

# FARM LABOR VEHICLE SAFETY IN CALIFORNIA

## I. INTRODUCTION

The Central Valley is a national hub of agricultural activity.<sup>1</sup> The highways are traveled daily by thousands of farm laborers commuting to and from the fields.<sup>2</sup> Sadly, over the past ten years, hundreds of farm workers have died on the highways in accidents which could easily have been prevented by changes in current farm labor vehicle regulations, safety training and restrictions on farm labor contractors.

This Comment will first examine the history behind farm worker transportation and the current regulations which govern it. Secondly, this discussion will reveal that the regulations, as currently written, cannot prevent many of the accidents. This is due to the difficulty of identifying the persons committing violations, the ineffective nature of the penalties for violating the statutes and, most shockingly, the nature of the relationship between farm labor contractors and the farm workers. Discussion will also include the framework for a cause of action against the farm labor contractors based upon a theory of extortion and racketeering under the federal Racketeer Influenced and Corrupt Organizations Act (“RICO”). Finally, this Comment will provide several alternative methods for preventing the high rate of fatalities involving farm laborers on the Central Valley Highways.

## II. HISTORICAL BACKGROUND

With crops growing throughout the Central Valley, the demand for seasonal or migrant farm laborers is among the greatest in the nation.<sup>3</sup> These laborers are often immigrants and unable to provide their own transportation to and from the fields where they work.<sup>4</sup> Public transportation systems are virtually non-existent in the Central Valley, yet the

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<sup>1</sup> Telephone Interview with Robert Garcia, Sergeant, CHP SAFE unit in Fresno, Cal. (Aug. 22, 2006).

<sup>2</sup> *See id.*

<sup>3</sup> *See id.* at 1.

<sup>4</sup> *Id.*

need for reliable transportation is significant.<sup>5</sup> The commute to and from a laborer's workplace is increasing due to the encroachment of residential property onto areas which were originally zoned for agricultural use.<sup>6</sup> It is estimated that ninety percent of the transportation provided to these laborers is offered by the employer or the farm labor contractor by way of farm labor vehicles.<sup>7</sup> A farm labor vehicle is defined by California's Vehicle Code as any vehicle capable of carrying more than nine laborers in addition to the driver to or from a place of employment.<sup>8</sup> These vehicles have historically been referred to by farm laborers as "ticking time bombs."<sup>9</sup>

The California Highway Patrol ("CHP") indicates that there are between 1,700 and 3,000 farm labor vehicles operating in the state.<sup>10</sup> Farm labor vehicles are more prevalent during the summer months due to the grape harvest which brings additional farm laborers from other states to the Central Valley.<sup>11</sup> Conditions on overcrowded vehicles often force passengers to stand during the commute and ride alongside sharp, unsecured harvesting tools.<sup>12</sup> One farm laborer reported that alcohol was being sold and consumed by the passengers and drivers alike during the commutes.<sup>13</sup> Such issues began gaining widespread attention in August of 1999, when thirteen farm laborers were killed in Fresno County after the farm labor vehicle they were riding in collided with a tractor-trailer attempting to make a U-turn.<sup>14</sup> The vehicle had previously been registered with the California Department of Motor Vehicles as a farm labor vehicle, but remained unregistered, and presumably, uninspected and uninsured since 1997.<sup>15</sup> By removing the factory installed seats and replacing them with wooden benches that run along the inside of the van, it

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<sup>5</sup> CAL. DEP'T OF TRANSP., AGRICULTURAL INDUSTRIES TRANSPORTATION SERVICES (AITS) STATEWIDE NEEDS ASSESSMENT STUDY (2003) at xiv.

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

<sup>7</sup> *Id.* at 37.

<sup>8</sup> CAL. VEH. CODE § 322 (Deering, LEXIS through 2006 Ch. 62).

<sup>9</sup> See Manny Fernandez, Lynda Gledhill & Jonathan Curiel, *Farm Laborers Call Van Ticking Time Bomb*, S.F. CHRON. (Aug. 11, 1999), available at <http://www.sfgate.com/cgi-bin/article.cgi?file=/c/a/1999/08/11/MN6350>.

<sup>10</sup> CAL. ASSEMB., ASSEMBLY BILL 602 BILL ANALYSIS, 1999-2000 Leg. Session, at 3 (Cal. 2000), [http://www.leginfo.ca.gov/pub/99-00/bill/asm/ab\\_0601-0650/ab\\_602\\_cfa\\_20000829\\_113712](http://www.leginfo.ca.gov/pub/99-00/bill/asm/ab_0601-0650/ab_602_cfa_20000829_113712).

<sup>11</sup> Garcia, *supra* note 1.

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

<sup>13</sup> Fernandez et al., *supra* note 9.

<sup>14</sup> Manny Fernandez, *Deadly Crash in Valley*, S.F. CHRON. (Aug. 10, 1999), available at <http://www.sfgate.com/cgi-bin/article.cgi?file=/c/a/1999/08/10/MN54666>.

<sup>15</sup> See *id.*

was able to carry fifteen passengers.<sup>16</sup> At the time of that accident, passenger seatbelts were not required for farm labor vehicles.<sup>17</sup>

The Fresno County accident caught the attention of the California Legislature which vowed to focus more attention on the issue of farm labor vehicle safety.<sup>18</sup> Assemblyman Dean Florez commented, “[w]hen you saw the pictures, it looked like it shouldn’t be that bad of an accident ... then you heard thirteen people died. I think it pointed out that we finally have to pay attention to van safety.”<sup>19</sup> Assemblywoman Sarah Reyes similarly voiced her concern, “[o]ne of the things that concerns me is not only the seat belts but also the inspection and registration of these vehicles.”<sup>20</sup>

By the end of 1999, the death toll of Central California farm laborers reported by law enforcement and the media was staggering. One report claimed one hundred fatalities involving farm labor vehicles had occurred in the past ten years in the Central Valley alone.<sup>21</sup> This number included an accident in December 1995 which claimed the lives of five people, including three children who were riding with their father to the fields.<sup>22</sup> An accident in November 1997 killed eleven people, including a one-year-old baby traveling with his mother.<sup>23</sup> Six other farm workers were killed in the four months preceding the eye-opening August 1999 crash.<sup>24</sup> Four people died in a crash in Coalinga in April of 1999 and two separate accidents in May, claimed two more lives.<sup>25</sup> According to the CHP, there were 264 accidents involving farm labor vehicles between January of 1994 and March of 2000.<sup>26</sup> Sixteen of these accidents resulted in fatalities.<sup>27</sup>

The surprising number of fatalities raised questions as to *why* the workers choose to ride in farm labor vehicles, rather than save money to buy their own transportation or carpool. The workers’ own accounts

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<sup>16</sup> *See id.*

<sup>17</sup> *Id.*

<sup>18</sup> Lynda Gledhill, *New Look at Farm Van Safety*, S.F. CHRON. (Aug. 19, 1999), available at <http://www.sfgate.com/cgi-bin/article.cgi?file=/c/a/1999/08/19/MN102393>.

<sup>19</sup> *Id.*

<sup>20</sup> EDITORIAL, *Safety for Farm Vehicles*, S.F. CHRON. (Aug. 12, 1999), available at <http://www.sfgate.com/cgi-bin/article.cgi?file=/e/a/1999/08/12/EDITORIAL505>.

<sup>21</sup> Fernandez et al., *supra* note 9.

