

CAUSE NO. CC-03-77

PLAINTIFFS' FOURTH AMENDED PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, Plaintiffs, **FATIMA DEL SOCORRO LEIVA MEDINA** and **EDWIN ALFREDO MANCIA GONZALES**, and file their ***Fourth Amended Petition***, complaining of Defendants, **RANCH RESCUE TEXAS**, an unincorporated association, **JOSEPH SUTTON, BETTY SUTTON, TORRE JOHN FOOTE a/k/a JACK FOOTE, HENRY MARK CONNER, JR. and CASEY JAMES NETHERCOTT**, and for cause of action would show unto the Court as follows:

I. NATURE OF THE ACTION

This is a civil action to recover damages for injuries inflicted upon the plaintiffs by persons associated with Ranch Rescue, a group of vigilantes that operate as an illegal paramilitary unit. Their unlawful actions, motivated by racial animus, intimidate Latino travelers in the border region and put them at risk and in fear of being assaulted, detained, or worse. Joseph and Betty Sutton, landowners in Jim Hogg County, Texas, and Ranch

Rescue, under the leadership of Jack Foote, authorized Ranch Rescue associates to conduct armed paramilitary assaults against Latinos traveling across the Suttons' property. After plaintiffs were found on the Suttons' property, Ranch Rescue associates chased them, surrounded them, pointed weapons at them, unlawfully detained them, physically searched them, assaulted them and robbed them at gunpoint. Joseph Sutton later threatened to kill the plaintiffs. The actions were committed in furtherance of an unlawful conspiracy directed by Foote and Joseph Sutton to frighten, unlawfully detain, and intimidate Latinos found on or near the Suttons' property and were carried out with the encouragement and assistance of both Joseph Sutton and Foote. Plaintiffs seek actual and exemplary damages for the injuries they sustained.

II. PARTIES

Plaintiffs

1. Plaintiff **FATIMA DEL SOCORRO LEIVA MEDINA** ("Leiva") is a Latina woman who at all times relevant was a traveler in Jim Hogg County, Texas.
2. Plaintiff **EDWIN ALFREDO MANCIA GONZALES** ("Mancia") is a Latino man who at all times relevant was a traveler in Jim Hogg County, Texas.

Defendants

3. Defendant **RANCH RESCUE TEXAS** ("Ranch Rescue") is an unincorporated association with its principal place of business in Abilene, Taylor County, Texas. It authorized the tortious and illegal acts or omissions of the associates of Ranch Rescue alleged in this petition. Moreover, it substantially assisted and encouraged the unlawful acts complained of herein, with the specific intent to do so, and conspired with the Suttons, Foote and other Ranch Rescue associates to engage in the illegal and tortious acts complained of herein. It may be served with process by serving its Treasurer, Stephen Mason, at his last known address, 312 Windy Hollow Lane in Kyle, Texas, 78640, or its

Coordinator, John Torre Foote, 17717 Fm 1082, Abilene, Texas 79601-8611, or at 5015 cr 105, Abilene, Texas 79601 at his last known address, pursuant to the provision of Texas Civil Statutes Art. 1396-70.01, Sec. 14.

4. Defendant **JOSEPH SUTTON** (“Joseph Sutton”) is the co-owner of the property where the actions complained of herein occurred. He selected Ranch Rescue and its associates to act as his agents and granted them access to his ranch with knowledge that it would be used as a secure base of operations from which they could conduct their paramilitary activities. He authorized the tortious and illegal acts or omissions of the associates of Ranch Rescue alleged in this petition. Moreover, he substantially assisted and encouraged the unlawful acts complained of herein, with the specific intent to do so, and conspired with Betty Sutton, Foote and other Ranch Rescue associates to engage in the illegal and tortious acts complained of herein. He is a resident of Jim Hogg County, Texas, and may be served with process at Sutton Ranch, South State Highway 16, Hebbronville, Texas.

