

UNITED STATES COMMISSION ON CIVIL RIGHTS

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BRIEFING TO THE COMMISSION
ON SAN DIEGO BORDER ISSUES,
THE RESULTS OF OPERATION GATEKEEPER

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THURSDAY
NOVEMBER 14, 2002

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SAN DIEGO, CALIFORNIA

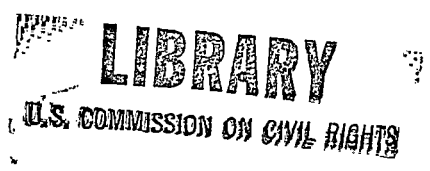
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The Commission convened at 9:11 a.m., in the Coast Ballroom, Holiday Inn by the Bay, 1355 North Harbor Drive, San Diego, California, Chairperson Mary Frances Berry, presiding. Briefing hosted by the American Civil Liberties of San Diego and Imperial Counties.

Present:

- MARY FRANCES BERRY, CHAIRPERSON
- CRUZ REYNOSO, VICE CHAIRPERSON
- JENNIFER C. BRACERAS, COMMISSIONER
- CHRISTOPHER EDLEY, JR., COMMISSIONER
- ELSIE M. MEEKS, COMMISSIONER

- LESLIE R. JIN, STAFF DIRECTOR



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Panelists:

WILLIAM ACEVES, Professor of Law and Director of
the International Legal Studies Program,
California Western School of Law; Member
AMERICAN CIVIL LIBERTIES UNION Board

MARIO OBLEDO, National Coalition of Hispanic
Organizations

CLAUDIA SMITH, California Rural Legal
Assistance Foundation

WAYNE CORNELIUS, Director of the Center for
Comparative Immigration Studies and Director
of the Center for U.S.-Mexican Studies,
University of California, San Diego

ROBERTO MARTINEZ, Recently Retired Director,
American Friends Service Committee Border
Project

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P-R-O-C-E-E-D-I-N-G-S

(9:11 a.m.)

CHAIRPERSON BERRY: I want to welcome everyone and thank you for coming this morning.

The Commission, as many of you may know already, decided back in May that we would, as often as possible, meet outside of Washington so that we could interact with local people and our State Advisory Committees insofar as possible to hear from people on the ground, where they are, about the issues that they're concerned about.

And we have been several places since then. And today we are here in San Diego. The State Advisory Committees in Arizona and in California have been very concerned about the issue of the border crossing and what happens to people who cross and also the people who live in the area and the impact on them of the federal policy. And so we are having our meeting, our official business meeting tomorrow morning, but we decided that this day early we would come so that we could hear from the people who the SAC thought it was important for us to hear from about these concerns.

And this presentation will be focused, as I understand it, on the impact of federal policy in

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1 San Diego and the Southern California region and to
2 the extent that you wish to talk anything else related
3 to it, that will be fine.

4 The organizations, I understand, that are
5 here today are: The American Civil Liberties Union;
6 the American Friends Service Committee; the California
7 Rural Legal Assistance Fund; and the Center for
8 Comparative Immigration Studies, University of
9 California San Diego responded positively, and wanted
10 to come to make this presentation. And we thank you
11 for getting -- for coming here.

12 And I want to introduce now Professor
13 William Aceves, who is in charge, who will be
14 moderating as well as speaking on the subject. He is
15 a professor of law. When I first saw him out there
16 and introduced myself, I thought he was a law student,
17 but then --

18 VICE CHAIRPERSON REYNOSO: He was once.

19 CHAIRPERSON BERRY: And, yeah, so -- and
20 he -- I think one of my old high school teacher's
21 granddaughter who is a law professor I think teaches
22 at your law school. Her name is Andrea Johnson.

23 DR. ACEVES: Absolutely, yes.

24 CHAIRPERSON BERRY: Yes. I always think
25 of her as a small child, but of course she's a woman

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1 in her late forties, or something.

2 VICE CHAIRPERSON REYNOSO: You're getting
3 old, Mary.

4 CHAIRPERSON BERRY: Yeah. And so you may
5 give her my regards, please, when you see her.

6 DR. ACEVES: I will do that.

7 CHAIRPERSON BERRY: Professor Aceves is
8 Professor of Law and Director of the International
9 Legal Studies Program at California Western School of
10 Law. And he is also a member of the ACLU Board.

11 And he writes and works and teaches
12 international law and human rights and works with all
13 of the organizations, international and national, in
14 this field and has presented *amici* briefs to the
15 courts on this subject. And he was the principal
16 author of the *2002 Amnesty International Report on*
17 *Torture in the United States.*

18 And so I will turn it over to you and we
19 wait to have you introduce the other panelists and
20 proceed in whatever way you wish, Professor Aceves.

21 DR. ACEVES: Good morning. *Buenos dias.*
22 Thank you for coming today.

23 VICE CHAIRPERSON REYNOSO: Good morning.

24 DR. ACEVES: I think I always tell my
25 students that we're all students of the law,

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1 regardless of which side of the podium we stand on.

2 I'd like to take this opportunity to
3 welcome the Commission on Civil Rights here. I also
4 want to take this opportunity to thank the Commission
5 and the California State Advisory Committee for taking
6 this opportunity to meet with us today to discuss as
7 an important issue as Operation Gatekeeper and its
8 implications on human life.

9 In October 1994 Operation Gatekeeper was
10 launched by the Border Patrol in the San Diego Sector.

11 The purported goal of Operation Gatekeeper was to
12 deter migrants from entering through the urban areas
13 of San Diego County. And to accomplish this goal,
14 Operation Gatekeeper sought to channel the migrants
15 eastward, out of the urban areas and into the more
16 inhospitable and dangerous terrain in east San Diego
17 County and Imperial County.

18 The border enforcement plan recognized
19 that migrants would be placed in mortal danger as a
20 result of this border strategy. Nonetheless, the
21 planners acknowledged, recognized that migrants would
22 continue to make the effort of trans- -- of moving
23 through those inhospitable regions. Subsequently,
24 Operation Gatekeeper was extend to the El Centro
25 Sector.

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1 And it should also be noted and it will be
2 mentioned on several occasions that similar border
3 strategies have been developed in the other border
4 states.

5 Since Operation Gatekeeper was adopted in
6 1994 over 2,200 individuals, men, women, children,
7 have lost their lives crossing over into the United
8 States. But those are the only figures that have been
9 documented. We have no way of knowing how many more
10 people perished in the crossing.

11 Some of them died in the mountain regions
12 as a result of hypothermia. Some died in the deserts
13 as a result of heat exhaustion. Some drowned in the
14 canals that line the U.S.-Mexico border.

15 As I mentioned, we simply do not know the
16 actual number of victims. Recent studies have raised
17 serious questions about the efficacy of Operation
18 Gatekeeper. Organizations as diverse as the General
19 Accounting Office, as diverse as the Public Policy
20 Institute of California have questioned the success of
21 the border strategy and have also questioned the human
22 costs associated with the strategy.

23 Despite these findings one can argue that
24 Operation Gatekeeper has been extraordinarily
25 successful. Its goal was to channel migrants out of

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1 the urban areas of San Diego and into the inhospitable
2 regions of east San Diego County and Imperial County.

3 And in this respect Operation Gatekeeper has been
4 brutally successful.

5 Some commentators have argued that
6 Operation Gatekeeper and similar strategies have
7 improved the quality of life for U.S. citizens living
8 on this side of the border. I think that misstates
9 the issue. It's not about the quality of life. It's
10 about life itself.

11 The following presentations we're going to
12 have for you this morning will discuss the
13 establishment of Operation Gatekeeper. It will
14 discuss the human toll of Operation Gatekeeper, the
15 human suffering of the survivors and the family
16 members, the deaths. It will discuss the national
17 implications of Operation Gatekeeper. It will discuss
18 its impact on the Latino community. It will also
19 discuss the international implications of Operation
20 Gatekeeper, the implications with respect to the
21 international community.

22 Each speaker will speak from 10 to 15
23 minutes, and that will leave ample time for questions
24 at the end.

25 We have five speakers today. The first is

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1 Mario Obledo. Mr. Obledo has been a prominent
2 activist in the Latino community for over 30 years.
3 He co-founded the Mexican American Legal Defense and
4 Education Fund in 1968 and the National Hispanic Bar
5 Association in 1971.

6 He has served as a Secretary of Health and
7 Welfare in California. In 1998 he was awarded the
8 Presidential Medal of Freedom by President Bill
9 Clinton. He is the current President of the National
10 Organization -- National Coalition of Hispanic
11 Organizations.

12 I would now like to introduce Mario
13 Obledo.

14 CHAIRPERSON BERRY: Thank you.

15 MR. OBLEDO: Thank you very much, William.

16 Good morning, Commission Members. First I
17 would like to start off by introducing my beautiful
18 wife Keda Alcala-Obledo, without whose assistance and
19 care I wouldn't be here today. So, Keda.

20 MS. ALCALA-OBLEDO: (Stands briefly.)

21 VICE CHAIRPERSON REYNOSO: Good morning.

22 MR. OBLEDO: Since I've become the
23 President of National Coalition of Hispanic
24 Organizations, we have become involved in immigration
25 work to some extent. We are studying the border

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1 issues and immigration policy throughout the country,
2 et cetera.

3 And I've been involved in civil rights
4 work, as mentioned before, for over 30 years. So this
5 border policy issue is a matter of civil rights,
6 nothing else.

7 If you will stop and reflect for a minute,
8 most of the illegal immigrants in the United States
9 come to California and Texas, which happen to be the
10 most richest and most prosperous states in the
11 country. I would recommend that perhaps we ought to
12 ship some of the illegal immigrants to Iowa, North
13 Dakota, South Dakota, Idaho, Montana -- states that
14 need a better economy, because it's been proven time
15 and again that illegal immigrants add to the economy
16 of a state. And California and Texas stand out for
17 that reason.

18 Another thing is that since the border
19 issues developed, in 1994 really, with Operation
20 Gatekeeper -- and I'm not going to address Operation
21 Gatekeeper because we have an expert here on the
22 panel, Claudia Smith, who's not only an expert on
23 Operation Gatekeeper but Operation Safeguard and
24 Operation Rio Grande and all of the border issues.
25 She will speak about the statistics, the outcome, all

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1 aspects of Operation Gatekeeper.

2 I will say this, that I and the
3 organization and members of the organization picketed
4 in Nogales, Arizona concerning the vigilantes. We
5 wanted to call it to the attention of state and
6 federal officials. But that situation still persists
7 in Arizona.

8 And even though the Commission does not
9 really interfere with immigration, naturalization
10 policies, you can get involved because this is a civil
11 rights issue. People are getting killed down there by
12 the ranchers. People are being brutalized. That's
13 human life. Over 2,000 human lives have been lost.
14 There's no reason for it. There shouldn't be a human
15 life lost crossing the border.

16 Let's talk about the border for a minute.
17 You know people have studied this issue for years and
18 years. Some people have called for militarization of
19 the border. Put in the Army and the National Guard
20 down at the border to protect the border, to not allow
21 people to come into this country.

22 No army, no navy, no force is going to
23 prevent the illegal immigrants from coming into this
24 country, because they come into this country full of
25 hope, desire, ambition to work, et cetera.

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1 I recommend an open border, much as we do
2 for services and goods. We ought to have an open
3 border on capital -- human capital. The government of
4 Mexico and the United States could sit jointly and
5 work out a proposal, to let people come into this
6 country, to convert the Border Patrol into an
7 information and referral service, to where they could
8 direct people to places where jobs are available,
9 where schools are available, where housing's
10 available, et cetera; and work out a plan for
11 permanent stay of so many of a time limited.

12 And I've thought about this issue a long
13 time. And I think that children perhaps born in the
14 United States out of these people coming into this
15 country should not be U.S. citizens. They shouldn't
16 be allowed to own real estate or to own other
17 investments, et cetera. They could only stay in the
18 country several years and report periodically to the
19 INS or other federal agencies and law enforcement
20 agencies. And then most of them want to go back to
21 Mexico in any event. And once they have the capital
22 and the savings they can go back to Mexico. That's
23 the only way to work things out.

24 There wouldn't be one life lost. There
25 would be mutual cooperation between the two countries.

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1 Our states could develop economically. We'd all be
2 better off because of it.

3 So I call for an open border. I think it
4 makes sense. I think it can be worked out, et cetera.

5 And I would like the Commission to voice their
6 opinion on such an idea, because we're not ever going
7 to prevent illegal immigration into this country, no
8 matter what we do. So why don't we work out some
9 sensible solution to the problem and allow people to
10 come into this country, live without fear, work,
11 contribute to the economy, and then return home. I
12 think something like that can be worked out.

13 You know at one time I went to the Mexican
14 government and I recommended it turn communist because
15 this country allows asylum to people fleeing communist
16 nations. So I figured, well, if Mexico says, "We're
17 communist," that means the U.S. would have to allow
18 all the illegal immigrants in and we'd offer them
19 immunity. But obviously my recommendation was not
20 taken up and the issue still exists.

21 With that I think I'll close and listen to
22 the real experts on the border issues.

23 CHAIRPERSON BERRY: Thank you.

24 MR. OBLEDO: Thank you.

25 VICE CHAIRPERSON REYNOSO: Thank you.

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1 DR. ACEVES: Thank you, Mr. Obledo.

2 Our next speaker is Dr. Wayne Cornelius.
3 Professor Cornelius is Professor of Political Science
4 and U.S.-Mexico Relations at the University of
5 California at San Diego. He is also the Director of
6 the Center for Comparative Immigration Studies and the
7 Director of the Center for U.S.-Mexican Studies.

