

# Prosecution of Criminal Organizations: A More Effective Means to Curbing Violence

*Joseph A. Cooley*  
*Trial Attorney*  
*Organized Crime and Gang Section*  
*Criminal Division*

## I. Introduction

The tragic reality of the culture of many of the large urban street gangs in this country is that shooters are fungible. Due to their limited resources and overwhelming caseload, state prosecutions typically focus on a particular incident. Understandably, a murder will draw more focus than an incident that does not result in a death. In most cases, the subject directly responsible for this murder is the focus of the investigation. Assuming an effective prosecution of this subject is developed, all too often the defendant is quickly replaced by another who, like the first, is willing to follow orders to take out the next designated target.

A federal prosecution that focuses on the organization responsible for directing the violence will be more effective by addressing both “the shot-callers” and the “soldiers” that ultimately carry out these violent missions. Typically, the organization will have an “enforcer” that relays the mission from “shot-caller” to “soldier” and usually supervises to ensure that the mission is carried out. An effective means of curbing the urban violence is to target each person responsible for the deadly outcome. To further enhance the effectiveness of targeting organizations, a constant vigil of that organization should be maintained. A one-time prosecution of a criminal organization will rarely be sufficient in curbing violence in the long term. An experienced federal prosecutor recognizes that “today’s defendant is tomorrow’s cooperator.” Incorporating these cooperators into subsequent investigations of the criminal organization will greatly disrupt, if not dismantle, the organization.

## II. RICO: a Criminal Organization’s Worst Nightmare

*So when I have a ballgame, you ain’t never gonna hear me say, “You better go get that guy.” Never, I ain’t never gonna . . . [also] we don’t talk about no f..king drugs in the circle. That’s all they [feds] wanna hear, that’s conspiracy to a f..king RICO Act. That’s life!*<sup>1</sup>

This statement was one of the many admonitions Vargas and others made during a Universal Leadership Meeting held in a remote community center in Willis, Texas, on May 29, 2005.<sup>2</sup> In attendance were seventeen of the ALKN leaders of Texas, along with two prominent ALKN leaders from Chicago,

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<sup>1</sup> Alexander Vargas (a.k.a. “Pacman”) former Regional Inca of the Almighty Latin King Nation (ALKN), Southeast Region, Chicago, Illinois. Page 43 of Transcript to Government Trial Exhibit #125, United States v. Nava, et al., No. 5:09-CR-004 (N.D. TX, February 16, 2010).

<sup>2</sup> See [Third Superseding Indictment at 17, United States v. Vargas, No. 2:10-CR-109 \(N.D. Ind. \\_\\_\\_\)](#); see also [Press Release, Office of Public Affairs, U.S. Dep’t of Justice, Six Alleged Members of the Almighty Latin King and Queen Nation Indicted for Racketeering Conspiracy \(June 29, 2010\)](#).

Vargas and Sisto Bernal (a.k.a. “Suge”), the ALKN National Enforcer. The Chicago leaders were invited to Texas to address the statewide ALKN leadership. Unbeknownst to these ALKN leaders, an Alcohol Tobacco, Firearm, and Explosives (ATF) Task Force wired the community center for video and audio recordings pursuant to a Title III authorization from a District Court in the Southern District of Texas.

Vargas’s declaration was an attempt to warn those in attendance that they could be subject to a life sentence in a prosecution under the Federal Racketeer Influenced and Corrupt Organizations (RICO) Act, in violation of 18 U.S.C. § 1961, et seq.<sup>3</sup> The ALKN arranged the Universal Leadership Meeting, normally an annual event, to discuss the affairs and practices of the gang.<sup>4</sup> The participants raised issues relating to drug trafficking and general discussions of conspiracy to murder, potentially RICO predicate acts as Vargas cautioned. As discussed below, Vargas predicted his RICO fate, that of the other Chicago Latin Kings who made the trip to Texas,<sup>5</sup> and another prominent leader who attended the meeting, Donte Reyes (a.k.a. “DK”), South Regional Inca of Texas.

## **A. Houston Investigation**

The electronic surveillance of the May 29, 2005, Universal Leadership Meeting, was a product of an ATF investigation that was initiated by the arrest of an ALKN leader on November 29, 2003. Shortly after his arrest, this ALKN leader, CS1, began to cooperate with ATF. CS1 provided detailed historical information regarding the ALKNs in Texas and their association with New York and Chicago.

In 2001, CS1 went to Chicago to receive “the blessing” from the “Nations Enforcer,” Sisto Bernal. From that point, CS1 organized the Texas ALKNs into four regions: South, West, Central, and East.<sup>6</sup> By the end of 2003, the Texas ALKNs’ membership was in excess of one thousand. Although he remained in custody following his arrest, CS1 made countless consensual recordings. In addition, with the assistance of CS1’s girlfriend, ATF made controlled buys of guns and drugs from ALKN members. The girlfriend was also instrumental in making arrangements for the facility used for the May 29, 2005 Universal Leadership Meeting.

