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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

ANA MARIA VICENTE, et al.)	
)	
Plaintiffs,)	Case No. 05-CV-00157-JMR
)	
v.)	Defendants' Statement of Facts
)	Deemed Undisputed.
ROGER BARNETT, et al.)	
)	
<u>Defendants.</u>)	

Defendants deem the following facts undisputed:

1. Defendant Roger Barnett owns a ranch in Cochise County, which is frequently crossed by illegal entrants and drugrunners. Declaration of Roger Barnett, ¶ 1.

2. On March 7, 2004, he and his wife Barbara, a codefendant, were checking the ranch for damage, when his dog ran off into the desert, barking. Roger followed, and came upon a large group of people, apparently trying to hide. Declaration of Roger Barnett, ¶ 2; Deposition of Barbara Barnett, 37.

3. He called Border Patrol on his cell phone. *Id.* Border Patrol responded, and took them into custody and removed them. Declaration of Roger Barnett, ¶ 4.

4. All Plaintiffs admitted that they were in the U.S. illegally. Deposition of Agent Deric Wesley, pp. 47-48. Some had “hits” for having been caught during previous attempts at illegal entry. Deposition of Agent Manuel Rodriguez, p. 34. Some plaintiffs have since re-entered the U.S. Deposition of Adela Vicente, 24-25; Deposition of Ana Maria Vicente, 39.

5. Roger Barnett was not concerned that the group might cross State lines. His concern was that they were acting illegally. Declaration of Roger Barnett, ¶ 3.

6. Roger is not a State employee, nor did he purport to be one. *Id.*, ¶ 5.

7. The involvement of Defendant Barbara Barnett consisted of coming to the scene after Roger radioed her. *Id.*, ¶ 6; Deposition of Barbara Barnett, 31-32, 35. Deposition of Nancy Vicente, 14-15; Deposition of Adela Vicente 27-28. Defendant Donald Barnett (brother of Roger Barnett) was not even present that day. Declaration of Roger Barnett, ¶ 6; Deposition of Donald Barnett, 40.

8. The events of that day were not the result of any conspiracy. Declaration of Roger Barnett, ¶ 6. It was a happenstance resulting from the Barnett’s dog smelling humans and running off. Deposition of Barbara Barnett, 36.

Respectfully submitted this 24th day of April, 2007

s/ David T. Hardy
Attorney for Defendants

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Declaration of Roger Barnett

1. I am Roger Barnett, a defendant in this matter. I own a ranch in Cochise County, Arizona. The ranch is frequently crossed by illegal entrants and drug smugglers.

2. On March 7, 2004, I was with my wife Barbara checking my property for damage, when my dog ran off into the desert, barking. I followed him, and came upon a large group of people, apparently trying to hide. Since drug smugglers are frequently armed, I drew my handgun. I holstered it after assuring myself that they were not armed. I then called Border Patrol on my cell phone, and my wife Barbara on my radio, and waited until Border Patrol arrived and took them into custody. I did not threaten, kick, or insult anyone. The only physical contact I had with any was that, after discovering a woman lying on her side with eyes closed, apparently asleep or comatose, I tapped the bottom of her foot with my toe until she opened her eyes and responded.

3. I was not concerned that the group might subsequently cross State lines. My concern was that they were acting illegally at this location in the desert, and law enforcement should deal with them. I had no idea whether their destination was Phoenix or Tucson or Chicago or any other place.

4. Border Patrol responded within a few minutes and took them into custody.

5. I am not now, and was not then, employed by any State. I did not claim to anyone that I was acting on behalf of a government. I was a citizen reporting an apparent crime to proper authorities.

6. My wife and codefendant Barbara's total involvement was to come to the scene after I radioed her. My brother and codefendant Donald had no involvement at all and was not present. None of us have "conspired" for any illegal purpose. We do try to spot drug smuggling and illegal entry, and to report these offenses to the authorities.

I declare under penalty of perjury that the above is true and correct.



Roger E. Barnett

4-18-07
Date

Court Reporting Service

[P. 47]

21 Q Okay. Now it states here, there's some
22 explanation of how you -- it says here, "The subjects
23 stated that they were Mexican citizens who weren't in
24 possession of immigration documents allowing them to
25 enter, pass through, work, or reside in the United

[P. 48]

1 States." I assume that they didn't just state that to
2 you, that was in response to your procedural -- the
3 questions that you do, correct?

