No. 12-___

IN THE

Supreme Court of the United States

BIZZIE WALTERS et al.,

Petitioners,

v.

TODD MCMAHEN et al.,

Respondents.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

Howard W. Foster
FOSTER P.C.
150 N. Wacker Dr.
Suite 2150
Chicago, IL 60606

Thomas C. Goldstein
Counsel of Record
Kevin K. Russell
Kevin R. Amer
GOLDSTEIN &
RUSSELL, P.C.
5225 Wisconsin Ave. NW
Suite 404
Washington, DC 20015
(202) 362-0636
tg@goldsteinrussell.com

QUESTION PRESENTED

In 1996, Congress amended the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1961 *et seq.*, to define "racketeering activity" to include violations of certain provisions of immigration law relating to the hiring of undocumented workers. In this case, workers at a chicken processing plant brought a RICO action against plant officials alleging that their wages were depressed as a result of a conspiracy to violate those immigration provisions in order to hire undocumented workers at below market rate wages. The Fourth Circuit held that petitioners' claim was precluded as a matter of law because such immigration law violations cannot be a proximate cause of the plaintiffs' lowered wages.

The question presented is:

Whether allegations that an employer engaged in a pattern of violations of federal immigration laws for the purpose of depressing employee wages can state a claim under RICO, as the Second, Sixth, Ninth, and Eleventh Circuits have held; or whether such allegations necessarily fail to state a claim because, as the Fourth Circuit held below, immigration violations cannot be the proximate cause of depressed wages.

PARTIES TO THE PROCEEDINGS BELOW

The parties to the proceedings below include petitioners (plaintiffs-appellants below) Bizzie Walters, Annie Hodge, Annette Baldwin, Katrena Cooper, and Barbara Allen, on behalf of themselves and a class of similarly situated persons.

Respondents (defendants-appellees below) are Todd McMahen, Tol Dozier, Nancy Hollis, Alberto Asyn, Richard Jamison, Jim Hungate, Amparo Herrera, Maria Salizar Gonzalez, Jeff Beckman, Jerry Layne, David Castro, Angie Wood, Julio Unzueta, Elana Fernandez, Jim Booth, Terry Ashby, Jeanette Cox, Leslie Cox, Randy Brown, Efrem Andrews, Gilberto Fernando Rivera, Bennie Gray, Charlie Carpenter, Bel Holden, Rob Helfin, Gary Miller, Emperatriz Paola Beatty, Sandra Herrera, and Gustavo Gus Paez.

Elana Asyn was a defendant in the district court, but was terminated on March 18, 2011. Perdue Farms Incorporated moved to intervene as a defendant in the district court, but withdrew the motion.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Bizzie Walters *et al.* respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-22a) is reported at 684 F.3d 435. The district court's opinion (Pet. App. 23a-44a) is reported at 795 F. Supp. 2d 350.

JURISDICTION

The court of appeals issued its decision on July 5, 2012. Pet. App. 1a. A petition for rehearing and rehearing en banc was denied on July 31, 2012. *Id*. 45a-46a. On October 18, 2012, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including November 28, 2012. No. 12A381. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

1. Title 18 U.S.C. § 1962 provides in relevant part:

> **Prohibited activities**
>
> . . . .
>
> (c) 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 or collection of unlawful debt.
>
> (d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

2. Title 18 U.S.C. § 1961 provides in relevant part:

> As used in this chapter –
>
> (1) "racketeering activity" means . . . (B) any act which is indictable under any of the following provisions of title 18, United States Code: . . . section 1546 (relating to fraud and misuse of visas, permits, and other documents) . . . .

3. Title 18 U.S.C. § 1546 provides in relevant part:

> (b) Whoever uses –
>
> (1) an identification document, knowing (or having reason to know) that the document was not issued lawfully for the use of the possessor,
>
> (2) an identification document knowing (or having reason to know) that the document is false, or
>
> (3) a false attestation,
>
> for the purpose of satisfying a requirement of section 274A(b) of the Immigration and Nationality Act, shall be fined under this title, imprisoned not more than 5 years, or both.

3. Title 18 U.S.C. § 1964 provides in relevant part:

> **Civil remedies**
>
> . . . .
>
> (c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962.

STATEMENT OF THE CASE

Petitioners brought this civil RICO action alleging that respondents – officers and employees of Perdue Farms, Inc. – conspired to depress hourly wages at the company by employing illegal aliens through violations of federal immigration law. The district court dismissed the complaint and the Fourth Circuit affirmed. The court of appeals did not dispute that Congress specifically amended RICO to permit suits premised on patterns of immigration violations. It nonetheless held as a matter of law that RICO's proximate causation requirement precludes workers whose wages are depressed as a result of immigration violations from suing to enforce the statute.

1. RICO declares it 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." 18 U.S.C. § 1962(c). The term "racketeering activity" is defined by reference to various "predicate acts" set forth in Section 1961(1).

In 1996, Congress amended RICO to expand the list of RICO predicate acts to include certain violations of the nation's immigration laws. Pub. L. No. 104-132, § 433, 110 Stat. 1214, 1274 (1996) (codified at 18 U.S.C. §§ 1961(1)(B), (F)). Among the newly added predicate offenses was 18 U.S.C. § 1546(b), which provides:

> Whoever uses –
>
> > (1) an identification document, knowing (or having reason to know) that the document was not issued lawfully for the use of the possessor,
> >
> > (2) an identification document knowing (or having reason to know) that the document is false, or
> >
> > (3) a false attestation,
>
> for the purpose of satisfying a requirement of section 274A(b) of the Immigration and Nationality Act, shall be fined under this title, imprisoned not more than 5 years, or both.

2. The meat and poultry processing industry is one of the biggest exploiters of unauthorized

immigrant labor. *See* Pew Hispanic Center, *Unauthorized Migrants: Numbers and Characteristics* 27 (June 14, 2005) (estimating that 25 percent of meat and poultry workers are unauthorized workers).[1] Petitioners are five hourly-wage employees of Perdue, a major poultry processing company. In 2010, petitioners filed a class action alleging that Perdue officials and employees had conspired purposefully to depress the wages of hourly workers by employing large numbers of aliens not authorized to work in the United States.

Petitioners' complaint alleged, in relevant part, that Purdue officials instructed the company's human resources staff to hire undocumented workers, accept false identification documents, and falsely attest to their validity on the I-9 Employment Eligibility Verification forms required by the Government, in violation of 18 U.S.C. §1546(b). The purpose and effect of this scheme was to depress the wages of hourly employees throughout the company, thereby reducing labor costs and increasing both the company's profitability and the conspirators' own compensation. Complaint ¶¶43-44. Specifically, petitioners "allege[d] that these hiring practices save Perdue millions of dollars in labor costs because illegal immigrants will work longer hours for lower wages than American citizens." Pet. App. 26a-27a. "But for the employment of these many illegal immigrants," the Complaint

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[1] *Available at* http://www.pewhispanic.org/files/reports/46.pdf.

alleged, Perdue "would be required by market forces to pay higher wages to Class members." Complaint ¶84. At the same time, because of the company's "size and power within the local labor market," petitioners had little option other than to continue "to work for depressed wage rates" at Perdue's factories. Complaint ¶79.

3. The district court dismissed the suit, and the Fourth Circuit affirmed, although on different grounds.

As relevant here, the court of appeals did not accept the district court's conclusion that petitioners' allegations concerning defendants' violations of Section 1546(b) lacked sufficient detail to survive a motion to dismiss under *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). *See* Pet. App. 9a, 18a; *id*. 35a-37a. Instead, the court held that the complaint failed as a matter of law because a "false attestation violation cannot be a proximate cause" of depressed wages. *Id*. 21a.[2]

The Fourth Circuit began by explaining that RICO requires plaintiffs to show that the alleged predicate acts "proximately cased the plaintiffs' injury." Pet. App. 19a. The court observed that *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258 (1992), had "identified three reasons supporting this

[2] The court of appeals therefore did not reach the district court's additional holding that petitioners' claims were barred by the intracorporate conspiracy doctrine. Pet. App. 22a n.11.

requirement of a direct link between an alleged predicate act and a plaintiff's injury." *Id*. First was the "factual difficulty of measuring indirect damages and distinguishing among distinct independent causal factors." *Id*. The second reason was the "complexity of apportioning damages among plaintiffs to remove the risk of multiple recoveries." *Id*. 19a-20a. And the third reason was "the vindication of the law through compensation of directly-injured victims." *Id*. 20a.

The Fourth Circuit then concluded that the "first rationale identified in *Holmes* . . . illustrates the central deficiency of the plaintiffs' claim." Pet. App. 20a. Because the "wage depression alleged by the plaintiffs is not directly linked to any violation of the false attestation predicate," the "factual challenges involved in attempting to measure indirect damages and to distinguish among distinct independent causal factors would be insurmountable." *Id*. Specifically, the court explained that in its view, "it is not the violation of the false attestation predicate that has caused the harm suffered by the plaintiffs." *Id*.

The court did not dispute the adequacy of petitioners' allegations that the widespread employment of undocumented workers resulted in depressed wages at respondents' factory. Instead, it held that this causal connection was inadequate to establish proximate cause, for three reasons.

First, the court held that only the Government is directly affected by violations of immigration laws. "[T]he fraudulent use of identification documents and the false attestations placed on the I–9 forms," the court reasoned, "are fundamentally crimes against the

government of the United States." Pet. App. 20a-21a. Consequently, "such actions do not *directly* impact the plaintiffs' wage levels." *Id*. 21a (emphasis added).

Second, although the court did not doubt that the false attestations could be the but-for cause of wage depression, they could not be the proximate cause because they were simply "one step in a chain of events that ultimately may have resulted in the employment of unauthorized aliens by Perdue." Pet. App. 21a.

Third, the false attestation violations could not be a proximate cause of injury because an employer can always inflict the same injury without actually violating the false attestation provision, so long as it is willing to violate other federal laws. The court used an example to explain:

> If Perdue engaged in the hiring of unauthorized aliens without the hiring clerks' fraudulent completion of the I–9 forms, such as by paying the unauthorized employees in cash and not reporting their employment to the United States government, the alleged injury suffered by the plaintiffs would be the same as that stated in the amended complaint.

Pet. App. 21a.

REASONS FOR GRANTING THE WRIT

Congress amended RICO in 1996 with the specific purpose to permit suits by those injured by conspiracies to violate immigration laws, including violations involving the recurring scenario of employers using false attestations regarding the validity of workers' identification and work authorization papers. The decision in this case effectively repeals that amendment by construing RICO's proximate cause standard in a fashion that makes any such suits impossible. Workers whose wages are lowered when an employer is able to hire undocumented aliens at below market rate wages are directly injured by immigration law violations, particularly by false attestations. And if those injured workers cannot sue to enforce the statute – because, on the Fourth Circuit's theory, the Government is the only direct victim of immigration fraud and the employer could have hired the undocumented workers by violating the law in a different way – then the statute's private right of action has similarly been repealed in relevant part.

That cannot be the law, and in other circuits it is not. Both the circuit conflict, and the defiance of Congress's policy judgment that such suits should be permitted, are intolerable. This Court should grant the petition in this case and reverse.

I. The Fourth Circuit's Decision Is In Conflict With Holdings Of Other Circuits.

Certiorari is warranted first because the Fourth Circuit's decision in this case is irreconcilable with the law of four other circuits.

A. Four Other Circuits Have Held That RICO's Proximate Cause Element Does Not Preclude Wage Depression Suits Predicated On Immigration Violations.

In conflict with the decision below, the Sixth, Ninth, and Eleventh Circuits have held that RICO's proximate cause requirement is *not* a bar to wage depression suits by workers whose employers have engaged in a pattern of immigration violations in order to hire significant numbers of undocumented aliens at below market wages. The Second Circuit has gone one step further, finding that by reducing the defendant's labor costs, such immigration violations may proximately cause injury to the defendant's competitors as well.

1. Sixth Circuit

As in this case, the plaintiffs in *Trollinger v. Tyson Foods, Inc.*, 370 F.3d 602 (6th Cir. 2004) (Sutton, J.), were workers in a chicken processing plant who alleged that their employer engaged in a scheme "to depress the wages of . . . hourly employees by hiring illegal immigrants," *id.* at 605, by, among other things, accepting false identification documents and filing false attestations. *See id*. at 606 (noting predicate acts included violations of 18 U.S.C. § 1546(b)).

The district court dismissed the complaint, finding that the allegations were insufficient to show that the employer's illegal conduct proximately caused an injury to the plaintiffs. *Trollinger v. Tyson Foods, Inc.,* 214 F. Supp. 2d 840, 843-44 (E.D. Tenn. 2002). But the Sixth Circuit reversed, concluding that RICO's proximate cause requirement did not eliminate the possibility of such wage depression suits. First, it rejected the claim that the plaintiff's injuries were derivative, rather than direct. 370 F.3d at 615-18. The court then rejected the claim that the workers had "failed to show proximate cause because the 'chain of reasoning' in support of their claim 'is largely speculative.'" *Id*. at 618. It further rejected Tyson's contention that other "independent factors" could have been a more direct cause of the depressed wages, noting that such an argument "requires us to do as much speculating as plaintiffs' multi-link chain of causation allegedly requires us to do." *Id.* at 619.

2. Ninth Circuit

In *Trollinger*, the Sixth Circuit relied in part on the Ninth Circuit's prior decision in *Mendoza v. Zirkle Fruit Co.*, 301 F.3d 1163 (9th Cir. 2002). *See Trollinger*, 370 F.3d at 619. *Mendoza* arose "from claims that two agricultural companies leveraged the hiring of undocumented immigrants in order to depress the wages of their legally documented employees." 301 F.3d at 1166.

The district court dismissed the complaint, finding that the "damages were too speculative and difficult to entertain." *Id*. at 1167. The Ninth Circuit reversed. It explained that "[i]n this circuit, we focus on three

nonexhaustive factors in considering causation," including

> (1) whether there are more direct victims of the alleged wrongful conduct who can be counted on to vindicate the law as private attorneys general; (2) whether it will be difficult to ascertain the amount of the plaintiff's damages attributable to defendant's wrongful conduct; and (3) whether the courts will have to adopt complicated rules apportioning damages to obviate the risk of multiple recoveries.

Id. at 1169 (citations omitted).

Starting with the first factor, the Ninth Circuit was "unable to discern a more direct victim of the illegal conduct" than the workers whose wages were depressed, given that "the undocumented workers cannot 'be counted on to bring suit for the law's vindication.'" *Id*. at 1170 (quoting *Holmes*, 503 U.S. at 273). Second, the Ninth Circuit held that proximate cause was not eliminated by the possibility that "factors other than the scheme coupled with the growers' power in the relevant labor market *could* account for the plaintiffs' depressed wages." *Id*. at 1171 (emphasis in original). Finally, the Ninth Circuit observed that there was no "significant risk of multiple recovery in this case" because no "other potential plaintiffs emerge with clarity." *Id*.

3. Eleventh Circuit

The Eleventh Circuit has likewise rejected the claim that RICO's proximate cause element eliminates

wage depression suits like this one. In *Williams v. Mohawk Industries, Inc.*, 465 F.3d 1277 (11th Cir. 2006), the "plaintiffs filed [a] class-action complaint alleging that Mohawk's widespread and knowing employment and harboring of illegal workers allowed Mohawk to reduce labor costs by depressing wages for its legal hourly employees . . . in violation of federal and state RICO statutes." *Id*. at 1280. Among other provisions, the plaintiffs alleged that the defendant conspired to violate 8 U.S.C. § 1546, by "knowingly or recklessly accept[ing] fraudulent documentation from illegal aliens." *Id.* at 1282.[3]

Although the Eleventh Circuit acknowledged that the plaintiff's theory of causation required multiple steps to connect the immigration violations to suppressed wages, it nonetheless held that "it is clear that plaintiffs have alleged a sufficiently direct relation between their claimed injury and the alleged RICO violations." *Id*. at 1288-89. The court thus rejected the defendant's assertion, accepted by the Fourth Circuit in this case, that proximate cause was lacking because "illegal hiring is just one of myriad factors affecting wages." *Id*. at 1289. To the contrary, the Eleventh Circuit noted, "the Supreme Court has

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[3] It appears that the Section 1546 violation may have been pled only as a predicate to the state, and not the federal, RICO claim. But if so, it made no difference. The complaint unambiguously alleged other immigration violations as predicates to the federal RICO claim and the Eleventh Circuit construed both statutes to impose the same proximate cause requirement. *Id*. at 1294.

already recognized a direct correlation between illegal hiring and lower wages." *Id*. (citing *DeCanas v. Bica*, 424 U.S. 351, 356-57 (1976)).

The Eleventh Circuit further rejected Mohawk's argument that the United States was the most direct victim of any immigration violation. The court explained that:

> [u]nder Mohawk's theory, the United States would arguably be the most direct victim of all RICO predicate, criminal acts. Congress, however, criminalized the employment of illegal workers in part to protect legal workers. It is consistent with RICO's purposes – to expand enforcement beyond federal prosecutors with limited public resources – to turn victims (here, Mohawk's legal workers) into prosecutors as private attorneys general seeking to eliminate illegal hiring activity by their *own* employer.

465 F.3d at 1290 (emphasis in original). Thus, the court concluded that if workers suffering wage depression were not considered directly injured by immigration violations, there would be no private enforcement of RICO's immigration-related provisions because "[t]here is no more direct[ly] injured party who could bring suit." *Id*.

4. Second Circuit

The Second Circuit has gone further, recognizing that immigration violations proximately cause not only lower wages for legal workers, but also economic

injuries to competitors who do not enjoy similar reductions in labor costs.

In *Commercial Cleaning Services, L.L.C. v. Colin Service Systems, Inc.*, 271 F.3d 374 (2d Cir. 2001) (Leval, J.), a company brought suit against a competitor, alleging that the defendant "engaged in a pattern of racketeering activity by hiring undocumented aliens for profit in violation of Section 274 of the Immigration and Nationality Act (INA), 8 U.S.C. § 1324(a), a RICO predicate offense." 271 F.3d at 378. "According to the complaint, [the defendant's] illegal hiring practices enabled it to lower its variable costs and thereby underbid competing firms, which consequently lost contracts and customers" to the defendant. *Id*.

The district court dismissed, holding that the plaintiff "did not allege a direct injury proximately caused by [the defendant's] illegal hiring." *Id*. But the Second Circuit reversed. It began by rejecting the defendant's claim that the "chain of causation between its alleged hiring of undocumented workers" and the plaintiff's injury was "too long and tenuous to meet the proximate cause test of *Holmes*." 271 F.3d at 380. Specifically, the court rejected the defendant's assertion that it was speculative whether the immigration violations caused the lower pay that, in turn, caused the plaintiff a competitive disadvantage. *Id*. at 383. The "purpose of the alleged violation" of immigration law, the court explained, "was to take advantage of [undocumented workers'] diminished bargaining position, so as to employ a cheaper labor force and compete unfairly on the basis of lower costs."

Id. Thus, by "illegally hiring undocumented alien labor, [the defendant] was able to hire cheaper labor and compete unfairly." *Id*. This, the court held, was sufficient to establish that the immigration violation "was a proximate cause of [the defendant's] ability to underbid the plaintiffs and take business from them." *Id*.

The court also rejected the defendant's assertion that a direct injury was lacking because the Government also has an interest in, and right to enforce, immigration laws. *Id*. at 385.

B. The Fourth Circuit's Decision Below Precludes The Wage Depression Suits Other Circuits Permit.

1. These decisions are incompatible with the Fourth Circuit's ruling in this case.

Importantly, the Fourth Circuit did not reject petitioner's claims on any ground specific to this particular complaint. The court did not adopt, for example, the district court's conclusion that the complaint lacked sufficient specificity or factual detail under *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007). *See* Pet. App. 9a, 18a; *id*. 35a-37a. Instead, the Fourth Circuit determined that RICO's proximate cause requirement eliminates the possibility of *any* wage depression suit premised on immigration violations because in *every* such suit, the immigration violations will be "fundamentally crimes against the government," and but "one step in a chain of events" leading to the hiring of unauthorized workers and the depression of wages. *Id*. 21a.