This ATF investigation resulted in federal and state prosecutions of over twenty defendants. These charges included drug and weapons violations, while one was convicted for murder in a state prosecution. No RICO charges were pursued. For some time, other prominent Latin Kings who participated in the May 29th meeting, including the Chicago Latin Kings and Reyes, eluded prosecution.

## **B. Lubbock Investigation**

The Drug Enforcement Administration (DEA) Regional Office in Lubbock, Texas, initiated an investigation into the West Region ALKN in September 2007. Three of the leaders from that region, Jose Nava (a.k.a. “Chino”), Texas State Enforcer, his brother Luis Nava (a.k.a. “Flaco”), and their cousin Jesus Martinez (a.k.a. “Solid”) attended the 2005 Universal Leadership Meeting.

On May 4, 2008, Jose Nava, located in Big Spring, Texas, ordered a drive-by shooting of a rival drug organization in retaliation for a shooting incident where Jose Nava was shot a few weeks earlier.<sup>7</sup> As

<sup>3</sup> 18 U.S.C. §§ 1961–1968 (2012).

<sup>4</sup> See Third Superseding Indictment, *supra* note 2, at 9.

<sup>5</sup> Aside from Vargas and Bernal, two other Chicago Latin Kings traveled to Texas: Jose Zambrano (a.k.a. “Speedy”), Southeast Regional Enforcer, and Hiluterio Chavez (a.k.a. “Tails”), Southeast Regional Treasurer. Although they did not attend the Texas Universal Leadership Meeting with Vargas and Bernal, they were captured on video during the after-party.

<sup>6</sup> See Third Superseding Indictment, *supra* note 1, at 4–5.

<sup>7</sup> See [Press Release, Office of Public Affairs, U.S. Dep’t of Justice, Almighty Latin King and Queen Nation Gang Members Sentenced to Life in Prison for their Roles in Multiple Murder, Narcotics and Firearms Crimes \(May 13, 2010\)](#).

directed by Jose Nava, two vehicles were involved in the mission that included the ultimate shooter, James Cole (a.k.a. “Blitz”), and four others.<sup>8</sup> They drove by a family gathering of the rival member’s residence. After the lead car passed, Cole rode up in the second car and then unloaded an AK47-type of assault rifle, striking six persons, and killing two, including a woman that was twenty-six weeks pregnant.<sup>9</sup>

In the summer of 2008, an arrest of an ALKN member led to his cooperation. This confidential source, CS2, provided detailed information regarding the operations of Jose Nava and other ALKN members. Aside from information on the murders that occurred on May 4, 2008, the CS2 explained the drug trafficking operations of Jose Nava and his brothers. CS2 identified Dante Reyes (a.k.a. “DK”), mentioned above, and their source of supply of cocaine, located in the Texas Valley area in Mission, Texas. According to the CS2, Jose Nava would obtain kilogram quantities of cocaine from Reyes, either by way of couriers that would travel from the Valley to Western Texas or by meeting halfway in San Antonio. Occasionally, Jose Nava or others would travel to the Valley area to obtain the cocaine.

Based on information from a source received the previous night, DEA initiated surveillance on December 9, 2008, at the residence of Jose Nava in Lubbock, Texas. Later that evening, surveillance observed that Jose Nava and his wife traveled one hundred miles to Big Spring, Texas, the known residence of Reynaldo Nava and his wife. From there, they drove fifty miles to Midland, Texas, the known residence of Luis Nava and his wife. After that, they drove over 300 miles to a motel in San Antonio, Texas, arriving the following morning, December 10th. On December 13th, Reynaldo Nava and his wife joined Jose Nava and his wife in San Antonio. Shortly thereafter, the four left San Antonio in two separate vehicles and headed back to Lubbock, Texas. A traffic stop led to the seizure of the kilogram of cocaine in Reynaldo Nava’s vehicle. These arrests were followed by search warrants executed at the residences of all three Nava brothers.

This December 13th cocaine seizure was followed by a complaint charging all three Nava brothers and their paramours with conspiracy to possess with the intent to distribute five kilograms or more of cocaine in violation of 21 U.S.C. § 846.<sup>10</sup> This initial complaint was followed by an indictment.<sup>11</sup>

On February 19, 2009, the Superseding Indictment was returned to include eleven other members and associates of the West Region ALKN and charges related to the May 4, 2008 murders. The case was prosecuted by the United States Attorney’s Office (USAO) of the Northern District of Texas (Lubbock Division) with Assistant United States Attorney (AUSA) Cody L. Skipper, the Criminal Division’s Gang Unit,<sup>12</sup> and this author. Although it was composed of seasoned gang prosecutors, the prosecution team had no experience with RICO or charges under Violent Crimes in Aid of Racketeering (“VICAR”), in violation of 18 U.S.C. § 1959. Instead, they relied on more familiar drug trafficking related charges.

