

1
2 ARIZONA STATE ADVISORY COMMITTEE
3 TO THE
4 UNITED STATES COMMISSION ON CIVIL RIGHTS
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10 HEARING

11 AUGUST 23, 2002
12 RADISSON HOTEL CITY CENTER
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8 DR. CATHERINE MEDINA

9 MR. JONES OSBORN

10 MR. RAMON M. PAZ

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P R O C E E D I N G S

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2 DR. WEBB-VIGNERY: I'd like to welcome
3 everyone to the fact-finding hearing or briefing of the
4 Arizona State Advisory Committee to the U.S. Commission
5 on Civil Rights.

6 Today the Arizona State Advisory Council
7 will conduct a fact-finding briefing to collect
8 information on a situation concerning Mexican nationals
9 attempting to cross into Southern Arizona from Mexico.

10 We have invited representatives from both
11 public agencies and private organizations to appear
12 before the State Advisory Committee and address the
13 situation along the U.S.-Mexico border.

14 The U.S. Commission on Civil Rights is an
15 independent bipartisan fact-finding agency first
16 established by Congress in 1957 and reestablished in
17 1983. The Arizona State Advisory Committee is among 51
18 such committees appointed nationwide by the Commission.

19 At this time I would like to give the
20 opportunity for the members of the Arizona State
21 Advisory Committee to introduce themselves. Perhaps we
22 can start with you, Ramon.

23 MR. PAZ: Ramon Paz. I represent
24 Tucson-Nogales area. Retired school administrator.

25 MR. MATUS: Jose Matus, here from Tucson.

1 MR. RODRIGUEZ: Jesse Rodriguez from
2 Flagstaff representing Northern Arizona.

3 MS. GARCIA: Isabel Garcia from Tucson.

4 MR. GATTONE: Paul Gattone from Tucson.

5 DR. WEBB-VIGNERY: June Webb-Vignery,
6 Tucson.

7 MS. KASCH: Elaine Kasch from Flagstaff.

8 MS. LEE: Lorraine Lee, Tucson.

9 DR. MEDINA: Catherine Medina from
10 Flagstaff.

11 MR. OSBORN: Jones Osborn from Yuma. I'm
12 an unemployed state legislator.

13 MR. ALSTON: I'm Gilbert Alston. I'm
14 with the Los Angeles Advisory Committee here as an
15 observer.

16 DR. WEBB-VIGNERY: And at this time we
17 have an itinerary today, and our first person to
18 discuss these areas with the Advisory Committee is
19 Henry A. Ramon, Vice Chairperson of the Tohono O'odham
20 Nation.

21 MR. RAMON: Good morning. First I just
22 want to say that I'm very honored and privileged to
23 come before you. It is fitting that today, as fellow
24 citizens of the United States, we pursue the meaning of
25 what is right.

1 I, as a member of the Tohono O'odham, a
2 grass-roots member, have experienced emotions, pain and
3 feeling of frustration, myself and my people.

4 I appear before you on behalf of the
5 Tohono O'odham Nation to ask for your help. We Tohono
6 O'odham have lived in our sacred desert since the
7 beginning of time.

8 When the first immigrants came to the
9 desert, Americans, we welcomed them, gave them water
10 and food and taught them how to survive on our sacred
11 desert. This is our tradition. We have always
12 welcomed strangers as our guests.

13 Tohono O'odham people welcome new
14 immigrants to our land. Immigrants are forced by
15 unjust border policy and current immigration laws to
16 risk their lives crossing our land in search of work to
17 feed their families.

18 Many -- too many have died. Men, women
19 and children. Last year we spent in excess of one-half
20 million dollars carrying for them in our hospitals, but
21 still too many died. Today we spend millions on search
22 and rescue activities.

23 The same policies and laws that bring
24 deaths to our people brings great suffering to our
25 O'odham people. Our land is an occupied war zone.

1 Our people are no longer free to travel.
2 Our people are stopped and asked for documents,
3 documents they cannot produce. We are told we must
4 obtain immigration permits to enter our own lands. Our
5 veterans or elders, our widows, cannot receive the
6 benefits they have earned working all their lives.
7 This is not right.

8 As Tohono O'odham people we were here
9 first and today we are asked to prove our right to be
10 here. This is wrong. Just plain wrong.

11 The United States House of
12 Representatives is presently considering the Tohono
13 O'odham Citizenship Act of 2001, H.R. 2348, which would
14 make all enrolled members of the Tohono O'odham nation
15 United States citizens and recognize our enrollment
16 credential as the legal equivalent of a state-issued
17 birth certificate or a federally-issued certificate of
18 citizenship.