<sup>22</sup> Fernandez, *supra* note 14.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *See id.*

<sup>26</sup> *California Transportation*, RURAL MIGRATION NEWS (Cal.), [http://migration.ucdavis.edu/rmn/comments.php?id=576\\_0\\_3\\_0](http://migration.ucdavis.edu/rmn/comments.php?id=576_0_3_0). (last visited July 25, 2006).

<sup>27</sup> *Id.*

suggest they knew the danger of these vehicles.<sup>28</sup> United Farm Workers spokesman Mark Grossman stated “[t]his is where abuse and exploitation are the rule not the exception.” Grossman explained that many times employers would require laborers to ride in a particular van to and from work even if the laborer had alternate means of transportation.<sup>29</sup> Such requirements would become a condition of employment and the laborers had to pay the drivers of these vans up to twenty-five dollars per day for transportation to and from the fields in which they work.<sup>30</sup>

The effectiveness of the federal Migrant and Seasonal Agricultural Worker Protection Act of 1996 (“MSPA”) was another concern, a concern which has continued to this day, as the regulations have remained the same.<sup>31</sup> Under these federal regulations, any vehicle which is used or caused to be used to transport agricultural workers must be properly insured, operated by a properly licensed driver and meet federal and state safety standards.<sup>32</sup> However, the farm labor vehicles which are of the greatest concern are exempt from the federal regulations.<sup>33</sup> The MSPA specifically exempts situations in which only immediate family is transported in the vehicle.<sup>34</sup> Additional exemptions include voluntary carpool arrangements and transportation that is within twenty-five miles of the laborers’ residence and limited to thirteen weeks per year.<sup>35</sup>

### III. LEGISLATION AND PROJECTS

#### A. *Assembly Bills 555 and 1165*

The CHP took action within weeks of the deadly accident in Fresno County.<sup>36</sup> Under the authority granted by the Vehicle Code,<sup>37</sup> the CHP inspected 166 farm labor vehicles on August 19, 1999; 101 were deemed unsafe.<sup>38</sup> On September 1, 1999, the CHP discovered fifty-five unlicensed drivers during an inspection of 254 vehicles.<sup>39</sup> As a result of

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<sup>28</sup> Fernandez et al., *supra* note 9.

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

<sup>30</sup> *Id.*

<sup>31</sup> Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. §1803 (Deering, LEXIS through 2007 P.L. 110-179).

<sup>32</sup> *Id.* at § 1843.

<sup>33</sup> *Id.* at § 1803.

<sup>34</sup> *Id.*

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

<sup>36</sup> *California: Safety Housing*, RURAL MIGRATION NEWS (Cal.), [http://migration.ucdavis.edu/rmn/comments.php?id=404\\_0\\_3\\_0](http://migration.ucdavis.edu/rmn/comments.php?id=404_0_3_0) (last visited July 25, 2006).

<sup>37</sup> CAL. VEH. CODE §31401 (Deering, LEXIS through 2006).

<sup>38</sup> *California: Safety Housing*, *supra*, note 36.

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

these two rounds of enforcement, the CHP ordered sixty-seven vehicles off the road immediately and refused to certify many others.<sup>40</sup>

On September 29, 1999, the Legislature passed two emergency bills relating to farm labor vehicles.<sup>41</sup> Assembly Bill 1165 (“AB 1165”) was authored by Dean Florez and focused on the need for seatbelts in farm labor vehicles.<sup>42</sup> This bill sought to amend the California Vehicle Code by expanding seatbelt requirements for vehicles to include farm labor vehicles.<sup>43</sup> The bill further directed the CHP to issue stickers to van owners or drivers that clearly showed the vehicle was registered as a farm labor vehicle which had passed a safety inspection, including the seatbelt requirement.<sup>44</sup> The CHP was further tasked with the development and maintenance of a toll-free number that persons could use to report vehicles in violation of these regulations.<sup>45</sup> The bill allocated 1.75 million dollars to the CHP to employ additional officers tasked specifically with enforcing the safety regulations of farm labor vehicles.<sup>46</sup>

Assembly Bill 555 (“AB 555”), authored by Assemblywoman Sarah Reyes, was signed into law simultaneously with AB 1165 and dealt with direct enforcement of the regulations set forth within 1165.<sup>47</sup> AB 555 was considered an urgency measure and was placed into effect immediately.<sup>48</sup>

AB 555 required all farm labor vehicles to operate with their headlights turned on regardless of the time of day.<sup>49</sup> Secondly, it gave the CHP the authority to inspect any farm labor vehicle located “in maintenance facilities, terminals, labor camps, or other private property of the vehicle owner or farm labor contractor to ensure compliance with the provisions of this bill.”<sup>50</sup> Perhaps most importantly, AB 555 provided stiffer penalties for persons in violation of the safety regulations.<sup>51</sup> In 1999, the law required that the CHP annually inspect farm labor vehicles and that any person found operating a vehicle in willful violation of re-

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

<sup>41</sup> Assemb. 1165, 1999 Leg., Reg. Sess., (Cal. 1999), 1999 Cal. AB 1165 (LEXIS); Assemb. 555, 1999 Leg., Reg. Sess., (Cal. 1999), 1999 Cal. AB 555 (LEXIS).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* (Amended CAL. VEH. CODE §27315 and added sections 2429, 4154, 4453.2, 31401.5 and 31405).

<sup>44</sup> *Id.*

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

<sup>46</sup> *Id.*

<sup>47</sup> Assemb. 555, 1999 Leg., Reg. Sess. (Cal. 1999), 1999 Cal. AB 555 (LEXIS).

<sup>48</sup> *Id.*

<sup>49</sup> Assemb. 555, *supra* note 47.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

quired safety inspections was guilty of a misdemeanor and subject to a fine of not less than \$500.<sup>52</sup> AB 555 amended California Vehicle Code in regards to such penalties.<sup>53</sup> The minimum \$500 fine was increased to \$1,000.<sup>54</sup> In addition to the \$1,000 fine, operators would be fined an additional \$500 for each passenger being transported at the time the violation was discovered, up to a maximum fine of \$5,000.<sup>55</sup> The imposition of these fines could no longer be suspended, and any person who operated or owned and willfully and knowingly allowed the operation of a farm labor vehicle in violation of the safety inspection regulations was charged with a misdemeanor.<sup>56</sup> The Appropriations Committee estimated that the increased costs of AB 555 were minor and the fines for violations of the safety regulations would create an undetermined revenue increase.<sup>57</sup>

### *B. Safety and Farm Labor Vehicle Education Program*

The 1.75 million dollars allocated to the CHP by AB 1165 was used for the Safety and Farm Labor Vehicle Education Program ("SAFE") which concentrated ninety-five percent of the program's efforts in California's Central Valley.<sup>58</sup> The program began with ten officers permanently assigned to it and 159 other officers were trained to conduct random inspections of farm labor vehicles.<sup>59</sup>

Currently the program has ten full-time officers and one sergeant operating out of the Central Division, which encompasses the area between Modesto and Bakersfield.<sup>60</sup> The rest of the state is covered by an additional ten officers with five officers assigned to the California coast, two

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<sup>52</sup> CAL. S. RULES COMM., ASSEMBLY BILL 555 BILL ANALYSIS, THIRD READING, 1999-2000 Leg. Sess. at 2, [http://www.leginfo.ca.gov/pub/99-00/bill/asm/ab\\_0551-0600/ab\\_555\\_cfa\\_19990908\\_171049\\_sen](http://www.leginfo.ca.gov/pub/99-00/bill/asm/ab_0551-0600/ab_555_cfa_19990908_171049_sen). [hereinafter *CAL. S. RULES COMM.*] (Amending penalties for violations of CAL. VEH. CODE § 31404).