That manifestly is not the rule in the Second, Sixth, Ninth or Eleventh Circuits. Each of those courts has not only held that RICO wage depression suits premised on immigration violations are possible; each has reversed dismissal of such a suit for lack of proximate cause.

The conflict is most obvious in the Sixth and Eleventh Circuits, both of which revived complaints alleging the same predicate immigration offense as alleged in this case. *See Trollinger*, 370 F.3d at 606 (noting 18 U.S.C. § 1546(b) predicate); *Mohawk*, 465 F.3d at 1293 (same). Those courts, moreover, have squarely rejected the Fourth Circuit's reasoning. For example, each has rejected the Fourth Circuit's conclusion that proximate cause is lacking because the immigration violation is "one step in a chain of events" leading to lowered wages. Pet. App. 21a; *see Trollinger*, 370 F.3d at 618-20; *Mohawk*, 465 F.3d at 1288-89. Likewise, while the Fourth Circuit opined that only the federal government is directly injured by immigration violations, Pet. App. 20a-21a, the Eleventh Circuit expressly disagreed. *Mohawk*, 465 F.3d at 1290.

It is also clear that this case would have been allowed to proceed in the Second and Ninth Circuits. Although those circuits' precedents involved different immigration provisions, the proximate cause arguments were the same as in this case and both circuits rejected the fundamental premises of the Fourth Circuit's decision below. Specifically, both courts accepted the claim, rejected by the Fourth Circuit, that proximate cause could be proven through

a chain of events leading from an immigration violation, to the hiring of an illegal alien, to the reduction of wages for lawful employees. *Commercial Cleaning Servs.*, 271 F.3d at 382-83; *Mendoza*, 301 F.3d at 1170-71. (Indeed, the Second Circuit allowed the chain of causation to proceed one step further, from the lowered wages to a competitor's loss of business due to the decreased labor costs). Moreover, the Second Circuit also rejected the assertion that the federal government is the direct victim of immigrations, and therefore the more appropriate RICO plaintiff. *Commercial Cleaning Servs.*, 271 F.3d at 385. The Ninth Circuit likewise concluded that there could be no more direct victim of an immigration violation that the workers whose wages were lowered as a consequence. *Mendoza*, 301 F.3d at 1170.

C. The Conflict Is Recurring, Important, And Untenable.

This circuit conflict should not endure. The availability of a cause of action should not vary depending on the jurisdiction in which the case arises. Moreover, as the conflict itself illustrates, whether RICO permits wage suits is a question that recurs frequently in the lower courts. *See supra* § I(A); *see also, e.g.*, *Zavala v. Wal Mart Stores Inc.*, 691 F.3d 527 (3d Cir. 2012); *Edwards v. Prime, Inc.*, 602 F.3d 1276 (11th Cir. 2010); *Baker v. IBP, Inc.*, 357 F.3d 685 (7th Cir. 2004); *Broussard-Wadkins v. Maples*, No. CV-09-S-1563-NE, 2012 WL 4514178 (N.D. Ala. Sept. 28, 2012); *Simpson v. Sanderson Farms, Inc.*, No. 7:12-CV-28 (HL), 2012 WL 4049435 (M.D. Ga. Sept. 13, 2012); *Boyd v. Koch Foods of Alabama, LLC*, No. 2:11cv748-

MHT, 2012 WL 72708 (M.D. Ala. Jan. 10, 2012); *New Jersey Regional Council of Carpenters v. D.R. Horton, Inc.*, No. 08-1731 (KSH), 2011 WL 4499276 (D.N.J. Sept. 27, 2011); *Short v. Mando American Corp.*, No. 3:10-cv-350-MEF, 2011 WL 486144 (M.D. Ala. Feb. 7, 2011); *Hall v. Thomas*, 753 F. Supp. 2d 1113 (N.D. Ala. 2010); *Brewer v. Salyer*, No. CV F 06-1324 AWI DLB, 2009 WL 1396148 (E.D. Cal. May 18, 2009); *Nichols v. Mahoney*, 608 F. Supp. 2d 526 (S.D.N.Y. 2009); *Cruz v. Cinram Int'l, Inc.*, 574 F. Supp. 2d 1227 (N.D. Ala. 2008); *Marin v. Evans*, No. CV-06-3090-RHW, 2008 WL 2937424 (E.D. Wash. July 23, 2008); *Hager v. ABX Air, Inc.*, No. 2:07-cv-317, 2008 WL 819293 (S.D. Ohio Mar. 25, 2008); *Hernandez v. Balakian*, No. CV-F-06-1383 OWW/DLB, 251 F.R.D. 488 (E.D. Cal. Mar. 19, 2008); *Cunningham v. Offshore Specialty Fabrications, Inc.*, 543 F. Supp. 2d 614 (E.D. Tex. 2008); *cf. also Canyon County v. Syngenta Seeds, Inc.*, 519 F.3d 969 (9th Cir. 2008) (county brought RICO suit against employer of unlawful immigrants for costs inflicted on county health care and criminal justice systems); *A.L.L. Masonry Constr. Co. v. Omielan*, No. 07 C 5761, 2009 WL 2214026 (N.D. Ill. July 23, 2009) (company brought RICO claim against competitor that lowered labor costs through conspiracy to hire unauthorized workers); *System Mgmt., Inc. v. Loiselle*, 91 F. Supp. 2d 401 (D. Mass. 2000) (same); *Motino v. Toys "R" Us, Inc.*, No. 06-370 (SRC), 2007 WL 2123698 (D.N.J. July 19, 2007) (authorized workers brought RICO claim alleging conspiracy to replace lawful employees with unauthorized workers); *Mattus v. Facility Solutions, Inc.*, No. 05-0863 (DRD), 2005 WL 3132190 (D.N.J. Nov. 21, 2005) (same); Mary Catherine G. Isensee,

Enforcing Against the Enforcers: Ensuring Immigration Compliance Through Civil RICO, 49 HOUS. L. REV. 101 (2012).

That litigation reflects the broader, well documented problem of exploitation of undocumented workers to obtain lower labor costs and the Government's inability to address the problem without assistance from private litigants. *See, e.g.*, *Arizona v. United States*, 132 S. Ct. 2492, 2500 (2012); Congressional Budget Office, *The Role of Immigrants in the U.S. Labor Market* 23-24 (2005), *http://www.cbo.gov/doc.cfm?index=6853* (estimating that wages of Americans without a high-school education are nine percent lower as a result of illegal immigration); *cf. also* U.S. Dep't of Homeland Security, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2011*, at 5 (estimating unauthorized immigrant population in Georgia at 440,000, nearly twice as many as estimated in 2000).[4]

At the same time, the scope of RICO's causation requirement more generally has been a source of confusion and conflict in the lower courts. *Lerner v. Fleet Bank, N.A.*, 459 F.3d 273, 284 (2d Cir. 2006) ("There is no little confusion in the case law about the meaning and proper use of the term 'proximate causation' in the RICO context."); *Bridgeport Harbour Place I, LLC v. Ganim*, 30 A.3d 703, 741 (Conn. App.

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[4] *Available at* http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2011.pdf.

Ct. 2011) (same); *see also Moore v. PaineWebber, Inc.*, 189 F.3d 165, 173 (2d Cir. 1999) (Calabresi, J., concurring) ("Much confusion exists, moreover, on the significance of various elements of causation in RICO-fraud situations as opposed to negligence cases, and on the relationship between causation in statutory cases and in common law actions."); Jacob Poorman, *Exercising the Passive Virtues in Interpreting Civil RICO "Business or Property,"* 75 U. CHI. L. REV. 1773, 1775 (2008) (noting that "pervasive disagreement as to what constitutes 'business or property'" under RICO "is compounded by courts conflating injury and proximate cause").

Granting the petition in this case thus would permit the Court to resolve a specific circuit conflict while also providing additional guidance on the operation of one of the statute's most important provisions.

II. The Fourth Circuit's Decision Is Incorrect.

Certiorari is also warranted because the decision below is incorrect, dramatically undermining Congress's decision to expand RICO to address immigration violations and contravening this Court's proximate cause precedents.

A. The Decision Below Subverts Congress's Decision To Create A Private Cause Of Action Under RICO For Immigration Violations.

As discussed, the unavoidable consequence of the Fourth Circuit's decision in this case is that private plaintiffs may not bring civil RICO actions predicated

on false attestation and similar immigration violations. That consequence demonstrates that the Fourth Circuit's ruling cannot be correct.

Congress amended RICO in 1996 specifically to add Section 1546 and other immigration-related violations as predicate offenses. Pub. L. No. 104-132, § 433, 110 Stat. 1214, 1274 (1996) ("Establishing Certain Alien Smuggling-Related Crimes as RICO-Predicate Offenses"). Those amendments were designed to expand the remedies available for offenses involving "false use, or forgery of passports, identification documents, or visas; offenses relating to peonage and slavery; . . . and offense[s] relating to assisting illegal aliens to enter the country." H.R. Rep. No. 104-22, 1995 WL 56411, at *16 (1995).

The "fact that RICO specifically provides that illegal hiring is a predicate offense indicates that Congress contemplated the enforcement of the immigration laws through lawsuits like this one." *Mendoza*, 301 F.3d at 1170. Nothing in the statutory text or the legislative history indicates that Congress intended to exclude private plaintiffs from seeking relief under the newly added immigration predicates. Indeed, Congress was acting against the backdrop of this Court's cases that had stressed the importance of RICOs private enforcement provisions, which bring "the pressure of 'private attorneys general' [to bear] on a serious national problem for which public prosecutorial resources are deemed inadequate." *Agency Holding Corp. v. Malley-Duff & Assocs., Inc.*, 483 U.S. 143, 151 (1987).

B. The Fourth Circuit Incorrectly Applied RICO's Proximate Cause Requirement To Preclude Civil Suits Predicated On Section 1546.

The Fourth Circuit's decision is also irreconcilable with this Court's proximate cause precedents. While the court of appeals was correct that RICO requires "some direct relation between the injury asserted and the injurious conduct alleged," *Holmes*, 503 U.S. at 268, this Court has previously recognized the direct relationship between the hiring of unauthorized workers and depressed wages. *See DeCanas v. Bica*, 424 U.S. 351, 356-57 (1976) (explaining that "acceptance by illegal aliens of jobs on substandard terms as to wages and working conditions can seriously depress wage scales and working conditions of citizens and legally admitted aliens"), *superseded by statute on other grounds as stated in Chamber of Commerce v. Whiting*, 131 S. Ct. 1968, 1975 (2011). The Fourth Circuit's reasons for refusing to recognize this obvious economic reality reflect a misunderstanding of this Court's proximate cause precedents.

First, the fact that the immigration offenses may be "fundamentally crimes against the government of the United States," Pet. App. 21a, has no bearing on whether those violations also proximately caused petitioners' injuries. While the Government may also suffer an injury to its interests a sovereign, that is true of *any* RICO predicate offense. "If the existence of a public authority that could prosecute a claim against putative RICO defendants meant that the plaintiff is

too remote under *Holmes*, then no private cause of action could ever be maintained, for every RICO predicate offense, as well as the RICO enterprise itself, is separately prosecutable by the government." *Commercial Cleaning Servs.,* 271 F.3d at 385. That obviously is not what Congress contemplated. As this Court has noted, violations of RICO's civil provisions are "not 'offenses against the laws of the United States,'" enforceable only through federal criminal prosecutions. *Tafflin v. Levitt,* 493 U.S. 455, 464 (1990) (citation omitted). Instead, Congress included a civil private right of action under RICO precisely because it intended private litigation to supplement government enforcement of the underlying predicate offenses. *See, e.g.*, *Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639, 654-55 (2008) (noting that "directly injured victims can generally be counted on to vindicate the law as private attorneys general") (quoting *Holmes*, 503 U.S. at 269-70).

The Fourth Circuit suggested that because the Government is injured in a theoretical sense, and because its injury is direct, the Government is the only entity to have a RICO claim predicated on immigration violations. Pet. App. 21a. But that reasoning misses the point of asking what party is most directly injured by a RICO violation, which is to avoid the practical problems that could arise from allowing suit by plaintiffs whose injuries are derivative of other *private* potential plaintiffs, giving rise to the need to apportion damages and the risk of multiple recoveries. *Holmes*, 503 U.S. at 269-70. But that concern is not implicated by the fact that the Government may suffer a non-monetary injury

whenever the law is violated. And as a number of courts have observed, there is no private party more directly injured by an employer's unlawful employment of unauthorized workers than the company's legal employees. *See Mohawk*, 465 F.3d at 1290; *Mendoza*, 301 F.3d at 1170. Such employees, moreover, have the greatest incentive to bring an action to challenge the illegal conduct – exactly the outcome contemplated by RICO. *See Malley-Duff*, 483 U.S. at 151.

Second, the Fourth Circuit was wrong in concluding that proximate cause could not be established in wage depression cases because the violation was but "one step in a chain of events" leading to lower wages. Pet. App. 21a. This Court has never prohibited recoveries for injuries that are more than one step down a chain of causation. The Court's unanimous decision in *Bridge v. Phoenix Bond & Indemnity Co.*, 553 U.S. 639 (2008), provides an illustration. There, Cook County ran an annual auction to sell liens on delinquent taxpayers' property. To prevent any one company from acquiring a disproportionate share of the liens, it required every participating entity to submit bids only in its own name and to certify that it was not submitting simultaneous bids on the same parcel through agents or intermediaries. The plaintiffs in *Bridge* were participants in the auctions who believed that a competitor had filed a false certification and was violating the rule. They filed suit under RICO alleging that as a result of the fraud, the County allowed the defendant to acquire more liens than it otherwise would have, which caused the plaintiffs to lose the

chance to obtain more liens, which caused them financial injury (on the assumption that they would have recovered more on the liens than they would have paid for them). This Court held that this multi-link chain of causation alleged a "sufficiently direct relationship between the defendant's wrongful conduct and the plaintiff's injury to satisfy the proximate-cause principles articulated in *Holmes* and *Anza* [*v. Ideal Steel Supply Corp.*, 547 U.S. 451 (2006)]." *Id*. at 657-58; *see also Hemi Group, LLC v. City of New York*, 130 S. Ct. 983, 992 (2010) (reaffirming *Bridge*).

Petitioners' proximate cause claim in this case is equally well founded. The causal link between respondents' false attestations and petitioners' injuries are just as direct as the link between the defendant's false certification and the plaintiffs' competitive injuries in *Bridge*. Moreover, here, "unlike in *Holmes* and *Anza*, there are no independent factors that account for [petitioners'] injury, there is no risk of duplicative recoveries by plaintiffs removed at different levels of injury from the violation, and no more immediate victim is better situated to sue." *Bridge*, 553 U.S. at 658.

Third, there is no basis in law or logic for the Fourth Circuit's holding that causation fails because respondents could have caused the same depression of wages if they had "engaged in the hiring of unauthorized aliens without the hiring clerks' fraudulent completion of the I–9 forms, such as by paying the unauthorized employees in cash and not reporting their employment to the United States government." Pet. App. 21a. This Court has never

suggested that a RICO defendant can defeat causation by arguing that it could have brought about the same injury through some other form of illegal conduct. When a defendant tricks an old lady into sending him her pension check, his fraud is the proximate cause of the loss, even if he could have achieved the same result by stealing her wallet. So, too, here. Even if there were a *factual* basis for assuming that respondents would have pursued other illegal means of employing undocumented workers if prevented from filing false attestations, that is an argument courts simply cannot accept. The law cannot be that the greater the defendant's lawlessness, the harder it is to hold it accountable for the laws that it breaks.

Here, it is enough that petitioners can plausibly allege that if respondents had complied with the law and not made false attestations, they could not have hired massive numbers of illegal aliens and could not have driven down petitioners' wages.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

Howard W. Foster
FOSTER P.C.
150 N. Wacker Dr.
Suite 2150
Chicago, IL 60606

Thomas C. Goldstein
Counsel of Record
Kevin K. Russell
Kevin R. Amer
GOLDSTEIN & RUSSELL, P.C.
5225 Wisconsin Ave. NW
Suite 404
Washington, DC 20015
(202) 362-0636
tg@goldsteinrussell.com

November 28, 2012

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BIZZIE WALTERS; ANNIE HODGE; ANNETTE BALDWIN; KATRENA COOPER; BARBARA ALLEN, on behalf of themselves and all those similarly situated, *Plaintiffs-Appellants,* v. TODD MCMAHEN; TOL DOZIER; NANCY HOLLIS; ALBERTO ASYN; RICHARD JAMISON; JIM HUNGATE; AMPARO HERRERA; MARIA SALIZAR GONZALEZ; JEFF BECKMAN; JERRY LAYNE; DAVID CASTRO; ANGIE WOOD; JULIO UNZUETA; ELANA FERNANDEZ; JIM BOOTH; TERRY ASHBY; JEANETTE COX; LESLIE COX; RANDY BROWN; EFREM ANDREWS; GILBERTO FERNANDO RIVERA; BENNIE GRAY; CHARLIE CARPENTER; BEL HOLDEN; ROB HEFLIN; GARY MILLER; EMPERATRIZ PAOLA BEATTY; SANDRA HERRERA; GUSTAVO GUS PAEZ, *Defendants-Appellees,*	No. 11-1796

and

ELANA ASYN,

Defendant,

PERDUE FARMS INCORPORATED,

Movant.

Appeal from the United States District Court
for the District of Maryland, at Baltimore.
Richard D. Bennett, District Judge.
(1:11-cv-00751-RDB)

Argued: May 16, 2012

Decided: July 5, 2012

Before NIEMEYER and KEENAN, Circuit Judges, and Margaret B. SEYMOUR, Chief United States District Judge for the District of South Carolina, sitting by designation.

Affirmed by published opinion. Judge Keenan wrote the opinion, in which Judge Niemeyer and Judge Seymour joined.

COUNSEL

ARGUED: Howard W. Foster, FOSTER PC, Chicago, Illinois, for Appellants. Maurice Baskin, VENABLE, LLP, Washington, D.C., for Appellees. **ON**

BRIEF: Matthew A. Galin, FOSTER PC, Chicago, Illinois, for Appellants. Brooks R. Amiot, JACKSON LEWIS LLP, Baltimore, Maryland, Allan S. Rubin, JACKSON LEWIS LLP, Southfield, Michigan, for Appellees Efrem Andrews, Terry Ashby, Alberto Asyn, Jeff Beckman, Jim Booth, Randy Brown, Charles Carpenter, Jeanette Cox, Leslie Cox, Tol Dozier, Helena Fernandez, Bennie Gray, Rob Heflin, Amparo Herrera, Bel Holden, Nancy Hollis, Jim Hungate, Richard Jamison, Jerry Layne, Todd McMahen, Naaman Garrett Miller, Gualberto Rivera, and Angie Wood; William J. Hughes, Jr., COOPER LEVENSON, Atlantic City, New Jersey, David Daneman, BISHOP, DANEMAN & REIFF, LLC, Baltimore, Maryland, for Appellees David Castro, Maria Salizar Gonzalez, Sandra Herrera, and Julio Unzueta.

OPINION

BARBARA MILANO KEENAN, Circuit Judge:

In this case, a group of hourly-wage employees of Perdue Farms, Inc. (Perdue), a major poultry processing company, filed a civil conspiracy action under 18 U.S.C. § 1962(d) of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1961 *et seq*. These hourly-wage employees (the plaintiffs) alleged that certain corporate managers of Perdue, human resources staff, and plant managers conspired to hire aliens not authorized to work in the United States in an effort to reduce labor costs. The plaintiffs asserted that this illegal hiring practice has caused the depression of wages paid to all hourly-wage

employees at certain Perdue facilities. The district court granted the defendants' motion to dismiss filed under Federal Rule of Civil Procedure 12(b)(6), holding that the plaintiffs failed to allege a civil conspiracy claim on which relief could be granted. We affirm, and hold that the plaintiffs failed to state a cause of action for civil conspiracy because they did not allege sufficiently a violation of two RICO predicate acts.