4 A Yes, that was in response to my questions.

[P. 34]

4 BY MR. HARDY:

5 Q Let's see. When you do processing, you check
6 for hits on the people in the terms of records?

7 A Yes, sir.

8 Q Would that show prior attempts at illegal entry?

9 A Yes, sir.

10 Q Do you recall whether any of this group had hits
11 for that?

12 A Some, some did previous, sure.

[P. 24]

4 Q All right. Your husband said -- he said before
5 that, you know, he's been kind of frustrated with the
6 Government because they're not doing what they can be
7 doing out there to stop all these illegals from coming
8 into the country. Do you believe that, as well?

9 A Absolutely.

10 Q All right. And he said before that, you know,
11 he doesn't think all these illegals should be coming into
12 the country, going to all parts of the -- you know,
13 Phoenix, and safehouses all over the place, and that he
14 doesn't think that's right, and that they should be
15 stopped.

16 Do you believe that, as well?

17 A Yes.

18 Q Okay. A lot of these illegals that you all
19 encounter, they're Spanish-speaking? Are they
20 Spanish-speaking, a lot of these illegals?

21 A Most of them, yes.

22 Q And do you know where they're coming from, are

23 they coming from Mexico, El Salvador?

24 A All places.

25 Q All right. But they all appear to be Latino or

25

1 Hispanic, Spanish-speaking countries?

2 A The majority.

.....

9 Do you believe that it's a threat when all these
10 people are coming in without being screened, and they're
11 coming in illegally in droves, that that's a threat to
12 the white race in the United States?

13 A Not just to the white race, to any race.

14 Q Okay. But do you -- what do you mean by that?

15 A It's just as much a threat to the Hispanics as
16 it is to us.

17 Q Okay.

18 A And to the black people.

19 Q Okay. So you don't see it as a multi-cultural
20 threat? Why specifically is it a threat?

21 A I think they're taking our jobs, and they're
22 here illegally. Why doesn't it bother you that they're
23 here illegally?

[P. 31]

17 Q So your recollection is maybe five or ten
18 minutes. How did you hear from him again then?

19 A On the radio.

20 Q Okay. So he took the two-way with him?

21 A Yes.

22 Q All right. He called you?

23 A On the radio.

24 Q All right. What's he say on the radio?

25 A He says, "There's a group of people down here,

32

1 and I'm going to call the Border Patrol."

2 Q Okay.

3 A And --

4 Q What did you do?

5 A He told me how to get there.

.....

[P. 35]

14 Q All right. When you see -- when you got there,
15 who was there when you got there?

16 A Just my husband.

17 Q Okay. So just Mr. Barnett was there?

18 A Yes.

19 Q And then what happened?

20 A He had already called the Border Patrol. And
21 they got there -- it seemed like they got there within a
22 few minutes, too, because they were in the area.

23 Q Okay. And how do you know they were in the
24 area?

25 A They told us that.

36

1 Q When they arrived?

2 A Yes.

[P. 37]

1 Q All right. Were you excited when you saw them,
2 that you all had found them?

3 A No.

4 Q Not at all? You had no reaction?

5 A We weren't looking for them.

6 Q Okay. So you're saying that you weren't looking
7 for those immigrants?

8 A No.

9 Q All right.

10 A If the dog hadn't gotten out and started
11 barking, we would have never even known they were there.

[P. 46]

3 Q Well, when some of the immigrants want to
4 communicate to you that they are hungry, how is it done?

5 A You'd be surprised how they'll go like this
6 (indicating), or they'll -- I do know the name for water
7 is "agua." They'll ask for water. We always carry water
8 with us for them.

[P. 20]

3 Q All right. Your brother -- he says that, you
4 know, he's kind of fed up with all the illegals coming to
5 the United States. Do you believe that, as well?

6 A Yes, I do.

7 Q Okay. And you don't think they should be
8 crossing, and coming and working in all different parts
9 of the country?

10 A I believe if they could do it legally, it would
11 be okay. But when they do it illegally, it's not right.

12 Q So you have a problem with them going and
13 crossing illegally, and coming and working in all these
14 different states here?