The superseding indictment charged all seventeen defendants with a 21 U.S.C. § 846 conspiracy.<sup>13</sup> In addition, Jose Nava, James Cole, and the four other ALKN members involved with the May 4, 2008 murders were charged substantively under Using and Carrying a Firearm to Commit Murder During and in Relation to a Federal Drug Trafficking Crime, in violation of 18 U.S.C. § 924(j)

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<sup>8</sup> *See id.*

<sup>9</sup> *See* Third Superseding Indictment, *supra* note 1, at 23–24; *see also* Almighty Latin King and Queen Nation Members Sentenced to Life in Prison for Their Roles in Multiple Murder, Narcotics and Firearms Crimes, *supra* note 7.

<sup>10</sup> 21 U.S.C. § 846 (2012).

<sup>11</sup> United States v. Nava, et al, 5:09CR0004 (N.D. Tex. January 6, 2009).

<sup>12</sup> In late 2010, the Gang Unit merged with Organized Crime and Racketeering Section to formed the Organized Crime and Gang Section.

<sup>13</sup> § 846.

(hereinafter § 924(j)).<sup>14</sup> Jose Nava and James Cole elected to go to trial and were convicted of the murders and other related charges. They later received three consecutive life sentences.

Ultimately, the *Nava* case resulted in convicting a total of twenty defendants charged in the investigation.<sup>15</sup> Although successful, the shortcoming of this prosecution was that some of the violent members of the ALKN Texas West Region were not readily chargeable as part of a drug conspiracy under 21 U.S.C. 846.<sup>16</sup> Consequently, those members avoided prosecution in this case. As discussed below, these gang members would not have been so fortunate if the prosecution team would have pursued RICO charges.

### C. Hammond Investigation

The Northern District of Texas prosecution led to a subsequent ALKN prosecution by the USAO of the Northern District of Indiana (NDIN) with AUSA David Nozick, the Criminal Division’s Organized Crime and Gang Section, and this author. The focus of this investigation was the Chicago Southeast Region of the ALKN headed by Alexander Vargas.

In late 2006, Jose Vargas (brother of Alexander) and another person were shot and killed by a member of a rival gang.<sup>17</sup> Consequently, Alexander Vargas ordered that the leaders of that gang be targeted. On February 25, 2007, James Walsh and Gonzalo Diaz, leaders of that rival gang, were shot and killed as they left a bar in Griffith, Indiana.<sup>18</sup>

A total of five Latin Kings were involved in those murders—two regional enforcers, Jose Zambrano (a.k.a. “Speedy”) and Ivan Quiroz (a.k.a. “Captain Kirk”); two shooters, Brandon Clay (a.k.a. “Cheddar”) and Jermaine Ellis (a.k.a. “J-Dub”); and a fifth Latin King, Jason Ortiz (a.k.a. “Creeper”). All five of these subjects had traveled from Illinois to Indiana to wait for their victims to leave a party being held at the Sopranos Lounge. After the shootings, they all fled in one vehicle while being pursued by the police. The subjects abandoned the vehicle. A short time later, Clay, Ellis, and Ortiz were taken into custody. The following day, the two murder weapons were recovered a short distance from the abandoned vehicle, registered to Quiroz and his wife. In addition, Clay and Ortiz provided post-Miranda statements implicating each other and Ellis. Ellis, a juvenile at the time, did not give a statement. After being held locally for forty-eight hours, all three subjects were later released without being formally charged.

During the summer of 2009, agents from the Federal Bureau of Investigation (FBI) Merrillville, Indiana Regional Office developed a source, CS3, a Latin King member who was targeted by the ALKNs for failing to submit to a violation.<sup>19</sup> CS3 provided historical knowledge of the Southeast Region of the

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<sup>14</sup> 18 U.S.C. § 924(j) (2012).

<sup>15</sup> Dante Reyes was the primary cocaine supplier to Jose Nava and could have been charged in that case. However, the *Nava* prosecution team deferred to an ongoing FBI investigation out of McAllen, Texas, that targeted Reyes and other ALKN members and associates. Yet the *Nava* superseding indictment did include Reyes’s right-hand man among the seventeen defendants charged. Shortly after that superseding indictment was unsealed, Reyes fled across the border to Mexico. Consequently, the McAllen-based FBI investigation stalled.

<sup>16</sup> § 846. Some of the Texas West Region ALKQN members were suspected of other crimes that were not directly involved in the drug trafficking. The West Region ALKQN was spread out over several townships in West Texas, including Lubbock, Big Spring, Midland, and others ranging approximately 150 miles. Due to this vast area, the prosecution team believed a jury may have had difficulty holding these other members not directly involved with drug trafficking accountable under an § 846 conspiracy theory.