I.

The plaintiffs are five hourly-wage employees of Perdue who are authorized to work in the United States.[1] They filed the action on behalf of themselves and similarly-situated employees, alleging that there is a conspiracy being conducted within Perdue's human resources department involving various levels of Perdue managers and human resources clerks responsible for hiring hourly-wage employees. The alleged object of this conspiracy is the receipt of increased compensation from Perdue flowing to the employee conspirators.

The plaintiffs asserted that the increased compensation received by the employee conspirators results from a hiring scheme designed to employ aliens brought into this country illegally using fraudulent means (the hiring scheme). According to the plaintiffs, the hiring scheme operates in the following fashion. At the lowest level of the conspiracy, the human

[1] The named plaintiffs are Bizzie Walters, Annie Hodge, Annette Baldwin, Katrena Cooper, and Barbara Allen.

resources clerks responsible for hiring hourly-wage employees (the hiring clerks) knowingly process the employment applications of unauthorized aliens who have been brought into this country illegally.[2] The hiring clerks knowingly accept false identification documents and attest to their veracity on Employment Eligibility Verification forms (I-9 forms) required by the United States Department of Homeland Security.

The plaintiffs further alleged that the managers of fourteen Perdue facilities across the United States (the facility managers) have instructed the hiring clerks to commit these acts.[3] The facility managers, in turn, allegedly received their instructions from certain Perdue corporate managers (corporate managers).[4]

Additionally, the plaintiffs asserted that the conspirators' acts have resulted in the depression of wages of every hourly-wage employee working for

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[2] The current and former hiring clerks named as defendants are Nancy Hollis, Alberto Asyn, Elana Fernandez, Amparo Herrera, Maria Salizar Gonzalez, Angie Wood, Julio Unzueta, Emperatiz "Paola" Beatty, Sandra Herrera, Leslie Cox, Gustavo "Gus" Paez, and Gilberto "Fernando" Rivera.

[3] The current and former facility managers named as defendants are Todd McMahen, Tol Dozier, Richard Jamison, Jim Hungate, Jeff Beckman, Jerry Layne, David Castro, Jim Booth, Terry Ashby, Jeanette Cox, Randy Brown, Efrem Andrews, Charlie Carpenter, Bennie Gray, and Bel Holden.

[4] The corporate managers named as defendants are Rob Helfin, the Senior Vice President of Human Resources for Perdue, and Gary Miller, the regional human resource manager for the "Delmarva" region.

Perdue. According to the plaintiffs, this wage depression is both an effect of the hiring scheme and the cause of the plaintiffs' damages. As alleged in the amended complaint, the conspirators benefit from the hiring scheme by reducing labor costs,[5] which in turn increases Perdue's profitability and results in higher compensation for the conspirators.

The plaintiffs filed this action in federal district court in Alabama in March 2010, alleging that the hiring clerks, the facility managers, and the corporate managers (collectively, the defendants) conspired to violate 18 U.S.C. § 1962(c). According to the amended complaint, this conspiracy includes the violation of two different statutes that qualify under RICO as "predicate acts" identified in 18 U.S.C. § 1961(1).

First, the plaintiffs alleged that the hiring clerks individually violated 8 U.S.C. § 1324, which provides criminal penalties for certain acts "relating to bringing in and harboring certain aliens." 18 U.S.C. § 1961(1)(F). The particular subsection at issue, 8 U.S.C. § 1324(a)(3), establishes as a criminal offense the act of knowingly hiring, during a 12-month period, ten or more unauthorized aliens who have been brought into the United States (the illegal hiring predicate). The plaintiffs asserted that each of the hiring clerks "have personally hired hundreds of [such] workers (and more than ten per year, each) with

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[5] The authorized employees allege that "illegal immigrants will work for extremely low wages."

actual knowledge that the workers were unauthorized for employment" and "had been brought into the country" illegally.

Second, the amended complaint alleged that the hiring clerks individually violated 18 U.S.C. § 1546, which establishes as a criminal offense certain acts "relating to fraud and misuse of visas, permits, and other documents." 18 U.S.C. § 1961(1)(B). In particular, the plaintiffs asserted that the hiring clerks violated 18 U.S.C. § 1546(b)(1)-(3), which prohibits the use of false identification documents, and fraudulent attestations regarding the validity of such documents, in the completion of government forms (the false attestation predicate). According to the plaintiffs, the hiring clerks routinely accept false identification documents provided by unauthorized aliens and, knowing those documents to be false, attest to their validity on the I-9 forms.

After the plaintiffs filed their complaint, the defendants moved to transfer the case to Maryland, where Perdue's corporate headquarters are located. The defendants also filed a motion to dismiss the complaint under Rule 12(b)(6). The district court in Alabama granted the defendants' motion to transfer.

Once the case was transferred to Maryland, the defendants renewed their motion to dismiss. The district court granted the motion, and dismissed the action with prejudice. The plaintiffs filed a timely appeal from the district court's judgment.

II.

A.

We review de novo a district court's dismissal of an action under Rule 12(b)(6). *Robinson v. Am. Honda Motor Co.*, 551 F.3d 218, 222 (4th Cir. 2009). In examining the sufficiency of a complaint, we are guided by the Supreme Court's instructions in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). As this Court has noted, those decisions require that complaints in civil actions be alleged with greater specificity than previously was required. *Robertson v. Sea Pines Real Estate Cos.*, ___ F.3d ___, ___, 2012 U.S. App. LEXIS 9694, at *19 (4th Cir. 2012).

The Supreme Court's decision in *Twombly* incorporated "[t]wo working principles." *Iqbal*, 556 U.S. at 678. First, although a court must accept as true all factual allegations contained in a complaint, such deference is not accorded to legal conclusions stated therein. *Id.* The mere recital of elements of a cause of action, supported only by conclusory statements, is not sufficient to survive a motion made pursuant to Rule 12(b)(6). *Id.*

Second, to survive such a motion, a complaint must state a "plausible claim for relief." *Id.* The determination whether a complaint adequately states a plausible claim is a "context-specific task," *id.* at 679, in which the factual allegations of the complaint must be examined to assess whether they are sufficient "to raise a right to relief above the speculative level," *Twombly*, 550 U.S. at 555.

To satisfy this standard, a plaintiff need not "forecast" evidence sufficient to prove the elements of the claim. *Robertson*, ___ F.3d at ___, 2012 U.S. App. LEXIS 9694, at *28. However, the complaint must allege sufficient facts to establish those elements. *Id.* Thus, while a plaintiff does not need to demonstrate in a complaint that the right to relief is "probable," the complaint must advance the plaintiff's claim "across the line from conceivable to plausible." *Twombly*, 550 U.S. at 570.

B.

The district court concluded that the plaintiffs' amended complaint contained several deficiencies that were fatal to the continued prosecution of their action. The court first determined that the amended complaint failed to plead with sufficient particularity the existence of a conspiracy among the defendants. The court also held that the amended complaint lacked sufficient facts supporting either alleged RICO predicate act. Finally, the court concluded that the entire theory on which the amended complaint was based was barred by the intracorporate immunity doctrine. Because we conclude that the plaintiffs failed to plead sufficient facts to establish the elements of either RICO predicate act, we affirm the district court's judgment on that limited basis.

In examining the plaintiffs' allegations concerning the two RICO predicate acts, we first observe that the plaintiffs have alleged that the defendants violated 18 U.S.C. § 1962(d) by conspiring to violate 18 U.S.C. § 1962(c). Subsection (d) provides, in relevant part,

that "[i]t shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section." Subsection (c) provides, in material part:

> 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 . . . .

18 U.S.C. § 1962(c).

An act of racketeering under RICO commonly is referred to as a "predicate act." *Maiz v. Virani*, 253 F.3d 641, 67 (11th Cir. 2001). A "pattern" of racketeering activity is show when a racketeer commits at least two distinct but relate predicate acts. *See Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S 479, 496 n.14 (1985). While private litigants may recover for racketeering injuries under 18 U.S.C. § 1964(c), their injuries must "flow from the commission of the predicate acts." 47 U.S. at 497. And, in the present case, because the plaintiff allege only two predicate acts in support of their civil conspiracy claim, their failure to plead sufficient facts to establish the elements of either predicate act would require that the amended complaint be dismissed. *See Crest Constr. II, Inc. v. Doe*, 660 F.3d 346, 358 (8th Cir. 2011).

1.

We turn to consider the first predicate act alleged by the plaintiffs, namely, the knowing act of hiring

multiple unauthorized aliens brought into this country illegally. The plaintiffs allege that each of the hiring clerks personally violated the illegal hiring predicate, which provides in relevant part:

> (A) Any person who, during any 12-month period, knowingly hires for employment at least 10 individuals with actual knowledge that the individuals are aliens described in subparagraph (B) shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both.
>
> (B) An alien described in this subparagraph is an alien who –
>
> > (i) is an unauthorized alien (as defined in section [1324a(h)(3) of this title]), and
> >
> > (ii) has been brought into the United States in violation of this subsection.

8 U.S.C. § 1324(a)(3).

This particular predicate act has been analyzed in similar contexts by two of our sister circuits. *See Edwards v. Prime, Inc.*, 602 F.3d 1276 (11th Cir. 2010); *Commercial Cleaning Servs., L.L.C. v. Colin Serv. Sys., Inc.*, 271 F.3d 374 (2d Cir. 2001). As our sister circuits have explained, the illegal hiring predicate has two distinct mens rea elements, both of which must be present in order for a violation to occur. First, a defendant must hire ten or more aliens within a 12-month period with actual knowledge that those

aliens are not authorized to work in the United States. *Edwards*, 602 F.3d at 1292-93. Second, the defendant must have actual knowledge that the unauthorized aliens hired were brought into the country in violation of 8 U.S.C. § 1324(a). *Id.* at 1293; *Commercial Cleaning Servs.*, 271 F.3d at 387.

This second element is a crucial component of any violation of the illegal hiring predicate. It is this element, requiring actual knowledge that the aliens were "brought into" this country illegally, that distinguishes 8 U.S.C. § 1324(a)(3), which contains the element and qualifies as a RICO predicate act, from 8 U.S.C. § 1324a(a)(1), which does not contain the element and is not a RICO predicate act but otherwise is substantially similar.[6] *See Nichols v. Mahoney*, 608 F. Supp. 2d 526, 534-35 (S.D.N.Y. 2009) (comparing the two provisions). Under 8 U.S.C. § 1324(a)(3), the RICO predicate act, the hiring of ten or more unauthorized aliens with knowledge that they were brought into this country illegally, exposes the employer to the imposition of fines or to a term of imprisonment of up to five years, or both. *Edwards*, 602 F.3d at 1293.

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[6] Section 1324a(a)(1) provides, in relevant part:

> In general. It is unlawful for a person or other entity—
>
> (A) to hire, or to recruit or refer for a fee, for employment in the United States an alien knowing the alien is an unauthorized alien (as defined in subsection (h)(3) of this section) with respect to such employment . . . .

In contrast, under 8 U.S.C. § 1324a(a)(1), the act of hiring unauthorized aliens *without* knowledge that they were brought into this country illegally limits the employer's exposure to the imposition of civil penalties.[7] *Id.*

The district court determined that the plaintiffs' allegations with respect to the illegal hiring predicate were deficient in two respects. The district court stated that the plaintiffs: 1) failed to identify any employee actually known to be an unauthorized alien; and 2) made only conclusory allegations regarding the manner in which the unauthorized aliens were brought into the United States. Although we disagree with the district court's determination that a plaintiff must identify a particular unauthorized alien worker to satisfy the pleading standards established in *Twombly* and *Iqbal*, we nevertheless agree with the court's ultimate holding that the plaintiffs failed to allege sufficient facts to state a plausible claim that the defendants violated the illegal hiring predicate.

Initially, as the plaintiffs observe, the purported name of an unauthorized alien hired by Perdue likely would emerge only in the form of a pseudonym used by the alien on the I-9 form. The inclusion of such a pseudonym in the complaint would be of minimal value with respect to increasing the plausibility of the

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[7] While a pattern of violations of 8 U.S.C. § 1324a(a)(1) could expose an employer to a criminal sentence of up to six months' imprisonment, even repeated violations of that statute would not qualify as a RICO predicate act. *Edwards*, 602 F.3d at 1293.

plaintiffs' claim. Moreover, the mission of the alleged conspiracy is the defendants' procurement of the unauthorized aliens brought into the country and hiring them to work for Perdue. Thus, because the individual aliens are not alleged to be conspirators but are merely subjects of the hiring scheme, they need not be described with the same detail as the conspirators, at least some of whom must be identified with a degree of particularity. *See Aetna Cas. Sur. Co. v. P & B Autobody*, 43 F.3d 1546, 1562 (1st Cir. 1994) (noting that each defendant must agree with one or more co-conspirators).

Instead, the fatal deficiency of the illegal hiring predicate allegations is the failure to provide sufficient factual support concerning the unauthorized aliens' entry into the United States. As stated above, the illegal hiring predicate requires that the violator employ at least ten aliens within a 12-month period "with actual knowledge" that each employee is "an unauthorized alien" and that each "has been brought into the United States." 8 U.S.C. § 1324(a)(3).

The amended complaint contains only two allegations that bear on the transportation of aliens into the United States. Paragraph 54 of the amended complaint provides, in relevant part, that "since 2006, [the hiring clerk defendants] have personally hired hundreds of workers (and more than 10 per year, each) with actual knowledge that the workers . . . had been brought into the country with the assistance of others on their illicit journey across the U.S.-Mexico border . . . ." Also, paragraph 108 provides, in relevant part, that "on information and belief, Defendant Paez [a

hiring clerk] is also responsible for directly working with 'coyotes' and 'runners' to obtain employment at Perdue for the illegal immigrants when they arrive in the local community. For these services, Paez charges the local immigrants a fee."

These paragraphs fail to establish the elements of a violation of the illegal hiring predicate. Paragraph 54 merely recasts the language of 8 U.S.C. § 1324(a)(3), and provides no factual basis to support the statement that hiring clerks had "actual knowledge" that the unauthorized aliens "had been brought into the country with the assistance of others."

Likewise, paragraph 108, which alleges that a single hiring clerk at one facility, on occasion, has worked with "coyotes" and "runners" to obtain unauthorized aliens for employment at Perdue, does not render plausible the contention that this clerk knowingly hired ten or more unauthorized aliens within one year knowing that they each received assistance crossing the border between the United States and Mexico. Moreover, this allegation in paragraph 108 does not support a conclusion that widespread conspiracy is being conducted to hire unauthorized aliens at fourteen Perdue facilities.[8] Thus, the plaintiffs' allegations regarding the illegal

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[8] The plaintiffs also refer us to their allegations involving illegal aliens obtaining false identification documents at facilities in the United States. However, these allegations have no bearing on the issue whether and in what manner the illegal aliens were "brought into the United States."

hiring predicate fail to advance their claim "across the line from conceivable to plausible." *Twombly*, 550 U.S. at 570.

We note that, prior to *Twombly* and *Iqbal*, the Ninth Circuit made a contrary holding with respect to similar language in a complaint involving the illegal hiring predicate. In *Mendoza v. Zirkle Fruit Co.*, 301 F.3d 1163 (9th Cir. 2002), the court held that an allegation the defendant company knew that unauthorized aliens hired were smuggled into the United States sufficiently supported the illegal hiring predicate for purposes of surviving a motion under Rule 12(b)(6). *Id.* at 1168. However, at the time *Mendoza* was decided, the dismissal of a complaint was appropriate only if it was "clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Mendoza*, 301 F.3d at 1167 (quoting *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514 (2002)). As the decisions in *Twombly* and *Iqbal* have made clear, the standard employed in *Mendoza* no longer is applicable.

Additionally, we disagree with the plaintiffs' contention that the use of "judicial experience and common sense," as authorized by *Iqbal*, 556 U.S. at 679, would lead to a conclusion that the aliens were "brought into the United States," within the meaning of 8 U.S.C. § 1324(a)(3)(B)(ii), because it is not plausible that they crossed over the border from Mexico and walked to Maryland or to any other Perdue location on their own. The plaintiffs conflate the rendering of any assistance to aliens during their course of travel with the act of bringing unauthorized

alien workers into the United States. However, because the illegal hiring predicate requires that unauthorized alien workers be "brought into the United States," a violation requires that a party other than the aliens actively assist with the alien workers' entry into the United States. Once these alien workers have arrived in the United States, any assistance that they receive from other parties is immaterial to the illegal hiring predicate. Therefore, while "judicial experience and common sense" may suggest that unauthorized aliens arriving in Maryland or other states did not travel there entirely by foot, it is not so obvious that such aliens allegedly employed at Perdue's facilities necessarily were "brought into the United States" by others. Accordingly, we conclude that the plaintiffs have not alleged sufficiently a violation of the illegal hiring predicate.

2.

The second RICO predicate act identified in the plaintiffs' amended complaint involves the fraudulent use and false attestation of documents. The particular provision that the plaintiffs assert was violated by the hiring clerks, 18 U.S.C. § 1546(b), states:

> Whoever uses –
>
> (1) an identification document, knowing (or having reason to know) that the document was not issued lawfully for the use of the possessor,
>
> (2) an identification document knowing (or having reason to know) that the document is false, or

> (3) a false attestation,
>
> for the purpose of satisfying a requirement of section 274A(b) of the Immigration and Nationality Act, shall be fined under this title, imprisoned not more than 5 years, or both.

18 U.S.C. § 1546(b).

The district court concluded that the allegations concerning the false attestation predicate were insufficient for two reasons. First, the district court focused on the plaintiffs' failure to identify any single unauthorized employee. Second, the district court held that the plaintiffs failed to state sufficient facts to support their claims regarding this predicate act.

For the reasons we already have stated, we conclude that the plaintiffs' failure to identify any of the unauthorized aliens involved is not fatal to their amended complaint. Additionally, we observe that the plaintiffs have provided a significantly greater level of detail regarding the false attestation predicate than they did regarding the illegal hiring predicate.[9] However, because the plaintiffs have not alleged facts establishing that they suffered an injury proximately

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[9] The parties dispute whether Rule 8 or Rule 9 of the Federal Rules of Civil Procedure provides the appropriate standard for pleading a violation of the false attestation predicate. Because we conclude that this RICO predicate act does not qualify as the proximate cause of the plaintiffs' injuries, we need not address the issue which Rule establishes the appropriate pleading standard.

caused by the hiring clerks' violation of the false attestation predicate, their claim also fails with regard to this predicate act.

As the Supreme Court noted in *Beck v. Prupis*, we are guided by the "well-established common law of civil conspiracy" when determining whether a plaintiff has been "injured" for purposes of 18 U.S.C. § 1962(c), based on a conspiracy alleged under 18 U.S.C. § 1962(d). *Beck*, 529 U.S. 494, 500 (2000). While a "mere violation" of 18 U.S.C. § 1962(d) is all that is required to establish criminal liability, a plaintiff may recover in an action for civil conspiracy only upon establishing injury caused by an act that is itself tortious. *Id.* at 501-02 & 501 n.6. Thus, in the present case, the plaintiffs were required to allege facts establishing that a violation of the false attestation predicate proximately caused the plaintiffs' injury. *See Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 453 (2006) (citing *Holmes v. Sec. Investor Prot. Corp.*, 503 U.S. 258, 268 (1992) for proposition that plaintiff in action invoking 18 U.S.C. § 1962(c) must sufficiently allege that the RICO violation was the proximate cause of plaintiff's injury).

The "central question" therefore is whether the plaintiffs' injuries were the direct result of the alleged predicate act. *Id.* at 461. The Supreme Court has identified three reasons supporting this requirement of a direct link between an alleged predicate act and a plaintiff's injury. These reasons are: (1) the factual difficulty of measuring indirect damages and distinguishing among distinct independent causal factors; (2) the complexity of apportioning damages

among plaintiffs to remove the risk of multiple recoveries; and (3) the vindication of the law through compensation of directly-injured victims. *See Holmes*, 503 U.S. at 269-70 (1992). Applying the proximate causation standard used in *Anza* and *Holmes*, we conclude that the hiring clerks' acts did not cause the injury alleged by the plaintiffs. The injury alleged in the amended complaint is the depression of wages suffered by the plaintiffs as the result of Perdue's employment of unauthorized aliens. Notably, however, the wage depression alleged by the plaintiffs is not directly linked to any violation of the false attestation predicate.