19 On behalf of the Tohono O'odham Nation, I
20 ask that the Advisory Committee to the United States
21 Civil Rights Commission to, by formal resolution,
22 request the United States Civil Rights Commission to
23 pass a formal resolution calling on Congress to pass
24 H.R. 2348 during the 107th session, and President
25 George W. Bush to sign our bill.

1 It is the right thing to do. It is just
2 not fair that our people, especially our elders, to
3 continue to suffer.

4 As I said, you know, there are many
5 things that go on every day and we were not present at
6 the site that those things are happening. It's not
7 visible to us of what we are trying to say, but my
8 people from time immemorial, and one of our traditions
9 is to honor our word of mouth.

10 We do not document things on paper.
11 Tohono O'odham people are learning how to do that, but
12 we are penalized because of our way of life.
13 Traditionally we were born in our homes so we didn't
14 register with the state. And now we're paying the
15 price because our elderlies cannot produce documents,
16 birth certificate, to become United States citizens.

17 Since time immemorial we believe the
18 earth is very sacred to us. Our belief is that our
19 creator made us out of the sacred clay on the desert,
20 so that is why we honor the ground, the land and all
21 plants, animals that are interrelated as our creator
22 made them part of the living people on earth.

23 It is said that sometimes we have to
24 experience things that was never -- that shouldn't
25 happen. It's common sense when we say that every

1 individual has rights and deserve to have the same
2 right as anybody, that we're all equal. We're all one
3 family in this universe and that's the way it should
4 be.

5 When a problem arises we make it right,
6 and today I'm asking you to make it right. It's so
7 simple to us.

8 A lot of people say because of September
9 11 that it has an impact on our bill that we have, but
10 it isn't. We're not immigrants. We were here from
11 time immemorial. And the requirements to become -- to
12 get a delayed birth certificate my people cannot meet
13 because they are not immigrants. It is geared towards
14 the immigrants, the policies, and I ask of you to help
15 us change the policies that are now in effect.

16 Our neighbors across are experiencing
17 tragedies, death, suffering, and it should never exist.
18 They have a right. They're human beings and they
19 deserve to seek for their rights for their families,
20 for their children.

21 It's very important that you really think
22 about the issue that I'm bringing out now because the
23 United States is -- everybody is looking at the United
24 States as a land of freedom and opportunity, one we
25 together must make it be a reality.

1 Thank you for listening. Are there any
2 questions?

3 DR. WEBB-VIGNERY: Thank you, Mr. Ramon .
4 There are questions and each question that you ask,
5 could you please identify yourself?

6 MR. OSBORN: Madam Chairman, Jones Osborn
7 from Yuma.

8 Vice Chairman Ramon, do the territorial
9 boundaries of the Tohono O'odham Nation extend into
10 Mexico or are they confined to the United States?

11 MR. RAMON: It extends into the United
12 States from time immemorial. Our people acquired the
13 land and still live there. There's still community on
14 the other side.

15 MR. OSBORN: It extends into Mexico?

16 MR. RAMON: It extends into Mexico and
17 they're enrolled members of the Tohono O'odham.

18 MR. OSBORN: The House Resolution 2348
19 would be confined to those persons living inside the
20 United States; is that correct?

21 MR. RAMON: And also the Tohono O'odham
22 members on the other side, because they are enrolled
23 members.

24 What happened back in 1937 during the
25 Reorganization Act, federal government came into the

1 Tohono O'odham Nation -- came to the Tohono O'odham
2 Nation and enumerated the Tohono O'odham Nation in
3 order to recognize them as a sovereign nation.

4 They were Tohono O'odham no matter if
5 they lived on the other side, and then the constitution
6 developed, the Tohono O'odham Nation Constitution, and
7 it spells out who will be members of the Tohono
8 O'odham.

9 And in the constitution it states that
10 they developed a base roll out of that enumeration.
11 They call it Tohono O'odham base roll.

12 And on the base roll are the list of the
13 Tohono O'odham back in '37 and in the constitution it
14 states that the offsprings of the 1937 base roll
15 automatically become members of the Tohono O'odham
16 Nation tribe.

17 And anybody that wasn't enumerated but is
18 a Tohono O'odham member at the time that the
19 enumeration was going on, they can be adopted by the
20 Tohono O'odham, but it has to be one-half O'odham, and
21 also it sets up a process.