5. Defendant **BETTY SUTTON** (“Betty Sutton,” and collectively with Joseph Sutton, “the Suttons”) is the co-owner of the property where the actions complained of herein occurred. She selected Ranch Rescue and its associates to act as her agents and granted them access to her ranch with knowledge that it would be used as a secure base of operations from which they could conduct their paramilitary activities. She authorized the tortious and illegal acts or omissions of the associates of Ranch Rescue alleged in this petition. Moreover, she conspired with Joseph Sutton, Foote and other Ranch Rescue associates to engage in the illegal and tortious acts complained of herein. She is a resident of Jim Hogg County, Texas, and may be served with process at Sutton Ranch, South State Highway 16, Hebbronville, Texas.

6. Defendant **TORRE JOHN FOOTE a/k/a JACK FOOTE** (“Foote”) is a founder of and the State Coordinator for Ranch Rescue Texas. He is also the founder of and President and National Spokesman for Border Rescue - Ranch Rescue USA (“Ranch

Rescue USA”), a non-profit corporation organized under the laws of the State of Nevada. He was an officer, agent, and vice-principal of Ranch Rescue Texas and was also an agent of the Suttons and was acting within the course and scope of this agency or as the vice-principal when he committed or authorized the acts or omissions alleged in this complaint. Moreover, he substantially assisted and encouraged the unlawful acts complained of herein, with the specific intent to do so, and conspired with the Suttons and other Ranch Rescue associates to engage in the illegal and tortious acts complained of herein. He is a resident of Taylor County, Texas, and may be served with process at his last known residence 17717 Fm 1082, Abilene, Texas 79601-8611, or at 5015 cr 105, Abilene, Texas 79601.

7. Defendant **HENRY MARK CONNER, JR.** (“Conner”), is, upon information and belief, a member of Ranch Rescue. He was an agent of Ranch Rescue, the Suttons and Foote and was acting within the course and scope of this agency when he committed the acts alleged in this petition. On information and belief, Conner is a nonresident of the state of Texas who does not maintain a regular place of business in this state or a designated agent for service of process. He has purposefully availed himself of the privileges and benefits of conducting business in Texas by committing torts, which are the subject of this suit, and which are set out with specificity herein, in whole or in part in Texas. This defendant is, therefore, subject to the personal jurisdiction of this court, and is deemed to have appointed the Secretary of State of the state of Texas as his agent for service of process, pursuant to the provision of Civil Practice & Remedies Code, §17.044. Duplicate copies of this petition and citation are served on the Secretary of State, and may be forwarded to the defendant at his last known address, 166 Grand Avenue, Lafayette, Louisiana 70503, pursuant to the provision of Civil Practice & Remedies Code, §17.045.

8. Defendant **CASEY JAMES NETHERCOTT** (“Nethercott”) is, upon information and belief, a member of Ranch Rescue. He was an agent of Ranch Rescue, the Suttons and Foote and was acting within the course and scope of this agency when he

committed the acts alleged in this petition. On information and belief, Nethercott is a nonresident of the state of Texas, who does not maintain a regular place of business in this state or a designated agent for service of process. He has purposefully availed himself of the privileges and benefits of conducting business in Texas by committing torts, which are the subject of this suit, and which are set out with specificity herein, in whole or in part in Texas. This defendant is, therefore, subject to the personal jurisdiction of this court, and is deemed to have appointed the Secretary of State of the state of Texas as his agent for service of process, pursuant to the provision of Civil Practice & Remedies Code, §17.044. Duplicate copies of this petition and citation are served on the Secretary of State, and may be forwarded to the defendant at his last known address, 14742 Beach Boulevard, Apartment 187, La Mirada, California, 90638, pursuant to the provision of Civil Practice & Remedies Code, §17.045.

**III.
JURISDICTION, VENUE AND DISCOVERY PLAN**

9. The amount in controversy is within the jurisdictional limits of this court.
10. The conduct made the basis of this suit occurred in Jim Hogg County.
11. Discovery will be conducted under Level III of the Texas Rules of the Civil Procedure. A Pretrial Docket Control Order and Discovery Plan will be submitted after the parties have been served and appear.

**IV.
STATEMENT OF FACTS**

12. Ranch Rescue is a group of vigilantes that operate as an illegal paramilitary unit. It is dedicated to physically detaining, assaulting, and terrorizing Latino travelers in the border region.

13. Ranch Rescue was founded by and is controlled by defendant Jack Foote, who presently holds the titles of State Coordinator for Ranch Rescue Texas and President

and National Spokesman for Ranch Rescue USA.