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

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> CAL. VEH. CODE §31404 (Deering, LEXIS through 2006).

<sup>57</sup> CAL. APPROPRIATIONS COMM., FISCAL SUMMARY ASSEMBLY BILL 555, 1999 Leg., Reg. Sess., (Cal. 1999), [http://www.leginfo.ca.gov/pub/99-00/bill/asm/ab\\_0551-0600/ab\\_555\\_cfa\\_19990908\\_144512\\_sen](http://www.leginfo.ca.gov/pub/99-00/bill/asm/ab_0551-0600/ab_555_cfa_19990908_144512_sen).

<sup>58</sup> Chuck Squatriglia, *Big Drop in Accidents Involving Farm Labor Vehicles*, S.F. CHRON. (Mar. 2, 2001), available at <http://www.sfgate.com/cgi-bin/article.cgi?file=/c/a/2001/03/02/MN213097>.

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

<sup>60</sup> Garcia, *supra* note 1.

officers to the Mexican border, two officers in the Stockton area and one officer in the Northern California area.<sup>61</sup>

SAFE has established eight inspection sites in the Central Division where officers complete voluntary inspections of farm labor vehicles.<sup>62</sup> Officers also inspect vans that are ordinarily exempt from farm labor vehicle requirements because they seat fewer than nine passengers.<sup>63</sup> The thirty-eight point inspections cover brakes, suspensions, seatbelts and seats.<sup>64</sup> In particular, officers ensure the vehicles are equipped with original factory seating and safe seatbelts.<sup>65</sup> These inspections are non-punitive in nature and the officers issue a report to the operator at the conclusion of the inspection.<sup>66</sup> If the vehicle passes the inspection, it is given a sticker to display in the window, as prescribed by AB 555.<sup>67</sup>

In addition to voluntary inspections, the SAFE unit conducts special strike operations throughout the week.<sup>68</sup> These special strikes are conducted Tuesday through Thursday at predetermined locations within the Central Division.<sup>69</sup> The entire unit mobilizes to that location and conducts aggressive enforcement on farm labor vehicles traveling the roadway.<sup>70</sup> The passing of AB 555 gave the officers the authority to pull over and detain any farm labor vehicle which does not display a sticker in the window showing it has passed the thirty-eight point inspection.<sup>71</sup> Vehicles that do display the sticker are subject to detention and roadway inspection only if they are observed driving in violation of traffic laws.<sup>72</sup>

Upon detention of any farm labor vehicle, the officer completes an inspection of the vehicle's condition as well as an inquiry into the vehicle's driver.<sup>73</sup> Any operator who is discovered to be without the Class B driver's license required for farm labor vehicles,<sup>74</sup> or operating a farm labor vehicle which has not been certified and inspected as required is ticketed for up to two misdemeanor violations of the Vehicle Code.<sup>75</sup>

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<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> CAL. S. RULES COMM., *supra* note 52.

<sup>68</sup> Garcia, *supra* note 1.

<sup>69</sup> *Id.*

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

<sup>71</sup> CAL. S. RULES COMM., *supra* note 52.

<sup>72</sup> See Garcia, *supra* note 1.

<sup>73</sup> *Id.*

<sup>74</sup> CAL. VEH. CODE §12804.9 (Deering, LEXIS 2006).

<sup>75</sup> Garcia, *supra* note 1.

### C. Assembly Bill 602

Assembly Bill 602 (“AB 602”) was introduced during the 2000-2001 legislative session by then Assemblyman Dean Florez and attempted to further the accomplishments of Assembly Bills 555 and 1165.<sup>76</sup> AB 602 provided that after January 1, 2007, seatbelts are required for all farm labor vehicles, even those previously designated as buses and exempted from the seatbelt requirements.<sup>77</sup> Furthermore, the Bill requires all tools with sharp edges carried in the passenger compartment of a farm labor vehicle are placed in securely latched containers.<sup>78</sup>

Hopes for the biggest impact on farm labor vehicle safety stemmed from the requirement that all seating in a farm labor vehicle, whether factory installed or modified, must meet federal safety standards.<sup>79</sup> As a result, farm labor vehicles could no longer be modified to contain wooden benches for seating.

### D. Agriculture Industry Transportation Services Project

In 2001, eight million dollars were spent on a pilot project for Agriculture Industry Transportation Services (“AITS”).<sup>80</sup> The purpose of the project was “to implement efficient and safe transportation services for seasonal, residential farm workers that will serve to mitigate the number of injuries and fatalities incurred by farm workers while commuting to and from agricultural work sites within Fresno, Kern, Kings and Tulare Counties in the Central Valley.”<sup>81</sup> One-half of the funding for this project was provided by the Federal Job Access/Rural Commute grant program and the other half was provided by the State Public Transportation Account.<sup>82</sup> The program began operation in 2002.<sup>83</sup>

This program allowed for Kings County Area Transit to purchase 134 fifteen passenger vans and begin vanpools in the Fresno, Kings and Tulare Counties in addition to twelve twenty-eight passenger buses.<sup>84</sup> Information regarding the program is disseminated at employment sites,

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<sup>76</sup> See Assemb. 602, 2000 Leg., Reg. Sess. (Cal. 2000), 2000 CA ALS 308 (LEXIS).

<sup>77</sup> *Id.* at 1.

<sup>78</sup> *Id.* at 2.

<sup>79</sup> See *id.*

<sup>80</sup> CAL. DEP’T OF TRANSP., DEP’T OF MASS TRANSP., AGRICULTURAL INDUSTRY TRANSPORTATION SERVICES (AITS) PILOT PROJECT (2003), <http://www.dot.ca.gov/hq/MassTrans/Agriculture.htm>.; CAL. DEP’T OF TRANSP., *supra* note 5 at ix.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> CAL. DEP’T OF TRANSP., *supra* note 5, at 82.



flea markets and by door-to-door visits in targeted areas.<sup>85</sup> All of the vehicles meet California and Federal safety standards for farm labor vehicles.<sup>86</sup> Each van is assigned to an agricultural worker who is a licensed driver with a clean driving record and resides within the community needing transportation.<sup>87</sup> Riders pay a set fee which goes back into the AITS program to cover expenses of gas, insurance and vehicle maintenance.

The fee paid by riders is nominal compared to the amount charged by many of the privately operated farm labor vehicles.<sup>88</sup> Based on the length of the commute, riders can be safely transported to and from work for sixty dollars per month.<sup>89</sup> This is a bargain when one considers that one farm laborer reported he spends twenty-five dollars per day on transportation provided by the *Raiteros*<sup>90</sup> to which farm labor contractors refer their workers.<sup>91</sup>

The drivers of the AITS vehicles must have driving records with no more than two DMV points, be over twenty-five years of age and complete a physical exam.<sup>92</sup> Drivers are given a walk-through of the vehicles on issues such as fire extinguishers, first aid kits and two-way radio equipment.<sup>93</sup> The vehicles are equipped with Global Positioning System locators which track the location and speed of the vehicle.<sup>94</sup> Personnel of AITS conduct random inspections of the AITS vehicles.<sup>95</sup> Furthermore, the driver signs a written agreement that he or she will not participate in unsafe driving practices and he or she must immediately report any citations or accidents to AITS.<sup>96</sup> A system which would alert AITS of any driving citations is being developed.<sup>97</sup> It was intended drivers would be compensated financially as an incentive to becoming a safe AITS driver.<sup>98</sup> It was estimated over 1,500 workers would be transported by

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<sup>85</sup> *Id.* at 86.