<sup>17</sup> See Third Superseding Indictment, *supra* note 1, at 19.

<sup>18</sup> Third Superseding Indictment, *supra* note 1, at 19–21.

<sup>19</sup> CS3 was scheduled to be “violated” (subjected to a beating) for failing to “post-up” (stand guard at an assigned area) as required by low-level members. After fending off the violation with a gun, CS3 fled the area. The ALKN issued a “KOS” (kill on sight order) on CS3.

Chicago ALKNs. In addition to CS3, there were other ALKN cooperating defendants that were serving sentences from previous prosecutions.

Clearly, the “centerpiece” of the government’s evidence were the recordings of the May 29, 2005 Universal Leadership Meeting. The audio and video of the ALKN leadership meeting was classic enterprise evidence. In addition, other videos recorded that day showed firearms being distributed to the Texas security team prior to the arrival of the Chicago ALKN leadership. Other videos showed all of the leaders except Vargas and Bernal being searched by the security team for recording devices and weapons prior to the meeting with the Chicago leaders. This electronic evidence was bolstered by cooperating defendants generated in the *Nava* case.

In addition, all of the targets of this initial indictment had extensive criminal histories and other contacts with law enforcement.<sup>20</sup> Some of these arrests documented criminal activity, such as the Walsh and Diaz murders, that were not previously adjudicated. It can be said that a RICO prosecution could be viewed as a criminal’s “life-time achievement” award. When a gang member’s years of activity is viewed as a whole, a “pattern of racketeering activity” is readily apparent. A final piece of the indictment was provided by the recorded jail calls made by Jason Ortiz.<sup>21</sup>

On June 17, 2010, a seven-count indictment was returned charging Alexander Vargas (a.k.a. “Pacman”), Sisto Bernal (a.k.a. “Suge”), Jose Zambrano (a.k.a. “Speedy”), Jason Ortiz (a.k.a. “Creeper”), Brandon Clay (a.k.a. “Cheddar”), and Jermain Ellis (a.k.a. “J-Dub”) with RICO conspiracy.<sup>22</sup> Ortiz and Clay were also charged with the February 25, 2007 murders of Walsh and Diaz pursuant to VICAR, 924(j), and other related violations.

As with the *Nava* case, the prosecution team recognized the impact of joining several members of the gang into one case. Unlike in *Nava*, the prosecution team decided that a *Gleazier* RICO conspiracy charge would be a better option than relying on a drug conspiracy to charge the gang.<sup>23</sup> To establish a criminal conspiracy violation under 18 U.S.C § 1962(d), we had to prove each of the following elements:

1. The existence of an enterprise;
2. That the enterprise was engaged in, or its activities affected, interstate commerce; and
3. That each defendant knowingly agreed that a conspirator [which may include the defendant] would commit a violation of 18 U.S.C. § 1962(c) [that is, committing two predicate acts].<sup>24</sup>

Of the three elements, the only real issue would be to determine which predicate acts to include in the RICO conspiracy. As part of a pattern of racketeering activity, the indictment included the following violations:

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<sup>20</sup> As with many departments, absent an arrest scenario, the Chicago Police Department had a practice of generating “field contact” reports with known or suspected gang members. These reports often explain the circumstances surrounding the contact and who accompanied the individual.

<sup>21</sup> While incarcerated for previous state violations, Ortiz generated several hours of recorded jail calls. These recorded conversations with other members and associates contained a treasure trove of enterprise evidence, including drug trafficking, weapons distribution, and members targeted for violations. The prosecution teams deemed much of the content of these calls to be admissible evidence as coconspirator statements.

<sup>22</sup> *United States v. Vargas, et al* 2:10CR109RL (N.D. Ind. June 17, 2010).

<sup>23</sup> *United States v. Gleazier*, 923 F.2d 496, 498-500 (7th Cir. 1991), *see also* U.S. DEP’T OF JUSTICE, ORGANIZED CRIME AND GANG SECTION, CRIMINAL RICO: 18 U.S.C. §§ 1961–1968, A MANUAL FOR FEDERAL PROSECUTORS at 310 (2016) (stating that it upheld the proposition that “it is sufficient to allege that it was part of the RICO conspiracy that the defendant agreed that a conspirator, which could be the defendant himself, would commit at least two acts of racketeering activity in the conduct of the affairs of the enterprise and to include sufficient allegations to inform the defendant of the nature of the charge.”).

<sup>24</sup> *See Salinas v. United States*, 522 U.S. 52, 63 (1997).