15 A I have a problem when they cross, and they tear
16 up the fences, and break the water lines, and leave the
17 trash, and steal everything they can on the ranch. I
18 have a real problem with that.

19 Q And do you have a problem with them coming over
20 here illegally and working in other parts of the country
21 without permission?

22 A Yes. I believe that if they would do it
23 legally, it would be okay.

24 Q Okay. Your brother, I've seen him before on
25 video, he gets a little angry when they come over. Do

21

1 you get a little angry, too, when they come over?

2 A Well, if you could be on the ranch and see the
3 filth, and the dirty diapers, and the feces, and where
4 they've trashed it. When my brother first got the ranch,
5 there wasn't a piece of trash on the ranch.

[P. 40]

6 Q All right. When we talk about March 7th, 2004,
7 and it's kind of what's been central as a part of this
8 lawsuit, can you tell me where you were that day on March
9 7th, 2004?

10 A Is that the day that this lawsuit is about?

11 Q Yes, part of it. The central part of this
12 lawsuit revolves around that day.

13 A I don't have a clue.

14 Q Okay. So do you remember Roger calling you and

15 saying I caught a huge amount of illegals today, and, you
16 know, there have been some allegations now, do you
17 remember anything about that?

18 A No.

19 Q All right. Do you recall being out there that
20 day at all?

21 A I wasn't there.

22 Q Okay. At all, at any time of the day, in the
23 morning, after it happened?

24 A No.

1 IN THE UNITED STATES DISTRICT COURT
2 DISTRICT OF ARIZONA

3
4 ANA MARIA VICENTE; GERARDO GONZALEZ;
SAMUEL JORDAN; SANDRA VELAZQUEZ;
5 MATEO JORDAN; ADELA VICENTE; NANCY
VICENTE, through her next friend,
6 ANA MARIA VICENTE; FRANCISCO VILCHES;
ABEL CRUZ; MANUEL MARTINEZ; JORGE
7 PEREZ; RIGOBERTO PEREZ; RODOLFO TORREZ;
OCTAVIO PEREZ; JUAN VICENTE; and SARA
8 VASQUEZ,

 Plaintiff,

9

 vs. Case No.: 05-CV-00157-JMR

10

 ROGER BARNETT; BARBARA BARNETT;
11 DONALD BARNETT; DOES 1-8,
 Defendants.