The first rationale identified in *Holmes* supporting the requirement of proximate causation illustrates the central deficiency of the plaintiffs' claim. Here, the factual challenges involved in attempting to measure indirect damages and to distinguish among distinct independent causal factors would be insurmountable.

The compensable injury resulting from a violation of 18 U.S.C. § 1962(c) necessarily is the harm caused by the predicate acts, which must be related sufficiently to each other that they constitute a pattern. *Anza*, 547 U.S. at 457. Thus, the RICO predicate acts must not only be a 'but for' cause of a plaintiff's injury, but the proximate cause of that injury as well. *Hemi Group, LLC v. City of New York*, ___ U.S. ___, ___, 130 S. Ct. 983, 989 (2010).

In the present case, however, it is not the violation of the false attestation predicate that has caused the harm suffered by the plaintiffs. Rather, the

fraudulent use of identification documents and the false attestations placed on the I-9 forms are fundamentally crimes against the government of the United States, and such actions do not directly impact the plaintiffs' wage levels. Although false attestations made by the hiring clerks are one step in a chain of events that ultimately may have resulted in the employment of unauthorized aliens by Perdue, the plaintiffs have not demonstrated that the false attestations themselves have had a direct negative impact on the plaintiffs' wages, or on any other aspect of their compensation.

This deficiency in the plaintiffs' claim becomes obvious by removing the false attestation acts from the plaintiffs' narrative. If Perdue engaged in the hiring of unauthorized aliens without the hiring clerks' fraudulent completion of the I-9 forms, such as by paying the unauthorized employees in cash and not reporting their employment to the United States government, the alleged injury suffered by the plaintiffs would be the same as that stated in the amended complaint. Therefore, as this exercise plainly illustrates, the false attestation violation cannot be a proximate cause of the plaintiffs' injury, because there is no direct relationship between the injury asserted and the predicate act alleged.[10] *Hemi*

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[10] We disagree with the plaintiffs' additional argument that, even if the amended complaint fails to state a claim for conspiracy under 18 U.S.C. § 1962(d) to violate 18 U.S.C. § 1962(c), the amended complaint should be construed as alleging claims against each defendant for individual violations of 18 U.S.C.

Group, ___ U.S. at ___, 130 S. Ct. at 989. For this reason, we hold that the plaintiffs' allegations regarding the false attestation predicate are legally insufficient.

III.

In conclusion, we hold that the plaintiffs have not alleged a plausible violation of either RICO predicate act. Thus, as a matter of law, the plaintiffs have failed to establish a claim supporting their allegation under 18 U.S.C. § 1962(d) of a conspiracy to violate 18 U.S.C. § 1962(c). Accordingly, we affirm the district court's judgment dismissing the plaintiffs' complaint.[11]

AFFIRMED

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§ 1962(c). There are two distinct problems with such an argument. First, the plaintiffs have alleged a single conspiracy count, and they have not cited any authority to suggest that we can rewrite their complaint at this stage. Moreover, we decline to do so. Second, as described in detail above, the plaintiffs have failed to plead sufficient violations of either RICO predicate under 18 U.S.C. § 1962(c), rendering their request moot.

[11] Because we conclude that the plaintiffs have failed to plead adequately a cause of action under 18 U.S.C. § 1962(d), we need not address the separate issue whether the intracorporate immunity doctrine bars their cause of action.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

BIZZIE WALTERS, *et al*. *		
Plaintiffs,	*	Civil Action No.: RDB-11-0751
v.	*	
TODD MCMAHEN, *et al.* *		
Defendants.	*	

* * * * * * * * *

MEMORDANDUM OPINON

On March 22, 2010, Plaintiffs Bizzie Walters, Annie Hodge, Annette Baldwin, Katrena Cooper and Barbara Allen filed a Class Action Complaint in the United States District Court for the Middle District of Alabama and initiated this class action lawsuit. Plaintiffs name as Defendants twenty-nine current and former Perdue Farms, Inc. ("Perdue") employees.[1] In a one count conspiracy claim, Plaintiffs allege that

[1] Todd McMahen, Tol Dozier, Nancy Hollis, Alberto Asyn, Elana Asyn, Richard Jamison, Jim Hungate, Amparo Herrera, Maria Salizar Gonzalez, Jeff Beckman, Jerry Layne, David Castro, Angie Wood, Julio Unzueta, Emperatriz "Paola" Beatty, Jim Booth, Terry Ashby, Jeanette Cox, Sandra Herrera, Leslie Cox, Gustavo "Gus" Paez, Randy Brown, Efrem Andrews, Gilberto "Fernando" Rivera, Bennie Gray, Charlie Carpenter, Bel Holden, Rob Helfin, and Gary Miller (collectively, "Defendants").

Defendants conspired to depress the wages of the legal, hourly-paid employees of Perdue in violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 *et seq*. through a scheme of hiring and falsely attesting to the work authorization of large numbers of illegal immigrants.

On May 28, 2010, Defendants filed a motion for joinder of Perdue, transfer of venue and / or dismissal and for stay of discovery. (ECF No. 61). Concurrently, Perdue filed a motion to intervene in the suit. (ECF No. 63). Subsequently, Plaintiffs filed a First Amended Class Action Complaint (ECF No. 80) on June, 18, 2010. Plaintiffs filed this action on behalf of themselves and on behalf of a class consisting of all other persons legally authorized to be employed in the U.S., who have been employed at any of the Perdue facilities identified in this action as hourly wage earners in the four years prior to the filing of this case and up through trial. Am. Compl. ¶ 185. On March 18, 2011, this case was transferred from the Middle District of Alabama to this Court, (ECF No. 147) and on April 5, 2011, Perdue withdrew its motion to intervene. (ECF No. 163).

Presently pending before this Court is Defendants' Motion for Dismissal (ECF No. 61).[2] The Defendants

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[2] Defendants' motion to dismiss was filed as part of the joint motion for joinder of Perdue, transfer of venue and stay of discovery, (ECF No. 61) filed in advance of the First Amended Complaint, but still deemed to be applicable to that amended complaint.

move to dismiss on the ground that Plaintiffs fail to state a claim for relief under *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009). Plaintiffs have filed a response in opposition to Defendants' motion (ECF No. 179). The parties' submissions have been reviewed and this Court held a hearing on June 9, 2011, pursuant to Local Rule 105.6 (D. Md. 2010)[3]

The Plaintiffs' one count civil RICO claim in this case relies on an expansive legal theory previously rejected by other United States District Courts. Essentially, the claim is that midlevel human resources employees have engaged in a conspiracy to indirectly enrich themselves by causing Perdue to violate United States immigration laws, thereby increasing its net profit, thereby increasing the potentiality of higher salaries for its employees. *See infra* n.13. This claim is simply not plausible. The logical extent of that legal theory would be to create civil RICO causes of action as to any allegedly illegal human resources decisions made by mid-level corporate employees. Furthermore, even if this theory were plausible, a corporation cannot conspire with its employees and, with rare exception, employees of a corporation, when acting within the scope of their employment, cannot conspire among themselves. No exceptions to this intracorporate conspiracy doctrine, well recognized by the United States Court of Appeals

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[3] The parties agreed that the pending Motion to Dismiss is applicable to the amended complaint.

for the Fourth Circuit, apply in this case. As the Plaintiffs simply have no discernible independent personal stake in this matter, any effort to further amend their complaint would be futile. Accordingly, for the reasons that follow, Defendants' Motion to Dismiss (ECF No. 61) is GRANTED, and this case is DISMISSED WITH PREJUDICE.

I. Background

In ruling on a motion to dismiss, "[t]he factual allegations in the Plaintiff's complaint must be accepted as true and those facts must be construed in the light most favorable to the plaintiff." *Edwards v. City of Goldsboro*, 178 F.3d 231, 244 (4th Cir. 1999).

Defendants are employees of Perdue, the alleged third largest poultry processing company in the United States. Am. Compl. ¶ 6. Perdue is headquartered in Salisbury, Maryland and owns and operates poultry processing facilities in Dothan, Alabama; Perry, Georgia; Monterey, Tennessee; Cromwell, Kentucky; Dillon, South Carolina; Accomac, Virginia; Bridgewater, Virginia; Concord, North Carolina; Georgetown, Delaware; Lewiston, North Carolina; Milford, Delaware; Rockingham, North Carolina; Salisbury, Maryland; and Washington, Indiana. *Id.* ¶ 3, 4. Plaintiffs allege that "Corporate Co-Conspirators," including defendants Helfin and Miller, conspired with unnamed "Facility Co-Conspirators" and the other named Defendants, employees in Perdue's Human Resources ("HR") departments, to implement a scheme of hiring illegal immigrants. *Id.* ¶ 43. Plaintiffs allege that these hiring practices save Perdue millions of dollars in labor costs because illegal

immigrants will work longer hours for lower wages than American citizens. *Id.* ¶ 43. Plaintiffs allege that these practices depress the wages of Perdue's legally authorized workers. *Id.* ¶ 184.

Plaintiffs state that corporate management directs HR managers and their staff members to accept false documents from illegal immigrants and to falsely attest to the authenticity of such documents in the hiring process. *Id.* ¶ 45. Plaintiffs allege that Defendants therefore engage in a host of illegal practices, including but not limited to: hiring workers who were previously employed at Perdue using different identifications, hiring workers known to be present in the United States illegally or using facially false documents, and hiring workers who use multiple sets of documents in order to work extra shifts. *Id.* ¶ 46.

Plaintiffs allege that these practices are pervasive and that a scheme of illegal hiring is in place at each of Perdue's processing facilities. *Id.* ¶ 184. At the Dothan plant, for example, Plaintiffs allege that Defendants Dozier, Hollis, Alberto Asyn, Elana Fernandez and other unnamed parties in the HR department use "some or all" of the hiring practices alleged in ¶¶ 45-46. *Id.* ¶ 68. Plaintiffs lay out the corporate hierarchy at the plant, stating that Dozier is responsible for assisting McMahen and other corporate officers in setting the class's wages below market rates. Plaintiffs further assert that McMahen knows and approves of an immigration law conspiracy at the Dothan facility. *Id.* ¶ 74. Plaintiffs repeat functionally the same argument as to the named

Defendants at the Perry facility, *Id.* ¶¶ 80-90; the Monterey facility, *Id.* ¶¶ 91- 105; the Cromwell facility, *Id.* ¶¶ 106-21; the Dillon facility, *Id.* ¶¶ 122-35; and the Accomac facility, *Id.* ¶¶ 136-48. Plaintiffs further allege, on information and belief, that the same illegal hiring conspiracy is in place at Perdue's eight other facilities: Bridgewater, *Id.* ¶¶ 149-52; Concord, *Id.* ¶¶ 153-56; Georgetown, *Id.* ¶¶ 157-60; Lewiston, *Id.* ¶¶ 161-64; Milford, *Id.* ¶¶ 165-68; Rockingham, *Id.* ¶¶ 169-72; Salisbury, *Id.* ¶¶ 173-76 Washington, *Id.* ¶¶ 177-80.

Plaintiffs allege that Perdue's hiring practices are RICO predicate acts.[4] First, Plaintiffs allege that certain Defendants violated 8 U.S.C. § 1324(a)(3)(A),[5] a predicate offense under 18 U.S.C. § 1961(1)(F), by knowingly hiring hundreds of unauthorized and fraudulently documented workers, who had been brought into the United States from Mexico with assistance. *Id.* ¶ 53, 54. Second, Plaintiffs allege that

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[4] Section 1961 of RICO defines the operative terms of § 1962 - § 1968. "Racketeering activity" is defined in § 1961 through a set of predicate violations – violations of other enumerated statutes.

[5] "Any person, who, during any 12-month period, knowingly hires for employment at least 10 individuals with actual knowledge that the individuals are aliens as described in subparagraph (B) shall be fined under title 18 or imprisoned for not more than 5 years, or both. (B) An alien described in this subparagraph is an alien who – (i) is an unauthorized alien (as defined in section 1324a(h)(3) of this title), and (ii) has been brought into the United States in violation of this subsection." 8 U.S.C. § 1324(a)(3).

certain Defendants violated 18 U.S.C. §§ 1546(b)(1), (2) and (3), racketeering acts under 18 U.S.C. § 1961(1)(B), by accepting fake or fraudulent documents from newly hired workers and making false attestations as to their legal status on I-9 forms.[6] *Id.* ¶ 56, 57. Conducting the affairs of an enterprise through a pattern of racketeering activity is illegal under 18 U.S.C. § 1962(c), and Plaintiffs therefore allege that Defendants, though their scheme of illegal hiring violated § 1962(d), which finds unlawful any conspiracy to violate § 1962(a)-(c).

II. Standard of Review

Under Federal Rule of Civil Procedure 8(a)(2), a complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Rule 12(b)(6) of the Federal Rules of Civil Procedure authorizes the dismissal of a complaint if it fails to state a claim upon which relief can be granted; therefore, a Rule 12(b)(6) motion tests the legal sufficiency of a complaint. *Edwards v. City of Goldsboro*, 178 F.3d 231, 243 (4th Cir. 1999). When ruling on such a motion, the court must "accept the well-pled allegations of the complaint as true," and "construe the facts and reasonable inferences derived therefrom in the light most favorable to the plaintiff." *Ibarra v. United States*, 120 F.3d 472, 474 (4th Cir. 1997).

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[6] All United States employers must complete and retain a Form I-9 for each individual they hire for employment in the United States verifying employment eligibility.

A complaint must be dismissed if it does not allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *see also Simmons v. United Mort. and Loan Inv., LLC*, 634 F.3d 754, 768 (4th Cir. Jan. 21, 2011); *Andrew v. Clark*, 561 F.3d 261, 266 (4th Cir. 2009). Under the plausibility standard, a complaint must contain "more than labels and conclusions" or a "formulaic recitation of the elements of a cause of action." *Twombly*, 550 U.S. at 555. Well-pleaded factual allegations contained in the complaint are assumed to be true "even if [they are] doubtful in fact," but legal conclusions are not entitled to judicial deference. *See id.* (noting that "courts are not bound to accept as true a legal conclusion couched as a factual allegation") (internal quotation marks omitted). Thus, even though Rule 8(a)(2) "marks a notable and generous departure from the hyper-technical, code-pleading regime of a prior era, . . . it does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions." *Ashcroft v. Iqbal*, __ U.S. __, 129 S. Ct. at 1937, 1950 (2009).

To survive a Rule 12(b)(6) motion, the legal framework of the complaint must be supported by factual allegations that "raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555. The Supreme Court has explained recently that "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice" to plead a claim. *Iqbal*, 129 S. Ct. at 1949. The plausibility standard requires that the pleader show more than a sheer possibility of success, although it does not impose a "probability

requirement." *Twombly*, 550 U.S. at 556. Instead, "[a] claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 129 S. Ct. at 1937. Thus, a court must "draw on its judicial experience and common sense" to determine whether the pleader has stated a plausible claim for relief. *Id.*

III. Analysis

A. Failure to State a Claim

Under the Racketeer Influenced and Corrupt Organizations Act, it is unlawful for "any person employed by or associated with any enterprise" to conduct "such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt." 18 U.S.C. 8 U.S.C. § 1962(c). Section 1961 of RICO spells out specific acts which are predicate violations. Section 1961(1)(F)[7] defines a violation of 8 U.S.C. § 1324(a)(3)(A) as a RICO predicate act. Under § 1961(1)(B)[8] violations of 18 U.S.C. §§ 1546(b)(1), (2) and (3)[9] are likewise predicate offenses.

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[7] "Any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), section 274 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to import of aliens for immoral purpose) if the act indictable under such section of Act was committed for the purpose of financial gain." 18 U.S.C. § 1961(1)(F).

[8] "(B) any act which is indictable under any of the following provisions of title 18, United States Code: section 1546 (relating

Under § 1962(d) it is unlawful to conspire to violate any provision of § 1962 (a), (b) or (c) of RICO. To plead a violation of § 1962(d), a plaintiff must allege that "each defendant agreed that another coconspirator would commit two or more acts of racketeering." *Proctor v. Metro. Money Store Corp., et al.*, 645 F. Supp. 2d 464, 477 (D. Md. 2009) (quoting *United State v. Pryba*, 900 F.2d 748, 760 (4th Cir. 1990)).

Plaintiffs bring a one count conspiracy claim under § 1964(c)[10] for a violation of § 1962(d), alleging predicate violations under § 1324(a)(3)(A) and 18 U.S.C. §§ 1546(b)(1) - (3). Amend Comp. ¶ 181. Plaintiffs assert that Federal Rule of Civil Procedure

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to fraud and misuse of visa, permits and other documents)." 18 U.S.C § 1961(1)(B).

[9] "Whoever uses – (1) an identification document, knowing (or having reason to know) that the document was not issued lawfully for the use of the possessor, (2) an identification document knowing (or having reason to know) that the document is false, or (3) a false attestation, for the purpose of satisfying a requirement of section 274A(b) of the Immigration and Nationality Act, shall be fined under this title, imprisoned for not more than 5 years or both." 18 U.S.C. § 1546(b)(1)-(3).

[10] "Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale or securities to establish a violation of section 1962." 18 U.S.C. § 1964(c).

8, not Federal Rule of Civil Procedure 9(b) should govern the pleading of these claims. Pls.' Opp'n at 14.[11] However, this Court need not reach a decision on the appropriate pleading standard; Plaintiffs fail to state a claim under the lower threshold of Rule 8, and would necessarily fail under the more rigorous Rule 9(b).[12]

Regardless of the pleading standard applied, Plaintiffs fail to state a claim. Plaintiffs present no more than conclusory allegations to suggest that the Defendants formed a conspiracy under 18 U.S.C. § 1962(d). Plaintiffs allege a scheme of illegal hiring in which supervisors direct HR staff members to violate immigration laws. Amend Comp. ¶ 45. In a similar civil RICO case alleging predicate violations of §1324(a) and §1546 brought in the Northern District of Alabama, the Court explained the standard of

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[11] The Defendants have alternatively argued that the complaint does not satisfy the pleading requirement of either Rule 8 or Rule 9(b).

[12] Parenthetically, this Court will note, however, that it appears that Rule 9(b) does apply to the allegations of false attestation which are part of the claims under §§ 1546(b)(1), (2) and (3). The pleading standard of Rule 9(b) applies to "all averments of fraud." *Hershey v. MNC Fin., Inc.*, 774 F. Supp. 367, 376 (D. Md. 1991). This Court recently found that when the alleged racketeering sounds in fraud, plaintiffs asserting RICO claims must meet the pleading standard of Rule 9(b). *Kun Lee v. PMG 1001, LLC*, No. RDB-09-1514, 2010 WL 14823 at *3 (D. Md. January 11, (2010). Plaintiffs' claims of "false attestation" under §1546 sound in fraud and therefore should meet the Rule 9(b) pleading standard.

pleading under § 1962(d), stating that plaintiffs must "describe in detail the conspiracy, including the identity of the co-conspirators, the object of the conspiracy and the date and substance of the conspiratorial agreement." *Cruz v. Cinram Intl. Inc.*, 574 F. Supp. 2d 1227, 1236 (N.D. Ala. 2008). Here, Plaintiffs fail to provide any facts indicative of such an agreement, including when or where the agreement took place, or the specific substance of any communications between management and HR staff regarding hiring policy. Plaintiffs do not state facts sufficient to present a "plausible" claim under *Twombly*.