<sup>86</sup> *Id.*

<sup>87</sup> *See id.* at 84.

<sup>88</sup> Press Release, Senate Democratic Caucus, Budget Promises to Improve Farmworker Commute (June 30, 2006), available at <http://democrats.sen.ca.gov>.

<sup>89</sup> CAL. DEP'T OF TRANSP., *supra* note 5, at 68.

<sup>90</sup> *Raitero* is the common term used to describe the drivers of large vehicles that charge farm laborers for transportation to and from the fields. (*See id.* at xviii).

<sup>91</sup> Fernandez et al., *supra* note 9.

<sup>92</sup> CAL. DEP'T OF TRANSP., *supra* note 5, at 84.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.* at 85.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

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

these AITS vehicles by June of 2004, due to the announcement of the expansion of the AITS project into Fresno County and the addition of seventy-five vans to the project on June 30, 2003.<sup>99</sup>

#### IV. PERSISTENT PROBLEMS

##### A. *Vehicles are in Disrepair and Unsafe*

Assembly Bill 1165 required the CHP to submit reports to the Legislature by July 1st of 2000, and again in 2001 and 2002, analyzing the impact and effectiveness of the new regulations.<sup>100</sup> The first of these reports was filed on July 21, 2000.<sup>101</sup> This report shows that in 1999, the CHP inspected 1,878 farm labor vehicles of which 1,353 were certified as safe and 380 were immediately placed out of service.<sup>102</sup> There were 5,942 farm labor vehicle violations recorded in 1999.<sup>103</sup> These violations include 3,046 equipment and maintenance violations and 620 driver's license violations.<sup>104</sup> Of the 943 farm labor vehicles inspected through August of 2000, 622 were certified as safe.<sup>105</sup> However, 148 were so dangerous they were immediately placed out of service.<sup>106</sup> A total of 2,816 violations were recorded in 2000.<sup>107</sup>

These numbers show that although the number of violations found in 2000 dropped fifty-two percent from those in 1999, a review of all the data shows the number of vehicles inspected has dropped nearly as much.<sup>108</sup> During the same period, the number of vehicles inspected was also almost fifty percent lower than the number of vehicles inspected for the whole of 1999.<sup>109</sup> Although a quick glance at the numbers may suggest a large drop in the number of violations, in reality they appear to be just as pervasive as they were prior to passage of the new regulations.

The SAFE unit attributes the continued violations to several factors.<sup>110</sup> Many of the farm labor vehicles cited have been previously cited for the

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<sup>99</sup> *Id.* at p.xxii.

<sup>100</sup> Florez, *supra* note 41.

<sup>101</sup> <http://www.agencyreports.ca.gov/rtspub/asp/agencyreport.asp?agency=167>. (last visited on July 25, 2006).

<sup>102</sup> CAL. HIGHWAY PATROL, FARM LABOR VEHICLE REPORT 7 (2000).

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> CAL. HIGHWAY PATROL, FARM LABOR VEHICLE REPORT 8 (2001).

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> Garcia, *supra* note 1.

same violations.<sup>111</sup> Although the penalties are quite severe for these violations, enforcement is difficult because it is hard to accurately identify the offenders.<sup>112</sup> In order to receive a California Driver's License or identification card, a person must prove his residency status to the Department of Motor Vehicles.<sup>113</sup> Many of the drivers in question here are illegal immigrants and therefore do not possess proper identification.<sup>114</sup> Officers do the best they can to identify these individuals and their addresses in order to begin court proceedings against them, but in many cases the drivers lie.<sup>115</sup> They are given a ticket and sign a promise to appear in court and then do not appear.<sup>116</sup> If fines are assessed against them they simply do not pay them and there is no way to enforce the penalties or pursue further court action because the individuals cannot be located.<sup>117</sup>

The drivers of these vehicles have become increasingly aware of new tactics to avoid detection by the SAFE unit. Many drivers now carry two-way radios in their vehicles, so that as soon as the SAFE unit is spotted other drivers are alerted of its presence and can pull off the road to avoid detection.<sup>118</sup> Furthermore, the lack of funding does not allow the unit to work overtime or have officers available on weekends.<sup>119</sup> Drivers are aware of the SAFE unit's schedule.<sup>120</sup> They know that Monday is volunteer inspection day at the eight inspection facilities between Modesto and Bakersfield and therefore there is no active enforcement on Mondays.<sup>121</sup> Drivers also know that on Tuesday and Wednesday the SAFE unit does morning enforcement and on Thursday it conducts evening enforcement.<sup>122</sup> The routine of the SAFE unit is well known and unfortunately, this problem will not be corrected without further funding.<sup>123</sup> There are only ten officers and the number of shifts ten officers can effectively cover in such a large geographical area is down to one

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<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> CAL. VEH. CODE §12801.5 (Deering, LEXIS through 2006).

<sup>114</sup> CAL. DEP'T OF TRANSP., *supra* note 5, at xvi.

<sup>115</sup> Garcia, *supra* note 1.

<sup>116</sup> *See id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

shift per day.<sup>124</sup> This means they must choose if they are going to do evening or morning enforcement.<sup>125</sup>

Under the California Vehicle Code, any vehicle capable of carrying more than nine passengers and used for the transportation of farm laborers is classified as a farm labor vehicle.<sup>126</sup> Any van which only transports eight passengers or less is not considered a farm labor vehicle.<sup>127</sup> They are not subject to the same requirements of certification and inspections, although the CHP offers free, non-punitive inspections of these vehicles.<sup>128</sup> Drivers have gone to great lengths to hide the classification of their vehicles.<sup>129</sup> They hide passengers and make modifications such as ripping out seats.<sup>130</sup> One CHP officer reported that he pulled over and detained what appeared to be a passenger van.<sup>131</sup> Upon inspection, he heard noises coming from a large toolbox and discovered a ninth passenger inside.<sup>132</sup>

### B. Accidents Continue

With 1.75 million dollars allocated towards enforcement of the new regulations through the SAFE unit, there appeared to be hope that the impact of the legislation could be evident in the 2000 statistics, based on the mandated farm labor vehicle report.<sup>133</sup> The news media began to report drastic decreases in the number of accidents for the year 2000, when compared to 1999.<sup>134</sup> Rural Migration News reported a twenty-three percent drop in collisions involving farm labor vehicles and for the first time since 1992, there were no farm laborer deaths on California's highways.<sup>135</sup> The San Francisco Chronicle reported that in 1999, California suffered twenty-two accidents in which fifty-eight farm laborers were injured and fourteen were killed.<sup>136</sup> The same article reported that these

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<sup>124</sup> *Id.*

<sup>125</sup> *See id.*

<sup>126</sup> CAL. VEH. CODE § 322 (Deering, LEXIS through 2006).

<sup>127</sup> *Id.*

<sup>128</sup> Garcia, *supra* note 1.

<sup>129</sup> CAL. HIGHWAY PATROL, *supra* note 105, at 31.

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

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *See generally*, CAL. HIGHWAY PATROL, *supra* note 102 and 105.