12

~~~~~  
13                   VIDEOTAPED DEPOSITION OF  
14  
15                   NANCY LUCERO VICENTE CAMILO

**[P. 4]**

0004

1       Q.   And why did you decide to come here?

2       A.   I wanted to go on with my studies.

3       Q.   Where were you attending school before

4 you tried to come here?

5       A.   I was attending high school.

6 Q. In Michoacan?

7 A. Yes.

8 Q. And you wanted to come to high school in  
9 the United States?

10 A. Yes.

11 MS. PEREZ: If you could instruct her  
12 to speak loudly and clearly, please.

13 Q. (By Mr. Hardy) Did you have any idea  
14 of which high school you wanted to attend?

15 A. You mean here?

16 Q. Yes.

17 A. No.

18 Q. Did you know which state you wanted to  
19 go to high school in?

20 A. No.

21 Q. So your plan was to come to the United  
22 States and find a high school somewhere?

23 A. Yes.

24 Q. Was that the first time you tried to  
25 come to the United States?

**0005**

1 A. Yes.

2 MR. HARDY: And I take it that --  
3 speaking to Marisol -- I take it you would object  
4 here as with the other to any questions about how  
5 did she come to originally be organized on the trip,  
6 come up to the border, that sort of thing?

7 MS. PEREZ: The manner and method of  
8 entry that led to her actually getting to the United  
9 States we would object to that.

10 MR. HARDY: Okay.

11 MS. PEREZ: As a 5th Amendment  
12 privilege.

[P. 10]

12 Q. And you had no plans of where to go or  
13 where you were heading for inside the United States;  
14 is that correct?

15 A. Yes, sir.

[P. 14]

21 Q. At some point did a woman come up?

22 A. Yes.

23 Q. Was she driving some sort of a vehicle?

24 A. I do remember hearing the sound of an  
25 engine, but I don't know if it was a dune buggy or a

0015

1 motorcycle.

2 Q. What do you remember about the woman?

3 A. The gentleman was talking to her on the  
4 radio. She arrived with a radio in her hand. She  
5 looked at us and began laughing.

6 Q. Do you remember anything else other than  
7 her laughing with him?

8 A. No. That's it.

9 Q. Did border patrol then arrive?

10 A. Yes.

1           IN THE UNITED STATES DISTRICT COURT  
2           DISTRICT OF ARIZONA

3  
4 ANA MARIA VICENTE; GERARDO GONZALEZ;  
SAMUEL JORDAN; SANDRA VELAZQUEZ;  
5 MATEO JORDAN; ADELA VICENTE; NANCY  
VICENTE, through her next friend,  
6 ANA MARIA VICENTE; FRANCISCO VILCHES;  
ABEL CRUZ; MANUEL MARTINEZ; JORGE  
7 PEREZ; RIGOBERTO PEREZ; RODOLFO TORREZ;  
OCTAVIO PEREZ; JUAN VICENTE; and SARA  
8 VASQUEZ,  
          Plaintiff,

9  
          vs.                                   Case No.: 05-CV-00157-JMR

10  
          ROGER BARNETT; BARBARA BARNETT;  
11 DONALD BARNETT; DOES 1-8,  
          Defendants.

12 ~~~~~  
13           VIDEOTAPED DEPOSITION OF  
14  
15           ADELA VICENTE CAMILO

**[P. 24]**

25           MR. HARDY: Marisol, I take it you

**0025**

1 would object if I asked her about her current status  
2 and how she came to be back in the United States?

3           MS. PEREZ: I would object to specific  
4 questions you ask regarding her manner of entry into  
5 the United States and what her current legal status

6 is currently, yes.

7 MR. HARDY: Okay. Maybe I can --

8 Q. (By Mr. Hardy) Do you -- Well, let's  
9 say at a later date did you decide to come back to  
10 the United States?

11 A. Yes.

12 Q. Approximately when was that?

13 A. I don't remember exactly.

14 Q. Within, was it within the last year or  
15 farther before that?

16 A. Before the last year.

1           IN THE UNITED STATES DISTRICT COURT  
2                   DISTRICT OF ARIZONA  
3  
4 ANA MARIA VICENTE; GERARDO GONZALEZ;  
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          ROGER BARNETT; BARBARA BARNETT;  
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          Defendants.

12 ~~~~~  
13           VIDEOTAPED DEPOSITION OF  
14  
15           ANA MARIA VICENTE

**[P. 11]**

20       Q.   How many people were there in your  
21 group?

22       A.   There were a few. I cannot say  
23 specifically how many.

24       Q.   Do you think there were more than ten?

25       A.   Maybe, yes. All I can say is that my

**0012**

1 brothers were among the people that I remember.

2 Q. How long had you been traveling as a  
3 group?

4 A. A few hours.

5 Q. So the group only formed up a few hours  
6 before this incident?

7 A. I don't remember.

8 Q. Where did the group form up?

9 A. I don't know. I don't know the place.

**[P. 27]**

14 Q. When the border patrolman arrived, what  
15 happened then?

16 A. He began talking with this person and  
17 they were laughing and kept on talking for a while.

18 Q. So Mr. Barnett and the border patrolman  
19 laughed while they talked?

20 A. Yes, sir.

**[P. 28]**

19 Q. Do you remember a woman driving up in a

20 truck?

21 A. Yes, I do remember the person. I heard  
22 a noise, but I don't know if she came on a truck or  
23 on a motorcycle.

24 Q. Was this before or after the border  
25 patrolman arrived?

**0029**

1 A. I don't remember.

2 Q. Do you remember anything about what she  
3 did or said?

4 A. She just began laughing also.

5 Q. Where was she looking when she was  
6 laughing?

7 A. The whole group.

8 Q. Do you know what she was laughing about?

9 A. No. I imagine she was laughing at us.

**[P. 39]**

7 Q. You're in the United States right now;  
8 is that correct?

9 A. Yes. But this is just now recent.

10 Q. Well, when did your present visit begin?

11 A. I don't remember.

12 Q. So you don't remember how long you've

13 been in the United States this time?

14 A. No, sir.

CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2007, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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Respectfully submitted this 24<sup>th</sup> day of April, 2007

s/David T. Hardy