Plaintiffs also fail to adequately plead agreement to the conspiracy on the part of each defendant, as required by the United States Court of Appeals for the Fourth Circuit in *United States v. Pryba*, 900 F.2d 748, 760 (4th Cir. 1990). In *Pryba*, the court found that to support a conspiracy conviction under § 1962(d), each defendant must agree that he or another would violate § 1962(c). *Id.* at 760. Plaintiffs repeat that at each facility Defendants use "some or all" of the illicit hiring practices alleged, Am. Compl. ¶ 71, but Plaintiffs fail to detail the personal agreement or involvement of each defendant. Moreover, as to eight of the Perdue facilities, Plaintiffs offer no facts supporting their allegations of predicate violations and conspiracy. They have pled on information and belief alone. Plaintiffs' claims rest heavily on conjecture; they have not advanced their allegations beyond a "speculative level" as *Twombly* requires. *Twombly*, 550 U.S. at 555.

Plaintiffs' claims as to the predicate RICO violations are similarly insufficient. In *Beck v. Prupis*, the Supreme Court held that "injury caused by an overt act that is not an act of racketeering or otherwise wrongful under RICO is not sufficient to give rise to a cause of action under § 1964(c) for a violation of § 1962(d)." 529 U.S. 494, 505 (2000). Thus Plaintiffs must plead facts sufficient to support a plausible inference that the alleged conspiracy actually gave rise to acts of racketeering which were the proximate cause of the Plaintiffs' injury.

A violation § 1324(a)(3)(A) occurs when an individual knowingly hires at least 10 individuals who are aliens, with knowledge that these individuals were brought into the United States in violation of the subsection. Plaintiffs' pleading of this predicate violation is simply a recitation of the statute:

> "They have personally hired hundreds of workers (and more than ten per year, each) with actual knowledge that the workers were unauthorized for employment, used fraudulent identity documents that did not pertain / relate to them, and had been brought into the country with the assistance of others on their illicit journey across the U.S.-Mexico border. . . ."

Am. Compl. ¶ 54. Plaintiffs do not identify a single worker specifically known to be an illegal alien. Rather, Plaintiffs only allege in a conclusory fashion that Defendants at various facilities "observe[] the largely illegal workforce and know[] that most of these

people are not U.S. citizens." Am. Compl. ¶ 83. Additionally, Plaintiffs allegations as to the means by which the illegal workers were brought into the country are unfounded. Plaintiffs state only: "on information and belief, Defendant Paez is also responsible for directly working with 'coyotes' and 'runners' to obtain employment at Perdue for the illegal immigrants when they arrive in the local community." *Id.* ¶ 108. This conclusion is not supported by any facts and is not entitled to judicial deference.

Plaintiffs likewise fail to state a claim under the predicate violation of 18 U.S.C. §§ 1546(b)(1)-(3). Plaintiffs explain that Defendants attest, under penalty of perjury, to the veracity of workers' identification documents when filling out I-9 forms. *Id*. ¶ 58. Plaintiffs' complaint states: "this is a false attestation because the HR staff members know the documents presented are fake / fraudulent." *Id*. ¶ 58. The HR staff's alleged knowledge stems from being "directed by their superiors to accept . . . false documents and make these false attestations," and from the alleged hiring practices themselves, which include "hiring workers who are known to have previously been employed at Perdue under different identities" or "hiring workers whose background information . . . is plainly invalid and / or inconsistent on its face." *Id.* ¶ 46. Plaintiffs again fail to give any specific examples of known illegal employees, workers whose papers were found to be facially fraudulent or workers hired for multiple shifts using dual identities. Plaintiffs do not provide any underlying facts

supporting the statement that these practices are taking place.

Additionally, under § 1964(c) a Plaintiff must plead injury to "business or property by reason of" the violation of the violation of § 1962(d). Plaintiffs allege that the "hourly wages for the Class . . . are depressed below market levels (the going rate for unskilled labor in the area by employers which do not employ illegal workers)." Am. Compl. ¶ 73. Plaintiffs state no underlying data or figures to support assertion. The complaint states no facts addressing: (1) the wages of any class members (2) the market wage of area employers who do not employ illegal workers (3) how the Plaintiffs can purport to determine which area employers do and do not "employ illegal workers" for purposes of calculating market wages. Plaintiffs, therefore, cannot sustain a claim because they fail to "raise a right to relief above a speculative level." *Twombly*, 550 U.S. at 555.

This Court's decision to dismiss this case is bolstered by the recent failure of substantially similar civil RICO claims relying on identical legal theories brought in district courts throughout the country. *See Nichols v. Mahoney*, 608 F. Supp. 2d 526 (S.D.N.Y. 2009); *Trollinger v. Tyson Foods*, 543 F. Supp. 2d 842 (E.D. Tenn. 2008); *Hall v. Thomas*, 753 F. Supp. 2d 1113 (N.D. Ala. 2010).[13] In *Nichols*, for example, the

[13] Two legally and factually analogous cases against poultry processors, *Trollinger v. Tyson Foods*, 543 F. Supp. 2d 842 (E.D. Tenn. 2008) and *Hall v. Thomas*, 753 F. Supp. 2d 1113 (N.D. Ala.

Southern District of New York dismissed a civil RICO claim alleging the same predicate violations of immigration statutes as in the instant case. As in this case, the *Nichols* court found that the plaintiffs failed to provide adequate factual information to sustain a claim, and noted that unlawful employment of aliens is *not* a RICO predicate act – only the hiring of "illegal aliens who are known to have been smuggled ('brought') into the United States" qualifies as a RICO predicate offense. *Nichols*, 608 F. Supp. 2d at 534.

Moreover, while Plaintiffs rely heavily in their analysis on the *Williams v. Mohawk Indus., Inc.*, 465 F.3d 1277 (11th Cir. 2006) line of cases,[14] *Mohawk* is readily distinguishable from the instant case. In *Mohawk*, the conspiracy outlined involved named third party recruiters who conspired with Mohawk employees to bring undocumented aliens across the border for employment purposes. *Id.* at 1281-2. In this case, by contrast, the conspiracy alleged involves

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2010), were found to be without merit and were decided for the defendants on summary judgment. While these cases did survive motions to dismiss, both cases were filed pre-*Iqbal* and therefore are of limited value in analyzing the legal sufficiency of the pleading in the instant case. Both *Trollinger* and *Hall* are nevertheless indicative of the lack of factual backing characterizing this particular strain of civil RICO cases based on alleged use of illegal immigrant labor. In both cases, defendants were subjected to a lengthy discovery process for identical allegations.

[14] *Williams v. Mohawk Indus., Inc.*, 314 F. Supp. 2d 1333 (N.D. Ga. 2004), *aff'd in part, rev'd in part on other grounds by* 465 F.3d 1277 (11th Cir. 2006).

no third party efforts and the complaint contains almost no facts regarding the arrival of the allegedly illegal workers in the United States. Moreover, *Mohawk* was decided pre-*Iqbal*, limiting its precedential value. *Nichols*, 608 F. Supp. 2d at 538. Substantial reliance on *Mohawk* does little to advance Plaintiffs' claims.

B. The Intracorporate Conspiracy Doctrine

Even if Plaintiffs' claims were sufficiently plausible, they are nevertheless barred by the intracorporate conspiracy doctrine. The intracorporate conspiracy doctrine, developed in the antitrust context, holds that because the acts of corporate agents are attributable to the corporation itself, a corporation lacks the multiplicity of actors required to form a conspiracy. *Marmott v. Maryland Lumber Co.*, 807 F.2d 1184 (4th Cir. 1986). As this Court has previously noted, a corporation cannot conspire with its employees – and employees, when acting within the scope of their employment, cannot conspire amongst themselves. *AGV Sports Group, Inc. v. Protus IP Solutions, Inc.,* No. RDB 08-3388, 2009 WL 1921152, at *4-5 (D. Md. July 1, 2009). The United States Court of Appeals for the Fourth Circuit has identified two exceptions to the intracorporate conspiracy doctrine: (1) when a corporate officer has an "independent personal stake" in achieving the illegal objectives of the corporation, *Greenville Publ'g Co. v. Daily Reflector, Inc.*, 496 F.2d 391, 399 (4th Cir. 1974); *Shoregood Water Co. v. United States Bottling Co.*, No. RDB 08-2470, 2009 WL 2461689 at *7 (D. Md. Aug. 10, 2009); and (2) when the agent's acts are unauthorized.

Buschi v. Kirven, 775 F.2d 1240, 1252-3 (4th Cir. 1985).

In *United States v. Gwinn*, No. 5:06-cv-00267, 2008 WL 867927 (S.D. W. Va. Mar. 31 2008), the Southern District of West Virginia engaged in a thorough review of the Fourth Circuit's continued application of the intracorporate conspiracy doctrine in civil RICO cases in light of the Supreme Court's decision in *Cedric Kushner Promotions Ltd. v. Don King et al.*, 533 U.S. 158 (2001). In *Cedric Kushner,* the Supreme Court found that a corporation's sole proprietor could be a natural person, and also an "enterprise" for the purposes of establishing liability under § 1962(c). *Id.* at 163. The Court made clear, however, that its holding created no inconsistency with "antitrust law's intracorporate conspiracy doctrine." *Id.* at 166. The court in *Gwinn* explained that while some courts have viewed *Cedric Kushner* as an indication that the intracorporate conspiracy doctrine should not be extended to RICO claims brought under § 1962(d) the Fourth Circuit has consistently found that the intracorporate conspiracy doctrine can be broadly applied to conspiracy cases, including civil RICO claims. *Gwinn*, 2008 WL 867927 at * 22-23 (citing *Detrick v. Panalpina Inc.,* 108 F.3d 529, 544 (4th Cir. 1997)). While the Fourth Circuit has yet to rule directly on this issue, *Cedric Kushner* should not change this Circuit's analysis of the applicability of the intracorporate conspiracy doctrine to non-antitrust cases. *See Culver v. JBC Legal Group, P.C.*, No. 5:04-cv-389, 2005 WL 5621875, at *6 (W.D.N.C. June 28, 2005) (unpublished) (holding that the intracorporate conspiracy doctrine is not limited to antitrust cases).

The Fourth Circuit has long held that "a single entity cannot conspire amongst itself." *Gwinn*, 2008 WL 867927, at * 23 (quoting *Cohn v. Bond,* 965 F.2d 154, 159 (4th Cir. 1991)). This principle has consistently been applied outside of the antitrust context. *See, e.g.*, *Buschi*, 775 F.2d at 1253 (holding the intracorporate conspiracy doctrine applicable to cases arising under 42 U.S.C. § 1983). Addressing § 1962(d) specifically, district courts in the Fourth Circuit pre-*Cedric Kushner* uniformly held that the intracorporate conspiracy doctrine can act to bar civil RICO claims brought under this section. *Sadighi v. Daghighfekr*, 36 F. Supp. 2d, 279 (D.S.C. 1999); *Huntingdon Life Sciences, Inc. v. Rokke*, 986 F. Supp. 982, 991 (E.D. Va. 1997); *Broussard v. Meineke Discount Muffler Shops, Inc.*, 945 F. Supp. 901, 911-12 (W.D.N.C. 1996) *rev'd on other grounds*, 155 F. 3d 331 (4th Cir. 1998).

Post-*Cedric Kusher*, the Fourth Circuit has continued to apply the intracorporate conspiracy doctrine in non-antitrust conspiracy cases. *See ePlus Tech., Inc. v. Aboud*, 313 F.3d 166 (4th Cir. 2002) (noting the general applicability of the intracorporate conspiracy doctrine to a non-antitrust conspiracy claim);[15] *Lewin v. Cooke*, 28 F.App'x 186 (4th Cir. 2002)

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[15] In *ePlus*, the plaintiff brought a civil conspiracy claim under state law and RICO § 1962(d). The court noted the general applicability of the intracorporate conspiracy doctrine, but found that the case fell under the independent personal stake exception. As a result, the court did not specifically note whether it considered the intracorporate conspiracy doctrine in relation to

(unpublished) (applying the intracorporate conspiracy doctrine to a state law conspiracy claim). In *ePlus*, for example, the court affirmed its pre-*Cedric Kushner* stance that "it is generally true that under the intracorporate immunity doctrine . . . corporate employees cannot conspire with each other or with the corporation." 313 F.3d at 179. Thus, claims brought under § 1962(d) likewise continue to be governed by the intracorporate conspiracy doctrine.

Applying the doctrine to the instant case, it is clear that Plaintiffs' claims are barred. The Defendants are all current or former employees of Perdue acting within the scope of their employment, Am. Compl. ¶ 45, and, as such, cannot conspire amongst themselves. Neither recognized exception applies. Plaintiffs specifically state that the Defendants were directed by management to pursue the particular hiring policy here alleged – there was no action outside the scope of the agents' authority. *Id*. Likewise, the independent personal stake exception has no bearing here. For that exception to apply, a conspirator must possess a personal interest independent and "wholly separable" from the interests of the corporation. *Selman v. Am. Sports Underwriters, Inc.*, 697 F. Supp. 225, 239 (W.D. Va. 1988). *See Greenville Publ'g Co.*, 496 F.2d at 399; *Gwinn*, 2008 WL 867927, at *25 ("Where a corporation's success is directly dependent on the

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the state law claim, the RICO claim, or both. *ePlus*, 313 F.3d at 179.

agent's success in furthering the illegal activity, the two are directly related and are not 'wholly independent' of one another."). Plaintiffs here allege no interest on the part of the Defendants independent of their relationship with the Perdue corporation; Defendants' alleged interests and the profitability of the company are, instead, completely intertwined.[16] Therefore, Plaintiffs cannot sustain a claim under § 1962(d).

IV. Dismissal with Prejudice

In *Cozzarelli v. Inspire Pharms., Inc.*, 549 F.3d 618, 630 (4th Cir. 2008), the Fourth Circuit held that dismissal with prejudice was warranted where "amendment would be futile in light of the [complaint's] fundamental deficiencies." *See also Ganey v. PEC Solutions, Inc.*, 418 F.3d 379, 391 (4th Cir. 2005) (affirming a denial to leave to amend where any amendment would be futile).

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[16] At the hearing held by this Court on June 9, 2011, Plaintiffs explained that the alleged scheme aimed to increase Perdue's overall profitability. Plaintiffs alleged that greater profits would, in turn, benefit the Defendants in the form of higher wages and bonuses for "keeping labor costs low." Plaintiffs provided no facts supporting the conclusion that Defendants would, in fact, receive greater compensation from their alleged activities. *Cf. ePlus*, 313 F.3d at 179-80 (holding that the independent personal stake exception applied when a conspirator's aim was to profit by sending her employer into bankruptcy). Defendants, therefore, have no independent personal stake in the alleged scheme.

Here, dismissal with prejudice is appropriate. Plaintiffs have no presently pending motion for leave to amend and a previous amendment did not cure fundamental deficiencies in the complaint. Plaintiffs continue to rely on conclusory allegations and boilerplate recitations of the elements of their cause of action. Moreover, even if Plaintiffs were able to meet the pleading standard of *Twombly* and *Iqbal*, the intracorporate conspiracy doctrine bars the expansive civil RICO claim proffered by the Plaintiffs. Thus, amendment of this complaint would be futile. Plaintiffs cannot plead conspiracy of these parties as allegedly configured within the corporate entity, Perdue Farms, Inc.

CONCLUSION

For the reasons stated above, Defendants' Motion to Dismiss is GRANTED and this case is DISMISSED WITH PREJUDICE. A separate Order follows.

Dated: July 6, 2011

/s/_____
Richard D. Bennett
United States District Judge

FILED: July 31, 2012

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 11-1796
1:11-cv-00751-RDB)

BIZZIE WALTERS; ANNIE HODGE; ANNETTE BALDWIN; KATRENA COOPER; BARBARA ALLEN, on behalf of themselves and all those similarly situated

Plaintiffs – Appellants

v.

TODD MCMAHEN; TOL DOZIER; NANCY HOLLIS; ALBERTO ASYN; RICHARD JAMISON; JIM HUNGATE; AMPARO HERRERA; MARIA SALIZAR GONZALEZ; JEFF BECKMAN; JERRY LAYNE; DAVID CASTRO; ANGIE WOOD; JULIO UNZUETA; ELANA FERNANDEZ; JIM BOOTH; TERRY ASHBY; JEANETTE COX; LESLIE COX; RANDY BROWN; EFREM ANDREWS; GILBERTO FERNANDO RIVERA; BENNIE GRAY; CHARLIE CARPENTER; BEL HOLDEN; ROB HEFLIN; GARY MILLER; EMPERATRIZ POALA BEATTY; SANDRA HERRERA; GUSTAVO GUZ PAEZ

Defendants – Appellees

and

ELANA ASYN

Defendant

PERDUE FARMS INCORPORATED

Movant

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Niemeyer, Judge Keenan and Chief District Judge Seymour.

For the Court

/s/ Patricia S. Connor, Clerk

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF ALABAMA

SOUTHERN DIVISION

BIZZIE WALTERS, ANNIE HODGE, ANNETTE BALDWIN, KATRENA COOPER and BARBARA ALLEN, on behalf of themselves and all those similarly situated,	§	
Plaintiffs,	§	
v.	§	**CIVIL ACTION NO. 1:10-cv-257**
TODD McMAHEN, TOL DOZIER, NANCY HOLLIS, ALBERTO ASYN, ELANA FERNANDEZ, RICHARD JAMISON, JIM HUNGATE, AMPARO HERRERA, MARIA SALIZAR GONZALEZ, JEFF BECKMAN, JERRY LAYNE, DAVID CASTRO, ANGIE WOOD,	§	**JURY DEMAND**
	§	**CLASS ACTION**

JULIO UNZUETA,	§
EMPERATRIZ "PAOLA" BEATTY, JIM BOOTH, TERRY ASHBY, JEANETTE COX, SANDRA HERRERA, LESLIE COX, GUSTAVO "GUS" PAEZ, RANDY BROWN, EFREM ANDREWS, GILBERTO "FERNANDO" RIVERA, BENNIE GRAY, CHARLIE CARPENTER, BEL HOLDEN, ROB HEFLIN, and GARY MILLER,	§
	§
Defendants.	§

FIRST AMENDED CLASS ACTION COMPLAINT

Plaintiffs Bizzie Walters, Annie Hodge, Annette Baldwin, Katrena Cooper, and Barbara Allen, on behalf of themselves and all those similarly situated (hereafter "Plaintiffs"), by and through their undersigned attorneys, complain of the Defendants, Todd McMahen, Tol Dozier, Nancy Hollis, Alberto

Asyn, Elana Fernandez, Richard Jamison, Jim Hungate, Amparo Herrera, Maria Salizar Gonzalez, Jeff Beckman, Jerry Layne, David Castro, Angie Wood, Julio Unzueta, Emperatriz "Paola" Beatty, Jim Booth, Terry Ashby, Jeanette Cox, Sandra Herrera, Leslie Cox, Gustavo "Gus" Paez, Randy Brown, Efrem Andrews, Gilberto "Fernando" Rivera, Bennie Gray, Charlie Carpenter, Bel Holden, Rob Helfin, and Gary Miller (hereafter "Defendants")[1], as follows, for

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[1] "Defendants" will hereafter refer to all the named Defendants in this Complaint. "Dothan Defendants" will hereafter refer to: Defendants Todd McMahen, Tol Dozier, Nancy Hollis, Alberto Asyn, and Elana Asyn, the named Defendants working at the Dothan Facility. "Perry Defendants" will hereafter refer to: Defendants Richard Jamison, Jim Hungate, Amparo Herrera, and Maria Salizar Gonzalez, the named Defendants working at the Perry Facility. "Monterey Defendants" will hereafter refer to: Defendants Jeff Beckman, Jerry Layne, David Castro, Angie Wood, Julio Unzueta, and Emperatriz "Paola" Beatty, the named Defendants working at the Monterey Facility. "Cromwell Defendants" will hereafter refer to Defendants Jim Booth, Terry Ashby, Jeanette Cox, Sandra Herrera, Leslie Cox, and Gustatvo "Gus" Paez, the named Defendants working at the Cromwell Facility. "Dillon Defendants" will hereafter refer to Defendants Randy Brown, Jim Booth, Efrem Andrews, and Gilberto "Fernando" Rivera, the named Defendants working at the Dillon Facility. "Accomac Defendants" will hereafter refer to Defendants Bennie Gray, Charlie Carpenter, and Bel Holden, the named Defendants working at the Accomac Facility. "Corporate Co-Conspirators" will hereafter refer to Defendants Rob Helfin, Gary Miller, and the other unnamed co-conspirators at Perdue's corporate Headquarters in Salisbury, Maryland, who Plaintiffs believe establish and approve of the hiring and wage setting policies that allow the fourteen (14) facilities to conduct the illegal hiring

damages caused to them by their violations of the Racketeer Influenced and Corrupt Organizations ("RICO") Act, and in support state the following:

I.