14. Ranch Rescue has official chapters in at least eight states, including Arizona, California, Colorado, New Mexico, Oklahoma, Texas, Virginia and Washington.

15. Ranch Rescue and its associates recruit and are recruited by landowners in the southern U.S. border region, such as defendants Joseph and Betty Sutton, to set up secure paramilitary base camps, organize paramilitary patrols, provide paramilitary training, carry out paramilitary missions, and launch armed assaults on travelers in the border region. These activities are organized as paramilitary campaigns, and are given operational titles, such as “Operation Falcon” - the paramilitary operation that is the subject of this suit.

16. The Suttons selected Ranch Rescue and its associates to act as their agents and granted them access to their ranch with full knowledge that it would be used as a base camp for “Operation Falcon” - a secure camp from which Ranch Rescue could conduct their unlawful paramilitary activities. The Suttons authorized the Ranch Rescue associates to conduct armed paramilitary assaults against Latinos traveling across their property.

17. Jack Foote was, upon information and belief, the mission coordinator for Operation Falcon. In his capacity as mission coordinator and as leader of Ranch Rescue, Foote authorized the Ranch Rescue associates to conduct armed paramilitary assaults against Latinos traveling across the Suttons’ property.

18. Ranch Rescue associates were well-armed and well-equipped to further their unlawful objectives. Members of the paramilitary units were armed with high-powered assault rifles and handguns and were equipped with night-vision devices, two-way radios, flares, machetes, binoculars, observation posts, all-terrain vehicles, and a trailing dog trained to track humans. Most members of the paramilitary units of Ranch Rescue wore camouflaged uniforms and were required to carry firearms.

THE ATTACK ON PLAINTIFFS

19. On or about March 18, 2003, plaintiffs Leiva and Mancia were chased, surrounded, assaulted, physically detained at gunpoint, terrorized, interrogated, and threatened with death by Joseph Sutton, Foote and other Ranch Rescue associates.

20. While the plaintiffs were traveling on foot across defendants Joseph and Betty Suttons' property, they were accosted by Ranch Rescue associates, who chased them into the brush. Defendant Joseph Sutton fired numerous gunshots, while angrily yelling out obscenities in Spanish at the plaintiffs and threatening to kill them ("te vamos a matar").

21. The Ranch Rescue associates continued to search for the plaintiffs. The plaintiffs were ultimately discovered by defendants Foote, Nethercott and Conner and other Ranch Rescue associates with the help of Nethercott's trained Rottweiler attack dog.

22. Upon discovery, the plaintiffs were forcefully captured and restrained. Defendant Nethercott forced plaintiff Mancia to remain on the ground with his hands behind his head. He then ordered plaintiff Mancia to get up and struck him in the back of his head with a handgun. Defendant Nethercott also allowed his Rottweiler to attack plaintiff Mancia, ripping the hood of his sweatshirt from his head. Plaintiff Leiva was found by another Ranch Rescue associate who initially held her to the ground.

23. The plaintiffs were then grabbed under their arms and forcefully moved to a clearing where they were again ordered to kneel on the ground. They were physically searched, forced to remain in prone positions for a long period of time, interrogated at great length, and accused of being drug smugglers. At one point, a Ranch Rescue associate forcefully jerked the plaintiffs' faces upward to facilitate the taking of their photos. Each of these wrongful actions occurred while plaintiffs were being held at gunpoint. As a result, the plaintiffs were in fear for their lives.

24. The plaintiffs were later forced into a van and driven to the front gate of the property where Joseph Sutton verbally abused them, insulted them, accused them of being

drug smugglers, and threatened them with death in an attempt to terrorize them. He stuck his head into the van, pointed and shook his finger at them in a threatening manner, and told them that if they returned to his property his men were going to kill them. Sutton was yelling so furiously that saliva flew from his mouth and hit plaintiff Leiva in the face.

25. After approximately one and one-half hours of unlawful detention, the plaintiffs were finally released.

26. All of the assailants, with the exception of defendants Nethercott and Sutton, wore camouflaged uniforms. They communicated through two-way radios and were armed with high-powered assault rifles, handguns and knives. At least one Ranch Rescue associate, defendant Conner, aimed a high-powered assault rifle at the plaintiffs throughout the duration of their detention. And at least one other Ranch Rescue associate told the plaintiffs that they were soldiers on guard duty because of the war in Iraq.