8 Professor Cornelius has taught at Harvard,
9 MIT, Princeton, Stanford, and Oxford Universities. He
10 is the author or editor of over 200 publications, many
11 of these publications involving immigration issues or
12 cross-border issues.

13 Professor Cornelius will provide a
14 quantitative analysis of Operation Gatekeeper.

15 DR. CORNELIUS: Thank you very much, Will.

16 I appreciate very much this opportunity to
17 address the Commission. Let me begin by stating my
18 personal view that the subject under discussion today,
19 this morning represents the most obvious, the most
20 acute and the most systematic violation of human
21 rights occurring on U.S. soil today.

22 We're talking about the consequences of
23 four so-called concentrated border enforcement
24 operations, beginning with Operation Hold-the-Line in
25 the El Paso metropolitan area in 1993, followed by

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1 Operation Gatekeeper here in the San Diego area in
2 1994, Operation Safeguard in the central Arizona area
3 beginning in 1995, and Operation Rio Grande in the
4 south Rio Grande Valley of Texas beginning in 1998.

5 It's worth pointing out that these four
6 operations have succeeded in fortifying less than 10
7 percent of the entire 2,000-mile border with Mexico,
8 but it's a critical 10 percent because those segments
9 of the border represented the low risk, easy access to
10 the U.S. corridors.

11 What we have created along these highly
12 fortified segments of the border is a high-tech
13 Maginot Line against illegal immigration with fences,
14 conventional fences of the type that you see here in
15 Tijuana [referring to the slide presentation]
16 extending into the Pacific Ocean at its western
17 terminus.

18 These conventional fences can be vaulted,
19 can be climbed over, and in fact this happens every
20 single night within the urbanized areas. They are
21 being replaced by higher-technology versions, concrete
22 bollard fences of the type that you see here.

23 Video surveillance systems. Televised
24 video surveillance systems operating 24 hours a day
25 along these heavily fortified segments, which are

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1 linked to Border Patrol dispatching centers and which
2 can dispatch Border Patrol vehicles precisely to the
3 areas where illegal entries have been detected.

4 Infrared night scopes, both fixed, mounted
5 on the platforms of the type that you just saw, as
6 well as mobile units like this which detect the
7 presence of illegal entrants by their body heat.

8 What are the consequences of this
9 strategy? This is the 72 -- this is the 32-year
10 apprehension trend. The first point that I would like
11 to emphasize is that the total number of apprehensions
12 recorded by the Border Patrol in the fiscal year just
13 concluded was virtually the same as in fiscal 1994, at
14 the beginning of implementation of this strategy.

15 We have had a significant decline in
16 apprehensions during the last three fiscal years, as
17 you can see in the graph. Almost all of that decline,
18 in my best professional judgment, can be attributed to
19 two factors. One, the success of the concentrated
20 border enforcement strategy in discouraging
21 undocumented migrants from returning to Mexico, as
22 they would traditionally do at the end of the year or
23 for various kinds of family situations. If they are
24 not returning to Mexico they are not at risk at being
25 apprehended. So that accounts for a significant share

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1 of the decline.

2 And the rest can easily be explained by
3 the softness of the U.S. economy, the weakened of
4 demand for Mexican and other undocumented immigrant
5 labor in this country.

6 What we have succeeded in doing most
7 dramatically with this strategy is to redistribute
8 illegal-entry attempts away from the San Diego
9 corridor and urbanized areas like El Paso into the
10 mountains and the desert, particularly the Arizona
11 desert.

12 You can see how Arizona has dramatically
13 increased its share of total apprehensions during this
14 period of implementation of concentrated border
15 enforcement. California, the gold line in the middle,
16 has dropped significantly, to third place. And Texas
17 is -- maintains its second largest share.

18 The decline in entrant apprehensions
19 affects all segments, but clearly the bulk of the
20 traffic is now occurring in the Arizona desert, where
21 you don't have heavily fortified border corridors. In
22 fact, typically you have no fence at all or a fence of
23 the type that you see in this slide which can be
24 easily circumvented by both people and animals.

25 Another clear consequence of the strategy

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1 has been to bid up the fees charged by professional
2 smugglers. I don't have more recent data than 1998,
3 but you can see that the cost charged per head by a
4 professional smuggler at least doubled between 1993
5 and 1998. Today it's somewhere between \$1500 and
6 \$2500, depending on the services offered and the area
7 in which entry is being attempted.

8 So concentrated border enforcement has
9 been a bonanza for the professional smuggling
10 industry. They have not by any means priced
11 themselves out of the market.

12 There has been no discernible impact on
13 the supply of immigrant labor in labor markets and in
14 industries where these types of workers have
15 traditionally been clustered. Here you see the
16 results of a survey that we did in San Diego County of
17 employers who depend heavily on immigrant labor, we
18 found that well over two-thirds of the employers in
19 San Diego County had experienced no change in the
20 number of immigrant job seekers showing up at their
21 doors. Only eight percent had noticed a decline in
22 applicants. And more than one out of five actually
23 have noticed an increase in the supply of foreign-born
24 job seekers.

25 I've already mentioned the decline in

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1 trend in apprehensions as an indicator of greater
2 permanence of Mexican migrants in the United States.
3 It's very clear from a large number of survey studies
4 that have been done both on the U.S. side and at
5 points of origin in Mexico that concentrated border
6 enforcement has increased the rate of permanent
7 settlement in the United States. And even among those
8 who consider themselves temporary migrants, it has
9 lengthened the average stay in this country.

10 Another indicator of this phenomenon is
11 the dramatic rise in the amount of money being
12 remitted by migrants from the U.S. to Mexico. Why is
13 that an indicator of greater permanence? It reflects
14 the fact that migrants are staying in the United
15 States and sending more of their earnings to relatives
16 in Mexico through bank wires and other kinds of
17 electronic transfers, which is what is captured in
18 these data, rather than bringing it back to their
19 relatives in lump sums at the end of their working
20 sojourn in the United States.

21 There is absolutely no evidence that
22 concentrated border enforcement has created an
23 effective deterrent at the point of origin. There is
24 no evidence that it is discouraging would-be
25 undocumented migrants from leaving their home

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1 communities in Mexico and at least trying their luck
2 in running the gauntlet at the U.S. border.

3 The most dramatic consequence and a
4 subject of today's discussion of this strategy is the
5 rising mortality rate among undocumented migrant
6 attempting illegal entry along the southwest border.
7 The trend, the borderwide trend in migrant deaths has
8 been clear since the late 1990s. The final figure for
9 2002 was actually 320 rather than 311. These data
10 were only as of the 26th of September.

11 And you can see from this graph that
12 Arizona, the bottom line, the yellow line, deaths
13 occurring in the Arizona Sector have increased most
14 markedly in the last two or three years. Texas
15 remains in second place, but Arizona has surpassed
16 Texas as a killing field. And California continues to
17 decline.

18 Operation Gatekeeper was implemented in
19 three phases, beginning in the western most sector,
20 the Imperial Beach Sector, proceeding into the
21 mountains in Phase II, the Tecate Mountains. And in
22 Phase III into the desert of Imperial County and into
23 the Yuma desert in Arizona.

24 This is the kind of terrain that
25 undocumented migrants are transitting in San Diego and

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1 Imperial Counties. You can see the Salton Sea, that
2 green blob directly north of the border.

3 I've gotten ahead of myself here.

4 Deaths occurring as a result of
5 dehydration are inevitable under this kind of
6 strategy. It is impossible for migrants to carry
7 enough water for a two- to three-day trek across the
8 desert to prevent dehydration. And of course some of
9 them, even though they try to hydrate themselves as
10 well as possible, as you can see in this slide, are
11 unable to do that and actually are very near death by
12 the time they are detected by the U.S. Border Patrol.

13 And those that misjudge the duration of
14 the trek, the intense heat that they will encounter in
15 the Imperial Desert temperatures frequently, routinely
16 rise above 110, 115 degrees in the summer months, can
17 easily succumb to that miscalculation.

18 Another clear and present hazardous is the
19 All American Irrigation Canal which marks, parallels
20 the U.S.-Mexico border both in the Imperial Valley and
21 the Arizona Sector. The All American Canal at places
22 is almost as wide as a football field. The current is
23 extremely swift, deceptively swift. It poses a mortal
24 danger even to young healthy males who consider
25 themselves to be strong swimmers.

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1 You can see in these two slides how The
2 All American Canal presents the primary barrier to
3 crossing into the U.S. in the Mexicali area as well as
4 in the Yuma, Arizona area.

5 Crossings are made at night. There is a
6 well organized industry of ferrying migrants across
7 the All American Canal in rubber rafts. Frequently
8 those rafts are overloaded. They capsize, dumping
9 their human cargo into the canal. A lot of drownings
10 occur for that reason.

11 The Border Patrol has posted signs along
12 the canal: "Stay out"; "Don't Swim"; "Dangerous."
13 But of course that does not deter migrants from
14 trying. Bodies are routinely fished out of the canal
15 lock system that manages the water level along the All
16 American Canal.

17 Migrants also float into the United States
18 on the New River which is the most contaminated free-
19 flowing river in the Western world. Every toxin and
20 bacteria known the man flows through the New River.
21 And, again, people swim it. People typically go
22 through floating through lashed to rubber intertubes,
23 as you can see this group was doing on the night that
24 they were photographed here.

25 The redistribution of deaths occurring at

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1 the border parallels the implementation of Operation
2 Gatekeeper. At the outset of Gatekeeper in 1995 most
3 deaths were occurring in the San Diego corridor as a
4 result of traffic accidents. Migrants being mowed
5 down on the freeways as they attempted to cross in the
6 urban area. And I'll fast-forward through these
7 subsequent years. You can see the deaths moving into
8 the mountain area of San Diego County, beginning to
9 show up in the Calexico desert area as well in '96.
10 In '97 even more of the deaths occurring in the desert
11 area, relatively fewer in the mountains.

12 1998, the overwhelming majority occurring
13 in the desert as far as north as the Salton Sea. And
14 now into the Yuma desert in Arizona. '99, 2000, and
15 2001.

16 This is actually one of the most useful
17 indicators that, in fact, the strategy of concentrated
18 border enforcement is producing, has produced a
19 significant increase in the mortality rate among
20 undocumented migrants. At least a third of them end
21 up unidentified in potter's fields like this one at
22 the Holtsville Cemetery near El Centro, California.

23 Again Arizona has become are primary
24 killing field in recent years, but deaths are also
25 occurring away from the border, such as this highly

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1 publicized incident just last month in which 11
2 undocumented migrants were found inside, trapped
3 inside a railroad car in a small town in Iowa. They
4 had bordered in Texas and had not been released in
5 time to prevent them from dying from dehydration and
6 starvation.

7 This is also, I would argue, directly
8 attributable to the strategy of concentrated border
9 enforcement. Migrants in general are taking much
10 greater risks, physical risks to secure access to the
11 labor market in this country.

12 So what do we have after more than eight
13 years and more than \$20 billion expended on
14 concentrated border enforcement? Basically what we
15 have to show for it is more than 2200 deaths. It
16 could hardly have been otherwise. If we were serious
17 about reducing illegal immigration to the United
18 States we would of course be vigorously enforcing the
19 immigration laws in the workplace.

20 In fact what we have seen during this same
21 period in which concentrated border enforcement was
22 implemented is a collapse in the workplace enforcement
23 effort on the part of the federal government. Since
24 1998 only about two percent of the entire INS effort
25 has been expended on worksite investigations. The

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1 number of workplace inspectors has fallen to 300
2 compared with 9500 Border Patrol agents.

3 The number of employers fined for hiring
4 illegal migrants dropped to fewer than 200 throughout
5 the country in the year 2000. The total number of
6 illegal migrants arrested at their workplace in the
7 same year was only 953, when approximately a million
8 were being apprehended at the border.

9 So what we have is a triumph of symbolic
10 -- is a triumph of symbolic politics and economics.
11 We have a symbolic show of force at the border,
12 reflecting the priorities that Congress has given the
13 INS, which are, number one, fortify the border in a
14 highly visible though ineffectual manner; and dispose
15 of so-called criminal aliens who commit other
16 violations of federal law, round them up, when they
17 have served their sentences, then deport them. These
18 are the overriding priorities that Congress has
19 dictated to the INS, and they are fulfilling their
20 mission.

21 Meanwhile we have what I called at the
22 outset of this presentation an ongoing clear
23 systematic and acute violation of human rights in the
24 form of a rising tide of death at the border. Thank
25 you.

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1 PROFESSOR ACEVES: Thank you, Professor
2 Cornelius.

3 Our third speaker is Claudia Smith, who is
4 an attorney with the California Rural Legal Assistance
5 Foundation. She is a tireless advocate, and I would
6 underscore tireless in this respect, working on behalf
7 of immigrants and farm workers here in the United
8 States.

9 She has been a leading activist in the
10 campaign against Operation Gatekeeper in the effort
11 the publicize the human consequences of this border
12 enforcement strategy. She has appeared before the
13 Inter-American Commission on Human Rights, the United
14 Nations Special Rapporteur on Migrants, where she
15 addressed the issue of Operation Gatekeeper.

16 Claudia Smith will provide details on the
17 implementation of Operation Gatekeeper.

18 MS. SMITH: The Border Patrol calls these
19 operations work in progress. I call them deaths in
20 progress.

21 Welcome to what I call the border of
22 hypocrisy, where our immigration control policies
23 collide with the reality of our demand for low-skilled
24 labor.