NATURE OF ACTION

1. This is a class action brought on behalf of all hourly-paid workers legally authorized to be employed in the United States who are or have been employed by Perdue Farms, Inc. ("Perdue") since March 2006 (four years prior to the filing of the initial Complaint in this action) at its fourteen (14) poultry processing facilities ("facility" or "facilities") identified in this Amended Complaint.

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described herein. "Facility Co-Conspirators" will hereafter refer to the unnamed co-conspirators working in the management and Human Resource (hereafter "HR") offices at Perdue's other poultry processing facilities: the Bridgewater, Virginia facility; the Concord, North Carolina facility; the Georgetown, Delaware facility; the Lewistown, North Carolina facility; the Milford, Delaware facility; the Rockingham, North Carolina facility; the Salisbury, Maryland facility; and the Washington, Indiana facility. Based on the similarity of the hiring practices at Dothan, Perry, Monterey, Cromwell, Dillon, and Accomac, and based on Counsel's experiences in other similar cases, Plaintiffs contend that the same and similar hiring practices are utilized at each of the remaining Perdue poultry processing facilities as well. For these reasons, Plaintiffs have included allegations involving these Perdue facilities as well. Plaintiffs intend to amend file a Second Amended Complaint to specifically name the remaining Facility Co-Conspirators and the Corporate Co-Conspirators.

2. Plaintiffs, as representatives of the legal, hourly paid workers at Perdue (hereafter "the Class"), allege that the Defendants have conspired to depress their wages by knowingly employing large numbers of illegal immigrants (likely more than 500 in the last four years alone) and by falsely attesting that these illegal immigrants presented genuine work authorization documentation/identification documents. This is referred to as "the Illegal Immigrant Hiring Scheme" or "the Scheme."

3. On information and belief, the Defendants have conspired with others in Perdue's Headquarters in Salisbury, Maryland, and at its other processing facilities identified herein.

4. The Scheme is conducted and carried out at the following poultry processing facilities owned and operated by Perdue: Dothan, Alabama; Perry, Georgia; Monterey, Tennessee; Cromwell, Kentucky; Dillon, South Carolina; Accomac, Virginia; Bridgewater, Virginia; Concord, North Carolina; Georgetown, Delaware; Lewistown, North Carolina; Milford, Delaware; Rockingham, North Carolina; Salisbury, Maryland; and Washington, Indiana.

5. The Illegal Immigrant Hiring Scheme violates the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 *et seq*. It is perpetrated every day as an integral part of the Defendants' and their co-conspirators' regular manner of conducting hiring and employment at Perdue and will continue unabated, victimizing every legal worker, until halted by judicial intervention.

6. Perdue claims to be the third largest poultry processing company in the United States, with annual sales in excess of $4.6 billion.

II.
PARTIES, JURISDICTION AND VENUE

7. Plaintiff Bizzie Walters is a citizen of Alabama. She was legally authorized to be employed in the U.S. and was an employee at Perdue's Dothan Facility within the past four years.

8. Plaintiff Annie Hodge is a citizen of Alabama. She was legally authorized to be employed in the U.S. and was an employee at Perdue's Dothan Facility within the last four years.

9. Plaintiff Annette Baldwin is a citizen of Georgia. She was legally authorized to be employed in the U.S. and was an employee at Perdue's Perry Facility within the last four years.

10. Plaintiff Katrena Cooper is a citizen of Georgia. She was legally authorized to be employed in the U.S. and was an employee at Perdue's Perry Facility within the last four years.

11. Plaintiff Barbara Allen is a citizen of Tennessee. She was legally authorized to be employed in the U.S. and was an employee at Perdue's Monterey Facility within the last four years.

12. Defendant Todd McMahen is a citizen of Alabama. He is the Complex Manager of the Dothan Facility.

13. Defendant Tol Dozier is a citizen of Alabama. He is the HR Manager at the Dothan Facility.

14. Defendant Nancy Hollis is a citizen of Alabama. She is an HR clerk at the Dothan Facility.

15. Defendant Alberto Asyn is a citizen of Alabama. He is a current supervisor at the Dothan Facility and a former HR clerk at the Dothan Facility.

16. Defendant Elana Fernandez is a citizen of Alabama. She is an HR clerk at the Dothan Facility.

17. Defendant Richard Jamison is a citizen of Georgia. He is the Complex Manager at the Perry Facility.

18. Defendant Jim Hungate is a citizen of Georgia. He is the HR Manager at the Perry Facility.

19. Defendant Amparo Herrara is a citizen of Georgia. He is an HR clerk at the Perry Facility.

20. Defendant Maria Salizar Gonzalez is a citizen of Georgia. She is a former HR clerk at the Perry Facility.

21. Defendant Jeff Beckman is a citizen of Tennessee. He is the Complex Manager at the Monterey Facility.

22. Defendant Jerry Layne is a citizen of Tennessee. He is the HR Manager at the Monterey Facility.

23. Defendant David Castro is a citizen of Tennessee. He is the former HR shift supervisor at the Monterey Facility.

24. Defendant Angie Wood is a citizen of Tennessee. She is an HR clerk at the Monterey Facility.

25. Defendant Julio Unzueta is a citizen of Tennessee. He is a former HR clerk at the Monterey Facility.

26. Defendant Emperatriz "Paola" Beatty is a citizen of Tennessee. She is an HR Clerk at the Monterey Facility.

27. Defendant Jim Booth is a citizen of Kentucky. He is the current Complex Manager at the Cromwell Facility and the former Complex Manager at the Dillon Facility.

28. Defendant Terry Ashby is a citizen of Kentucky. He is the former Complex Manager at the Cromwell Facility.

29. Defendant Jeanette Cox is a citizen of Kentucky. She is the current HR manager at the Cromwell Facility.

30. Defendant Sandra Herrera is a citizen of Kentucky. She is a former HR clerk at the Cromwell Facility.

31. Defendant Leslie Cox is a citizen of Kentucky. She is a current HR clerk at the Cromwell Facility.

32. Defendant Gustavo "Gus" Paez is a citizen of Kentucky. He is the current training manager/supervisor and a former HR clerk at the Cromwell Facility.

33. Defendant Randy Brown is a citizen of South Carolina. He is the current Complex Manager at the Dillon Facility.

34. Defendant Efrem Andrews is a citizen of South Carolina. He is the current HR Manager at the Dillon Facility.

35. Defendant Gilberto "Fernando" Rivera is a citizen of South Carolina. He is the current HR representative at the Dillon Facility.

36. Defendant Charlie Carpenter is a citizen of Virginia. He is a Complex Manager at the Accomac Facility.

37. Defendant Bennie Gray is a citizen of Virginia. He is a plant manager at the Accomac Facility.

38. Defendant Bel Holden is a citizen of Virginia. She is the HR manager at the Accomac Facility.

39. Defendant Rob Helfin is the Senior Vice President of Human Resources ("HR") for Perdue. He works in the Perdue corporate headquarters office in Salisbury, Maryland ("corporate office").

40. Defendant Gary Miller[2] is the regional HR Manager for the Perdue "Delmarva" region. He works for the corporate Perdue office.

41. This Court has subject matter jurisdiction over this case as a federal question, pursuant to 28 U.S.C. § 1331 and 18 U.S.C. § 1964(c).

42. Venue is proper in this Court because one of the facilities is located in Dothan, Alabama, where Plaintiffs Bizzie Walters and Annie Hodge were employed and victimized by the Scheme.

III.
FACTUAL ALLEGATIONS

43. The Corporate Co-Conspirators, including Defendants Rob Helfin and Gary Miller, have conspired with the Defendants, and the Facility Co-Conspirators to approve and carry out the Illegal Immigrant Hiring Scheme at Perdue's facilities, described more fully below. The Scheme saves Perdue millions of dollars in labor costs because illegal immigrants will work for extremely low wages, will typically not complain about workplace conditions and injuries, and because of their vulnerable situation, will accede to employer demands to work harder and longer hours than American citizens.

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[2] Rob Helfin and Gary Miller are identified in this Amended Complaint as two of the "Corporate Co-Conspirators."

44. If the Defendants were not conspiring with the Corporate Co-Conspirators and Facility Co-Conspirators to hire large numbers of illegal immigrants at the Perdue Facilities, Perdue would have to pay the Plaintiffs and the Class significantly higher wages. Thus, the Scheme increases the profitability of Perdue and the amount of money each Defendant and the Co-Conspirators earn. The Scheme also enables Defendants to earn higher compensation than they would otherwise earn if Perdue were not illegally lowering its labor costs through the Scheme.

45. The Illegal Immigrant Hiring Scheme subverts the law against knowingly hiring illegal immigrants. This is done by directing the HR staff to falsely attest that illegal immigrants have presented genuine work authorization documents that relate to the employee tendering them, in order to facilitate their illegal employment. The HR staff members are directed by their superiors to accept these false documents and make these false attestations. Those HR superiors are, in turn, directed by their superiors in Perdue's corporate management (*i.e.*, the Corporate Co-Conspirators), including Rob Helfin, to conduct their facility hiring in this manner so as to ensure that hundreds of illegal immigrants are hired and so that labor costs are kept very low. Thus, the Scheme emanates from the highest level of the Company down to the HR clerks who interview job applicants at each of Perdue's facilities.

46. Defendants and their co-conspirators employ a variety of methods to accomplish the Scheme,

including, but not limited to: 1) hiring workers who are known to have previously been employed at Perdue under different identities; 2) hiring workers who are known to the Defendants and/or HR staff to be in the U.S. illegally and using false/fraudulent identity documents; 3) hiring workers who cannot speak English while claiming to be U.S. Citizens, fully aware of the requirement that naturalized U.S. citizens be conversant in English and that native Americans speak English; 4) hiring workers whose background information (as provided in the interview/application/new-hire process and on the I-9 Forms during the work authorization verification process) is plainly invalid and/or inconsistent on its face, indicating identity fraud/theft; 5) hiring workers who use "dual identities" with different sets of documents to enable them to work double shifts; 6) falsely attesting under penalty of perjury on I-9 Forms issued by the U.S. Government that an employee's identification document(s) appears genuine and relates to the person tendering them; and/or 7) coaching illegal aliens at the time of hire to claim a high numbers of dependents on their tax forms in order to reduce tax withholding as much as possible. (This is not intended to be an exhaustive list.)

47. Additionally, supervisors, such as Defendants Alberto Asyn and David Castro, frequently tell legal class members perceived to be underperforming that Mexicans work harder and/or threaten to replace them with new hires from "the tomato fields" (a euphemism for illegal workers) if they do not work harder.

48. Once illegal immigrants are employed at Perdue, the Facilities' management and HR staff will "tip off" the illegal workers prior to any government raid/audit or any rumor of a government raid/audit to ensure that these workers are not arrested. Former Perdue employees at numerous facilities have explained that on days when there are visits by the government or rumors of such visits/raids, the Perdue Facilities are noticeably emptier and many production lines are unable to run.

49. For example, a former Perdue supervisor at the Monterey Facility has explained that when there was a rumor of a government raid, Defendants Beckman and Castro would hold a meeting of all supervisors, in which they would explain that on the day(s) of the raid/visits (or rumored raid/visits), there may not be enough workers in attendance to run full production lines because the illegal workers would not come to work. As a result, Defendants Beckman and Castro instructed the supervisors to run only the most important lines to make sure that production continued.

50. A majority of Perdue's hourly-paid workforce hired in the past four years falls into one or more of these categories identified above.

51. Such hiring practices are in direct violation of the Immigration and Nationality Act and RICO, which makes the employment of illegal immigrants a predicate offense.

52. Rob Helfin, one of the Corporate Co-Conspirators, is Vice President of HR for Perdue. He is responsible for setting and approving compensation levels for all hourly paid employees in the company. He is also responsible for setting hiring policy for the entire company, including Perdue's policies related to immigration laws. Under his direction, and with the assistance of regional HR director Gary Miller, as well as other unnamed regional HR directors, each of Perdue's facilities conduct hiring of hourly paid employees in the illegal manner described above. He approves of the illegal manner in which hiring is conducted because he knows it will allow the facilities to be staffed with large numbers of illegal immigrants, who are willing to work for depressed, sub-market wages.

IV.
THE RICO PREDICATE ACTS
COMMITTED AGAINST THE PLAINTIFFS

A. Employment of 10 Illegal Aliens Per Year:

53. Defendants Nancy Hollis, Alberto Asyn, Elana Fernandez, Amparo Herrera, Maria Salizar Gonzalez, Angie Wood, Julio Unzueta, Emperatriz "Paola" Beatty, Sandra Herrera, Leslie Cox, Gustavo "Gus" Paez, and Gilberto "Fernando" Rivera, personally violated 8 U.S.C. § 1324(a)(3)(A), a form of racketeering under 18 U.S.C. § 1961(1)(F):

> Any person who, during any 12-month period, knowingly hires for employment at least 10 individuals with actual knowledge that the

> individuals are aliens . . . who [are] . . . unauthorized . . . and [have] been brought into the United States in violation of this subsection.

54. Defendants Hollis, Alberto Asyn, Elana Fernandez, Amparo Herrera, Salizar Gonzalez, Wood, Unzueta, Beatty, Sandra Herrera, Leslie Cox, Paez, and Rivera personally conduct the application, interview, hiring, and work authorization verification process for new hires. As such, they have personally violated this statute by hiring illegal aliens in the manner described above in ¶¶ 45-46. Specifically, since 2006, they have personally hired hundreds of workers (and more than ten per year, each) with actual knowledge that the workers were unauthorized for employment, used fraudulent identity documents that did not pertain/relate to them, and had been brought into the country with the assistance of others on their illicit journey across the U.S.-Mexico border and in obtaining fake/false identity documents once here.

55. Their violations of § 1324(a)(3)(A) have been ongoing since 2006 and will not stop without judicial intervention.

B. Use of False Attestations and False Documents

56. Defendants Hollis, Alberto Asyn, Elana Fernandez, Amparo Herrera, Salizar Gonzalez, Wood, Unzueta, Beatty, Sandra Herrera, Leslie Cox, Paez, and Rivera have also personally violated 18 U.S.C.

§§ 1546(b) (1), (2), and (3), other forms of racketeering activity pursuant to 18 U.S.C. § 1961(1)(B):

> Whoever uses –
>
> > (1) an identification document, knowing (or having reason to know) that the document was not issued lawfully for the use of the possessor,
> >
> > (2) an identification document knowing (or having reason to know) that the document is false, or
> >
> > (3) a false attestation, for the purpose of satisfying a requirement of section 274A(b) of the Immigration and Nationality Act, shall be fined under this title, imprisoned not more than 5 years, or both.

57. As described above, when completing I-9 Forms for newly hired hourly-paid workers, Defendants Hollis, Alberto Asyn, Elana Fernandez, Amparo Herrera, Salizar Gonzalez, Wood, Unzueta, Beatty, Sandra Herrera, Leslie Cox, Paez, and Rivera routinely falsely attest, under penalty of perjury, the following:

> I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (*month*/*date*/*year*) _____ and that to the best of my knowledge the employee is authorized to work in the United States.

58. In the case of illegal immigrants, this is a false attestation because the HR staff members know the documents presented are fake/fraudulent, for the reasons identified in ¶¶ 45-46, *inter alia.* Thus, these actions violate 18 U.S.C. § 1546(b)(3), a RICO predicate offense.

59. Defendants Hollis, Alberto Asyn, Elana Fernandez, Amparo Herrera, Salizar Gonzalez, Wood, Unzueta, Beatty, Sandra Herrera, Leslie Cox, Paez, and Rivera have personally violated § 1546(b)(3) in this manner hundreds of times since 2006.

60. Additionally, Defendants Hollis, Alberto Asyn, Elana Fernandez, Amparo Herrera, Salizar Gonzalez, Wood, Unzueta, Beatty, Sandra Herrera, Leslie Cox, Paez, and Rivera routinely accept fake and fraudulent identification and work authorization documents as part of the process of completing I-9 Forms, knowing that these documents were not issued legally for use by the possessor, for the reasons identified in ¶¶ 45-46, *inter alia.* Thus, these actions violate 18 U.S.C. §§ 1546(b) (1) and (2).

61. Defendants Hollis, Alberto Asyn, Elana Fernandez, Amparo Herrera, Salizar Gonzalez, Wood, Unzueta, Beatty, Sandra Herrera, Leslie Cox, Paez, and Rivera have personally violated §§ 1546(b) (1) and (2) in this manner hundreds of times since 2006.

62. Violations of §§ 1546(b) (1), (2), and (3) committed by Defendants Hollis, Alberto Asyn, Elana Fernandez, Amparo Herrera, Salizar Gonzalez, Wood, Unzueta, Beatty, Sandra Herrera, Leslie Cox, Paez,

and Rivera have been ongoing since 2006, are continuous, open-ended, and will not stop without judicial intervention.

V.
COUNT ONE AGAINST THE DEFENDANTS FOR VIOLATIONS OF 18 U.S.C. §1962(d) – CONSPIRACY TO VIOLATE 18 U.S.C. § 1962(c)

63. The preceding paragraphs are incorporated herein as though set forth in full.

64. Each of the Defendants conspired to carry out the Illegal Immigrant Hiring Scheme and the pattern of RICO predicate offenses described above.

65. The agreement by each Defendant to carry out the Scheme by their personal commission of RICO predicate acts, or that other members of the conspiracy will do so through the Perdue enterprise, violates 18 U.S.C. § 1962(d), a conspiracy to violate 18 U.S.C. § 1962(c). Each of the Defendants constitutes a "person" within the meaning of 18 U.S.C. §§ 1961(3) and 1962(c).

66. At all relevant times, Perdue was a corporation operated by the Defendants and other co-conspirators, which affected interstate commerce. As such, it is a RICO enterprise pursuant to 18 U.S.C. § 1961(4).

67. All Defendants were responsible for carrying out their objectives of the Scheme at their respective Facilities, as directed by their superiors at Perdue and ultimately approved by Helfin, as described in detail below.

A. The Scheme Is Carried Out at the Dothan, Alabama Facility by the Dothan Defendants with Approval from the Corporate Co-Conspirators

68. The Illegal-Immigrant Hiring Scheme is carried out at Perdue's Facility in Dothan, Alabama under the direction of Defendant McMahen with the assistance of Defendants Dozier, Hollis, Alberto Asyn, Elana Fernandez, and other unnamed co-conspirators in Dothan's HR Department. The Scheme utilizes some or all of the hiring policies described above in ¶¶ 45-46.

69. As described above, Defendants Hollis, Alberto Asyn and Elana Fernandez are responsible for personally conducting the application, interview, hiring, and work authorization verification process for new hires, including the illegal immigrants, and for falsely attesting that those illegal immigrants' work authorization/identity documents are genuine and relate to the employee.

70. Defendants Hollis, Alberto Asyn, and Elana Fernandez report directly to Defendant Dozier about the hiring process, including the staffing needs and how the hiring process for hourly-paid workers is conducted.

71. In addition to utilizing some or all of the hiring policies described above, under the direction of Defendant McMahen, Defendant Alberto Asyn personally recruits large numbers of illegal workers from local trailer parks, such as La Vista Trailer Park (in or around Dothan, Alabama).

