

CAUSE NO. CC-03-77

| | | |
|---------------------------------------|---|---|
| FATIMA DEL SOCORRO LEIVA | § | |
| MEDINA and EDWIN ALFREDO | | § |
| MANCIA GONZALES, | § | IN THE DISTRICT COURT |
| | § | |
| Plaintiffs, | § | |
| | § | |
| V. | § | |
| | § | 229th JUDICIAL DISTRICT |
| 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, | § | JIM HOGG COUNTY, TEXAS |
| | § | |
| Defendants. | § | |

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

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

committed the acts alleged in this petition. On information and belief, Nethercott is a nonresident of the state.

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

THE ATTACK ON PLAINTIFFS

19. On or about March 18, 2003, plaintiffs Leiva and Mancía 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 Mancía to remain on the ground with his hands behind his head. He then ordered plaintiff Mancía to get up and struck him in the back of his head with a handgun. Defendant Nethercott also allowed his Rottweiler to attack plaintiff Mancía, 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 Mancía

29. Plaintiffs Leiva and Mancía 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 Mancía

37. Plaintiffs Leiva and Mancía state a cause of action against

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 Mancía**

46. Plaintiffs Leiva and Mancía 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 Mancía, 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

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 Mancía**

55. Plaintiffs Leiva and Mancía 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

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

CERTIFICATE OF SERVICE

By my signature below, I hereby certify that a true