25 Almost 2,200 migrants have died along the

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1 Southwest border, as you've heard, since the Border
2 Patrol switched strategies in late 1994. That figure
3 includes almost 350 dead so far this year, according
4 to the Mexican government's count -- not counting the
5 11 found in the train in Iowa.

6 Regardless of whose numbers you use, this
7 summer migrants died in record numbers: Approximately
8 200 migrants just died in the last four months.

9 We didn't want the migrants to be an
10 abstraction so I have brought you a long list of their
11 names, starting with Victor Nicolas Sánchez, who was
12 33 years old when he drowned in the Tijuana River in
13 January of 1994, and ending, for now, with the Cleto
14 Godinez, whose age has not been determined yet, and
15 who died of heat stress in Carrizo Wash, not 60 miles
16 from here, just about a week ago.

17 The strategy of Operation Gatekeeper in
18 California as well as Safeguard in Arizona and Rio
19 Grande in Texas has been to push the undocumented foot
20 traffic out of the urban areas and into ever more
21 remote and dangerous places. The strategy was
22 designed to move the crossings out of the public eye,
23 starting with America's finest city. It was not
24 designed to seal the border -- something that is not
25 only unrealistic but probably undesirable from the

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1 perspective of both the U.S. and Mexico.

2 As former INS Commissioner Doris Meissner
3 herself explained earlier this year, in the global
4 economy a degree of undocumented labor must be
5 tolerated in order for the U.S. to keep competitive.

6 Crossing the border illegally has never
7 been risk free. The Border Patrol will tell you that
8 there are no more deaths now than before, but it can't
9 back up that assertion. Although the strategic plan
10 adopted by the Border Patrol in 1994 recognized that
11 the new routes were fraught with mortal dangers, the
12 Border Patrol did not even bother to keep a body count
13 until 1998.

14 Mexican government figures show that
15 migrant deaths have soared in the last eight years by
16 as much 500 percent on the California border and by as
17 much as 1,000 percent on the Arizona and Texas
18 borders.

19 The San Diego Sector, where nearly half of
20 the crossings used to take place, mostly -- where
21 nearly half of the crossings used to take place,
22 mostly in a relatively safe coastal corridor, about 14
23 miles wide. The Border Patrol's resources are
24 concentrated here. This was really the pilot program,
25 the testing ground for Operation Gatekeeper.

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1 We now have, just on a 60-mile sector --
2 we have a 2,00-mile border, and just on a 60-mile
3 sector we have a quarter of the more than 8,000 agents
4 along the entire border; 75 percent of the fencing,
5 some of it triple fencing; and 25 percent of the
6 stanchion lighting.

7 Not surprisingly, apprehensions in this
8 sector are at a 25-year low, but eight years and
9 billions of dollars later all that has been achieved
10 at an enormous cost in life is the appearance of a
11 border under control. In a classic squeeze-and-bulge
12 effect, the migrants are walking across the mountains
13 and the deserts to the east of San Diego.

14 Three GAO studies, the most recent dated
15 August of last year, have questioned the efficacy of
16 Gatekeeper and its counterparts. The Border Patrol
17 will tell you that its strategy is finally working
18 because the number of apprehensions at the Southwest
19 border fell by 25 percent each of the last two fiscal
20 years.

21 As Wayne has explained, the drop is for
22 reasons largely unrelated to the strategy, for
23 example, the recession. Immigration flows respond to
24 underlying economic conditions.

25 What I want to drive home is that the

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1 deaths did not fall in proportion to the
2 apprehensions, that this is getting deadlier.

3 Borderwide the deaths fell by only five
4 percent in fiscal year 2002, down slightly more than
5 the year before. We're talking 320 deaths instead of
6 336, but still up sharply from other years.

7 The deaths and the apprehensions did not
8 fall proportionately in fiscal year 2001 either. The
9 apprehensions fell by 24 percent, the deaths fell by
10 11 percent. What that tells me is that the three
11 operations are getting deadlier. Migrants are being
12 channeled to ever more remote stretches where the
13 possibility of rescue is minimal.

14 What is happening is that the Border
15 Patrol is fanning out east and west of the border
16 cities, which drives the migrant foot traffic not only
17 into the desert, but the most remote parts of the
18 desert, the farthest places away from roads.

19 And in the maps that Wayne showed you one
20 of the -- I don't know if we could go back to the map
21 of 2001, but what you will see there is that -- first
22 the map of 2000, if we could.

23 DR. CORNELIUS: I'll get it.

24 MS. SMITH: What it will show you is that
25 a lot of the deaths in the year 2000 were taking place

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1 right near the border city of Mexicali and of
2 Calexico. By the year 2001, as the Border Patrol had
3 fanned out, where the most of the deaths were taking
4 place is the area of Ocotillo. They went from nine
5 there in the year 2000 to 36 last year. And that is
6 where the mountains end and the deserts start. It is
7 -- and you will also see that the deaths even in the
8 All American Canal, the drownings, are happening at
9 the other extreme near Yuma. And that's because as
10 they light up parts of the canal, people just go to
11 other parts of the canal where there is no lighting,
12 so that they can get across undetected. It is getting
13 deadlier.

14 Until last year most of the deaths
15 occurred in California's Imperial Desert. Now the
16 grimmest example is in the Tucson Sector, a vast
17 expanse of hell. There, the apprehensions fell by 26
18 percent in fiscal year '02, but the migrant deaths
19 actually rose by an astounding 70 percent, which
20 translates into 55 more deaths in fiscal year 2002
21 than the year before in the Tucson Sector. And some
22 of them were children as young as 11 years old.

23 After September 11th, as the controls at
24 the ports-of-entry get stricter, it is much more
25 difficult especially for children to get across with

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1 false papers, false declarations of citizenship, or
2 hidden in cars, and so the children are also now
3 taking to the desert.

4 The Border Patrol will put all the blame
5 on the smugglers. I'm not apologist for smugglers.
6 It's not a humanitarian service. It's a very
7 lucrative business and it's being carried out in more
8 and more heartless a way. But the truth is that
9 smugglers have been made indispensable by these
10 operations. You cannot get across without a smuggler
11 any longer.

12 And it's also counterproductive. Because,
13 although it may sound counterintuitive, what the
14 experts say is that the more that you are forced to
15 resort to smugglers, the better chance you have of
16 getting across undetected, and that the possibility of
17 apprehension may have fallen from 30 to 20 percent
18 during the course of the last eight years.

19 Another build-up is sure to redirect the
20 migrant foot traffic into even more punishing places.

21 The flashpoint right now is Tucson, and not just
22 because of the death figures. That is where self-
23 appointed guardians of the border are detaining
24 migrants and holding them at gunpoint until the Border
25 Patrol arrives.

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1 I hope you go there. I have read the
2 transcript of an August 23rd hearing by your State
3 Advisory Board in Arizona. The vigilante activity has
4 picked up since then with the advent of groups like
5 the so-called American Border Patrol.

6 A Douglas rancher allied with that group
7 recently bragged to the *New York Times* that he and his
8 brother had detained 8,000 migrants over the past four
9 years. That's probably an exaggeration, but according
10 to the Mexican Consul in Douglas, with whom I spoke
11 yesterday, at least 40 migrants were detained at
12 gunpoint by the Barnett brothers just in the last few
13 days.

14 I quote from a *New York Times* story that
15 goes into an interview with the Barnetts. In it
16 Barnett said, "He said that the migrants, who are made
17 to sit on the grounds, sometimes get mouthy with us
18 and that he was forced to become physically aggressive
19 to control them."

20 All in all this deputizing oneself as
21 Border Patrol agents has all sorts of ominous civil
22 rights implications which the authors there, from the
23 U.S. Attorney on down, have chosen to ignore.

24 The vigilantes mask their anti-Mexican
25 animus by talking about the border as a national

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1 security issue. But it seems that *Solo son los pobres*
2 *diablos que vienen buscar trabaja...*, "It's only the
3 poor devils that come looking for work that die in the
4 desert," the terrorists get in the legal way.

5 Be that as it may, if the United States
6 wants to put the Southwest Border in the national
7 security context and wants to seal every inch of the
8 border, it is free to do so. What it cannot do as an
9 alternative is keep funneling economic migrants to
10 their death.

11 Thank you.

12 PROFESSOR ACEVES: Thank you.

13 I've been asked to comment on Operation
14 Gatekeeper and international law. And while we
15 recognize that the Commission's primary goal is to
16 examine the status of these border enforcement
17 strategies with respect to United States law, it would
18 be my position that international law is an important
19 factor to consider for several reasons.

20 First, international law is part of the
21 law of the United States. Article VI of the Supremacy
22 Clause recognizes the status of treaties as part of
23 the supreme law of the land.

24 Similarly, customer international law,
25 which consists of state practice, is also recognized

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1 as an integral part of law of the United States. And
2 there have been countless executive, legislative, and
3 judicial decisions recognizing the status of
4 international law in this country.

5 Second, international law provides us with
6 a perspective on how to gage the status of Operation
7 Gatekeeper, the legitimacy of Operation Gatekeeper.
8 Beginning with our own Declaration of Independence, we
9 have long recognized that we should all respect, we
10 should acknowledge decent respect to the opinions of
11 mankind.

12 Reference to international law can inform
13 our own purely domestic analysis.

14 Let me say a few background words about
15 international law, the relevant international
16 standards that may apply here.

17 First, international law requires states,
18 countries to respect the right to life and protect
19 human dignity and human integrity. This has been
20 recognized in the United Nations Charter, the
21 International Covenant on Civil and Political Rights.

22 Both of those documents are treaties that have been
23 signed by the United States, ratified by the United
24 States. And so therefore under the Supremacy Clause
25 both the UN Charter and the Covenant on Civil and

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1 Political Rights are the supreme law of the land.

2 Respect for right to life is also
3 recognized in other sources of international law. The
4 American Convention on Human Rights, a treaty signed
5 by the United States; the American Declaration on the
6 Rights and Duties of Man, a document prepared by the
7 Organization of American States, an organization that
8 the U.S. is a prominent member of as well.

9 What are the implications of these
10 international norms? Well, for example, international
11 law acknowledges the right of countries to use force
12 in the maintenance of state security. However, the
13 use of force must always be necessary. It must be
14 proportionate. And there must be no alternative
15 policies available. Thus international law requires
16 countries to respect and protect life, even if they
17 have an independent right to undertake state action,
18 to undertake the use of force, or to develop border
19 enforcement strategies.

20 This reasoning has been acknowledged by
21 the International Court of Justice, the European Court
22 of Human Rights, the Inter-American Court of Human
23 Rights, and countless other United Nations'
24 institutions.

25 Second, countries must not abuse their

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1 rights under international law. Countries are
2 precluded from acting in a manner that may cause
3 unnecessary injury. Even if a country has a
4 recognized right under international law, this right
5 must be implemented in a manner that does not cause
6 unnecessary injury or death. This Abuse of Rights
7 Doctrine is recognized in numerous civil law
8 countries. It is also an integral part of
9 international law.

10 Third, international law recognizes the
11 principle of good faith. The principle of good faith
12 is an integral component of numerous international
13 instruments, including the United Nations Charter, the
14 American Convention on Human Rights.

15 What does this all mean for Operation
16 Gatekeeper and these border enforcement strategies?
17 When countries adopt policies that may lead to the
18 loss of life, they must act to minimize threats to
19 physical integrity and well being. Countries must
20 ensure that their actions are proportionate,
21 necessary, and that no alternative action is
22 available.

23 The United States is aware that Operation
24 Gatekeeper will lead to threats to life, to the
25 integrity of individuals. There is a history of over

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1 2,200 individuals that have lost their lives of the
2 past eight years as a direct result of the border
3 enforcement strategies.

4 The U.S. has failed to develop any type of
5 an effective response to the mounting death toll.
6 Thus the United States has violated international law.

7 What are the implications of these
8 international rules? Well, I'll briefly highlight
9 three situations where these international violations
10 have had an impact on the United States.

11 First, Amnesty International adopted a
12 resolution two years ago expressing significant
13 concern about the status of Operation Gatekeeper and
14 its impact on human rights.

15 Second, the Inter-American Commission on
16 Human Rights has taken action in this regard. In
17 February of 1999 the California Rural Legal Assistance
18 Foundation, the ACLU of San Diego and Imperial
19 Counties filed a petition with the Inter-American
20 Commission on Human Rights challenging Operation
21 Gatekeeper.

22 The Commission is an organ of the
23 Organization of American States. The Commission has
24 the authority to investigate violations of
25 international human rights norms, including against

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1 the United States.

2 The Gatekeeper petition raised three
3 issues. First, the petition acknowledged that the
4 United States does have a right to adopt an effective
5 border strategy.

6 Second, that the United States must do so
7 in a manner that complies with international law,
8 acknowledging the principle of good faith,
9 acknowledging the Abuse-of-Rights principle,
10 acknowledging that any policy must respect the right
11 to life.

12 In November of 2001, last year, the
13 Commission held a hearing in Washington, D.C. to
14 consider the admissibility of this petition. Claudia
15 Smith of the California Rural Legal Assistance
16 Foundation, Jordan Budd of the ACLU of San Diego and
17 Imperial Counties and I appeared before the Commission
18 to discuss Operation Gatekeeper.

19 The petition is currently under review by
20 the Inter-American Commission. Two months ago the
21 United States government was asked to provide a
22 response to this petition.

23 Third, the United Nations Special
24 Rapporteur on Migrants has addressed Operation
25 Gatekeeper. Earlier this year Professor Cornelius,

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1 Claudia Smith and myself appeared before the Special
2 Rapporteur on Migrants to discuss the status of
3 Operation Gatekeeper and to provide similar
4 information to the Special Rapporteur that we have
5 provided to you this morning.