72. Defendant Dozier is the HR Manager at the Dothan Facility. He has authority over all hiring and firing decisions at the Dothan Facility and is responsible for implementing the hiring policy at the Facility. He reports directly to Defendant McMahen. As part of the Scheme, Defendant Dozier personally approved the hiring policies identified above in ¶¶ 45-46. He observes the largely illegal workforce and knows most of these people are not U.S. citizens or lawful permanent residents; *i.e.,* they are ineligible for employment and have frequently used different names/identities to obtain employment. Defendant Dozier knows and approves of Defendants Hollis, Alberto Asyn, Elana Fernandez, and the other Facility's HR staff's illegal hiring practices that allow these workers to become employed at Perdue.

73. Additionally, Defendant Dozier is responsible for assisting Defendant McMahen and the Corporate Co-Conspirators in setting hourly wages for the Class which are depressed below market levels (the going rate for unskilled labor in the area by employers which do not employ illegal workers) because they know that illegal immigrants will work for extremely low wages. But for the employment of these many illegal immigrants, Defendants McMahen and Dozier and the co-conspirators would be required by market forces to pay higher wages to Class members.

74. Defendant McMahen is part of the management of the Dothan Facility, and has authority over all decisions at the Facility. In his role in the Company, he has approved of and assists in executing the illegal

hiring policies above. He also assists in setting the depressed sub-market hourly wage levels at the Dothan Facility, knowing the Facility is staffed with many illegal immigrants and knowing that the Facility's hiring policies allow such workers to be hired. He visits the plant and observes the largely illegal workforce and knows most of these people are not U.S. citizens or lawful permanent residents; *i.e.*, are ineligible for employment. Defendant McMahen knows and approves of the massive immigration law conspiracy committed by the Dothan Facility's HR staff in order to maintain this illegal workforce, which allow these workers to become employed at Perdue.

75. Defendant McMahen reports directly to the Corporate Co-Conspirators in Maryland, who approve of the illegal manner in which he runs the Dothan Facility, because it saves money in labor costs.

76. Others are part of the Conspiracy to facilitate the Scheme at the Dothan Facility. Defendants McMahen and Dozier have directed all of the Dothan Facility's HR personnel to conduct hiring in the manner described above, which results in the constant and systematic employment of illegal immigrants.

77. Since 2006, the Dothan Defendants have conspired with the Corporate Co-Conspirators to commit a pattern of racketeering activity detailed above.

78. As a direct and proximate result of, and by reason of, the Defendants' agreement to implement and carry out the Scheme through the Perdue

enterprise, the Plaintiffs have been injured in their property, within the meaning of 18 U.S.C. § 1964(c), by being paid depressed, below market wage rates.

79. The Defendants and Corporate Co-Conspirators are able to attract legal workers, *i.e.*, the Class, to work for depressed wage rates at the Dothan Facility because of its size and power within the local labor market.

B. The Scheme Is Carried Out at the Perry, Georgia Facility by the Perry Defendants with Approval from the Corporate Co-Conspirators

80. The Illegal-Immigrant Hiring Scheme is carried out at Perdue's facility in Perry, Georgia under the direction of Defendant Richard Jamison, with assistance of Defendants Jim Hungate, Amparo Herrera, Maria Salizar Gonzalez, and other unnamed co-conspirators in Perry's HR Department. The Scheme utilizes some or all of the hiring policies described above in ¶¶ 45-46.

81. As described above, Defendants Amparo Herrera and Salizar Gonzalez are responsible for personally conducting the application, interview, hiring, and work authorization verification process for new hires, including the illegal immigrants, and for falsely attesting that their work authorization/identity documents were genuine and related to them.

82. Defendants Amparo Herrera and Salizar Gonzalez report directly to Defendant Jim Hungate

about the hiring process, including the staffing needs and how the hiring process for hourly-paid workers is conducted.

83. Defendant Hungate is the current HR Manager at the Perry Facility. He has authority over all hiring and firing decisions at the Perry Facility and is responsible for implementing the hiring policy at the Facility. He reports directly to Defendant Jamison. As part of the Scheme, Defendant Hungate personally approved the hiring policies identified above in ¶¶ 45-46, observes the largely illegal workforce and knows most of these people are not U.S. citizens or lawful permanent residents; *i.e.,* they are ineligible for employment and have frequently used different names/identities to obtain employment. Defendant Hungate knows and approves of Defendants Salizar Gonzalez, Amparo Herrera, and the other Perry Facility's HR staff's illegal hiring practices, which allow these workers to become employed at Perdue.

84. Additionally, Defendant Hungate is responsible for assisting Defendant Jamison and the Corporate Co-Conspirators in setting hourly wages for the Class, which are depressed below market levels (the going rate for unskilled labor in the area by employers which do not employ illegal workers) because they know that illegal immigrants will work for extremely low wages. But for the employment of these many illegal immigrants, Defendants Hungate and Jamison, and the Co-Conspirators, would be required by market forces to pay higher wages to Class members.

85. Defendant Jamison is part of the management of the Perry Facility and has authority of all decisions at the Facility. In his role in the Company he has approved of, and assists in, executing the illegal hiring policies above. He also assists in setting the depressed sub-market hourly wage levels at the Perry Facility, knowing the Facility is staffed with many illegal immigrants and knowing that the Facility's hiring policies allow such workers to be hired. He visits the plants and observes the largely illegal workforce and knows most of these people are not U.S. citizens or lawful permanent residents; *i.e.*, are ineligible for employment. Defendant Jamison knows and approves of the massive immigration law Conspiracy committed by the Perry Facility's HR Staff in order to maintain this illegal workforce, which allows these workers to be employed at Perdue.

86. Defendant Jamison reports directly to the Corporate Co-Conspirators, who approve of the illegal manner in which he runs the Perry Facility, because it saves money in labor costs.

87. Others are part of the Conspiracy to facilitate the Scheme at the Perry Facility. Defendant Jamison has directed all of the Perry Facility's HR personnel to conduct hiring in the manner described above, which results in the constant and systematic employment of illegal aliens.

88. Since 2006, the Perry Defendants have conspired with the Corporate Co-Conspirators to commit a pattern of racketeering activity detailed above.

89. As a direct and proximate result of, and by reason of, the Defendants' agreement to implement and carry out the Scheme through the Perdue enterprise, the Plaintiffs have been injured in their business or property within the meaning of 18 U.S.C. § 1964(c) by being paid depressed, below market wage rates.

90. The Defendants and Corporate-Conspirators are able to attract legal workers, *i.e*., the Class, to work for depressed wage rates at the Perry Facility because of its size and power within the local labor market.

C. The Scheme Is Carried Out at the Monterey, Tennessee Facility by the Monterey Defendants with Approval from the Corporate Co-Conspirators

91. The Illegal-Immigrant Hiring Scheme is carried out at Perdue's facility in Monterey, Tennessee under the direction of Defendant Jeff Beckman, with the assistance of Defendants Jerry Layne, David Castro, Angie Wood, Julio Unzueta, Emperatriz "Paola" Beatty, and other unnamed Co-Conspirators in Monterey's HR department. The Scheme utilizes some or all of the hiring policies described above in ¶¶ 45-46.

92. As described above, Defendants Wood, Unzueta, and Beatty are responsible for personally conducting the application, interview, hiring, and work authorization verification process for new hires, including the illegal immigrants, and for falsely

attesting that their work authorization/identity documents were genuine and related to them.

93. Additionally, in exchange for money, Defendant Unzueta assists illegal workers in obtaining fake/fraudulent identification/work authorization documents in order to facilitate their employment at the Monterey Facility.

94. A former worker explained that when the illegal hiring practices are brought to the attention of managers and supervisors at the Monterey Facility, such as Defendant David Castro, legally authorized workers are told to "shut up" or they could lose their job.

95. Defendants Wood, Unzueta, and Beatty report directly to Defendants Layne and Castro about the hiring process, including the staffing needs and how the hiring process for hourly-paid workers is conducted.

96. Defendant Layne is the HR Manager at the Monterey Facility. He has authority over all hiring and firing decisions at the Monterey Facility and is responsible for implementing the hiring policy at the Facility. He reports directly to Defendant Beckman. As part of the Scheme, Defendant Layne personally approved the hiring policies identified above in ¶¶ 45-46, is aware of the largely illegal workforce, and knows most of these people are not U.S. citizens or lawful permanent residents; *i.e.,* they are ineligible for employment and have frequently used different names/identities to obtain employment.

97. Defendant Layne knows and approves of Defendants Wood, Unzueta, Beatty, and the other Monterey Facility's HR staff's illegal hiring practices, which allow these workers to become employed at Perdue. He also approves of the illegal practices committed by Defendant David Castro, described herein.

98. Additionally, Defendant Layne is responsible for assisting Defendant Beckman and the Corporate Co-Conspirators in setting hourly wages for the Class, which are depressed below market levels (the going rate for unskilled labor in the area by employers which do not employ illegal workers) because they know that illegal immigrants will work for extremely low wages. But for the employment of these many illegal immigrants, Defendants Beckman and Layne and the Co-Conspirators would be required by market forces to pay higher wages to Class members.

99. Defendant Beckman is part of the management of the Monterey Facility, and has authority over all decisions at the Facility. In his role in the Company, he has approved of and assists in executing the illegal hiring policies above. He also assists in setting the depressed sub-market hourly wage levels at the Monterey Facility, knowing the Facility is staffed with many illegal immigrants and knowing that the Facility's hiring policies allow such workers to be hired. He visits the plant and observes the largely illegal workforce and knows most of these people are not U.S. citizens or lawful permanent residents; *i.e.*, are ineligible for employment. Defendant Beckman

knows and approves of the massive immigration law conspiracy committed by the Monterey Facility's HR Staff in order to maintain this illegal workforce, which allow these workers to become employed at Perdue.

100. Defendant Beckman reports directly to the Corporate Co-Conspirators, who approve of the illegal manner in which he runs the Monterey Facility, because it saves money in labor costs.

101. In addition to utilizing some or all of the hiring policies described above, under the direction of Defendant Beckman, Defendants Castro and Unzueta recruit large numbers of illegal workers to staff the Monterey Facility.

102. Others are part of the Conspiracy to facilitate the Scheme at the Monterey Facility. Defendants Beckman and Layne have directed all of the Monterey Facility's HR personnel to conduct hiring in the manner described above, which results in the constant and systematic employment of illegal immigrants

103. Since 2006, the Monterey Defendants have conspired with the Corporate Co-Conspirators to commit a pattern of racketeering activity detailed above.

104. As a direct and proximate result of, and by reason of, the Defendants' agreement to implement and carry out the Scheme through the Perdue enterprise, the Plaintiffs have been injured in their business or property within the meaning of 18 U.S.C.

§ 1964(c) by being paid depressed, below market wage rates.

105. The Defendants and Corporate Co-Conspirators are able to attract legal workers, *i.e.*, the Class, to work for depressed wage rates at the Monterey Facility because of its size and power within the local labor market.

D. The Scheme Is Carried out at the Cromwell, Kentucky Facility by the Cromwell Defendants with Approval from the Corporate Co-Conspirators

106. The Illegal-Immigrant Hiring Scheme is carried out at Perdue's facility in Cromwell, Kentucky, under the direction of Defendants Jim Booth and Terry Ashby, with the assistance of Defendants Jeanette Cox, Sandra Herrera, Leslie Cox, Gustavo Paez, and other unnamed Co-Conspirators in Cromwell's HR department. The Scheme utilizes some or all of the hiring policies described above in ¶¶ 45-46.

107. As described above, Defendants Sandra Herrera, Leslie Cox, and Gustavo Paez are responsible for personally conducting the application, interview, hiring, and work authorization verification process for new hires, including the illegal immigrants, and for falsely attesting that their work authorization/identity documents were genuine and related to them.

108. In addition to utilizing some or all of the hiring policies described above, on information and belief, Defendant Paez is also responsible for directly

working with "coyotes" and "runners" to obtain employment at Perdue for the illegal immigrants when they arrive in the local community. For these services, Paez charges the illegal immigrants a fee.

109. Defendants Sandra Herrera, Leslie Cox, and Gustavo Paez report directly to Defendant Jeannette Cox about the hiring process, including the staffing needs and how the hiring process for hourly-paid workers is conducted.

110. In or about 2009, Defendant Sandra Herrera was arrested for selling false/fake identification at the Cromwell Facility.

111. Defendant Jeanette Cox is the HR Manager at the Cromwell Facility. She has authority over all hiring and firing decisions at the Cromwell Facility and for implementing the hiring policy at the Facility. She reports directly to Defendant Booth. As part of the Scheme, Defendant Cox personally approved the hiring policies identified above in ¶¶ 45-46, is aware of the largely illegal workforce, and knows most of these people are not U.S. citizens or lawful permanent residents; *i.e.,* they are ineligible for employment and have frequently used different names/identities to obtain employment. Defendant Jeanette Cox knows and approves of Defendants Sandra Herrera, Leslie Cox, Paez and the other Cromwell Facility's HR staff's illegal hiring practices, which allow these workers to become employed at Perdue.

112. Additionally, Defendant Cox is responsible for assisting Defendant Booth and the Corporate Co-

Conspirators in setting hourly wages for the Class, which are depressed below market levels (the going rate for unskilled labor in the area by employers which do not employ illegal workers) because they know that illegal immigrants will work for extremely low wages. But for the employment of these many illegal immigrants, Defendants Booth, Jeanette Cox, and the Co-Conspirators would be required by market forces to pay higher wages to Class members.

113. Defendant Booth is part of the management of the Cromwell Facility and has authority over all decisions at the Facility. In his role in the Company, he has approved of and assists in executing the illegal hiring policies above. He also assists in setting the depressed sub-market hourly wage levels at the Cromwell Facility, knowing the Facility is staffed with many illegal immigrants and knowing that the Facility's hiring policies allow such workers to be hired. He visits the plant and observes the largely illegal workforce and knows most of these people are not U.S. citizens or lawful permanent residents; *i.e.*, are ineligible for employment. Defendant Booth knows and approves of the massive immigration law conspiracy committed by the Cromwell Facility's HR Staff in order to maintain this illegal workforce, which allow these workers to become employed at Perdue.

114. Prior to working at the Cromwell Facility, Defendant Booth was the Complex Manager at the Perdue Dillon, South Carolina Facility, where he approved and assisted in carrying out Scheme there, in the same manner (described below).

115. At the Cromwell Facility, Defendant Booth reports directly to the Corporate Co-Conspirators, who approve of the illegal manner in which he runs the Cromwell Facility, because it saves money in labor costs.

116. Defendant Ashby, the former Complex Manager at the Cromwell Facility, was also part of the management of the Cromwell Facility during the relevant period. In his role in the Company, like Defendant Booth, he approved of and assisted in, executing the illegal hiring policies above. He also assisted in setting the depressed sub-market hourly wage levels at the Cromwell Facility, knowing the Facility is staffed with many illegal immigrants and knowing that the Facility's hiring policies allow such workers to be hired. He visited the plant and observed the largely illegal workforce and knew most of those workers were not U.S. citizens or lawful permanent residents; *i.e.*, were ineligible for employment. Defendant Ashby knew and approved of the massive immigration law conspiracy committed by the Cromwell Facility's HR Staff in order to maintain the illegal workforce.

117. Defendant Ashby reported directly to the Corporate Co-Conspirators, who approved of the illegal manner in which he ran the Cromwell Facility.

118. Others are part of the Conspiracy to facilitate the Scheme at the Cromwell Facility. Defendants Booth, Ashby, and Jeanette Cox, have directed all of the Cromwell Facility's HR personnel to conduct hiring in the manner described above, which results in the

constant and systematic employment of illegal immigrants.

119. Since 2006, the Cromwell Defendants have conspired with the Corporate Co-Conspirators to commit a pattern of racketeering activity detailed above.

120. As a direct and proximate result of, and by reason of, the Defendants' agreement to implement and carry out the Scheme through the Perdue enterprise, the Plaintiffs have been injured in their business or property within the meaning of 18 U.S.C. § 1964(c) by being paid depressed, below market wage rates.

121. The Defendants and the Corporate Co-Conspirators are able to attract legal workers, *i.e.*, the Class, to work for depressed wage rates at the Cromwell Facility because of its size and power within the local labor market.

E. The Scheme Is Carried out at the Dillon, South Carolina Facility by the Dillon Defendants with Approval from the Corporate Co-Conspirators

122. The Illegal-Immigrant Hiring Scheme is carried out at Perdue's facility in Dillon, South Carolina, under the direction of Defendants Jim Booth and Randy Brown, with the assistance of Defendants Efrem Andrews and Gilberto "Fernando" Rivera. The Scheme utilizes some or all of the hiring policies described above in ¶¶ 45-46.

123. As described above at other facilities, Defendant Gilberto "Fernando" Rivera is responsible for conducting the application, interview, hiring, and work authorization verification process for new hires, including the illegal immigrants, and for falsely attesting that their work authorization/identity documents were genuine and related to them.

124. Defendant Efrem Andrews is the HR Manager at the Dillon Facility. He has authority over all hiring and firing decisions at the Dillon Facility and is responsible for implementing the hiring policy at the Facility. He reports directly to Defendant Randy Brown. As part of the Scheme, Defendant Andrews personally approved the hiring policies identified above in ¶¶ 45-46, is aware of the largely illegal workforce, and knows most of these people are not U.S. citizens or lawful permanent residents; *i.e.,* they are ineligible for employment and have frequently used different names/identities to obtain employment. Defendant Andrews knows and approves of the Dillon Facility's HR staff's illegal hiring practices, which allow these workers to become employed at Perdue.

125. Additionally, Defendant Andrews is responsible for assisting Defendant Brown and the Corporate Co-Conspirators in setting hourly wages for the Class, which are depressed below market levels (the going rate for unskilled labor in the area by employers which do not employ illegal workers) because they know that illegal immigrants will work for extremely low wages. But for the employment of these many illegal immigrants, Defendants Brown,

Andrews, and the Co-Conspirators would be required by market forces to pay higher wages to Class members.

126. Randy Brown is part of the management of the Dillon Facility and has authority over all decisions at the Facility. In his role in the Company, he has approved of, and assists in, executing the illegal hiring policies above. He also assists in setting the depressed sub-market hourly wage levels at the Dillon Facility, knowing the Facility is staffed with many illegal immigrants and knowing that the Facility's hiring policies allow such workers to be hired. He visits the plants and observes the largely illegal workforce and knows most of these people are not U.S. citizens or lawful permanent residents; *i.e.*, are ineligible for employment. Defendant Brown knows and approves of the massive immigration law Conspiracy committed by the Dillon Facility's HR Staff in order to maintain this illegal workforce, which allow these workers to become employed at Perdue.

127. Defendant Brown reports directly to the Corporate Co-Conspirators, who approve of the illegal manner in which he runs the Dillon Facility, because it saves money in labor costs.

128. As stated above, Defendant Booth was formerly part of the management of the Dillon Facility before moving to the Perdue Cromwell Facility during the relevant period. In his role in the Company while at the Dillon Facility, like Defendant Brown after him, he approved of and assisted in executing the illegal hiring policies and assisted in setting the depressed

sub-market hourly wage levels there, knowing the Facility was staffed with many illegal immigrants and knowing that the Facility's hiring policies allowed such workers to be hired. He visited the plant and observed the largely illegal workforce and knew most of those people were not U.S. citizens or lawful permanent residents; *i.e.*, are ineligible for employment. Defendant Booth approved of the massive immigration law conspiracy committed by the Dillon Facility's HR Staff in order to maintain the illegal workforce.

129. While at the Dillon Facility, Defendant Booth reported directly to the Corporate Co-Conspirators, who approved of the illegal manner in which he ran the Dillon Facility.

130. In addition to utilizing some or all of the hiring policies described above, under the direction of Defendant Booth and the other facility co-conspirators, Defendant Rivera assisted with the live haul department's "swapping of social security numbers," which allows non-employees to "fill in" for current workers who are on vacation/leave of absence by using the current worker's social security number. The "fill-in worker" does not need to present any valid identity/work authorization documents and/or socials security numbers because he or she simply "assumes" the identity of the current worker, who has already been hired.