1. Murder in violation of Indiana Code §§ 35-42-1-1,<sup>25</sup> 35-41-1-4,<sup>26</sup> and 35-50-2-9;<sup>27</sup>
2. Multiple acts indictable under 18 U.S.C. § 1951 (robbery affecting interstate commerce);<sup>28</sup>
3. 18 U.S.C. § 1952 (interstate travel in aid of racketeering);<sup>29</sup>
4. Multiple acts involving narcotics trafficking in violation of 21 U.S.C. § 841(a)(1) (distribution and possession with the intent to distribute a controlled substance);<sup>30</sup> and
5. 21 U.S.C. § 846 (conspiracy to distribute and possession with the intent to distribute a controlled substance).<sup>31</sup>

Although, there were a total of six persons involved with the Walsh and Diaz murders, only Ortiz and Clay were originally charged with these murders. The other defendants were all charged in the RICO conspiracy along with Ortiz and Clay. The RICO conspiracy specified thirty-seven “overt acts” that were either RICO predicate acts or conduct that demonstrated the defendant’s on-going participation in the affairs of the enterprise.<sup>32</sup> This indictment was viewed as a “place-setter,” with the expectation that the investigation would progress to include additional charges and new defendants.

As stated above, Zambrano was captured on video during the after-party at the May 29, 2005 Universal Leadership Meeting. Confronted with this and other evidence, Zambrano elected to cooperate. He was soon joined by Ellis. Both pleaded guilty to the RICO conspiracy, which included admitting to their involvement in the Walsh and Diaz murders. Although Zambrano was not charged substantively with these murders, we nevertheless were required to obtain “no seek” authorization through the Capital Case Section prior to his plea agreement.<sup>33</sup>

Although Ellis’s cooperation was useful, Zambrano’s cooperation could not have been more critical to the success of this prosecution. Zambrano’s tenure with Latin Kings started when he was eleven years old, and upon his arrest at age thirty, he was one of four Southeast Regional Enforcers. Zambrano had intimate knowledge of the Latin Kings, from the foot soldier to the Corona, the overall leader of the ALKN affiliated with the Chicago faction. In addition, Zambrano had direct knowledge of multiple murders, the distribution of hundreds of kilograms of cocaine and thousands of kilograms of marijuana, and other RICO predicate acts committed by the enterprise. With the cooperation of Zambrano and Ellis, coupled with that of other cooperators, many of the ALKN Chicago Southeast Region members, and others, were exposed to prosecution.

Approximately four months later, on October 22, 2010, the Superseding Indictment was returned in this case. The Superseding Indictment added Vargas to the charges related to the Walsh and Diaz murders.<sup>34</sup> In addition, the ongoing investigation revealed that Clay was involved in two other Chicago

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<sup>25</sup> IND. CODE ANN. § 35-42-1-1 (West 2017).

<sup>26</sup> *Id.* § 35-42-1-4.

<sup>27</sup> *Id.* § 35-50-2-9.

<sup>28</sup> 18 U.S.C. § 1951 (2012).

<sup>29</sup> *Id.* § 1952 (2012 & Supp. III 2015).

<sup>30</sup> 21 U.S.C. § 841(a)(1) (2012).

<sup>31</sup> *Id.* § 846.

<sup>32</sup> For example, a possession of a firearm is not a listed predicate act. However, possession of this weapon in an area controlled by the gang can demonstrate participation in the affairs of the enterprise.

<sup>33</sup> No such requirement was necessary for Ellis due to the fact he was a juvenile when he shot and killed Diaz.

<sup>34</sup> With the cooperation of Zambrano and Ellis, there was sufficient evidence to also charge Ivan Quiroz in the Walsh and Diaz murders. However, Quiroz was a significant flight risk due to his family ties in Mexico, where he had previously fled immediately following the Walsh and Diaz murders. Consequently, the prosecution team elected not to charge by way of indictment until Quiroz was taken into custody on an outstanding warrant based on a sealed

murders, those of Edward Delatorre on November 26, 2006, and Christina Campos on April 22, 2009. Along with Clay, there were five others involved in the Delatorre murder, including two shooters. Clay served as a “lookout.” As for the two shooters, one was prosecuted for this murder in Cook County, Illinois, while the other shooter fled apprehension but was subsequently killed in Detroit, Michigan, approximately eighteen months after the Delatorre murder.<sup>35</sup>

Clay was joined by Ortiz and two other Latin King members in the incident that involved the Campos murder. In addition to Clay and Ortiz, the identified shooter, Martin Anaya (a.k.a. “Lefty”), was charged substantively with the Campos murder. A fourth Latin King, a juvenile who had minimal involvement, was not charged.