6 As part of her mandate the Special
7 Rapporteur has visited the U.S.-Mexico Border to
8 review the implementation of Operation Gatekeeper.
9 And we presented to her the same concerns that are
10 expressed to you today.

11 When countries adopt policies that may
12 lead to the loss of life, they must act to minimize
13 threats to physical integrity and well being.
14 Countries must ensure that their actions are
15 necessary, proportionate, and that there are no
16 alternative policies available that would not lead to
17 the loss of life that we are seeing here on the U.S.-
18 Mexico Border.

19 By adopted border control policies that
20 the U.S. knows and intended to lead to significant
21 danger being posed to migrants, seeking family
22 reunification or employment opportunities, the United
23 States has violated international law.

24 Our final speaker is Roberto Martinez.
25 Mr. Martinez has been a prominent activist in human

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1 rights and immigration for the past 30 years. In 1992
2 he was the first U.S. citizen acknowledged by Human
3 Rights Watch for his courageous work in monitoring
4 human rights.

5 In December 2001 he retired as the
6 Director of the American Friends Service Committee
7 Border Project. He is currently writing a book on the
8 U.S.-Mexico Border. He just got back from Arizona a
9 few hours ago.

10 Mr. Martinez will provide comments on the
11 human toll of Operation Gatekeeper based upon his
12 interaction with border crossers and their families.
13 And he will also comment on Operation Gatekeeper and
14 its similar strategies in Arizona.

15 MR. MARTINEZ: Thank you, William.

16 Good morning.

17 CHAIRPERSON BERRY: Good morning.

18 VICE CHAIRPERSON REYNOSO: Good morning.

19 MR. MARTINEZ: Thank you for this
20 opportunity to address this ever escalating problem
21 that is just impacted so many areas of the border.
22 And, as William mentioned, I actually just got off the
23 plane about an hour ago from Arizona. I spent a week
24 there.

25 I have been doing research on the impact

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1 of Operation Gatekeeper in the Arizona Border and also
2 on the escalating vigilante problem, where just in the
3 last few weeks two migrants were shot and killed by
4 two men in camouflage uniform, which of course they're
5 still investigating as to who these people are. But
6 there are witnesses.

7 In my opinion in what's happening on the
8 Arizona border is that Operation Gatekeeper is having
9 a tremendous impact on the deaths on the border there
10 in Arizona, particularly in the Sasabe part of the
11 border.

12 I've been there twice in the last month --
13 two months, actually, and the first time I took a trip
14 down to Altar, which is about 200 miles south of
15 Sasabe, which is a border town in Arizona. And I went
16 down there because I had information that Altar is a
17 gathering point for tens of thousands of migrants
18 heading for the United States.

19 I went with a group of people down to this
20 church called Our Lady of Guadalupe, which has a big
21 plaza on one end of the church. And this is where
22 they all gather. And I mean it's just an incredible
23 sight to see bus after bus, people gathering. And
24 they estimate that anywhere from a thousand to 1500
25 migrants gather every single day, come through there

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1 every single day.

2 Astonishingly enough, 60 percent --
3 according to the workers there, 60 percent of the
4 migrants are from Chiapas. So consequently a good
5 number of the people dying at the border in Arizona
6 are from Chiapas. And this demonstrates again the
7 motives for coming here, which they confess are
8 economic but also related to drought, to environmental
9 devastation, to the hurricanes and everything that
10 displaces workers. So there's a lot of factors
11 involved in economic and political and natural factors
12 that are contributing to the moving of people from the
13 south to the north.

14 As I watched them leave in groups of 15 to
15 20 heading for the border, you know the only thing
16 they carry -- or the lucky ones get to carry four
17 gallons of water. The unlucky ones, two, and their
18 backpack and a sheet of paper from the workers with a
19 list of all the consulates in the U.S. and their
20 rights once they cross the border.

21 These are very small -- these are mostly
22 indigenous people and they're very small. And to
23 carry four gallons of water, much less five which
24 would probably get them further, is impossible.

25 There's a lot of other things that we

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1 found out, but I'd like to move to this week. I just
2 came back from the Ajo area of the desert in Arizona
3 where the majority of people apparently are dying.
4 And we drove down Highway 86 west towards Ajo and got
5 off on a dirt road where there's a ranch.

6 We traveled a few miles, about five miles.

7 We stopped at a water station that has two 30-gallon
8 drums of water and a little flag. So we stopped there
9 and we were talking. And then we heard a voice cry
10 out from the bush, *Por favor ayudame. Por favor*
11 *ayudame*, "Please help us." So we walked several feet
12 under this kind of a brush that was for migrants,
13 indigenous type, three young men and a young woman.
14 And they were apparently in a state of dehydration.
15 They had said that all their water was gone, their
16 food. They had no covering. Two of the men had been
17 beaten and robbed because there are some criminal
18 activity on the border in Sasabe.

19 And so they were in very desperate
20 situation there. Fortunately the people we were with
21 had a first aid kit. And they weren't seriously
22 injured by the beating, but they were suffering from
23 dehydration. Of course the water station is keeping
24 them alive.

25 They said it took them three days to get,

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1 travel the approximately 60 miles from Sasabe to that
2 point of the Ajo Desert. And they had -- they only
3 brought two gallons of water each, which was consumed
4 quickly with the heat.

5 And of course the food ran out, and they
6 -- so we provide as much food and water as we could.
7 We didn't have very much. And we called ahead for
8 help from a Samaritan group. I can't mention any
9 names because obviously they would be investigated,
10 but nevertheless there is some good work being done
11 out there in terms of trying to help the migrants
12 through that area, which is probably the most
13 dangerous area.

14 Two months ago I went on the Border
15 Delegation to Washington to do some lobbying with some
16 people. And a lady from Mexicali named Anna Hernandez
17 went with us, and she was talking about how her 25-
18 year-old brother left Sasabe for the United States and
19 traveling with, I think, about eight. There was a
20 about a total of nine of them. And they only got as
21 far as that area where the water station is and three
22 of them died including her brother, and nobody ever
23 found the other six. I mean basically she said they
24 disappeared. She doesn't know if they made it or they
25 died, or whatever. But it's a long trek from Sasabe

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1 to any civilized part of the desert. Probably take
2 about four or five days of walking at night, because
3 of course in the day it's tremendously hot.

4 And so her concern and angry was that the
5 local authorities would not release her brother's body
6 to her, and it took about two or three weeks going
7 back and forth from Mexicali to the sheriff's station
8 in that area.

9 When they finally did release the body
10 they just wrapped him up and put him in the back of
11 her pick-up truck. And she had to drive the body back
12 toward the border, where he lived in Sonoyta, where
13 his wife and children live.

14 She turned a very tragic loss into a
15 teaching lesson for the migrants along the way. She
16 said she ran across groups of migrants. And she would
17 stop and tell them, "Look, this is what's waiting for
18 you out in the desert. It's not worth it." And she
19 would do this wherever she saw groups of migrants
20 until she was able to return the body home.

21 But my information is that as of October,
22 from October '01 up to this year, October, they told
23 me that 169 people have died, men, women and children,
24 in that area of the desert.

25 And as far as I'm concerned this is all

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1 impacted by of course Operation Gatekeeper. If they
2 were to add -- they said if they were to add the
3 deaths in Yuma, it would be dramatically higher.

4 So the squeeze is between Operation Hold-
5 the-Line in El Paso and Operation Gatekeeper which is
6 squeezing them into that area of the desert. They
7 have to fight not only the elements, they have to
8 fight the bandits in that area. And just in the
9 couple or two hours that we were in that area of Ajo,
10 we saw wild deer, wild javelina. They said it's
11 infested with rattlesnakes and scorpions. So when
12 they're sleeping at night down there they're exposed
13 to all kinds of dangers.

14 And, as was mentioned, they have -- they
15 never recover all the bodies. As one gentleman said,
16 the desert is an expert at cleaning itself, and I
17 won't go into the gory details, but I'm sure many,
18 many more are never found. And so I'd like to close
19 with that and turn it over to William.

20 PROFESSOR ACEVES: In designing Operation
21 Gatekeeper and related border enforcement strategies,
22 the U.S. specifically set out to channel migrants away
23 from the populated regions of the Southwest and into
24 the inhospitable regions of the desert and mountains.

25 Statements made by U.S. government

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1 officials acknowledge that that was the explicit
2 design of Operation Gatekeeper. And in this respect
3 Operation Gatekeeper and related strategies have
4 proven extraordinarily effective, as we've seen well
5 over 2,200 men, women and children have died over the
6 past eight years.

7 However, serious questions have been
8 raised about the efficacy of this border enforcement
9 strategy in terms of its ability to deter individuals
10 seeking to enter the United States.

11 Despite the increasing deaths, the United
12 States has failed to take adequate steps to minimize
13 the tragic loss of life. We hope that this Commission
14 can take appropriate steps to further publicize this
15 human tragedy and urge the United States government to
16 review and reconsider these border enforcement
17 strategies.

18 Let me reiterate our appreciate to you for
19 your time and your attention to this serious issue.
20 We also acknowledge and appreciate the California
21 State Advisory Committee for putting this together.
22 And at this time we would be happy to answer any of
23 your questions. Thank you.

24 CHAIRPERSON BERRY: Thank you very much,
25 Professor Aceves. Thanks to all of the panelists.

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1 Do my colleagues have any questions for
2 the panel? Yes, Commissioner Braceras.

3 COMMISSIONER BRACERAS: Thank you all very
4 much for coming. I confess I learned a great deal
5 from listening to you today.

6 My question is, and I know it cannot be
7 answered in just a few moments, but I'd like to hear
8 from each of you what your recommendations would be to
9 us as a body or to the INS, were you to be advising
10 them directly, and what suggestions do you have for us
11 specifically as to how we can play a constructive role
12 in reforming some of the problems you've highlighted
13 here today?

14 MS. SMITH: Well, I say unapologetically
15 that I am not an expert in the macro. I have had my
16 head in the micro, which is the deaths.

17 The demographics, if anything, the
18 migration pressures are going to be reduced I think
19 primarily by demographics in Mexico over the next 10,
20 15, 20 years. In the meantime even if you adopt a
21 guest worker program, which is one of the solutions
22 that's being touted, although that may reduce the
23 deaths, let's say you have a program of 25,- to
24 250,000 visas, well, that may reduce the deaths, it's
25 still not going to take care of the problem.

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1 Because the estimates are that in a normal
2 year anywhere from 400,000 to 600,000 Mexican
3 nationals -- forget the Central Americans that are
4 behind them, although Mexico has now taken a page or
5 two from Gatekeeper and is implementing it on its
6 southern border -- nevertheless, we're talking 400,-
7 to 600,000 in a normal year that will try and cross.
8 So that's still, if you do the arithmetic, still
9 leaves at least 100,000 trying to get through
10 illegally.

11 And what we're basically saying is we
12 recognize the right to control the border, at least I
13 do. But it is not an absolute right. It is a right
14 that has to be reconciled with the obligation of
15 states to protect lives, be that the lives of
16 undocumented people or citizens.

17 And you cannot design a strategy that
18 maximizes the risk to life, especially when you do
19 virtually nothing to counteract the employer magnet,
20 and I think that that's the key. That's why I keep
21 calling this the border of hypocrisy.

22 I really go back to when Operation
23 Gatekeeper started. You have to look at it in that
24 context. It was 1994, the year of Proposition 187.
25 Immigration, illegal immigration was very visible,

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1 particularly in this area. It was the backdrop for
2 political ads, anywhere from Barbara Boxer to Patrick
3 Buchanan, I mean all strips along the political fault
4 line. And this was designed at least in the short run
5 and possibly in the medium run, if not in the long
6 run, to be a strategy of getting the illegal crossings
7 out of the public eye and of coming up with the
8 appearance of a border under control.

9 CHAIRPERSON BERRY: Mr. Obledo, you
10 already made a suggestion. Do you want to reiterate
11 it or do you have another suggestion?

12 MR. OBLEDO: No. No, I have another
13 suggestion.

14 CHAIRPERSON BERRY: Okay.

15 MR. OBLEDO: I think it was mentioned here
16 previously, but I would recommend that the U.S.
17 Commission on Civil Rights hold a hearing in either
18 Tucson or Nogales to ascertain whether there's been a
19 violation of human rights or civil rights.

20 CHAIRPERSON BERRY: Um-hum.

21 MR. OBLEDO: I called the Mexican American
22 Legal Defense Fund to file a lawsuit against the
23 ranchers in question here, because I understand that
24 they don't own the land they occupy. They lease it
25 from the federal government or the state government.

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1 And the leases provide that no violence shall take
2 place on the properties.

3 And obviously they admit to committing
4 violence, so the Mexican American Legal Defense Fund
5 is looking at the situation to find out whether
6 they're going to file a lawsuit or not.

7 CHAIRPERSON BERRY: Yes, Professor
8 Cornelius.

9 DR. CORNELIUS: I go back to the severe
10 imbalance between the effort that we are making to
11 symbolically fortify the border relative to what we
12 were doing -- what we are doing in workplaces.

13 One approach of course to reducing
14 undocumented traffic in general, and this is the only
15 approach that most immigration experts feel would have
16 any success, any possibility of appreciably reducing
17 the traffic, would be systematic, vigorous, consistent
18 enforcement of employer sanctions, laws in the
19 workplace. That would not eliminate the demand for
20 undocumented labor. It would take a chunk out of it.