131. Further, Defendant Rivera knows and encourages supervisors in the live haul division to obtain new fake/fraudulent documentation for current workers whose current documentation appears to be

no longer valid or about whom it becomes known that the current documentation was fake/fraudulent.

132. Others are part of the Conspiracy to facilitate the Scheme at the Dillon Facility. Defendants Booth, Brown, and Andrews have directed all of the Dillon Facility's HR personnel to conduct hiring in the manner described above, which results in the constant and systematic employment of illegal immigrants.

133. Since 2006, the Dillon Defendants have conspired with the Corporate Co-Conspirators to commit a pattern of racketeering activity detailed above.

134. As a direct and proximate result of, and by reason of, the Defendants' agreement to implement and carry out the Scheme through the Perdue enterprise, the Plaintiffs have been injured in their business or property within the meaning of 18 U.S.C. § 1964(c) by being paid depressed, below market wage rates.

135. The Defendants and Corporate Co-Conspirators are able to attract legal workers, *i.e.*, the Class, to work for depressed wage rates at the Dillon Facility because of its size and power within the local labor market.

F. The Scheme Is Carried out at the Accomac, Virginia Facility by the Accomac Defendants with Approval from the Corporate Co-Conspirators

136. The Illegal-Immigrant Hiring Scheme is

carried out at Perdue's facility in Accomac, Virginia, under the direction of Defendants Bennie Gray and Charlie Carpenter, with the assistance of Defendant Bel Holden, and other unnamed Co-Conspirators in Accomac's HR department. The Scheme utilizes some or all of the hiring policies described above in ¶¶ 45-46.

137. As described above at other facilities, unnamed Co-Conspirator HR clerks at the Accomac Facility are responsible for conducting the application, interview, hiring, and work authorization verification process for new hires, including the illegal immigrants, and for falsely attesting that their work authorization/identity documents were genuine and related to them.

138. A former shipping supervisor at the Accomac Facility observed how the Scheme worked – in part – at the Accomac Facility (located in Virginia). Many hourly paid workers drove to work in cars that had Tennessee license plates and also presented fake identification documents/IDs from Tennessee. Such factors indicate that these workers used fake or fraudulent documents to get hired. This same shipping supervisor also learned that it was normal when hiring illegal immigrants for Perdue HR representatives to advise such workers on the "tax situation," *i.e.*, that the more dependants they claimed, the less taxes they had to pay.

139. Defendant Bel Holden is the HR Manager at the Accomac Facility. She has authority over all hiring and firing decisions at the Accomac Facility and is responsible for implementing the hiring policy at the

Facility. She reports directly to Defendants Carpenter and Gray. As part of the Scheme, Defendant Holden personally approved the hiring policies identified above in ¶¶ 45-46, is aware of the largely illegal workforce, and knows most of these people are not U.S. citizens or lawful permanent residents; *i.e.,* they are ineligible for employment and have frequently used different names/identities to obtain employment. Defendant Holden knows and approves of the Accomac Facility's HR staff's illegal hiring practices, which allow these workers to become employed at Perdue.

140. Additionally, Defendant Holden is responsible for assisting Defendants Carpenter and Gray and the Corporate Co-Conspirators in setting hourly wages for the Class, which are depressed below market levels (the going rate for unskilled labor in the area by employers which do not employ illegal workers) because they know that illegal immigrants will work for extremely low wages. But for the employment of these many illegal immigrants, Defendants Carpenter, Gray, Holden and the Co-Conspirators would be required by market forces to pay higher wages to Class members.

141. Defendants Carpenter and Gray are part of the management of the Accomac Facility and have authority over all decisions at the Facility. In their role in the Company, they have approved of and assist in executing the illegal hiring policies above. They also assist in setting the depressed sub-market hourly wage levels at the Accomac Facility, knowing the Facility is staffed with many illegal immigrants and

knowing that the Facility's hiring policies allow such workers to be hired. They visit the plant and observe the largely illegal workforce and know most of these people are not U.S. citizens or lawful permanent residents; *i.e.*, are ineligible for employment. Defendants Gray and Carpenter know and approve of the massive immigration law conspiracy committed by the Accomac Facility's HR Staff in order to maintain this illegal workforce.

142. The former shipping supervisor also explained that when the illegal hiring practices are specifically brought to the attention of HR staff and Managers, such as Defendants Holden and Gray, the response is simply: "It's not my job to question who they are," the hiring practices were a "big joke," and/or it was "just the way Perdue did business."

143. Defendants Carpenter and Gray report directly to the Corporate Co-Conspirators, including Defendant Gary Miller, who approve of the illegal manner in which they run the Accomac Facility, because it saves money in labor costs.

144. The former shipping supervisor also raised his concerns about the illegal hiring practices at the Accomac Facility with Defendant Miller, the regional HR Manager (i.e., workers who are not really the person they are claiming to be in the hiring process). Miller's response indicates that he was only interested in the appearance of compliance with immigration laws, rather than actual compliance.

145. Others are part of the Conspiracy to facilitate the Scheme at the Accomac Facility. Defendants Carpenter, Gray, and Holden have directed all of the Accomac Facility's HR personnel to conduct hiring in the manner described above, which results in the constant and systematic employment of illegal immigrants.

146. Since 2006, the Accomac Defendants have conspired with the Corporate Co-Conspirators, including Defendant Gary Miller, to commit a pattern of racketeering activity detailed above.

147. As a direct and proximate result of, and by reason of, the Defendants' agreement to implement and carry out the Scheme through the Perdue enterprise, the Plaintiffs have been injured in their business or property within the meaning of 18 U.S.C. § 1964(c) by being paid depressed, below market wage rates.

148. The Defendants and the Corporate Co-Conspirators, including Defendant Miller, are able to attract legal workers, *i.e.*, the Class, to work for depressed wage rates at the Accomac Facility because of its size and power within the local labor market.

G. The Scheme Is Carried out at the Bridgewater, Virginia Facility by the Facility Co-Conspirators with Approval from the Corporate Co-Conspirators

149. On information and belief, the Illegal-Immigrant Hiring Scheme is carried out at Perdue's

facility in Bridgewater, Virginia under the direction of the Facility Co-Conspirators. The Scheme utilizes some or all of the hiring policies described above in ¶¶ 45-46.

150. On information and belief, since 2006, the Facility Co-Conspirators have conspired with the Corporate Co-Conspirators to commit a pattern of racketeering activity detailed above at the Bridgewater Facility.

151. As a direct and proximate result of, and by reason of, the Facility Co-Conspirators' agreement to implement and carry out the Scheme through the Perdue enterprise, the Plaintiffs have been injured in their property, within the meaning of 18 U.S.C. § 1964(c), by being paid depressed, below market wage rates.

152. The Facility Co-Conspirators and Corporate Co-Conspirators are able to attract legal workers, *i.e.*, the Class, to work for depressed wage rates at the Bridgewater Facility because of its size and power within the local labor market.

H. The Scheme Is Carried out at the Concord, North Carolina Facility by the Facility Co-Conspirators with Approval from the Corporate Co-Conspirators

153. On information and belief, the Illegal-Immigrant Hiring Scheme is carried out at Perdue's facility in Concord, North Carolina under the direction of the Facility Co-Conspirators. The Scheme utilizes

some or all of the hiring policies described above in ¶¶ 45-46.

154. On information and belief, since 2006, the Facility Co-Conspirators have conspired with the Corporate Co-Conspirators to commit a pattern of racketeering activity detailed above at the Concord Facility.

155. As a direct and proximate result of, and by reason of, the Facility Co-Conspirators' agreement to implement and carry out the Scheme through the Perdue enterprise, the Plaintiffs have been injured in their property, within the meaning of 18 U.S.C. § 1964(c), by being paid depressed, below market wage rates.

156. The Facility Co-Conspirators and Corporate Co-Conspirators are able to attract legal workers, *i.e.*, the Class, to work for depressed wage rates at the Concord Facility because of its size and power within the local labor market.

I. The Scheme Is Carried out at the Georgetown, Delaware Facility by the Facility Co-Conspirators with Approval from the Corporate Co-Conspirators

157. On information and belief, the Illegal-Immigrant Hiring Scheme is carried out at Perdue's facility in Georgetown, Delaware under the direction of the Facility Co-Conspirators. The Scheme utilizes some or all of the hiring policies described above in ¶¶ 45-46.

158. On information and belief, since 2006, the Facility Co-Conspirators have conspired with the Corporate Co-Conspirators, including Defendant Gary Miller, to commit a pattern of racketeering activity detailed above at the Georgetown Facility.

159. As a direct and proximate result of, and by reason of, the Facility Co-Conspirators' agreement to implement and carry out the Scheme through the Perdue enterprise, the Plaintiffs have been injured in their business or property, within the meaning of 18 U.S.C. § 1964(c), by being paid depressed, below market wage rates.

160. The Facility Co-Conspirators and Corporate Co-Conspirators are able to attract legal workers, *i.e.*, the Class, to work for depressed wage rates at the Georgetown Facility because of its size and power within the local labor market.

J. The Scheme Is Carried out at the Lewiston, North Carolina Facility by the Facility Co-Conspirators with Approval from the Corporate Co-Conspirators

161. On information and belief, the Illegal-Immigrant Hiring Scheme is carried out at Perdue's facility in Lewiston, North Carolina under the direction of the Facility Co-Conspirators. The Scheme utilizes some or all of the hiring policies described above in ¶¶ 45-46.

162. On information and belief, since 2006, the Facility Co-Conspirators have conspired with the

Corporate Co-Conspirators to commit a pattern of racketeering activity detailed above at the Lewiston Facility.

163. As a direct and proximate result of, and by reason of, the Facility Co-Conspirators' agreement to implement and carry out the Scheme through the Perdue enterprise, the Plaintiffs have been injured in their business or property, within the meaning of 18 U.S.C. § 1964(c), by being paid depressed, below market wage rates.

164. The Facility Co-Conspirators and Corporate Co-Conspirators are able to attract legal workers, *i.e.*, the Class, to work for depressed wage rates at the Lewiston Facility because of its size and power within the local labor market.

K. The Scheme Is Carried out at the Milford, Delaware Facility by the Facility Co-Conspirators with Approval from the Corporate Co-Conspirators

165. On information and belief, the Illegal-Immigrant Hiring Scheme is carried out at Perdue's facility in Milford, Delaware under the direction of the Facility Co-Conspirators. The Scheme utilizes some or all of the hiring policies described above in ¶¶ 45-46.

166. On information and belief, since 2006, the Facility Co-Conspirators have conspired with the Corporate Co-Conspirators to commit a pattern of racketeering activity detailed above at the Milford Facility.

167. As a direct and proximate result of, and by reason of, the Facility Co-Conspirators' agreement to implement and carry out the Scheme through the Perdue enterprise, the Plaintiffs have been injured in their business or property, within the meaning of 18 U.S.C. § 1964(c), by being paid depressed, below market wage rates.

168. The Facility Co-Conspirators and Corporate Co-Conspirators are able to attract legal workers, *i.e.*, the Class, to work for depressed wage rates at the Milford Facility because of its size and power within the local labor market.

L. The Scheme Is Carried out at the Rockingham, North Carolina Facility by the Facility Co-Conspirators with Approval from the Corporate Co-Conspirators

169. On information and belief, the Illegal-Immigrant Hiring Scheme is carried out at Perdue's facility in Rockingham, North Carolina under the direction of the Facility Co-Conspirators. The Scheme utilizes some or all of the hiring policies described above in ¶¶ 45-46.

170. On information and belief, since 2006, the Facility Co-Conspirators have conspired with the Corporate Co-Conspirators to commit a pattern of racketeering activity detailed above at the Rockingham Facility.

171. As a direct and proximate result of, and by reason of, the Facility Co-Conspirators' agreement to

implement and carry out the Scheme through the Perdue enterprise, the Plaintiffs have been injured in their business or property, within the meaning of 18 U.S.C. § 1964(c), by being paid depressed, below market wage rates.

172. The Facility Co-Conspirators and Corporate Co-Conspirators are able to attract legal workers, *i.e.*, the Class, to work for depressed wage rates at the Rockingham Facility because of its size and power within the local labor market.

M. The Scheme Is Carried out at the Salisbury, Maryland Facility by the Facility Co-Conspirators with Approval from the Corporate Co-Conspirator

173. On information and belief, the Illegal-Immigrant Hiring Scheme is carried out at Perdue's facility in Salisbury, Maryland under the direction of Facility Co-Conspirators. The Scheme utilizes some or all of the hiring policies described above in ¶¶ 45-46.

174. On information and belief, since 2006, the Facility Co-Conspirators have conspired with the Corporate Co-Conspirators, including Defendant Gary Miller, to commit a pattern of racketeering activity detailed above at the Salisbury Facility.

175. As a direct and proximate result of, and by reason of, the Facility Co-Conspirators' agreement to implement and carry out the Scheme through the Perdue enterprise, the Plaintiffs have been injured in their business or property, within the meaning of 18

U.S.C. § 1964(c), by being paid depressed, below market wage rates.

176. The Facility Co-Conspirators and Corporate Co-Conspirators are able to attract legal workers, *i.e.*, the Class, to work for depressed wage rates at the Salisbury Facility because of its size and power within the local labor market.

N. The Scheme Is Carried out at the Washington, Indiana Facility by the Facility Co-Conspirators with Approval from the Corporate Co-Conspirators

177. On information and belief, the Illegal-Immigrant Hiring Scheme is carried out at Perdue's facility in Washington, Indiana under the direction of the Facility Co-Conspirators. The Scheme utilizes some or all of the hiring policies described above in ¶¶ 45-46.

178. On information and belief, since 2006, the Facility Co-Conspirators have conspired with the Corporate Co-Conspirators to commit a pattern of racketeering activity detailed above at the Washington Facility.

179. As a direct and proximate result of, and by reason of, the Facility Co-Conspirators' agreement to implement and carry out the Scheme through the Perdue enterprise, the Plaintiffs have been injured in their business or property, within the meaning of 18 U.S.C. § 1964(c), by being paid depressed, below market wage rates.

180. The Facility Co-Conspirators and Corporate Co-Conspirators are able to attract legal workers, *i.e*., the Class, to work for depressed wage rates at the Washington Facility because of its size and power within the local labor market.

VI.
THE DEFENDANTS HAVE VIOLATED 18 U.S.C. § 1962(d) AND WILL CONTINUE TO DO SO INDEFINITELY

181. The Conspiracy between the Defendants, the Corporate Co-Conspirators (including Defendants Rob Helfin and Gary Miller), and the Facility Co-Conspirators, to perpetrate the Scheme, is a violation of 18 U.S.C. § 1962(d), an agreement among Defendants and their Co-Conspirators to violate § 1962(c) by participating in the affairs of Perdue (the enterprise) through a pattern of racketeering activity.

182. The Scheme is ongoing, open-ended, and has been perpetrated continuously for the last four years. It will not stop without judicial intervention.

183. Defendants are subject to joint and several liability for all of the damage caused by all the racketeering acts committed by any of them and their Co-Conspirators.

VII.
THE LEGALLY AUTHORIZED HOURLY-PAID EMPLOYEES ARE THE DIRECT VICTIMS OF THE SCHEME

184. The underlying predicate acts of the Illegal

Immigrant Hiring Scheme at each of Perdue's Facilities, the hiring of illegal immigrants and the false attestation that the illegal immigrants are presenting genuine work authorization/identity documents, are a substantial and direct factor in causing the depressed wages about which the Plaintiffs, and the other legally authorized hourly workers at Perdue, complain. No other party has been damaged by the Scheme.

VIII.
CLASS ALLEGATIONS

185. This action is brought and may be maintained as a class action pursuant to Fed. R. Civ. P. 23(b)(3). Plaintiffs bring this action on behalf of themselves, and all other persons legally authorized to be employed in the U.S., who have been employed at any of the Perdue facilities identified herein, as hourly wage earners in the four years prior to the filing of this case ("the Class" or "Class Members") and up through trial.

186. The Class is so numerous that joinder of all Class Members is impracticable. The actual number can be ascertained through discovery of Perdue's records, but is in the hundreds or (likely) thousands.

187. Among the questions of fact and law that are common to the Class are:

i. Whether Defendants have been and are currently engaged in the Illegal Immigrant Hiring Scheme in order to depress wages of the Class in violation of 8 U.S.C. § 1324(a)(3)(A) and 18 U.S.C. § 1546(b)?;

ii. Whether the Defendants conspired with each other (and the Corporate and the Facility Co-Conspirators) to carry out the Illegal Immigrant Hiring Scheme at Perdue?;

iii. Whether the Defendants and their Co-Conspirators have committed the Illegal Immigrant Hiring Scheme through the Perdue enterprise?;

iv. Whether the individual illegal acts of hiring and false attestations comprising the Illegal Immigrant Hiring Scheme constitute a "pattern of racketeering activity" as required by RICO?; and

v. Whether, and to what extent, the Illegal Immigrant Hiring Scheme has caused Class Members' wages to be depressed?

188. Plaintiffs' claims are typical of those of the members of the Class inasmuch as their damages were directly and proximately caused by the Illegal Immigrant Hiring Scheme. Plaintiffs seek no relief that is antagonistic or adverse to other Class Members.

189. Plaintiffs are committed to the vigorous prosecution of this action and have retained counsel who are competent in the prosecution of RICO cases generally, and this legal theory in particular. Accordingly, they and their counsel will fairly and adequately protect and represent the interests of the Class.

190. Questions of law or fact that are common to the members of the Class are substantially similar and predominate over any questions affecting only individual Class members, and a class action is the superior method for the fair and efficient adjudication of this controversy.

191. Plaintiffs anticipate no difficulty in the management of this action because the evidence proving the Illegal Immigrant Hiring Scheme is ascertainable through discovery, and the identities of the Class Members are known to the Defendants, the Facility Co-Conspirators, the Corporate Co-Conspirators, and Perdue. Damages can be calculated through expert testimony.

IX.
PRAYER FOR RELIEF

192. WHEREFORE, Plaintiffs request their appointment as Class representatives and demand judgment and other relief, as follows:

193. Certification of the Class pursuant to Fed. R. Civ. P. 23(b)(3) and appointment of Foster P.C. and Motley Rice LLC as lead counsel for the class and

Jacoby and Meyers, LLC and its associated counsel as additional counsel for the class.

194. Judgment in an amount equal to three times the damages caused to the Class by the Defendants' racketeering activity pursuant to 18 U.S.C. § 1964(c);

195. For appropriate attorney's fees, pursuant to 18 U.S.C. § 1964;

196. For the costs of this action;

197. For a jury trial;

198. For preliminary and permanent injunctions against the Defendants and their Co-Conspirators from perpetrating the Illegal Immigrant Hiring Scheme and further racketeering activity through the Perdue enterprise and to require them to terminate the employment of all illegal immigrants from Perdue.

199. For any other relief the Court deems just and proper.

Dated: June 18, 2010

/s/ Lance H. Swanner
Lance H. Swanner
Alabama SJIS #SWA013
lance.swanner@
jacobymeyers.com
JACOBY & MEYERS, LLC
111 E. Main Street
P.O. Box 5551
Dothan, AL 36302
(334) 794-8000 – Phone
(334) 699-6885 – Facsimile

Robert J. Camp
Alabama SJIS #CAM064
rcamp@cochranfirm.com
THE COCHRAN FIRM, P.C.
505 North 20th Street,
Suite 825
Birmingham, AL 35203
(205) 244-1115 – Phone
(205) 244-1171 – Facsimile

Howard W. Foster
Pro Hac Vice Counsel
Illinois Bar No. 6201218
hfoster@fosterpc.com
Matthew A. Galin
Pro Hac Vice Counsel
Illinois Bar No. 6282920
mgalin@fosterpc.com
FOSTER, P.C.
55 West Wacker Drive,
14th Floor
Chicago, Illinois 60601
(312) 726-1600 – Phone
(866) 470-5738 – Facsimile

William H. Narwold
Pro Hac Vice Counsel
South Carolina Bar No.
73977
bnarwold@motleyrice.com
Lance V. Oliver
Pro Hac Vice Counsel
Alabama SJIS # OLI021