<sup>134</sup> Squatriglia, *supra* note 58; *California: FLC's, Housing, Hate*, RURAL MIGRATION NEWS (Cal.), <http://migration.ucdavis.edu/rmn/comments.php?id=469> (last visited Jul. 25, 2006).

<sup>135</sup> *California: FLC's, Housing, Hate*, RURAL MIGRATION NEWS (Cal.), <http://migration.ucdavis.edu/rmn/comments.php?id=469> (last visited July 25, 2006).

<sup>136</sup> Squatriglia, *supra* note 58.

numbers decreased to seventeen accidents with thirty-four injuries and no fatalities in 2000.<sup>137</sup> It seemed, by those accounts, that the new regulations, the implementation of the SAFE unit and the stiffer penalties were beginning to have the desired impact.

There is great disparity between the statistics reported by the media and those reported in the Farm Labor Vehicle Reports.<sup>138</sup> These reports, submitted to the California Legislature in 2000 and 2001, contradict the numbers reported by the media for the same period, showing a much higher accident and violations rate.

The Farm Labor Vehicle Report of 2001 was prepared by the Enforcement Services Division of the CHP.<sup>139</sup> According to data available through March of 2000, there had already been fourteen collisions involving farm labor vehicles in which fifty-one persons had been injured and three had died.<sup>140</sup> The statistics for the entire year of 1999 show forty-five accidents, with fifty-four persons injured and fourteen dead.<sup>141</sup> These numbers are far less encouraging than those reported in the media.

This is evidenced by a farm labor vehicle accident on February 10, 2000, in which fourteen people were injured.<sup>142</sup> The driver of this particular farm labor vehicle was previously cited just three months earlier for illegally transporting farm laborers.<sup>143</sup> At the time of the accident, the driver still had not obtained the proper certification required by California law.<sup>144</sup>

In a discussion with the SAFE unit, officers expressed their satisfaction over the decrease in collisions over the past five years.<sup>145</sup> Officer Robert Garcia of the SAFE unit stated that the Central Division has not seen any fatalities of farm laborers in connection with a traffic collision involving farm labor vehicles since 2000.<sup>146</sup> However, this does not mean fatalities have not been occurring. For instance, in December of 2001, seven farm laborers died when the driver of their van failed to stop

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<sup>137</sup> *Id.*

<sup>138</sup> See generally, CAL. HIGHWAY PATROL, *supra* note 102 and 105.

<sup>139</sup> CAL. HIGHWAY PATROL, *supra* note 105.

<sup>140</sup> *Id.* at 12.

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

<sup>142</sup> Press Release, Senator Dianne Feinstein of California, Senator Feinstein to Introduce Legislation to require Seatbelts for Farm Workers (Feb. 17, 2000), [http://www.senate.gov/~feinstein/releases00/farm\\_workers\\_seatbelts.html](http://www.senate.gov/~feinstein/releases00/farm_workers_seatbelts.html) (last visited Jul. 29, 2006).

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> Garcia, *supra* note 1.

<sup>146</sup> *Id.*

at a railroad crossing and was hit by an Amtrak train.<sup>147</sup> Since the van they were in only held seven passengers, it was not legally considered a farm labor vehicle.<sup>148</sup> In September of 2002, two farm laborers died in a van which only carried eight passengers when the driver of the van failed to stop at a stop sign.<sup>149</sup> The driver was believed to have been under the influence of alcohol at the time of the accident.<sup>150</sup> The media has covered numerous accounts such as these over the past five years.<sup>151</sup>

On May 16, 2006, three more farm laborers died after the driver of their van swerved into oncoming traffic.<sup>152</sup> Eight other persons were injured in this collision.<sup>153</sup> The van was carrying seven passengers and was not a farm labor vehicle within the definition of the Code.<sup>154</sup> The driver of the van ran away from the scene of the accident.<sup>155</sup> It is extremely difficult to draft any legislation that would require these vehicles to be certified and inspected as farm labor vehicles, due to the fact that vehicles of this size are often used for personal use.<sup>156</sup>

### C. Agricultural Worker Transportation Needs Assessment

With the legislation passed in 1999 and 2000, and the added hope the AITS project of 2001 brought to the table, California had high hopes for the elimination of unsafe transportation of farm laborers. Unfortunately, it seems as though California still has a long way to go in its search for safer commutes for the laborers and safer highways for all Californians who may encounter these farm labor vehicles.

In 2003, a study was conducted by the Department of Transportation entitled the "Agricultural Worker Transportation Needs Assessment."<sup>157</sup>

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<sup>147</sup> Marc Benjamin, *Train Crash Kills Seven*, FRESNO BEE (Cal.) (Dec. 14, 2001), available at <http://www.fresnobee.com/local/v-printerfriendly/story/1312050p-1380443c.html>.

<sup>148</sup> *Id.*

<sup>149</sup> Marc Benjamin, *2 die in Accident Near Caruthers*, FRESNO BEE (Cal.) (Sep. 5, 2002), available at <http://www.fresnobee.com/local/v-printerfriendly/story/4257100p-5270808c.html>.

<sup>150</sup> *Id.*

<sup>151</sup> Benjamin, *supra* note 147 and 149; Louis Galvan, *3 die in crash near Selma*, FRESNO BEE (Cal.) (May 17, 2006), available at <http://www.fresnobee.com/local/v-printerfriendly/story/1219409p-12937286c.html>.

<sup>152</sup> Louis Galvan, *3 die in crash near Selma*, FRESNO BEE (Cal.) (May 17, 2006), available at <http://www.fresnobee.com/local/v-printerfriendly/story/1219409p-12937286c.html>.

<sup>153</sup> *Id.*

<sup>154</sup> CAL. VEH. CODE §322 (Deering, LEXIS through 2006).

<sup>155</sup> Galvan, *supra* note 152.

<sup>156</sup> Interview with Dean Florez, Senator, State of California, in Fresno, Cal. (Sep. 27, 2006).

<sup>157</sup> See generally, CAL. DEP'T OF TRANSP., *supra* note 5.

This study set out to evaluate the continuing needs of farm laborers as well as the effectiveness of the AITS project.<sup>158</sup> The study used statewide focus groups and community forums to develop its data.<sup>159</sup> Extensive interviews were conducted with farm laborers regarding the current conditions of their available means of transportation.<sup>160</sup> These interviews were conducted between December 2002 and February of 2003, long after the passing of Assembly Bills 555, 1165 and 602.<sup>161</sup> The statements taken from the interviews indicated a disturbing trend despite the legislation and the recently operative AITS project.

Of the laborers interviewed, seventy-two percent stated that they depended on others for transportation during their commutes, which varied from fifteen minutes to two hours in length.<sup>162</sup> Of greatest concern was the transportation provided by the *Raiteros*. The laborers interviewed stated it was understood when you go to work for a farm labor contractor, you must ride with the *Raitero* to whom you are referred.<sup>163</sup> The laborers appeared to believe there was a financial arrangement between the farm labor contractor and the *Raitero*.<sup>164</sup> Furthermore, they stated it was a method of control because this would preclude them from being able to leave the worksite prior to the work being completed if they did not like the conditions under which they were working.<sup>165</sup>

Laborers stated they “knew better” than to ask the driver if he or she was licensed or to inquire about any other safety issues such as the use of seatbelts.<sup>166</sup> They were told if they did not like the conditions they should get out and someone would be more than happy to take their place.<sup>167</sup> If the workers used their own vehicles to commute to the worksite, the contractor would first hire those workers which rode with the *Raitero*, as directed.<sup>168</sup> If there were any jobs left after those workers were hired, then you might be hired for a job.<sup>169</sup>

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<sup>158</sup> *Id.* at x.