21 It could reduce the most egregious forms of
22 exploitation by those employers who do abuse workers
23 simply on the basis of their immigration status. But
24 it is the only approach that has a realistic chance of
25 reducing demand on the U.S. side of the border.

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1 The longterm solution to this problem does
2 not lie in the United States, however, it lies in
3 Mexico and other points of origin, countries of
4 origin. And it takes the form of doing things to
5 create alternatives to immigration in the first place.
6 And that requires a much greater and more creative
7 commitment to micro enterprise development in the most
8 important sending localities and regions. That is an
9 approach that has never been seriously attempted. A
10 lot of lip service is paid to it regularly, including
11 by U.S. government commissions, but there has never
12 been a serious commitment on the part of the U.S.
13 government to assisting Mexico, even in developing
14 pilot projects of this nature.

15 It is not rocket science. We know what
16 needs to be done in these places to create attractive
17 alternatives to immigration. It's simply a question
18 of will.

19 PROFESSOR ACEVES: I think some of my
20 suggestions overlap with what my colleagues have said
21 here. And there is unanimity in terms of the possible
22 actions that can be taken: Increased workplace
23 enforcement here in the United States; promoting guest
24 worker programs that provide more opportunities for
25 individuals to come into the U.S. legally; increased

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1 medical assistance and safety patrols; further
2 publicize the dangers of crossing in cooperation with
3 the Mexican government; acknowledge the economic
4 realities in terms of what's happening in the U.S.,
5 what's happening in Mexico, and other countries in
6 Latin America; deter vigilante action; address the
7 smuggler problem.

8 There are a whole host of issues here that
9 can be addressed and that have been addressed to some
10 extent, but it sure could use a lot more publicity on
11 the part of the United States and more action to
12 increase a response to this human tragedy.

13 CHAIRPERSON BERRY: So that so far what
14 you have is, in terms of what we might do, is to
15 publicize more of these issues and, secondly, Mr.
16 Obledo's suggestion about the vigilantes and the
17 violence, seeing whether there is some ways to --

18 MR. OBLEDO: Ms. Berry, I have an
19 additional recommendation.

20 CHAIRPERSON BERRY: Okay.

21 MR. OBLEDO: We spent approximately \$20
22 billion along the Mexico-U.S. border. I recommend
23 that that money be donated to the illegal immigrants.
24 That way they could probably stay in Mexico with a
25 type of Social Security.

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1 CHAIRPERSON BERRY: I forgot the other
2 one, that the Mexican government --

3 MR. OBLEDO: And no deaths would occur.

4 CHAIRPERSON BERRY: Right. The other one
5 was the Mexican government should become communist.

6 COMMISSIONER BRACERAS: I'm also
7 interested. I mean the Chair mentioned two things
8 that weren't legislative in nature, and I'm
9 interested, if we were going to make recommendations
10 to Congress, for example, which is one of the things
11 that this body is charged with doing, you know I would
12 certainly welcome your concrete suggestions as to what
13 those recommendations would be.

14 And it's certainly not something you have
15 to come up with right now. If your organizations have
16 initiatives that you'd like to bring to our attention,
17 I encourage you to send them to us so that we can
18 further educate ourselves and incorporate that into
19 anything we might in the future decide to recommend
20 legislatively.

21 CHAIRPERSON BERRY: Yes. And then -- yes,
22 I'll recognize you in just a second. And then of
23 course we can ask the General Counsel's Office to look
24 into this business about the vigilantes and the
25 question that you raised about whether something

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1 should be done there and whether we ought to recommend
2 that or whether we ought to go there and have a
3 hearing, or whatever. Recommend the Justice
4 Department do something.

5 I'm going recognize the Vice Chair, but
6 just so I don't forget, when you were making your
7 recommendations I just wondered how likely it is that
8 employer sanctions would be -- this failure seems to
9 be bipartisan.

10 COMMISSIONER MEEKS: Yes.

11 CHAIRPERSON BERRY: I was sitting here
12 thinking about -- I mean in season and out. And as a
13 historian, I know this and teaching about the legal
14 aspects of these matters, that in season and out you
15 have whatever political parties are involved.
16 Attitudes about immigration that are a fertile ground
17 for this kind of thing to happen to people.

18 So I was just wondering, and you don't
19 have to answer it yet, but just put a pin in it, you
20 know how likely is it that anybody is going to enforce
21 employer sanctions strenuously. And if they did what
22 would happen.

23 For example, if sanctions were imposed so
24 strenuously that people in San Diego County, or
25 whatever this is -- is this San Diego County -- yeah.

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1 What's La Jolla? Is this in San Diego County. If
2 they didn't have any maids or gardeners, or whatever,
3 or people to work in the factories or the fields up
4 and down in the valley and so on. I mean what would
5 people who cry out about migrants coming across and so
6 on, what would they do.

7 Those vigilantes out there and wherever
8 this place is where they're shooting people or holding
9 them, or whatever they're doing, I mean if you really
10 did get rid all of the undocumented workers.

11 And then I was thinking, going back to Mr.
12 Obledo's first suggestion, the one about open borders,
13 I mean when you really think about it, what sense does
14 it make for us not to have open borders between the
15 United States and the south and the north. I mean I'm
16 talking about the Canadians, and the folks on our
17 borders going back and forth in the way that he
18 described.

19 And I was remembering finally, and then
20 I'll turn to someone else, when Mr. Giuliani was mayor
21 of New York and we had a hearing there, and he was
22 talking about -- Cruz, you may remember this --

23 VICE CHAIRPERSON REYNOSO: Sure.

24 CHAIRPERSON BERRY: -- how many illegal --
25 undocumented or illegal migrants there were in New

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1 York City. And he said, "We probably have more than
2 anybody, but nobody ever talks about it. They're
3 always talking about the folks down on the border and
4 the folks here and there." Remember that?

5 VICE CHAIRPERSON REYNOSO: Yeah. He said
6 one other thing, and he credited the immigrants, both
7 documented and undocumented, were the economic revival
8 of New York.

9 CHAIRPERSON BERRY: Right. And so you
10 don't hear a lot about that. But somebody else had
11 questions. Who had? Were you next? Who's next?

12 VICE CHAIRPERSON REYNOSO: Well, I have
13 questions. I want to pick up on the issue that the
14 Chair just mentioned in passing but I think is crucial
15 and has been crucial, and that is what are your
16 professional opinions in terms of the political
17 liability of workplace enforcement.

18 I say that because I started practicing
19 law in 1959 in El Centro, California. And even then
20 there were issues of workplace enforcement sometimes
21 pitting local immigrants who lived in this country
22 with those who had migrant papers but continued to
23 live in Mexicali. And the immigrants who were in
24 Imperial County felt that they were being undercut by
25 those who lived in Mexicali who had a lot less expense

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1 in terms of rent and schooling and so on.

2 So there having these conflicts between
3 those who are here and those who are in Mexico in
4 terms of workplace enforcement.

5 Later Cezar Chavez and the Farmworkers
6 movement initially tried to control the Vracero
7 Program and other programs of competition with local
8 workers. But because it ended up -- because there was
9 such poor workplace enforcement, eventually the
10 Farmworkers Union changed its policy to incorporate
11 the undocumented within the union because it found
12 that politically it could not exclude them.

13 I myself was active with a group called
14 Community Service Organization where initially we
15 supported the government's effort at workplace
16 enforcement, but as the years went by concluded that
17 the government was unwilling to have workplace
18 enforcement because those who use the undocumented
19 were those that had political power and political
20 money.

21 And so since it was politically
22 impossible, we concluded, to have workplace
23 enforcement, then many of us shifted our views to try
24 to protect the undocumented while they were here since
25 it was politically impossible in our view and the

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1 groups that I was associated with to have government
2 enforce the law. Because those who were in charge of
3 politics controlled the politicians who passed the
4 laws but were unwilling to enforce them.

5 So my question to you is: Have things
6 changed in the last 40 years? Do you think there's a
7 possibility that government actually would enforce the
8 safety rules, the health rules, and the immigration
9 rules in terms of workplace enforcement? Each one of
10 you mentioned that as a possible solution. But I'm
11 asking the question: Is it viable politically
12 speaking now?

13 MS. SMITH: I did mention work enforcement
14 as a possible solution because of all the panoply of
15 the discriminatory effects and all the other problems
16 that go with it, but I do think it's a very
17 interesting juxtaposition to realize that we've had
18 just along the California stretch of the border over
19 the last eight years about 850 migrant deaths, and
20 there have been less than half a dozen prosecutions of
21 employers.

22 You know certainly there are problems with
23 prosecutions, but you put together a case like you do
24 any other. and if you really wanted, you could.
25 Again it's not something I'm advocating, but now I've

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1 spent 30 years in legal services representing
2 farmworkers. And I always thought that I probably
3 more in a day than half a dozen Border Patrol agents
4 to discourage the hiring of undocumented workers, not
5 simply because I made employers really pay. I mean
6 not just the cost of doing business, but on top of
7 that, penalties and the rest for violating labor
8 standards. And nobody really wants to put money into
9 just regular enforcement of health and safety
10 standards and labor standards.

11 Now that can be a little too simplistic,
12 because that's not the only reason that people hire
13 undocumented workers. Some people hire undocumented
14 workers and give them minimum wage and give them
15 overtime, and they just prefer them as a workforce
16 because they bring in network. They don't have to go
17 out and recruit. One brings another. They work hard
18 and scared, on and on. But nobody ever wants to put
19 their money in enforcement of basic health, safety,
20 and labor of standards.

21 Just a very quick anecdote, of how you
22 call people's bluff. Around the time of Proposition
23 187, it was before that, there was a bill in the
24 California Legislature to deny undocumented children
25 the right to a primary education. And to call their

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1 bluff, I think it was John Burton, amended the bill to
2 say, hey, if you are caught hiring undocumented
3 people, you know, we are going to -- you know, there
4 goes your ranch, there goes your restaurant, there
5 goes your hotel, et cetera.

6 And everybody, the most avid proponents of
7 a bill to deny children a primary education just fled
8 from the bill. And so I think it's always going to be
9 that type of a mix. And that's why I go back to it.
10 It's just the fundamental hypocrisy of it. And people
11 are dying because of that hypocrisy, in large numbers.

12 DR. CORNELIUS: Could I add something?

13 CHAIRPERSON BERRY: Um-hum.

14 DR. CORNELIUS: You'll all remember the
15 great debate of the Simpson-Rodino bill. That
16 fundamental change in our immigration law back in
17 1986. Employer sanctions was touted as the magic
18 bullet. It was the center piece of that legislation.
19 Congress never got around to enforcing it.

20 I opposed employer sanctions at that time.
21 I lobbied against that provision of the bill mainly
22 on the grounds that it would be migrant workers rather
23 than employers who would pay the heaviest price.

24 What employer sanctions would do, if they
25 were stringently uniformly enforced, is to discourage

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1 a minority of employers who now use such labor, but
2 that minority would be the largest businesses that
3 actually offer the best working conditions, the
4 highest wages, that generally obey the safety
5 standards, and so forth, and push the hiring down the
6 hierarchy of firms into those that are more likely to
7 exploit and abuse their workers.

8 The realistic -- the objective risk of the
9 employer being fined and penalized under the 1986 law
10 as it eventually emerged from Congress was negligible.

11 However, a nontrivial proportion of undocumented
12 workers were at risk of greater exploitation and abuse
13 simply because employers can use that provision of the
14 law as a club. And there's no way to get around that.

15 COMMISSIONER EDLEY: Two comments.

16 CHAIRPERSON BERRY: Commissioner Edley.

17 COMMISSIONER EDLEY: Okay. I thought --

18 CHAIRPERSON BERRY: I heard a phone go
19 off.

20 COMMISSIONER EDLEY: Yes, --

21 CHAIRPERSON BERRY: Oh, you were about to
22 say something? Oh, I'm sorry.

23 MR. MARTINEZ: No, I have a couple of
24 comments. But, go ahead.

25 COMMISSIONER EDLEY: Well, I wanted to

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1 pursue this a little bit. And in line with
2 Commissioner Braceras' question on legislative
3 approaches, I think that there's -- at least there was
4 before last Tuesday; I think it'll pick up again -- a
5 fair amount of discussion in Washington about what
6 shape a new immigration legislative package ought to
7 take.

8 And, as most of you may know, I think
9 there's been a fair amount of progress over the last
10 year or two in trying to negotiate something affecting
11 agricultural workers, which is allegedly within a
12 stone's throw of some kind of an agreement.

13 So perhaps there might be -- there will be
14 legislation next year on at least that piece of it.
15 And, of course, there's always argument about whether
16 to just do something in the agricultural sector or to
17 wait and try to do something that would be broader,
18 and people have different views.

19 One of the sticking points, however, for
20 the broader topic is some kind of temporary worker
21 program with, I think, many people arguing that you
22 have to accept the reality of the population flows,
23 you have to accept the economic reality that
24 undocumented workers are so vitally important to many
25 employers. And so the issue is how to regularize this

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1 flow in a way that makes civil rights sense,
2 humanitarian sense, economic sense.

3 And I have to say frankly that one of the
4 -- I think one of the -- from where I sit, one of the
5 major difficulties in trying to define a temporary
6 worker program that would make sense and trying to
7 come up with a border strategy that would make sense
8 is that there's so many different opinions, there's so
9 much lack of consensus even among Latino groups,
10 immigrant rights groups, civil liberties groups, and
11 the like, there isn't a strategy. There is -- there
12 is -- there are deep division within the labor, within
13 organized labor, between Farmworkers, SCIU, Hotel
14 Workers on one side, and trades, some of the trade
15 unions on the other side.