27. During the entire ordeal, the plaintiffs feared they would be severely injured or even killed. They were terrified and traumatized, and as a result of the defendants' actions, they suffered physical injuries and severe emotional distress. Both plaintiffs have developed and are currently suffering from Post Traumatic Stress Disorder as a result of the trauma they experienced on the Sutton Ranch.

28. Defendants Nethercott and Conner were charged criminally with aggravated assault and unlawful restraint as a result of this attack. Nethercott was indicted on those charges along with the charge of unlawful possession of a firearm by a felon.

V. CAUSES OF ACTION

Count I: Assault on Leiva and Mancia

29. Plaintiffs Leiva and Mancia state a cause of action against defendants Ranch Rescue, Joseph and Betty Sutton, Foote, Nethercott and Conner under the common law of the State of Texas for assault. The conduct of defendant Nethercott was intentional,

knowing, or reckless, and involved infliction of bodily injury on plaintiff Mancia. The conduct of defendant Joseph Sutton was intentional or knowing and involved threats of imminent bodily injury or death to plaintiffs Leiva and Mancia. The conduct of defendants Sutton, Nethercott and Conner and other unidentified Ranch Rescue associates was intentional or knowing and involved offensive physical contact with plaintiffs Leiva and Mancia.

30. As a result of the assaults, plaintiffs Leiva and Mancia suffered physical injuries and severe emotional distress.

31. The conduct of the defendants and other Ranch Rescue associates was a direct and proximate cause of legal damage to the plaintiffs in an amount in excess of the jurisdictional minimum of this court.

32. Defendants Nethercott and Conner were acting within the course and scope of their duties as agents of defendants Ranch Rescue, Joseph and Betty Sutton, and Foote when they assaulted the plaintiffs.

33. The assaults on the plaintiffs were undertaken in furtherance of, and were direct and foreseeable results of, the conspiratorial agreement among defendants Ranch Rescue, Foote, Joseph and Betty Sutton, Nethercott and Conner to frighten, unlawfully detain and intimidate Latino migrants found on or near the Suttons' property.

34. The actions taken by defendants Nethercott and Conner when they assaulted the plaintiffs were authorized by defendants Ranch Rescue, Joseph and Betty Sutton, and Foote.

35. The actions taken by defendants Nethercott and Conner when they assaulted the plaintiffs were undertaken with the encouragement and substantial assistance of defendants Ranch Rescue, Joseph Sutton and Foote.

36. The actions of defendants Sutton, Nethercott and Conner constitute aggravated assaults in violation of section 22.02 of the Texas Penal Code because they used or exhibited deadly weapons - firearms - during the commission of the assaults.

Count II:
False Imprisonment of Leiva and Mancia

37. Plaintiffs Leiva and Mancia state a cause of action against defendants Ranch Rescue, Joseph and Betty Sutton, Foote, Nethercott and Conner under the common law of the State of Texas for false imprisonment. Joseph Sutton, Foote, Nethercott and Conner and other Ranch Rescue associates willfully and intentionally confined the plaintiffs to an area fixed by defendants and other Ranch Rescue associates without plaintiffs' consent and without legal authority or justification.

38. Plaintiffs were conscious of their confinement and were placed in fear for their lives.

39. As a result of being detained by defendants and other Ranch Rescue associates, plaintiffs were unlawfully deprived of their personal liberty. They suffered physical injuries and severe emotional distress related to their unlawful detention.

40. The defendants recklessly exposed the plaintiffs to a substantial risk of serious bodily injury.

41. The conduct of the defendants and other Ranch Rescue associates was a direct and proximate cause of legal damage to the plaintiffs in an amount in excess of the jurisdictional minimum of this court.

42. Defendants Foote, Nethercott and Conner and other Ranch Rescue associates were acting within the course and scope of their duties as agents of defendants Ranch Rescue, Joseph and Betty Sutton, and Foote when they detained the plaintiffs.