<sup>159</sup> *Id.*

<sup>160</sup> *Id.* at xi.

<sup>161</sup> *Id.* at 50.

<sup>162</sup> *Id.* at xviii.

<sup>163</sup> *Id.* at 55.

<sup>164</sup> *Id.* at 53.

<sup>165</sup> *Id.* at 55.

<sup>166</sup> *Id.* at 54.

<sup>167</sup> *Id.* at 55.

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

Frequent overcrowding of the vans and unsafe conditions, such as the lack of seatbelts and the presence of loose tools inside the vehicles, appeared to be accepted as the norm.<sup>170</sup> One woman stated,

One contactor had the habit of changing vans during the start of the grape season, when he knew that inspections were stepped up. While we regularly rode in a van without seats and seatbelts, he would start using the one with seats and seat belts for about two weeks, in case he got stopped for inspection. When he knew it was over, he would put us back on the floor.<sup>171</sup>

Over half of the laborers interviewed stated that they had regularly experienced situations in which riders were expected to buy the driver a case of beer to consume during the commute after the workday.<sup>172</sup> In some cases, riders observed the driver using narcotics during the commute.<sup>173</sup> Riders stated they had no choice but to try to find other means of transportation, but if the farm labor contractor required the workers to ride with a particular *Raitero*, this could result in the loss of a job.<sup>174</sup>

After reviewing the results of this study, one is left to wonder why the legislation and the AITS project, which seemed to have so much potential, did not properly address the problem of unsafe farm labor vehicles. The Department of Transportation's Assessment of 2003 attempted to clarify the issues which were impeding the potential success of programs such as AITS.<sup>175</sup>

Federal law prohibits the payment of drivers for the transportation of fellow workers.<sup>176</sup> This means there is less incentive for workers to get the physical exam, training and certification necessary to become a driver.<sup>177</sup> The added time it takes to pick up and drop off riders prior to and subsequent to a hot workday in the fields becomes much less desirable when there is no added compensation for doing so.

Likewise, federal regulations prohibit the charging of passengers any amount which would cause their income levels to drop below the federal minimum wage.<sup>178</sup> While perfectly logical when applied in terms of protection for the worker, in this situation it becomes completely nonsensical. If the riders do not have access to the AITS program or other means

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<sup>170</sup> *Id.* at 54-55.

<sup>171</sup> *Id.* at 56.

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> *Id.* at 55.

<sup>175</sup> *Id.* at 93.

<sup>176</sup> *Id.* at 94.

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

<sup>178</sup> *Id.* at 83.



of safe transportation, they are forced to ride with the *Raiteros*.<sup>179</sup> This places them in harm's way and costs more money than the fee the AITS program would need to charge riders in order to sustain the program. The limit on the number of persons which can be transported and the amount of money they can be charged directly impacts the sustainability of this project.<sup>180</sup>

Perhaps the greatest hindrance to the AITS program is when farm labor contractor's require their workers to ride with specific *Raiteros*.<sup>181</sup> Farm labor politics, according to the Department of Transportation Assessment, have been directly associated with a decreased willingness to use the AITS system.<sup>182</sup> It appears the financial arrangement, as well as the increased control over the labor force alleged by the workers, is impeding the AITS project from reaching its theoretical potential. In order for the program to succeed, it must gain the trust and endorsement of the employers in this area, including those individuals who have control over the contractors. Expected legislation in 2007 will attempt to address the issue of "unscrupulous contractors" by way of modification of licensing and bonding requirements.<sup>183</sup>

The greatest problem for these farm laborers, and society as a whole, continues to be the high number of unsafe drivers and vehicles on the road transporting workers for outrageous amounts of money. Current regulations and the implementation of the SAFE program have brought these numbers down, but continued accidents involving unlicensed drivers, drunk drivers and unsafe vehicles suggest not nearly enough is being done to eradicate the problem. The 2003 Assessment included a survey of law enforcement regarding these problems.<sup>184</sup> Although responses varied slightly from county to county, the recurring theme was that additional action is needed in order to make a significant impact on unsafe driving conditions. Accidents and injuries were overwhelmingly attributed to driving under the influence, speeding, ignoring stop signs, running off the road and the lack of seatbelts.<sup>185</sup>

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<sup>179</sup> *See id.*

<sup>180</sup> *Id.*

<sup>181</sup> *Id.* at 99.

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

<sup>183</sup> Interview with California Senator Dean Florez, (Sept. 27, 2006).

<sup>184</sup> CAL. DEP'T OF TRANSP., *supra* note 5, at 4.

<sup>185</sup> *Id.* at 13, 19, 27, 35.

## V. SUGGESTED APPROACHES

A. *Farm Labor Contractors Should be Held Accountable Based on the Racketeer Influenced and Corrupt Organizations Act ("RICO")*

If a cause of action can be shown under RICO, the contractors would be forced to discontinue their unlawful control over their workers. This would address all the issues of concern, including the unsafe farm labor vehicles, the non-participation of workers in the AITS program due to their inability to choose their transportation, and the inability of the Legislature to reach those vehicles which are not classified as farm labor vehicles.

Traditionally, RICO was enacted as a method of extending criminal and civil liability to the heads of mafia families who were responsible for a multitude of crimes including extortion and murder.<sup>186</sup> These mafia bosses traditionally had many persons working for them and would never become directly involved in the actual commission of the crimes.<sup>187</sup> Although solicitation or conspiracy charges were a legal possibility, realistically, they were not available to prosecutors due to the lack of willing witnesses.<sup>188</sup>

Modernly, the use of RICO has seen an incredible expansion, extending liability into a multitude of areas. A RICO suit was commenced in New York in 2002 by ten farm laborers against five contractors and growers alleging they were held in forced labor, violating federal human rights laws.<sup>189</sup> In addition, the plaintiffs alleged numerous violations of the MSPA including substandard housing, failing to comply with working arrangements and transporting the laborers in unsafe vehicles.<sup>190</sup> In late 2003, a motion by the United States to intervene was denied.<sup>191</sup> However, the court granted a stay of the civil proceedings until the conclusion of evidence in a related pending criminal case.<sup>192</sup>

The pertinent statute provides in part: "The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, di-

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<sup>186</sup> Jeff Grell, *RICO in a Nutshell*, <http://www.ricoact.com> (last visited Oct. 4, 2006).

<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

<sup>189</sup> *Legislative News*, Farmworker Legal Services of New York, Inc. 2 (2006), <http://www.flсны.org/Legislative%20News.htm> (last visited Oct. 24, 2006).

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

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

<sup>192</sup> *Id.*

rect or indirect, in any enterprise ....”<sup>193</sup> By way of RICO, a federal court can order farm labor contractors to cease their involvement in the transportation of the farm laborers whom they employ, if a violation of section 1962 can be established. Likewise, under section 1964(c), a civil remedy is available to plaintiffs who have been injured in their businesses or property by reason of a violation of section 1962.<sup>194</sup>

Under these two sections, farm labor contractors could be held civilly liable to plaintiffs injured by their actions.<sup>195</sup> Additionally, they could be enjoined from continuing their current behavior because it amounts to extortion of farm laborers. The extortion effectively places the laborers into a situation of forced labor by ensuring they have no reasonable way of leaving the fields before all the work is completed regardless of the conditions therein.