16 And just to play out the political point a
17 bit, I think it makes it very -- I know that it makes
18 it very, very difficult for Democrats certainly in
19 Congress to try to -- who to listen to. There's a
20 strong argument, for example, that if we have a
21 temporary worker program and we start thinking about
22 more effective regulation in the workplace of all of
23 this, can you do that without some kind of a national
24 I.D. card. Can you do that without -- can you do that
25 in a way that doesn't create all kinds of problems

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1 with racial profiling and harassment, et cetera, in
2 the workplace.

3 Well, if you start going down that trail
4 then the ACLU and others, MADEP, raise substantial
5 questions about that.

6 So I think there are a lot of people on
7 both sides of aisles, not just Democrats. It's just
8 that I happen to know the dynamic within the
9 Democratic Party far better than I know the dynamic
10 within the Republican Party, which is to say not at
11 all.

12 So I think there are a lot of people who
13 want to try to figure out what's the right thing to
14 do, quote-unquote, and have trouble getting coherent
15 consensus advice from groups like those of you.

16 So that's my first point, I think, is that
17 -- or maybe my second one. My first point is that it
18 does seem to me, it does strike me as completely right
19 that part of the answer here is a strategy for
20 regularizing the work flow.

21 But my second point being it's very
22 difficult to do if some of the groups most interested
23 in immigrant rights and immigration haven't themselves
24 done the hard work of coming up with a consensus view
25 about a strategy that they could collectively

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1 recommend to policymakers.

2 It is tough. And precisely because it's
3 tough I think we ought to have pretty low expectations
4 about what elected leaders are going to be able to
5 come up with. They need to be guided. They need to
6 be led. Our leaders need to be led by folks like you
7 who are intimately familiar with the issues and who
8 are prepared to make some suggestions about how the
9 difficult trade-offs can be made.

10 CHAIRPERSON BERRY: What about your third
11 point? You always have three points.

12 COMMISSIONER EDLEY: Well, I do. Thank
13 you.

14 The third point is that --

15 (Laughter.)

16 COMMISSIONER EDLEY: The third point,
17 frankly, is that I think that -- one reason I'm glad
18 we're here is because a bunch of -- these issues have
19 not been embraced, in my view, have not been broadly
20 embraced by the civil rights community as civil rights
21 issues.

22 And if you had this kind of vigilante
23 activity going on affecting some other group of people
24 of color, not around the border, it would -- we would
25 just be galvanized to action. The civil rights

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1 community would be galvanized to action. It would
2 have been all over it. There would be protests in
3 front of the Department of Justice saying: Why aren't
4 you prosecuting. Why aren't you investigating, et
5 cetera.

6 And I think to some extent that is just a
7 symptom of a little bit of a disconnect between border
8 policy and immigrant rights policy, on the one hand,
9 and more traditional civil rights advocacy on the
10 other.

11 And, Madam Chair, I just want to say I
12 think that our being here today, I hope that's going
13 to help build some bridges between those two
14 communities of concern and those two areas of concern.

15 CHAIRPERSON BERRY: Okay. You want to
16 comment before they answer?

17 COMMISSIONER BRACERAS: I just want to
18 sort of respond to some of the things.

19 CHAIRPERSON BERRY: Okay.

20 COMMISSIONER BRACERAS: Or not respond,
21 but agree with some of the things that Commissioner
22 Edley has said. From a Republican standpoint the same
23 issues come into play, of course, that he highlighted.

24 But I think that that's why this Commission can
25 actually play an important role in sorting through, in

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1 soliciting and sorting through some of the proposals
2 and coming up with a coherent recommendation that
3 hopefully would be free of interest-group politics and
4 could cut across party affiliations and find support
5 on both sides.

6 I mean I think this is really an issue
7 where we can come together and make some constructive
8 recommendations that -- you know, there are going to
9 be interest groups on the right and the left that
10 don't like them, but maybe, you know, we can help to
11 push the debate forward that way. So I hope that's
12 something that we'll be able to do.

13 And on Commissioner Edley's last point
14 about the vigilante ranchers and recommending
15 investigations, and so forth, we could talk about this
16 I suppose tomorrow at our business meeting, but we
17 might want to consider meeting with or writing a
18 letter to, you know, Ralph Boyd or someone at the
19 Civil Rights Division to talk about this issue and put
20 it on their radar if it's not already there.

21 So it's just something I would mention
22 that we might want to talk about again tomorrow.

23 CHAIRPERSON BERRY: Okay. Remember that.
24 We're going to talk about it later. I don't know who
25 was first, so let's -- who was first?

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1 VICE CHAIRPERSON REYNOSO: Professor
2 Cornelius I believe.

3 CHAIRPERSON BERRY: It is, and then we go
4 -- yes, please. Go ahead.

5 DR. CORNELIUS: Let me try to a crack at
6 some of Mr. Edley's concerns.

7 There is bipartisan support for what we
8 are doing now. More on the Republican side than on
9 the Democratic side, but still you can say there is a
10 substantial bipartisan base of support for the current
11 strategy of immigration enforcement.

12 The one conclusion that I would like you
13 to take away from this hearing today is the utter
14 futility of the current approach to immigration
15 control. It is not working in the terms that have
16 been set forth by the Border Patrol, by the Justice
17 Department, et cetera. And it's the migrants who are
18 paying the price of that failure with their lives.

19 Increasing the number of legal entry
20 options of one form or another has to be part of a
21 more constructive approach. The temporary worker
22 program is the first thing that is brought up as the
23 most appropriate instrument for increasing the number
24 of legal entry options, partly because it is the
25 course of political least resistance, much less

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1 politically sensitive than increasing the quota of
2 permanent legal resident visas for Mexicans or other
3 nationalities.

4 So let us posit that creating some sort of
5 temporary worker program is the only politically
6 feasible approach to increasing the number of legal
7 entry options in the short to medium run. It's not a
8 magic bullet, but there is substantial political
9 support for it, especially among Republicans in the
10 Bush administration. Even Democrats and their labor
11 union allies I think could be brought aboard for the
12 right kind of a temporary worker program.

13 It is worth doing if you have a
14 well-designed program that protects worker rights. It
15 is not worth doing if you're simply supplying cheap,
16 exploitable labor'--

17 COMMISSIONER BRACERAS: Right.

18 DR. CORNELIUS: -- for agribusiness or
19 some other industry.

20 In 1979 the Select Commission for
21 Immigration and Refugee Policy, another one of these
22 bipartisan federal government commissions, Cruz
23 Reynoso remembers it, asked me to design a temporary
24 worker program. I fulfilled my assignment. The plan
25 was filed away, published in the 16 volume

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1 proceedings, and was never seriously entertained.

2 But there were three elements that I
3 considered to be key to an appropriate and effective
4 temporary worker program.

5 One is to make the contracts of the
6 workers who participate in such a program renewable.
7 And that's terribly important because the vast
8 majority of the jobs that they would be filling are
9 not temporary jobs. They're jobs that exist
10 year-round. If workers were here on a fixed-short
11 contract, as they were during the Vracero Program of
12 1942 to '64, you would be rotating different workers
13 in and out of those jobs constantly. That applies
14 even to agricultural jobs today. But, of course,
15 overwhelmingly to urban nonagricultural jobs.

16 Only about 15 percent of the jobs held by
17 undocumented workers in the United States today are
18 agricultural jobs. So you have to design a program
19 that has a good enough fit with the nonagricultural
20 labor market if it's going to have any chance of
21 success. Workers have to have the right to renew
22 their contracts in agreement, of course, with the
23 employers. The number of consecutive renewals, that
24 can be debated. But a fixed short contract would be
25 deleterious.

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1 The second key element: It can't be
2 tailored specifically to the agricultural sector,
3 again because that's not where the vast bulk of the
4 demand in our economy is anymore for this kind of
5 labor. It is in urban services; it is in
6 construction; it is in retail and manufacturing.

7 Third, the immigrant worker has to be a
8 free agent. He cannot be bound to a specific employer
9 --

10 PROFESSOR ACEVES: Indentured.

11 DR. CORNELIUS: -- as an indentured
12 servant, as was the case under the Vracero Program.
13 If a worker came up under a Vracero visa and found
14 himself exploited, wanted to quit, find another
15 employer, he couldn't do that. His only option was to
16 return to Mexico. And that was a prescription for
17 exploitation.

18 The immigrant has to have free agency
19 within the labor market, the freedom to change
20 employers, to contract with a different employer,
21 without having to return to his place of origin.

22 So if those three key elements are somehow
23 honored and reflected in the design of the program, it
24 would do more good than harm.

25 COMMISSIONER BRACERAS: Do you have a copy

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1 of that report that was filed away?

2 DR. CORNELIUS: I'd be happy to send you
3 one. It's on my bookshelf.

4 COMMISSIONER BRACERAS: I'd love to see
5 that.

6 VICE CHAIRPERSON REYNOSO: Roberto.

7 MR. MARTINEZ: Yeah, I had a couple of
8 comments.

9 VICE CHAIRPERSON REYNOSO: And then
10 Claudia.

11 MR. MARTINEZ: I wanted to speak directly
12 to the operations on the border and make a specific
13 recommendation that given the ineffectiveness that has
14 been demonstrated here in the reports of these
15 operations, that short of abolishing these operations,
16 which I would recommend on the short term to possibly
17 slow down or stop the deaths on the border, but that
18 this Commission ask for an immediate review of the
19 effectiveness of these operations and weighing the
20 human cost against what they're trying to accomplish
21 which, of course, has led to nothing in terms of
22 controlling the illegal immigration that was spoken
23 about today, that it's not there to seal the border
24 but control it; and the fact that the strategy is to
25 funnel people into the deserts right now that -- and I

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1 think we've demonstrated effectively here today the
2 terrible tragedies that are taking place in the desert
3 and will probably continue unless an immediate review
4 maybe in the form of a suspension until it can be
5 reviewed by this Commission and maybe a congressional
6 panel of some kind that would address it directly.

7 My second comment is the role of the
8 employers, another role that the employers play in
9 this issue. And one of the things that was very
10 disturbing to me when I was in Altar speaking to the
11 workers as well as the migrants is the tremendous
12 amount of recruiting that employers in the big
13 factories, the big manufacturing companies or
14 production companies, like the poultry, because I was
15 going to say first that the majority of migrants that
16 I interviewed headed for Florida and North Carolina
17 and the Midwest, to the poultry industry in the South
18 and the meat-packing companies in the West, and were
19 being actively recruited by employers and even had
20 some of their transportation paid by the employers.

21 So to me in a sense the employers are some
22 of the biggest traffickers in illegal immigration in
23 this country. And then some of these workers are
24 forced to give up most of their salary for a year in
25 order to repay the transportation costs of the

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1 employers. So that's another area of employer
2 sanctions that I think has pretty much failed.

3 Thank you.

4 VICE CHAIRPERSON REYNOSO: Ms. Smith.

5 MS. SMITH: Of course we haven't even
6 mentioned legalization, which is the real sticking
7 point to all of these negotiations in terms of Latino
8 groups and what do you do with the eight million
9 undocumented people that are already here at this
10 point.

11 But one of the questions even in terms of
12 -- even if you were to exclude them, and it was only -
13 -

14 COMMISSIONER EDLEY: Well, it's not just
15 those who are here, but there's the added question of
16 if you have a temporary worker program can you
17 construct in that also earned legalization or earned
18 permanent --

19 MS. SMITH: That's right.

20 COMMISSIONER EDLEY: -- residence. And I
21 think that's -- it's --

22 MS. SMITH: If you had just a guest worker
23 program, one question that I have always had is:
24 Would people who have been apprehended, sometimes at
25 the border, would they be excluded from it? Would

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1 people who are already illegally here right now be
2 excluded from the possibility of being a guest worker,
3 especially when we're looking at the fact that if you
4 really enlarge it, it's going to be an urban program
5 more than a rural program.

6 But going back to your point about --
7 there's something about the border that makes the
8 civil rights community and the human rights community
9 sort of uneasy. It's sort of a no-man's land in terms
10 of civil rights and human rights, because everybody
11 thinks that you're going to get tagged as an open-
12 borders person if you start criticizing any elements
13 of it. And I think we're beginning to overcome that
14 some, in being able to say, "No, we're not advocating
15 open borders," but we do not believe that the right to
16 control the border is absolute. There are limits
17 beyond which you cannot go in order to achieve this if
18 you're achieving anything, which is really, you know,
19 what sticks in my craw.

20 But in any event I think that that's -- on
21 the vigilantes, I wrote a letter to Commissioner
22 Meissner two years ago, when the vigilante activity in
23 Arizona started, outlining a lot of concerns having to
24 do with also what I thought was Border Patrol
25 complicity, that I thought that the ranchers were

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1 acting as agents of the Border Patrol and how I felt
2 that they should handle -- dispatchers should handle
3 calls that they got from ranchers saying, "We're
4 holding somebody," you know, "a bunch of" quote-
5 unquote "illegals here," and saying, "Well, you know,
6 that's false imprisonment. If you're holding them for
7 trespass, then we'll call the sheriffs and then the
8 sheriffs maybe will be able to ask but, you know,
9 we're not supposed to go and you're not supposed to be
10 holding at gunpoint anybody in terms of illegal entry
11 and re-entry type of violation."

12 So I'd like to leave that with you. But I
13 think that that's -- it really, as I said, that is the
14 flashpoint, very, very worse.

