lived in the house with Lisa Lynn Mederos, 47; Mederos' daughter, Amber Nieve Mederos, 23; and the daughter's boyfriend, Jim Franklin Hiott, 24. Amber's toddler daughter, Lily Lynn Mederos, died while being treated at a hospital.”).

Prior to becoming active in the anti-immigrant movement, Ready had long been affiliated with right-wing extremist causes:

Jason Todd Ready never made a secret of his passion for right-wing politics and related causes, both of which got the bearded, barrel-chested former Marine branded a racist, an extremist and a bigot. In a lifetime of moving through mainstream politics in Arizona as well as within the semi-military world of less-established groups, Ready built a reputation for in-your-face confrontations, founding an armed volunteer group dedicated to patrolling the Mexico border and ending the smuggling of illegal immigrants and drugs.<sup>214</sup>

The “armed volunteer group” founded by Ready, the U.S. Border Guard, is “a volunteer group whose members dress in military garb and armor and carry weapons while on patrol for illegal immigrants in the desert area near the border.”<sup>215</sup> In June 2010, Ready led a group of approximately ten U.S. Border Guard members—including some individuals with ties to the Neo-Nazi National Socialist Movement (NSM)<sup>216</sup>—to “patrol” an area of Pinal County, Arizona, with a reputation for drug and human smuggling activity.<sup>217</sup> Describing the U.S. Border Guard as “the Minutemen project on steroids,”<sup>218</sup> Ready and his membership engaged in armed patrols of the desert, much to the consternation of local law enforcement.<sup>219</sup> Ready was also involved in the founding and creation of another anti-immigrant organization, Americans First, which staged a protest at the Mexican consulate in Phoenix in May 2006.<sup>220</sup> At that time, Ready told the *Arizona Republic*, “We are advocating that the government of Mexico should be designated a ‘threat nation’ because they are openly subverting our laws and sovereignty.”<sup>221</sup> Ready had previously drawn attention to himself in

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<sup>214</sup> *Id.*

<sup>215</sup> *Id.*

<sup>216</sup> Members of the U.S. Border Guard include Harry Hughes and Jeff Hall, both known to be NSM members. *Extremist Files: J.T. Ready*, S. POVERTY L. CENTER, <http://www.splcenter.org/get-informed/intelligence-files/profiles/jt-ready> (last visited Mar. 6, 2015).

<sup>217</sup> *Id.*

<sup>218</sup> *Id.*

<sup>219</sup> *Id.* (“Paul Babeu, the sheriff of Pinal County, said: ‘Though I appreciate their support and offer to take up arms and patrol, this would not be helpful, and would only cause a strain on already strained resources, and their safety needs to be a priority. I do not ask or encourage them to come here.’”).

<sup>220</sup> *Id.*

<sup>221</sup> *Id.*

March 2006 for shooting at a Latino man, although he was never criminally charged for that incident.<sup>222</sup>

The National Alliance, a group that Ready had ties to, is a well-known white supremacist hate group.<sup>223</sup> Speaking at a Neo-Nazi rally in 2009, Ready stated that the United States is “a white, European homeland. That’s how it should be preserved if we want to keep it clean, safe, and pure.”<sup>224</sup>

Perhaps the most disturbing fact about J.T. Ready is his extensive, well-documented ties to Arizona State Senator Russell Pearce, the principal author of many of Arizona’s anti-immigrant laws and ballot initiatives throughout the 2000s.<sup>225</sup> Prior to his murder-suicide in 2012, Ready appeared with Pearce at many different rallies and events with the politician and was supported by Pearce in both his personal and professional endeavors:

Ready was a man Pearce mentored for years, supported in a race for the Mesa City Council, groomed for higher political office, and inducted into his faith—the Church of Jesus Christ of Latter-day Saints.

Pearce was well aware of Ready’s nefarious extremist activities when he palled around with him at a 2007 anti-immigrant rally at the state Capitol, where an infamous picture of the pair, arm-in-arm and grinning, was taken.<sup>226</sup>

Think Progress elaborates on the intimate relationship between Pearce and Ready over the years:

Pearce and Ready’s relationship stretches back at least to 2004, when Pearce ordained Ready as an elder in the Church of Jesus Christ of Latter-Day Saints. By 2006, when Ready ran for Mesa City Council—a campaign that sputtered after the public learned that Ready was once court-martialed and kicked-out of the Marine Corps—he received Pearce’s endorsement. Ready also claims that he was with Pearce’s son Josh when Josh Pearce got a tattoo of an iron eagle with a swastika on his neck and chest, but that he also talked Josh out of joining a skinhead group.

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<sup>222</sup> *Id.* (“Ready made headlines in March 2006 when he fired a pistol at a Latino man armed with a BB gun (no criminal charges resulted from the incident).”).

<sup>223</sup> See Love, *supra* note 93.

<sup>224</sup> *Extremist Files: J.T. Ready*, *supra* note 216.

<sup>225</sup> See *supra* Part II.B.

<sup>226</sup> Stephen Lemons, *Russell Pearce Can’t Shake His Ties to Neo-Nazi J.T. Ready*, PHOENIX NEW TIMES (Aug. 23, 2012), <http://www.phoenixnewtimes.com/2012-08-23/news/russell-pearce-can-t-shake-ties-to-neo-nazi-j-t-ready/>.