43. The detentions of the plaintiffs were undertaken in furtherance of, and were direct and foreseeable results of, the conspiratorial agreement among defendants Ranch

Rescue, Foote, Joseph and Betty Sutton, Nethercott and Conner to frighten, unlawfully detain and intimidate Latinos found on or near the Suttons' property.

44. The actions taken by defendants Foote, Nethercott, and Conner and other Ranch Rescue associates when they detained the plaintiffs were authorized by defendants Ranch Rescue, Joseph and Betty Sutton, and Foote.

45. The actions taken by defendants Foote, Nethercott, and Conner and other Ranch Rescue associates when they detained the plaintiffs were undertaken with the encouragement and substantial assistance of defendants Ranch Rescue, Joseph Sutton, and Foote.

Count III:
Intentional Infliction of Emotional Distress upon Leiva and Mancia

46. Plaintiffs Leiva and Mancia state a cause of action against defendants Ranch Rescue, Joseph and Betty Sutton, Foote, Nethercott and Conner under the common law of the State of Texas for intentional infliction of emotional distress.

47. The acts of defendants Foote, Joseph Sutton, Nethercott and Conner and other Ranch Rescue associates against plaintiffs Leiva and Mancia, including surrounding them, unlawfully detaining them, pointing weapons at them, threatening to kill them, and committing assault and battery against them were reckless, intentional, and extreme and outrageous acts.

48. It is utterly atrocious and unacceptable in a civilized society for armed vigilantes to conduct themselves in such a terrorizing manner.

49. As a result of these intentional, extreme and outrageous acts, plaintiffs Leiva and Mancia have suffered severe emotional distress.

50. The conduct of the defendants and other Ranch Rescue associates was a direct and proximate cause of legal damage to the plaintiffs in an amount in excess of the

jurisdictional minimum of this court.

51. Defendants Foote, Nethercott, and Conner and other Ranch Rescue associates were acting within the course and scope of their duties as agents of defendants Ranch Rescue, Joseph and Betty Sutton, and Foote when they committed these intentional, extreme and outrageous acts against the plaintiffs.

52. These intentional, extreme and outrageous acts committed against the plaintiffs were undertaken in furtherance of, and were direct and foreseeable results of, the conspiratorial agreement among defendants Ranch Rescue, Joseph and Betty Sutton, Foote, Nethercott and Conner to frighten, unlawfully detain and intimidate Latinos found on or near the Suttons' property.

53. The actions taken by defendants Foote, Nethercott, and Conner and other Ranch Rescue associates when they committed these intentional, extreme and outrageous acts against the plaintiffs were authorized by defendants Ranch Rescue, Joseph and Betty Sutton, and Foote.

54. The actions taken by defendants Foote, Nethercott, and Conner and other Ranch Rescue associates when they committed these intentional, extreme and outrageous acts against the plaintiffs were undertaken with the encouragement and substantial assistance of defendants Ranch Rescue, Joseph Sutton, and Foote.

Count IV: Negligence and Gross Negligence Claims of Leiva and Mancia

55. Plaintiffs Leiva and Mancia state a cause of action against defendants Ranch Rescue, Joseph and Betty Sutton, and Foote under the common law of the State of Texas for negligence and gross negligence.

56. These defendants owed a duty of care to these plaintiffs, yet they failed to use reasonable and ordinary care and were negligent in:

- (a) failing to use appropriate care in screening and selecting the Ranch

Rescue associates;

- (b) failing to properly control the Ranch Rescue associates;
- (c) failing to properly train and supervise the actions of the Ranch Rescue associates; and
- (d) failing to take appropriate measures to ensure that people found on defendant Sutton's property were not harmed by the Ranch Rescue associates.

57. Defendants' conduct, when viewed objectively from the standpoint of the defendants at the time of the occurrence, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. Defendants, moreover, had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety or welfare of the plaintiffs.

58. These negligent acts committed against the plaintiffs were undertaken in furtherance of, and were direct and foreseeable results of, the conspiratorial agreement among defendants Ranch Rescue, Joseph and Betty Sutton, Foote, Nethercott and Conner to frighten, unlawfully detain and intimidate Latinos found on or near the Suttons' property.