In order to establish civil liability under RICO, a violation of one of the prohibited acts listed in section 1962 must first be established. The statute reads: “It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity....”<sup>196</sup> In order to establish a claim under section 1962(c), the plaintiff must show the defendant was employed by or associated with an enterprise that engaged in or affected interstate commerce and the defendant operated or managed the enterprise through a pattern of racketeering activity.<sup>197</sup>

Here, the contractors are clearly associated with an enterprise engaged in or affecting interstate commerce. The Central Valley’s impact on the rest of the nation’s agricultural supplies is undeniable. Thus, the employment of farm laborers to harvest, sort and package fruits and vegetables which are to be shipped throughout the United States is clearly an enterprise affecting interstate commerce within the meaning of RICO. The contractors are clearly associated with said enterprise and are in an operational management position therein. Although the contractors are not necessarily the owners of the farms, the decision in *Reeves v. Ernst & Young*<sup>198</sup> stated the phrase “operated or managed the enterprise” does not limit application of RICO exclusively to upper management. “An enterprise is operated not just by upper management but also by lower rung

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<sup>193</sup> 18 U.S.C. §1964(a) (Deering 2006).

<sup>194</sup> 18 U.S.C. §1964(c) (Deering 2006).

<sup>195</sup> *Id.*

<sup>196</sup> 18 U.S.C. §1962(c) (Deering 2006).

<sup>197</sup> Grell, *supra* note 179.

<sup>198</sup> *Reeves v. Ernst & Young*, 507 U.S. 170, 183 (1993).

participants in the enterprise who are under the direction of upper management.”<sup>199</sup> Since the farm labor contractors are directly responsible for hiring, supervising and paying the laborers, they are clearly operating the enterprise in any given field in which farm laborers are present.

The particular activity which would bring the contractors into the realm of liability under RICO cannot be an isolated activity and must create a pattern of continuous violations. In order for the violations to be part of a pattern of continuous violations, they must be sufficiently related. To be related, the violations must “have the same or similar purposes, results, participants, victims or methods of commission.”<sup>200</sup> Here, there is only one behavior which is of serious concern; namely the contractors’ insistence that the farm laborers ride in an unsafe and unlawful vehicle in exchange for a portion of the proceeds paid to the driver for the transportation to and from the fields every day. This behavior consistently has the same purpose: 1) financial gain, and 2) control over the workforce. The behavior always has the same victims, farm laborers who are charged exorbitant prices for unsafe rides to and from work, which at times, has resulted in their deaths. There is clearly a pattern in existence in this case. The element of continuity is clearly met here because the behavior has been exhibited over a long period of time and will potentially extend indefinitely into the future, unless curbed by some intervening authority. Thus, all of the elements have been met for a RICO claim with the exception of the actual racketeering activity.

According to the federal code, racketeering is defined as “any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion...”<sup>201</sup> Extortion is further defined by the Hobbs Act as the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, fear or under the color of official right.<sup>202</sup>

Here, the contractors are forcing workers to ride in unsafe and unlawful vehicles, thereby receiving a portion of the money collected for the transportation and gaining full control over the workers by preventing them from leaving the worksite if they wished to do so. The force exerted by the contractors is effective in that it frightens the workers into doing as the contractors instruct, or risk losing their only means of income to feed and support their families. The fear struck into the workers is evident by their statements in the 2003 AITS survey in which they

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<sup>199</sup> *Id.*

<sup>200</sup> *H.J. Inc. v. Northwestern Bell*, 492 U.S. 229 (1989).

<sup>201</sup> 18 U.S.C. §1961(1) (Deering 2006).

<sup>202</sup> 18 U.S.C. §1951(a) (Deering 2006).

explained that they “knew better” than to attempt to ride in another vehicle, start their own carpools or even ask about the unsafe conditions or licensing of the vehicle in which they were being forced to ride.<sup>203</sup> The transferability of farm workers skills is limited.<sup>204</sup> If the workers are displaced from the fields, the chance of gaining employment in another line of work based upon their experience is small.<sup>205</sup> Even when it is possible for them to gain work in another field, it does not appear to be a promising alternative either. In the 2003 AITS survey, farm workers from several different counties made similar comments regarding the problem of unscrupulous contractors and their assumptions of financial arrangements between the contractors and the *Raiteros*. Their responses make it clear that the problem is very widespread. If they refuse to do as the contractor says, they will not only lose their immediate opportunities for jobs in that particular field, they will likely encounter the problem of either: a) looking for work in a field where other workers have already been chosen for the job and there is no more work, or b) ending up in the exact same situation on in another field, where they are forced into unsafe and unlawful transportation arrangements.<sup>206</sup>

The Hobbs Act makes it clear that in order for extortion to occur, there must be a taking or attempted taking of the victim’s property.<sup>207</sup> Here, the workers are not only losing their tangible property, by being charged exorbitant amounts of money for transportation when there are much cheaper and safer alternatives, such as the AITS program, they are also being deprived of their rights as human beings. The right of protecting themselves, and often their loved ones working beside them, from being subjected to extremely dangerous situations which have proven fatal on so many occasions; their right to freedom gives them the right to choose to leave a worksite should the conditions be too harsh or the workday too long, a right that all of us enjoy. Even employees who are bound by a contractual agreement are not enslaved in their positions and may choose to leave their place of employment after weighing the risks and benefits of doing so. In the Central Valley situation, the farm workers do not even get the chance to weigh the risks and benefits of leaving the field, because there is no physical means of leaving. Many times they are up to two hours away from their homes and the people they can depend on.

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<sup>203</sup> CAL. DEP’T OF TRANSP., *supra* note 5, at 54.

<sup>204</sup> Comment, *Worker’s Compensation Reform and the Future of the Disabled Farm Worker in California*, SAN JOAQUIN AGRICULTURAL L.REV., Volume 15, (2006).

<sup>205</sup> *Id.*

<sup>206</sup> CAL. DEP’T OF TRANSP., *supra* note 5, at 55.

<sup>207</sup> 18 U.S.C. §1951(b) (Deering 2006).

Under the rationale of a 2006 decision in the United States Court of Appeals, the term “property” as defined in the Hobbs Act was affirmed to encompass tangible property as well as intangible rights.<sup>208</sup> The court there stated,

The concept of property under the Hobbs Act, as devolved from its legislative history and numerous decisions, is not limited to physical or tangible property or things but includes, in a broad sense, any valuable right considered as a source or element of wealth and does not depend upon a direct benefit being conferred on the person who obtains the property.<sup>209</sup>

The taking of money from workers, exceeding the amount needed to reimburse the driver for reasonable transportation expenses, for the purpose of buying alcohol for the driver,<sup>210</sup> as well as giving contractors a portion of the profits, is clearly a taking of tangible property. However, the taking of the workers’ rights to protect themselves and be free to choose their employment is a taking of intangible rights. Arguably, this is one of the rights discussed in *Gotti*, in that it directly relates to the workers livelihood and ability to earn money to support himself and his family. In *Gotti*, the right to a democratically elected union representative was of central concern to several counts of the verdict.<sup>211</sup> *Gotti* and the codefendants were exercising their control over numerous high ranking positions within a particular labor union.<sup>212</sup> The former president of the union testified one of the codefendants would “tell me on many occasion what to do and what not to do” and clarified that he had to comply with the codefendants’ orders regarding the structure of the union for fear of losing his job.<sup>213</sup> This was held to be sufficient to fulfill the property requirement of the Hobbs Act, distinguishing the case from the decision in *Scheidler v. National Org. for Women, Inc.*, wherein the United State Supreme Court narrowed the application of the Hobbs Act definition of extortion.<sup>214</sup>

In *Scheidler*, the central claim was an action under RICO based on the theory of extortion, alleging anti-abortion protestors were extorting doctors and patients by picketing and threatening to use violence against them.<sup>215</sup> The court stated “because...the anti-abortion protestors did not

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<sup>208</sup> United States of America v. Peter Gotti, 459 F.3d 296, 2006 U.S. App. LEXIS 17430, at \*64 (2006).