Pearce later tried to distance himself from Ready, but Ready insisted as recently as last year that Pearce was a seminal figure in his life. In an interview with a local Fox station, Ready called Pearce “a surrogate father” who “enlightened him,” that they spent time together at Pearce’s cabin, and that they were “around each other quite a bit.” In the same local news segment, Pearce admits that he had an association with Ready, but denies that it was as close as Ready suggests.<sup>227</sup>

More information about the exact nature of the relationship between Pearce and Ready, and the influence of Ready’s nativist and extremist views on Pearce, came out following Ready’s death as a result of a lawsuit filed by the ACLU:

[A]s seen in the e-mails released by the ACLU (some dating as far back as 2006), Pearce’s views on race, ethnicity, and immigration dovetailed nicely with those of Ready, who once called for land mines on the U.S. border with Mexico and who spent his last years on this Earth as a vigilante rounding up migrants at gunpoint in the desert.

As revealed [sic] in this electronic [sic] cache, one of Pearce’s favorite writers is nativist extremist Frosty Wooldridge, who likened illegal immigration to the importation of leper colonies in a 2006 column.<sup>228</sup>

Given the close relationship between Pearce and Ready, and Pearce’s prominent role in the rise of anti-immigrant legislation in Arizona, it is difficult to imagine that Ready’s close ties with white supremacist and Neo-Nazi organizations had absolutely no influence on Pearce’s political agenda. More than anything, the fact that Pearce’s open, close relationship with a notorious Neo-Nazi went unquestioned until after Ready’s violent death demonstrates the influence and casual acceptance of racist and xenophobic rhetoric in the immigration debate.

#### V. IMMIGRANTS, THE COLOR LINE, AND THE NEW AMERICANS OF THE 21ST CENTURY

According to a report by the Pew Research Center:

The nation’s population will rise to 438 million in 2050, from 296 million in 2005, and fully 82% of the growth during this period will be due to immigrants arriving from 2005 to 2050 and their descendants. . . Non-Hispanic whites, who made up 67%

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<sup>227</sup> Ian Millhiser, *Reported Neo-Nazi Spree Killer Called SB 1070 Sponsor Russell Pearce His ‘Surrogate Father,’* THINK PROGRESS (May 3, 2012, 9:00 AM), <http://thinkprogress.org/justice/2012/05/03/475840/reported-neo-nazi-spree-killer-called-sb-1070-sponsor-russell-pearce-his-surrogate-father/>.

<sup>228</sup> Lemons, *supra* note 226.

of the population in 2005, will be 47% in 2050. Hispanics will rise from 14% of the population in 2005 to 29% in 2050. Blacks were 13% of the population in 2005 and will be roughly the same proportion in 2050. Asians, who were 5% of the population in 2005, will be 9% in 2050.<sup>229</sup>

The color line in the 21st Century, and our definition of what it means to be an American, has been and will be impacted greatly by the growing immigrant population of the last 100 years. Because the majority of modern immigrants to the United States are non-white, and the birthrate among white Americans is declining, the U.S. Census Bureau also projects that by 2060, close to 20% of the population will be foreign born.<sup>230</sup>

The recent hysteria and inflammatory rhetoric employed against Central American women and children seeking refuge on the United States-Mexico border lays bare the difficult conversation that we, as Americans, need to have about race, racism, and our national identity. In a time when we are confronting the racial dynamics and prejudice in other areas of our society, such as police brutality and racial profiling of African Americans by law enforcement,<sup>231</sup> it is imperative that we also examine our beliefs about what we think Americans look like, sound like, and what really makes someone an “American.”

The New Americans are a diverse people from all over the world, unified by one thing—the opportunity to live free from oppression, in a land that provides the chance to make the best lives possible for ourselves and our children. More than any other group at this moment in time, Central American women and children exemplify what it means to be a New American. They have traveled thousands of miles for the chance to begin a new life in the United States, free from the poverty and violence that has marked their entire existence. They journeyed here full of hope and promise for the future, only to be detained for months in prison-like facilities.

In a country whose next generations will be largely comprised of immigrants and their children, the question we need to ask ourselves is: who are

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<sup>229</sup> Jeffrey S. Passel & D’Vera Cohn, *U.S. Population Projections: 2005-2050*, PEW RESEARCH CENTER (Feb. 11, 2008), <http://www.pewhispanic.org/2008/02/11/us-population-projections-2005-2050/>.

<sup>230</sup> See Michael Zennie, *White U.S. Children Will Be Minorities by 2020 After Immigrant “Baby Boom”*, *Census Reveals*, DAILY MAIL (March 4, 2015, 3:47 PM), <http://www.dailymail.co.uk/news/article-2979739/More-HALF-children-minorities-2020-immigrant-baby-boom.html>.

<sup>231</sup> Following the police-involved deaths of Michael Brown in Ferguson, Missouri, and Eric Garner in New York City, 2014 was an explosive year for confronting the brutality employed against minority populations, particularly African-American men, by law enforcement in the United States. See, e.g., John Lewis, *Michael Brown, Eric Garner, and the ‘Other America,’* ATLANTIC, Dec. 15, 2014, <http://www.theatlantic.com/politics/archive/2014/12/michael-brown-eric-garner-other-america-john-lewis/383750/>.

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we, and to whom do we belong? It is a question as old as America itself, and with the coming demographic shift in our population, the time is now for us to engage in soul-searching about where we have been, and where we want to go as a nation.