59. As a result of the negligent conduct of these defendants and other Ranch Rescue associates, plaintiffs Leiva and Mancia suffered physical injuries and severe emotional distress.

60. The negligent conduct of these defendants and other Ranch Rescue associates was a direct and proximate cause of legal damage to the plaintiffs in an amount in excess of the jurisdictional minimum of this court.

61. The actions of these defendants and other Ranch Rescue associates constituted deliberate, willful, or wanton conduct.

V
REMEDIES AND DAMAGES

62. Plaintiffs sue to recover their actual damages, which have accrued, and will accrue in amounts in excess of the jurisdictional minimum of this court.

63. Defendants have acted with malice as that term is defined in Chapter 41 Civil Practice & Remedies Code. Plaintiffs sue to recover an award of exemplary damages from each defendant in an amount to be determined by the jury.

VI
JOINT AND SEVERAL LIABILITY

64. Defendants are jointly and severally liable.

VII
REQUEST FOR DISCLOSURE

65. Plaintiffs request each Defendant to disclose those matters specified in Rule 194.2, Texas Rules of Civil Procedure.

VIII
JURY DEMAND

66. Plaintiffs demand a trial by jury. Their jury fee is tendered with the filing and service fees of this action.

IX
PRAYER

67. Plaintiffs pray that Defendants be cited to appear and answer herein, in the terms of the law; and that upon final hearing Plaintiffs have judgment of and from Defendants, jointly and severally for their damages, statutory, and equitable remedies, as herein alleged, for pre-judgment and post-judgment interest as provided by law; and for such other and further relief as the court may deem proper.

Respectfully submitted,

Kelley M. Bruner, *pro hac vice*
Morris Dees, *pro hac vice*
Southern Poverty law Center
400 Washington Avenue
P.O. Box 2087
Montgomery, AL 36104
Telephone: 334-956-8200
Facsimile: 334-956-8481

Ricardo de Anda, SBOT No. 05689500
De Anda Law Firm
212 Flores Ave.
Laredo, Texas 78040
State Bar No. 05689500
Telephone: 956-726-0038
Telecopier: 956-726-0030

Joseph P. Berra, SBOT No. 24027144
Mexican American Legal Defense and
Educational Fund
140 East Houston Street, Suite 300
San Antonio, Texas 78205
Telephone: 210-224-5476
Telecopier: 210-224-5382

John Judge, SBOT No. 11044500
Judge, Kostura & Putnam, P.C.
2901 Bee Cave Road
Heritage Square, Box L
Austin, Texas 78746
Telephone: 512/328-9099
Telecopier: 512/328-4132

Henry Garza
Enrique A. Garza Law Firm
P.O. Box 951
506 South Smith Street, Suite C
Hebronville, Texas 78361
Telephone: 361/527-5778
Facsimile: 361/527-5777

By: _____
KELLEY M. BRUNER
COUNSEL FOR PLAINTIFFS

CERTIFICATE OF SERVICE

By my signature below, I hereby certify that a true and correct copy of the foregoing document has been served on all parties of record on this the ____ day of March, 2004, as follows:

Marvin Rader
Marvin Rader & Associates
622 West Main Street
League City, Texas 77573-3729
(281) 332-8885
(Counsel for Sutton)

Via Facsimile & U.S. First Class Mail

Donato D. Ramos
Law Offices of Donato D. Ramos
P. O. Box 452009
Laredo, Texas 78045
(956) 722-9909
(Counsel for Sutton)

Via Facsimile & U.S. First Class Mail

Homero C. Canales
Law Offices of Homero C. Canales
208 N. Cameron Street
Alice, Texas 78332-4835
(361) 664-0716
(Counsel for Conner)

Via Facsimile & U.S. First Class Mail

Joseph L. Jacobson
1108 Nueces Street
Austin, Texas 78701
(512) 478-2044
(Counsel for Nethercott)

Via Facsimile & U.S. First Class Mail

Ranch Rescue Texas
Steve Mason, Treasurer
P.O. Box 4334
Austin, Texas 78765

*Via Certified Mail, Return Receipt
Requested*

Torre John Foote
P. O. Box 2684
Douglas, Arizona 85608

*Via Certified Mail, Return Receipt
Requested*

Kelley M. Bruner