In addition to these four murders, the RICO conspiracy charged in the Superseding Indictment listed eleven other murders occurring from December 20, 2001, through March 2, 2009, as “overt acts” that were committed by Latin King members. Ten of these murders were previously prosecuted by the State Attorney’s Office in Cook County, Illinois, and were included as “enterprise evidence.” The other murder occurred in Whiting, Indiana, a week prior to the Walsh and Diaz murders. In that incident, Isaiah Cintron, a recently discharged U.S. Marine, was shot and killed while visiting neighborhood friends. One of the weapons used in the Walsh and Diaz murders was traced to the Cintron murder.<sup>36</sup>

On November 16, 2011, the fifteen-count Third Superseding Indictment was returned in this case. This indictment was the culmination of multiple investigations into the Latin Kings. A total of fifteen additional defendants were included in the case. One of the new defendants was the ALKN Texas South Regional Inca Dante Reyes,<sup>37</sup> who, as indicated above, attended the May 29, 2005 Universal Leadership Meeting. Also of note, Hiluterio Chavez, the fourth Chicago Latin King member that traveled to this Texas Universal Leadership Meeting, was charged in the RICO conspiracy and Hobbs Act robbery conspiracy. Two other notable defendants were current and former Chicago police officers.<sup>38</sup> These defendants, along with Chavez and Bernal, were involved in home invasions of drug dealers. Six of the other new defendants were involved in one or both of two new murders that were included as part of the RICO conspiracy.<sup>39</sup> The final indictment included a total of twenty murders, two being the murders involving the *Nava* investigation in Big Spring, Texas, occurring on May 4, 2008.

For over fourteen months, Zambrano and Ellis were the only defendants to enter into plea agreements. Shortly after the takedown of the new defendants in the Third Superseding Indictment, the floodgates opened. Alexander Vargas was one of the first of the remaining defendants who sought to cooperate. Vargas’s initial proffer took two days. His plea agreement followed within a week. Once Vargas’s cooperation was known, ultimately all but one defendant entered their guilty pleas. As with Vargas, most of these defendants agreed to cooperate.

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complaint. Ultimately, Quiroz was arrested, and on April 19, 2011, the Second Superseding Indictment was filed that included Quiroz in the case.

<sup>35</sup> Two of the others involved were girls that set up the two shooting victims. Both of these girls were charged in the Third Superseding Indictment.

<sup>36</sup> Later, the investigation of this case determined that Quiroz and Hiluterio Chavez directed another to shoot at Cintron’s vehicle (resulting in his death) due to the mistaken belief that the vehicle contained rival gang members. The shooter was later killed in another incident a few years after the Cintron murder.

<sup>37</sup> After deferring his prosecution in the *Nava* case, Reyes was arrested on a sealed warrant upon returning from Mexico.

<sup>38</sup> The two police officers were being investigated by the FBI for some time. Shortly after the original indictment in this case, Antonio Martinez, who left the Chicago Police Department on medical disability, was approached by the FBI and agreed to cooperate. Clearly, Martinez was concerned that he could be implicated by one or more of the defendants in the case.

<sup>39</sup> As with Zambrano’s case, although these murders were not charged substantively, we were required to obtain authorization not to seek the death penalty through the Capital Case Section.

The sole remaining defendant, Martin Anaya, elected to go to trial. Several cooperating defendants, including Zambrano and Vargas, testified against him. As mentioned, Anaya was charged with the RICO and drug conspiracy for the VICAR murder of Christina Campos. There was some testimony that Campos was killed by “friendly fire.” Consequently, Anaya was acquitted of the VICAR murder but convicted on the remaining charges. At sentencing, the Court found Anaya accountable for the Campos murder but, nevertheless, decided on a variance and sentenced him to 360 months.

In all, seventeen of the twenty-three defendants convicted in this case were held accountable for one or more of the murders that were charged. As indicated below, this prosecution served as a model for later prosecutions in the NDIN that were brought by AUSA Nozick. Further, the outcome of this case conditioned many of the future defendants and their attorneys in these subsequent prosecutions to quickly realize the advantage of cooperating.

### **III. Other RICO Prosecutions in NDIN**

#### **A. Imperial Gangsters**

The investigation to follow the *Vargas* case focused on a gang known as the Almighty Imperial Gangster Nation (IG). The IG investigation was initiated following the murder of Latroy Howard, which occurred on June 19, 2010.<sup>40</sup> Juan Briseno (a.k.a. “Tito”) was indicted for the Howard murder on VICAR and § 924(j) murder charges on June 2, 2011.<sup>41</sup>

This indictment was followed by three superseding indictments. During the course of the case, AUSA Nozick partnered with trial attorney Bruce Hegyi of the Criminal Division’s Capital Crimes Section.<sup>42</sup> A total of twenty-four defendants were charged. Eleven of these defendants were charged with one or more of the thirteen murders included in the case. As with the *Vargas* case, the charging decisions on murders were not limited to the shooter(s). All but two of these defendants pleaded guilty. Also similar to the *Vargas* case, many of these defendants cooperated with the government.

Juan Briseno was one of the defendants who went to trial. In addition to the RICO and drug conspiracies, he was charged with substantive counts involving a total of six murders and four attempted murders. The government sought the death penalty. At trial, the jury returned guilty verdicts on the RICO and drug conspiracies, five of the six murders, and two counts relating to attempted murder. All of Briseno’s victims were arguably a result of gang-on-gang violence. Consequently, the jury did not unanimously agree on the death penalty. On June 16, 2015, Briseno was sentenced to five consecutive life sentences plus 120 months.