15 VICE CHAIRPERSON REYNOSO: Okay.
16 Commissioner Meeks has a question, I believe, and then
17 our Chair has a question.

18 COMMISSIONER MEEKS: Yes. To just sort of
19 bring us back to the meeting. I mean I think these
20 have all been good suggestions, but has the INS had
21 any response to the deaths? I mean have they been
22 doing anything differently because of that?

23 MS. SMITH: Well, --

24 COMMISSIONER MEEKS: We're going to go to
25 the border later, --

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1 MS. SMITH: Yeah, right.

2 COMMISSIONER MEEKS: -- and this would be
3 a good thing to --

4 MS. SMITH: Well, they were pretty much
5 shamed -- the deaths, nobody really wanted to
6 publicize them. Neither on the Mexican side nor the
7 U.S. side wanted to really publicize the deaths.

8 When the deaths could no longer be hidden,
9 which was in January of 1997 when over a dozen
10 migrants froze to death in the mountains, then the
11 Border Patrol was pretty much shamed into putting
12 together a search-and-rescue component. I'm not going
13 to minimize that. If they saved one life, it's worth
14 it. But it's not the answer.

15 As you can see, the deaths keep
16 multiplying and there are no amount of rescue towers
17 or water jugs that one can leave out there. Those are
18 vast expanses have hell that are the desert that could
19 really offset this kind of a policy.

20 There are warnings but, hey, what the
21 workers will tell you if you are there are at the
22 border when they came through is, you know, *la*
23 *necessita*. "It's necessity." And that's a tough one
24 to -- it's very tough to -- although you have to be
25 respectful of people's needs and you say -- you need

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1 to inform them of the dangers and you need to say,
2 hey, only you can weigh the dangers against your
3 needs.

4 But these are times to weigh and to weigh
5 it more carefully than you ever have before because
6 this is the reality at the border. But even at that -
7 - you know, and most of them think it's not going to
8 happen to them and, in fact, it doesn't happen to
9 most.

10 DR. CORNELIUS: Could I add something
11 quickly?

12 The Border Patrol's kneejerk response to
13 the deaths is to blame the *coyotes*.

14 COMMISSIONER EDLEY: Um-hum.

15 DR. CORNELIUS: I mean that is the first
16 thing that you will hear on your tour. The *coyotes*
17 are the heart and soul of the problem of border deaths
18 because they have no regard for human life; they're
19 willing to take whatever risks are necessary.

20 What they don't say is that it is
21 completely in the interest of the *coyote* to deliver
22 their human cargo safe and healthy. They don't get
23 paid if they don't.

24 MS. SMITH: It's c.o.d.

25 DR. CORNELIUS: It's c.o.d. The bulk, if

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1 not the entire payment, is received from relatives or
2 friends on the U.S. side of the border once the
3 immigrant is out of harm and in the place of residence
4 or employment. So it is utterly illogical for the
5 *coyotes* to be deliberately hazarding the lives of
6 these people.

7 Of course, deaths happen because people
8 get lost; *coyotes* underestimate the physical stamina
9 of the group for whatever reasons.

10 But this is, as far as I can tell, not a
11 systematic practice of endangering human life. And,
12 of course, the *coyotes* are there doing their
13 land-office business because the Border Patrol is
14 putting so many new obstacles in the paths of the
15 migrants.

16 So I think that's really a red herring, --

17 CHAIRPERSON BERRY: Yes.

18 DR. CORNELIUS: -- but you will hear it
19 constantly from every spokesman of the Border Patrol
20 that I have ever encountered.

21 VICE CHAIRPERSON REYNOSO: Mary.

22 CHAIRPERSON BERRY: In other words, I
23 guess you're saying that there should be more -- for
24 the safety and health and welfare of the migrants,
25 there should be more *coyotes*? I mean logically that

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1 makes sense, given what you said about what happens.

2 DR. CORNELIUS: Unassisted crossings are
3 the most dangerous.

4 CHAIRPERSON BERRY: Right. So that makes
5 sense.

6 I guess I had a few questions, just trying
7 to understand the subject much better.

8 What kind of policy would actually deter
9 people from attempting to migrate illegally? When you
10 say open borders and that everybody wants to make sure
11 nobody thinks they're for open borders, it's like
12 nobody wants people to think they're a liberal, you
13 know, because that's supposed to be a dirty word, so
14 people call themselves all kinds of other things.

15 When one says, "open borders," in the
16 context that I think Mr. Obledo was talking about, and
17 he didn't use that word earlier, we were talking about
18 more open flows across the southern border of the
19 United States, and I added the northern border, and
20 why that shouldn't be the case. It was not completely
21 unregulated flows, but letting people come temporarily
22 and go back to the extent that they wanted to, as long
23 as you verified who they were.

24 In the first place, what's wrong with
25 that?

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1 Secondly, what's wrong with that as a
2 policy? And if most of the Latino groups and even the
3 Asian American groups that are very concerned about
4 the Chinese migrants, for example, trying to come to
5 the United States and what's happened to some of them
6 in those container ships, and everything else, and
7 people in the other civil rights communities who may
8 not be concerned about migration as their first number
9 one issue but who could get concerned, what's wrong
10 with that as a policy? And wouldn't most groups say
11 that that policy made sense? That is, if they could
12 say what they wanted to say, wouldn't they say that
13 that policy makes sense, given the history of the
14 country, this country, and the history of Mexico and
15 the history of the whole Southwest and who lives where
16 and who has lived where, and given the benefits that
17 migrants bring to a society in terms of its
18 productivity and that it doesn't undermine the
19 productivity of the society, then what's wrong with
20 having a policy of letting people come, stay, as long
21 as you figure out that they're not terrorists, or
22 something, and stay here until they work, make some
23 money, go back and forth, because you've pointed out
24 from your data that people are staying here now
25 instead of going back. I heard that from at least a

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1 couple of you and what you said.

2 And if the folks were --

3 DR. CORNELIUS: We're keeping more
4 migrants in the country than we're keeping out.

5 CHAIRPERSON BERRY: Right, right.

6 So they come and they stay instead of
7 going back when they should. And if the policy was
8 designed to keep undocumented people from being here,
9 then all the policy is doing is ending up with more
10 undocumented people being here, if I hear you rightly,
11 as well as killing people, which just doesn't seem to
12 make sense.

13 So what would be wrong with the civil
14 rights groups or us recommending to Congress that
15 there be a policy -- not that they would pass it --
16 that simply said that if you wanted to make sense of
17 policy, this is what would make sense, and why is it
18 no one will recommend except you, you recommended it,
19 Mario -- no one will recommend this, is it because
20 it's considered to be politically unpalatable or wacky
21 or something, or is there something conceptually wrong
22 with it that I just don't understand?

23 MS. SMITH: Well, I think we do have an
24 open border. It's just that we -- for all practical
25 purposes as many -- almost as many people as -- I

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1 can't imagine that there would be a lot more coming.
2 Perhaps from Central America, if you didn't have
3 Mexico now holding the line there. But I can't
4 imagine that many more people would cross than are
5 already crossing.

6 I think I've been consistent in the sense
7 that before Gatekeeper was the strategy, I didn't
8 criticize the strategy; I criticized abuse by
9 individual agents to the arrest of workers, of
10 migrants, but not the strategy itself.

11 And so what I've always said is: Why not
12 go back to the old strategy? It was no less effective
13 when you look at the numbers and people weren't
14 getting killed. Of course they're going to be visible
15 at that point and that is, you know, political
16 dynamite. But truthfully I mean that's sort of been
17 my answer, is go back to the old strategy.

18 CHAIRPERSON BERRY: It's also the case --
19 Mr. Cornelius. Professor Cornelius, go ahead.

20 DR. CORNELIUS: Well, I have tried to
21 distance myself from open borders as a policy
22 prescription, partly because it's so patently
23 politically unrealistic in my view.

24 Secondly, -- and this is related -- at
25 least in the short term it would undoubtedly provoke a

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1 surge in migration from Mexico simply because if we
2 take away all obstacles, there are -- there's a
3 certain proportion of discretionary migrants,
4 especially women and children, dependents of men in
5 the United States, who would feel that if they did not
6 have to put themselves at physical risk by running
7 this gauntlet that we have created, that now is the
8 time to try to reunify their family on the U.S. side
9 of the border.

10 So there would be in the short term, in my
11 judgment, a surge in migration. That would be seized
12 upon by anti-immigration groups as proof positive that
13 we were opening the floodgates and could open the door
14 to much more retrogressive restrictionist legislation
15 in the Congress. That's one of the worst case
16 scenarios that I could envision from this.

17 If we had an economist sitting here today
18 he would say: Of course, in fact, your prices will
19 equalize.

20 CHAIRPERSON BERRY: It would be great.

21 DR. CORNELIUS: At some point supply and
22 demand will equilibrate; the situation will be
23 stabilized; there will be no unwanted migration; and
24 everyone will benefit. Of course, the political
25 traffic is not likely to bear that in the short to

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1 medium term.

2 So logically, conceptually it makes
3 eminent sense. Politically it probably makes little
4 or no sense, but those are the poles of the debate.*

5 CHAIRPERSON BERRY: Which is why, if I
6 understand the *Wall Street Journal* editorial page,
7 which --

8 DR. CORNELIUS: Yes.

9 CHAIRPERSON BERRY: -- has had on occasion
10 to say things about me, so I read it every now and
11 then, they would have probably endorsed that idea that
12 you just expressed --

13 DR. CORNELIUS: Yes. I mean that's the
14 pure libertarian --

15 CHAIRPERSON BERRY: -- because it's the
16 pure free market, --

17 DR. CORNELIUS: -- approach. Exactly.

18 CHAIRPERSON BERRY: -- you know, idea to
19 immigration. And I think --

20 DR. CORNELIUS: Not what the *Wall Street*
21 *Journal* does not endorse is greater rights and
22 protections --

23 CHAIRPERSON BERRY: For the people who are
24 there.

25 DR. CORNELIUS: -- for the people who are

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1 there.

2 CHAIRPERSON BERRY: Well, that's because
3 of the free market. But, in any case if you -- and
4 then what I guess policymakers are saying or the
5 citizens who want, you know, tightened restrictions
6 while they don't impose employer sanctions so they can
7 have the best of both worlds, is that there is no
8 limit on the number of people who would come if you
9 let everybody come.

10 In other words, all of Mexico would be
11 emptied of people immediately and all of Central
12 America, and they'd all come to the United States.
13 It's the same argument that's made in Miami about the
14 Haitians, when we were done there.

15 VICE CHAIRPERSON REYNOSO: Correct.

16 CHAIRPERSON BERRY: That if you were to
17 treat the Haitians like the Cubans are treated, all
18 the people in Haiti would leave, there would be nobody
19 left in Haiti except Aristide and his wife, the
20 premier, but everybody else would come to the United
21 States, so you have to keep regulating them to keep
22 them from coming, because they're economic refugees.

23 So I guess the argument then is, is that
24 the argument, that everybody would come. You know,
25 it's --

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1 DR. CORNELIUS: Well, it's demographic
2 determinism. If you have x number of poor people in
3 Mexico or Haiti, or whatever, as soon as you take away
4 the obstacles, they would be here.

5 CHAIRPERSON BERRY: What if they all did
6 go --

7 DR. CORNELIUS: What they ignore is that
8 there are far more nonmigrants than migrants. Even in
9 the case of Mexico with a 120-year tradition of
10 continuous labor immigration to the United States, it
11 is still a minority of the population that has any
12 propensity to migrate to the United States. Not
13 because they don't have economic reasons for it, but
14 because they don't have contacts in the United States.

15 They don't have a social network here. They have all
16 kinds of family circumstances that prevent them from
17 taking the financial risk of migrating to the United
18 States. They don't speak the language. There are
19 vast cultural differences. They frequently see Mexico
20 as a better place to raise their children than the
21 United States. So there are all kinds of
22 psychological impediments as well as economic ones to
23 mobility.

24 And I mean to me as an immigration
25 specialist, what I find more difficult to explain is

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1 why so many Mexicans are still sitting in their places
2 of origin rather than the immigration of those who do
3 come.

4 CHAIRPERSON BERRY: The last question I
5 guess I have or sort of the last question maybe --
6 it's either the last or the next to last, depending on
7 the answer, is how salient politically or how
8 important in terms of public consciousness do you
9 think this issue is in the locale where you live?

10 I mean, that is is this an issue in San
11 Diego and is it an issue in Arizona --

12 PROFESSOR ACEVES: Yes, it is.

13 CHAIRPERSON BERRY: -- among people who
14 are not Latinos who are not going across the border or
15 who aren't concerned about their families. If you
16 were to list, you know, five issues that people are
17 talking about, would this be one of them or is it like
18 below their radar screen, more or less, or they don't
19 really care one way or the other?

20 DR. CORNELIUS: They more -- we've solved
21 it here.

22 CHAIRPERSON BERRY: That's the people
23 coming across the border are dying or whether the
24 immigration policy is fair or what the Border Patrol
25 is doing -- I ask this because I ask a sample of one,

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1 which is a professor I know at the University of
2 Arizona, before I came here yesterday how much press
3 was there about this issue and how concerned were
4 people in his community.

5 And really -- admittedly, he's a professor
6 so he's at a university, and he said, "Well, not
7 much." You know, he hadn't heard anybody really
8 talking, but they know it's going. But they figure,
9 well, these people are getting what they deserve
10 because they shouldn't be coming across the border.

11 MS. SMITH: You have to die in groups of
12 14 for it to really get on the radar screen, but most
13 of the migrants won't accommodate that. They die in
14 groups of one -- I mean they in ones and groups of
15 twos and threes and fours.