<sup>209</sup> *Id.* at \*63-64.

<sup>210</sup> CAL. DEP’T OF TRANSP., *supra* note 5, at 56.

<sup>211</sup> *Gotti*, 2006 U.S. App. LEXIS 17430, at \*8.

<sup>212</sup> *Id.*

<sup>213</sup> *Id.* at \*10.

<sup>214</sup> *See Scheidler v. National Org. for Women, Inc.*, 537 U.S. 393, 408 (2003).

<sup>215</sup> *Id.* at 393, 398.

obtain or attempt to obtain property from respondents...there was no basis upon which to find that they committed extortion under the Hobbs Act."<sup>216</sup>

Here, the facts are more easily equated to the situation in *Gotti*, wherein certain intangible rights, as well as financial gain, were at stake.<sup>217</sup> The instant case does not contain any issues of empty threats of violence and therefore *Scheidler* is inapplicable. In this case, we are dealing with much more fundamental issues, namely the right to safe employment, in stark contrast to the right to have an abortion without being badgered on the way into the clinic. The actions of the contractors here are clearly unlawful and since they are taking money from the workers and in effect, their freedom while they are in the field, this clearly falls within the Hobbs Act definition of extortion.

Since all the elements of a RICO claim can be established here, an action should be brought and an injunction sought to prevent the Contractors from effectively enslaving their workers.

#### *B. Vicarious Liability Should Attach to Farm Labor Contractors*

California Vehicle Code section 31404 reads "Any person who operates, or any owner or farm labor contractor who *knowingly allows the operation of*" a farm labor vehicle in violation of current safety regulations enumerated in Vehicle Code section 31401, 31402 or 31403 is guilty of a misdemeanor.<sup>218</sup> The safety of thousands of farm laborers in our state, as well as the safety of the public roadways in general, requires farm labor vehicles are not operated in a condition which does not meet even the most basic of safety requirements such as the presence of seat-belts.

Section 31404 should be amended to include the following language: Any Farm Labor Contractor who suggests, refers or compels any worker to ride in a particular vehicle, is guilty of a misdemeanor if that vehicle is in violation of the aforementioned provisions. The requirement of "knowingly allows the operation of" should be eliminated completely. The presence of that phrase allows contractors to skirt around the law by claiming no knowledge of the safety violations.

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<sup>216</sup> *Id.* at 409.

<sup>217</sup> *Gotti*, 2006 U.S. App. LEXIS 17430, at \*8.

<sup>218</sup> CAL. VEH. CODE § 31404 (Deering, LEXIS through 2006), emphasis added.

### C. The Penalties Should Provide for Mandatory Impoundment

Currently the penalty for a misdemeanor conviction under Vehicle Code section 31404 ranges from \$1,000 to \$5,000, depending on the number of violations and the number of passengers discovered in the vehicle at the time of the violations.<sup>219</sup> Given the continued existence of vehicles in violation of this section, it is clear that these penalties have not deterred the use of violative farm labor vehicles as originally hoped. The statute should be amended to include mandatory impoundment of the vehicles. Any vehicle that is stopped and cited for safety violations should be given thirty days to repair the problems and return the vehicle to the CHP for inspection. If the vehicle is not returned for inspection by the end of the thirty day period, the Vehicle Identification Number and license plate number should be marked in the DMV database for mandatory impoundment if operated. This would eventually eliminate the existence of these vehicles altogether.

### D. Safety Courses and the Driver

The completion of specified safety courses should decrease the penalty for driving without a valid driver's license. California, as of yet, is not willing to license many of the farm laborers due to their residency status, thus eliminating even the most basic driver's training which citizens must complete prior to licensing. As even illegal immigrants have a realistic need for transportation, it seems unlikely that they will decide not to drive due to their inability to gain a drivers license. The completion of safety courses in exchange for a lighter penalty for driving without a valid California Driver's License would assist in alleviating the concern of untrained drivers operating vehicles on our highways. There is no guarantee that a program such as the one proposed would lead to persons actually driving safely or deter them from driving under the influence. However, logic demands that we ensure accessibility to the tools needed in order for these individuals to drive safely. They deserve at least the chance.

On June 30, 2006, Senator Dean Florez announced \$20 million dollars of the 2006 budget was allocated towards the continuation and expansion of the AITS program.<sup>220</sup> The AITS program has a greater presence in Kings County than any other county in the State.<sup>221</sup> The new budget al-

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<sup>219</sup> *Id.*

<sup>220</sup> Press Release, Senate Democratic Caucus, Budget Promises to Improve Farmworker Commute, June 30, 2006.

<sup>221</sup> Florez, *supra* note 183.



location will assist in “leveling the playing field” for the various counties in the State.<sup>222</sup> Portions of the allocated money may be earmarked for the expansion of the SAFE unit and the creation of more driver’s safety courses in the future. Currently there is no plan to utilize the new allocations in the budget for such purposes.<sup>223</sup> Senator Dean Florez does not discount the possibility of new allocations in next year’s budget for such purposes.<sup>224</sup>

## VI. CONCLUSION

The control contractors exert over their workers in forcing them to ride in specified vehicles undermines the potential of the AITS program to provide safe transportation to farm workers and the public as a whole. The definition of farm labor vehicles, based upon their capacity to carry nine or more passengers, leads to creative thinking by drivers who can effectively hide the classification of their vehicles. If successful, the driver will avoid inspections and make a large profit on daily transportation charges, to the detriment of every family who has lost a loved one in one of the numerous accidents on the Central Valley’s highways in the recent years. Legislation cannot effectively reach those vehicles due to their use as modes of personal transportation as well.<sup>225</sup> The penalties provided by statute are sufficient in theory, but in reality, are almost impossible to impose on the violators because of the difficulty identifying them.

Finding a way to take the contractors out of the equation, by means of an injunction under RICO and subjecting them to increased financial liability under both RICO and an amendment of the California Vehicle Code would greatly decrease the number of workers riding in these unsafe vehicles with drivers who are untrained and often intoxicated. The imposition of a mandatory impoundment clause in the statute would eliminate the vehicles little by little, in an effort to ensure that they will not be operated on the highway, which would make the roads safer for everyone. The creation of better and improved safety courses, with the proper incentives, can give drivers the chance to operate the vehicles in a safe manner, which has been shown to be the root cause of many fatal accidents in which drivers ran stop signs or failed to yield to traffic as directed by street signs. As discussed, there are several possible courses of action that are both plausible and possible ways to eliminate the prob-

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<sup>222</sup> *Id.*

<sup>223</sup> *Id.*

<sup>224</sup> *Id.*

<sup>225</sup> *Id.*

lem of unsafe farm labor vehicles. It is clear something must be done to create a safer commute for the workers upon which our economy depends as well as every other person who may travel on our highways.

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