#### **1. Two Six Investigation**

The IG investigation was followed by an investigation of one of their many rivals, the Two Six Nation (Two Six). In this case, AUSA Nozick partnered with trial attorney Andrew L. Creighton of the Criminal Division’s Organized Crime and Gang Section. This case originated with a criminal complaint that charged two members of the Two Six with a murder that occurred on May 16, 2003, in East Chicago, Indiana. The complaint was filed on August 23, 2013, charging these defendants with a § 924(j) murder. This case evolved over the next twenty-eight months, culminating in the filing of the Third Superseding Indictment on December 2, 2015, charging RICO and drug conspiracies that originated in January 1991, in addition to murders charged under VICAR and § 924(j).<sup>43</sup>

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<sup>40</sup> See [Third Superseding Indictment at 15, United States v. Briseno, No. 2:11-CR-77-PPS \(N.D. Ind.\)](#).

<sup>41</sup> [United States v. Briseno, 2:11CR00077-PPS \(N.D. Ind. June 2, 2011\)](#).

<sup>42</sup> See [Press Release, Office of Public Affairs, U.S. Dep’t of Justice, Leader of Imperial Gangsters Sentenced to Life in Prison for Five Murders, One Attempted Murder and Other Gang-Related Crimes \(June 15, 2015\)](#).

<sup>43</sup> [United States v. Pennington, 2:13-CR-00111-PPS \(N.D. Ind. December 2, 2015\)](#).

A total of ten defendants were charged in this case. Seven of these defendants were charged with one or more of the five murders included in the case. Of these, one murder case was taken over from the Lake County, Indiana State's Attorney's Office. The other four murders charged were basically "cold cases."

## 2. Follow-up Latin King Investigation

As though full circle, AUSA Nozick led a second prosecution on the Latin Kings. This case was initiated with the July 15, 2015 indictment of Anton Lamont James, charged with VICAR and § 924(j) murders for killing Martin Hurtado Jr. on October 28, 2014. Unlike the *Vargas* case, the focus of this investigation was primarily limited to the criminal activities of a newly constituted Latin King region formed in Northwest Indiana, with chapters located in East Chicago, Gary, and Hammond.

On January 19, 2017, the Third Superseding Indictment was filed in this case. AUSA Nozick partnered with AUSAs Dean Lantern and Abizer Zanzi. This indictment charged thirty-eight defendants with RICO and drug conspiracies. The Hurtado murder charges and other related counts, including prostitution charges, were part of this indictment. Although Hurtado's was the only murder substantively charged, two other murders were included as overt acts of the RICO conspiracy, naming a total of five defendants responsible for these murders. In addition, at least twenty-five overt acts were part of the RICO conspiracy, including shootings, robberies, weapons possessions, and three arsons.<sup>44</sup>

## 3. Demonstrative Impact on Reduction of Violence

The four prosecutions in the NDIN have resulted in excess of ninety defendants charged with involvement in a criminal enterprise. Twenty-six homicides were prosecuted, either substantively or as part of the RICO conspiracies charged.

A look at the homicide statistics for East Chicago, Indiana, serves as a strong measure of the effect that these prosecutions had on the communities of Northwest Indiana. During the five-year span from January 2006 until January 2011, there were seventy homicides reported in East Chicago, Indiana. The *Vargas* case was first indicted in the summer of 2010. During the proceeding five-year span, from January 2011 until January 2016, there were thirty-two homicides reported in East Chicago, Indiana.

# IV. Miscellaneous Considerations

## A. RICO Predicate Acts

In the *Vargas* case, the Third Superseding Indictment listed eighty-five overt acts in the RICO conspiracy.<sup>45</sup> Aside from the several murders, robberies committed by the defendants, in particular those who were Chicago police officers at the time, were a significant aspect of the case.<sup>46</sup> Drug trafficking related violations were also included as predicate acts, despite the absence of any significant drug seizures or extensive drug-related conversations captured by means of consensual or Title III authorized

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<sup>44</sup> United States v. James, et al., 2:15CR00072-PPS (N.D. Ind., January 19, 2017.)

<sup>45</sup> The overt acts listed in indictments in the *Vargas* case and the subsequent investigations were not restricted to RICO predicate acts. Other activity such as firearm possession, gang meetings, and "posting up" (maintaining a presence on a street controlled by the gang) were also included to demonstrate further participation in the affairs of the gang.