16 CHAIRPERSON BERRY: I see.

17 MS. SMITH: And so, no, people don't pay
18 much attention to at all.

19 On the other hand, it's not an issue that
20 can be completely ignored any longer either. It does
21 figure in the bilateral negotiations. It's had to be
22 addressed all the way from Castaneda and Colin Powell
23 to Fox and Bush, have actually had to make some
24 statements. What that amounted to is something else.
25 But in eight years at least it's gotten to the point

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1 where people have to pay some lip service to it.

2 PROFESSOR ACEVES: And that's one of the
3 reasons why organizations have gone before
4 international entities, whether it was the Inter-
5 American Commission or the UN Special Rapporteur to
6 try to highlight this issue at an international level,
7 to raise this issue and encourage organizations to put
8 pressure on the United States government to respond.

9 I guess for my final comment I would say
10 we've identified a number of broad, longterm
11 strategies that might be available. I think it's also
12 important to recognize the shortterm realities. It is
13 quite likely that at this moment in time there are
14 groups of individuals, one person, two person, larger
15 groups, that are leaving right from Mexico trying to
16 cross through the mountains, through the deserts. And
17 it is quite likely based on past experience that one
18 or more of those people will die in the shortterm.

19 CHAIRPERSON BERRY: Well, I asked that
20 last question because we were at Miami to talk about
21 and listen to people talk about the Haitian refugees
22 and make a site visit. They're having similar
23 problems, dying on the boats and so on.

24 I wondered what good it would do. And
25 insofar as I can tell, it did help with the pressure

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1 that is being brought by people in the communities.
2 Not Cuban American community is very supportive of the
3 Haitians. And all the people there who have been
4 coming out trying to do something about the policy, it
5 seems like there may be some kind of movement on the
6 subject.

7 So perhaps, just your coming here to tell
8 us about this today and us going on the site visit,
9 may illuminate the issue somewhat for people locally
10 so that they know that this still is an issue, it
11 hasn't gone away. And to the extent that they might
12 think about it, and we will think about what we can
13 do, and so if no one else has any questions, does
14 anyone have any? Yes. There is one, yes.

15 COMMISSIONER EDLEY: Yeah. Well, it's
16 more in the nature of a concluding comment. This is
17 -- I may have a somewhat different view of the
18 politics of this and a substantially less hopeful view
19 of the politics of this.

20 I was working in the White House and at
21 OMB in the '93 to '95-'6 timeframe and was very much
22 involved in some of the immigration issues from OMB
23 and was, I think it's fair to confess, very central in
24 the decisions, proposals to dramatically increase the
25 funding of INS, including the Border Patrol. And it

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1 may be instructive just to explain part of how that
2 came about.

3 In mid-'93 there was what felt from the
4 White House perspective like a crisis in terms of
5 particularly in the refugee and asylum area.
6 Haitians, Chinese. And there was a groundswell of
7 virulent restrictionist, anti-migrant sentiment on
8 Capitol Hill and in California.

9 And I think -- I don't want to
10 anthropomorphize the White House, so let me just say
11 that there were some people who were single-mindedly
12 focused on: How do we make sure that the president
13 has a good shot of getting re-elected and so he's got
14 to carry California, therefore he must be seen as
15 being vigorously engaged in trying to do something
16 about, quote, the problem, close quote, in California.

17 But there was also I think a very
18 progressive or, if you will, liberal view that we had
19 to do something to fend off a rising tide of
20 restrictionist anti-immigrant sentiment nationally.
21 And I think in a more tactical sense, we had to do
22 something to try to moderate the crackdown
23 legislatively on refugees and asylum-seekers.

24 And the policy formula for accomplishing
25 all of that was to try to dramatically increase the

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1 investment in services at INS and in social and other
2 services for resident migrants at the price, if you
3 will, of dramatically increasing investments in border
4 enforcement, the Border Patrol.

5 And I can tell you at OMB the basics, my
6 basic strategy which Leon Panetta, the OMB director,
7 and the president embraced was: Let's put as much
8 money into INS as we can plausibly claim that INS is
9 capable of spending without scandal, you know,
10 burning-bucks-in-the-backyard kind of thing. Because
11 there are limits on how fast can you hire people, how
12 fast can you train people, how fast can you buy
13 computers and all the rest of it. So there are limits
14 on how fast you can ramp up. But with the notion that
15 it would be a balanced investment between enforcement
16 and services, that we wanted to get down the backlog
17 so we wanted to do better visa processing, et cetera,
18 et cetera.

19 Now of course that policy was distorted
20 quite a bit by the time it worked through Congress and
21 the appropriations process and all the like. But the
22 basic point I'm making, and this goes back to
23 Professor Cornelius' comment a couple of minutes ago,
24 is that based on my experience on this issue there is
25 a very delicate political balance. And what one can

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1 do in terms of what I think of is in a humanitarian
2 and welcoming and sensible direction has to be
3 balanced with what other people will demand
4 politically in terms of what are the rules and what
5 are we doing to make sure that people play by the
6 rules.

7 Part of the rules involve the sovereignty
8 of the border and doing something that will regularize
9 workflows and the like. So I think that I agree with
10 Professor Cornelius that erasing the border is not
11 politically tenable. I even have doubts as to whether
12 or not it would be good economic policy, certainly in
13 terms of the distributional consequences for people in
14 the U.S. now, but it's a political nonstarter.

15 Instead the question is I think how to
16 have the right kind of balance that's informed by
17 civil rights and humanitarian concerns as well as by
18 the economic realities.

19 And the last point I make -- and I
20 apologize if I'm longwinded here, the last point I'd
21 make is that a couple of you have said Operation
22 Gatekeeper et cetera is not working, it's a failure.
23 And I guess I just want to tell you that while I'm
24 pretty inclined to agree with you, I think we have a
25 long way to go or you have a long way to go to prove

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1 that point. Because there will always be the argument
2 made by Border Patrol, by everybody, lots of other
3 people, "Well, but you don't know how bad the
4 situation would have been but for Operation
5 Gatekeeper," et cetera.

6 And we have such poor data about what's
7 happening, especially away from the border, such poor
8 data about what these migrant flows are, et cetera.
9 So -- and also we don't really know what the deterrent
10 effect is.

11 We see the scads of people assembling in
12 the plaza south of Arizona, but without this
13 aggressive border enforcement, that kind of
14 assembling, that kind of staging pattern would simply
15 -- might arguably simply be more broadly distributed,
16 less visible. And so how do you know.

17 One of the things we ought to think about,
18 I think, therefore, is what kind of research would
19 need to be conducted by whom in order to produce
20 answers that might persuade all but the resolutely
21 unpersuadably. So let's just -- I mean you peel off
22 35 percent on both ends of the spectrum. Right, the
23 folks who are unalterably for open borders and the
24 folks who are for militarizing the border.

25 And in the middle there are a bunch of

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1 folks who are just trying to figure out what's the
2 best thing to do. And I'm not sure that we've really
3 assembled -- maybe I'm not well informed enough -- I'm
4 not sure that we've really assembled the social
5 science case to demonstrate to people that their
6 current strategies really are failed, that we're
7 looking at all the variables and all the contingencies
8 as best we can. I know the methodologies are very
9 complicated. Maybe it's something we ought to try to
10 get the National Academy of Sciences to take a look
11 at.

12 But I just put that to you. I don't think
13 the case is proven. I understand what advocacy is.
14 And I understand if I were litigating this in the
15 court of public opinion I would stand up and say,
16 "It's a failure," but I also think that there's a lot
17 more work to be done to persuade people that it is.

18 CHAIRPERSON BERRY: Before I let you
19 respond let me just say that, Professor Edley, you
20 know better than anyone that you can never prove that
21 something would not -- would have happened otherwise
22 or would have happened even if this had not happened.
23 That that's not possible to prove.

24 It's like the conference I went to, and
25 another one I'm going to next week, where the theme

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1 is: If there had been no Civil War would slavery have
2 been abolished anyway. There's no way for anyone to
3 prove whether or not slavery would have been abolished
4 in the absence of a civil war.

5 COMMISSIONER EDLEY: Of course not.

6 CHAIRPERSON BERRY: No matter how many
7 researchers you get and how many billions of dollars
8 you spend, all we can do is sit around and speculate.

9 COMMISSIONER EDLEY: I agree. This isn't
10 about proof, this is about persuasion.

11 CHAIRPERSON BERRY: Right.

12 COMMISSIONER EDLEY: And obviously one
13 uses as many methodologies as you can to get as class
14 you can --

15 CHAIRPERSON BERRY: Right, to persuade.

16 COMMISSIONER EDLEY: -- to -- to the
17 proof.

18 CHAIRPERSON BERRY: Right. So I'll let
19 you -- anybody, yes, Mr. Obledo.

20 MR. OBLEDO: You mentioned the economics
21 and the open border. All you need to do is to point
22 out the states of California, the state of Texas, the
23 city of New York and the city of Miami to counter that
24 argument. Which, in fact, shows that an open border
25 would improve on the economics of the United States.

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1 What I think we ought to do is just advice
2 the illegal immigrants to go to North Dakota and South
3 Dakota and Montana and Iowa and all those -- yeah, and
4 improve their economies.

5 CHAIRPERSON BERRY: They were trying to
6 get there, the ones that were on the train, one day in
7 Iowa.

8 MR. OBLEDO: Well, all those populations
9 are increasing. It's surprising where you find
10 Hispanics in America today, almost anywhere you go.
11 Even in a small town in Georgia, the majority of the
12 school population is Hispanic.

13 CHAIRPERSON BERRY: And someone did --
14 apropos to what you said, Mr. Obledo, someone did a
15 little newspaper article recently in which they talked
16 about the increase in economic productivity, where the
17 places were, that you didn't expect it, and they were
18 all places where there had been an increase in
19 Hispanic immigration to work in various areas.

20 MR. OBLEDO: That's right.

21 CHAIRPERSON BERRY: In states like
22 Tennessee and North Carolina. And there were some
23 other places that I hadn't even thought about it.

24 Yes.

25 DR. CORNELIUS: This is actually

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1 happening. During the 1990s and increasingly, the
2 migrant population from Mexico is disbursing
3 throughout the United States. The growth rate of the
4 population today is much higher in small and medium-
5 sized cities in the Midwest and the South than it is
6 in places like Los Angeles and Houston and Chicago.

7 What kind of research needs to be done?
8 The most direct evidence, the best evidence would be
9 gathered in places of origin, --

10 COMMISSIONER EDLEY: Exactly. Exactly.

11 DR. CORNELIUS: -- high immigration areas
12 and localities. It's not a fancy methodology. I've
13 done sample surveys of this type five times since the
14 mid-1970s. I haven't done it in the last eight years,
15 however, so I have no direct evidence from that kind
16 of sample survey research on how people are perceiving
17 Gatekeeper and these other impediments.

18 What you do is you ask people who have
19 gone recently to the United States and returned. You
20 ask people who are thinking about going to the United
21 States, prospective migrants. And you ask people who
22 have no intention of going to the United States, at
23 least stated intention. And you try to ascertain how
24 important, what relative weight they assign to the
25 U.S. border enforcement strategy.

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1 And, you know, we need enough investment
2 in that kind of research to produce a credible result
3 but, you know, you give me \$200,000 and a couple of
4 years and I'll provide you the data set.

5 COMMISSIONER EDLEY: You know this is a
6 strange question. Does the INS have a research budget
7 to do things of that sort?

8 DR. CORNELIUS: No.

9 CHAIRPERSON BERRY: No, they don't. And
10 we're out of time, so let me -- I want to thank you.
11 But let me say -- we're beyond the time actually, but
12 this was so interesting.

13 I did want to point out that all during
14 the '90s when these developments were taking place,
15 and the '80s, the Commission on Civil Rights had -- in
16 the '90s had a consistent policy of being opposed to
17 the absence of services, led by the Vice Chair who
18 talked all the time about INS and its complaint
19 processing, its naturalization processes, all the rest
20 of it, as they were doing these various enforcement
21 techniques. And so -- that was before Mr. Edley was
22 on the Commission.

23 But, in any case, I want to thank you for
24 coming, and say that Mr. Phil Montez, who's our
25 Regional Director for this Region, and has been for

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1 30-something years is here today and will be here
2 tomorrow with us.

3 And the Chair of our Arizona SAC, June
4 Webb-Vignery, who I saw over there just a minute ago,
5 she's still here, is here. And the Chair of the
6 California SAC will be in later today. He was very
7 much involved in this, but couldn't be here. That's
8 Fernando Hernandez, who is at Cal State Los Angeles,
9 and will be here tonight and tomorrow.

10 I want to thank you for coming. We now
11 have a brief time set aside for us to have some
12 further discussions when this is over, this meeting.
13 But thank you very much.

14 MR. OBLEDO: Ms. Chairperson, I have one
15 additional recommendation and one question.

16 CHAIRPERSON BERRY: What?

17 MR. OBLEDO: I recommend that you cancel
18 one of your meetings and donate that money to
19 Professor Cornelius to carry out that research.

20 CHAIRPERSON BERRY: So he can do that
21 research he talked about. We'll take that under
22 advisement. A great idea, Mario. We'll close.

23 MR. OBLEDO: And then the question I have
24 is does anybody in this room know whether or not
25 President Bush's sister-in-law was originally an

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1 illegal alien?

2 CHAIRPERSON BERRY: I don't know. Maybe
3 somebody will tell us, but thank you very much.

4 (The Briefing was adjourned for the day at
5 11:27 o'clock a.m.)

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