<sup>46</sup> See Andrew Creighton, *The Hobbs Act*, 18 U.S.C. § 1951, U.S. ATTORNEYS' BULL., Jan. 2012, at 18 (explaining that these robberies were included as predicate acts under state law as well as under the Hobbs Act, 18 U.S.C. § 1951). This article provides an excellent overview of Hobbs Act.

recordings.<sup>47</sup> The December 13, 2008 seizure of a kilogram of cocaine in the *Nava* case was the only significant quantity of drugs acquired in this investigation.<sup>48</sup>

Several other listed overt acts in the *Vargas* case included violations of interstate travel in aid of racketeering in violation of 18 U.S.C. § 1952.<sup>49</sup> Aside from the Chicago–Texas aspect of the case, the close proximity of Chicago to Indiana made interstate travel to promote drug trafficking a common occurrence. Although not included as a listed predicate act, witness tampering is a routine gang practice that is one of several other potential predicate acts that could be included in RICO conspiracies.

## B. Use of Cooperators in Future Prosecutions

As with the Latin King investigation, RICO prosecutions, in particular, can lead to successive prosecutions. Often, a cooperating defendant from one case can be used in future prosecutions. Several of the cooperating defendants in the *Vargas* case have been debriefed in successive prosecutions. For one, Alexander Vargas testified in a trial against two Latin King members that were part of a case charged in *United States v. Ruibal*, prosecuted by AUSAs Russell A. Kavalhuna and Sally J. Berens. In that case, a total of thirty-one defendants were charged in a RICO conspiracy involving a multitude of attempted murders in the Holland, Michigan area.<sup>50</sup> Two other defendants were charged with VICAR offenses. As with the two that went to trial, all were convicted.<sup>51</sup>

## C. Cooperating Witness Safety

There is an ever-growing concern about a cooperating inmate’s safety. Upon his arrival, an inmate is typically confronted by other inmates in most medium- and high-level Bureau of Prisons (BOP) facilities. These inmates demand that the new arrivals present their “paperwork” (plea agreements and Presentence Investigation Reports) for inspection. In addition, federal inmates have access to PACER to determine whether the government filed any motions, sealed or otherwise, on behalf of the suspected cooperating inmate.

Upon approaching a defendant that is interested in cooperating and after demanding truthfulness and candor, the prosecutor needs to address witness security next. In the past, this author and other prosecutors would suggest the possibility of the Witness Security Program (WITSEC).<sup>52</sup> Once admitted into WITSEC, referred to as Phase I, cooperating inmates are typically placed in BOP facilities with other cooperating inmates.

Another promising option now being offered by BOP is the “Gang Drop-out” Program. The “Drop-out” program is designed for inmates that renounce their gang affiliation. After the certification process, BOP will place this inmate in a facility that is limited to other inmates that have also renounced their gang affiliation. Normally, this process can be expedited for those inmates that were cooperating government witnesses.

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<sup>47</sup> Many USAOs are reluctant to proceed on historical or “dry” drug conspiracy cases. However, a compelling criminal case may be developed when this historical drug evidence is presented in the context of other gang activity.

<sup>48</sup> The circumstances surrounding the single kilo of cocaine was representative of years of drug trafficking as testified by cooperating defendants.

<sup>49</sup> 18 U.S.C. § 1952 (2012 & Supp. III 2015).

<sup>50</sup> See Superseding Indictment in *United States v. Ribal*, et, No. 12-CR-00132, (W.D. Mich. February 8, 2013)

<sup>51</sup> *United States v. Ruibal*, No. 12-CR-00132, 2014 WL 198663, at \*1 (W.D. Mich. Jan. 16, 2014).

<sup>52</sup> See Linda A. Seabrook & Jelahn Stewart, *Snitches Get Stitches: Combating Witness Intimidation in Gang-Related Prosecutions*, U.S. ATTORNEYS’ BULL., May 2014, at 83, 88 for a helpful discussion of witness security measures, including WITSEC.

## V. Conclusion

The above cases demonstrate that an investigation that focuses on the organization will commonly disclose new evidence of “cold case” murders, leading to the prosecution of those responsible and preventing their involvement in future violence. In addition, targeting those responsible for ordering or directing the shooter(s) will aid in breaking the constant cycle of replacing one apprehended or deceased shooter with yet another.

### ABOUT THE AUTHOR

□ **Joseph A. Cooley** has been a prosecutor with United States Department of Justice since June of 1994, first starting as a Special Assistant U.S. Attorney in the NDIN and later as an AUSA. He served as an AUSA in the SDFL from 2002 until 2008. Since November 2008, he worked in the Criminal Division, starting at the Gang Unit and then with the merger the Organized Crime and Gang Section. Before becoming a lawyer, Mr. Cooley served on the Chicago Police Department (CPD) for approximately fourteen years. As a police officer, he worked in various capacities that included tactical work in the Public Housing Unit, Special Operations Group, and later as a detective. Throughout his career in law enforcement, he has focused on investigating and prosecuting violent street gangs and other domestic and foreign criminal organization.