22 We have an enrollment officer to do the
23 research and get the documentation, the documentation
24 between the offsprings of the 1937 base roll that is
25 presented to -- we have 22 legislative members, and it

1 goes before the council and it has to be a unanimous
2 vote before it is accepted and then it goes to the
3 Secretary of Interior where the Secretary of Interior
4 has to verify and approve and certify the documents.

5 Then they are entered on data that
6 they're members of the Tohono O'odham Nation, and our
7 data -- everybody is available 24 hours a day in the
8 office in Albuquerque, Mexico.

9 MR. OSBORN: Madam Chairman, Jones Osborn
10 again.

11 Would you happen to have with you a copy
12 of House Resolution 2348?

13 MR. RAMON: Not -- but I can have.

14 MR. OSBORN: You can furnish one?

15 MR. RAMON: Yes.

16 MR. OSBORN: I'd like to see it. Thank
17 you.

18 MR. GATTONE: Paul Gattone from Tucson.

19 Vice Chairman, I appreciate your
20 comments, unfortunately in our discussions oftentimes
21 about border issues and what's involved in border
22 issues I think we forget the perspective of native
23 people that live on both sides of the border, so I
24 think your comments are important to our fact finding.

25 I'm assuming that the U.S. Border Patrol

1 operates on the land which -- the tribe's land -- and I
2 wondered if maybe you could give us some idea about
3 some of the problems or concerns you might have or some
4 information about the interaction between tribal
5 members and representatives of the U.S. Border Patrol.

6 MR. RAMON: We call it harassment. Begin
7 to increase again a couple months because of new people
8 coming, you know, the new transfer of assignment to our
9 nation where they are harassing our people,
10 intimidating them and tailgating them in the vehicles,
11 shining bright lights in their faces and driving beside
12 them, looking into their cars or trucks.

13 And that's very dangerous because several
14 -- I know we had a public hearing and a lady was saying
15 that she ran off the road because of the bright light
16 that was shining. And it could have been a tragedy,
17 but she didn't get hurt.

18 And also even though we ask that they
19 produce document, that they ask -- the birth
20 certificate -- there's no way that they can do it, so
21 our people are afraid to go out in the open to gather
22 native plants or fruit because they're warned if they
23 stop you and you still don't have it, we will deport
24 you.

25 And the people that are born here on the

1 reservation would be at a loss if they're deported to
2 the other side. They wouldn't know where to go, so
3 it's very discouraging. So most of our people that
4 have no -- it's mostly the elders that don't have birth
5 certificates, so they hide from the Border Patrol
6 but --

7 MR. GATTONE: I had a follow-up question.
8 Does the Border Patrol --

9 Obviously the Tohono O'odham Nation is a
10 sovereign entity. Does the Border Patrol seek any sort
11 of agreement or permission in order to operate on your
12 land?

13 MR. RAMON: No, we communicate and try to
14 say it, but they have -- well, before there were times
15 like the damage to our environment, the land where they
16 drag tires, you know, we made an agreement and they
17 stopped doing that in certain parts of the areas.

18 But I guess as federal agents, according
19 to my knowledge, you know, they don't have any -- they
20 don't have the rights, you know, that they can -- even
21 though we tell them especially invading into the
22 privacy, a family that's with the fence, they'll go
23 right in without any kind of warning or permission.

24 DR. WEBB-VIGNERY: Chair recognizes
25 Isabel Garcia.

1 MS. GARCIA: Isabel Garcia. Welcome, Mr.
2 Ramon, I'm happy to have you here and I've been in
3 Washington, D.C. lobbying for H.R. 2348.

4 Isn't it true that a 17-year-old Tohono
5 O'odham was run down by a Border Patrol agent several
6 months ago?

7 MR. RAMON: That's correct.

8 MS. GARCIA: And it was a member of the
9 Tohono O'odham Nation?

10 MR. RAMON: Yes.

11 MS. GARCIA: And when you talk about the
12 1937 enrollment, that was a count, basically, by the
13 U.S. Government?

14 MR. RAMON: Right.

15 MS. GARCIA: To see how many were in the
16 nation; is that correct?

17 MR. RAMON: Yeah in order to recognize us
18 as a sovereign nation.

19 MS. GARCIA: And they included everybody
20 that was living on the Mexican side?

21 MR. RAMON: Yes.

22 MS. GARCIA: Isn't it also correct that
23 the nation members who live on the Mexican side have
24 been bused to boarding schools in the past and are
25 entitled to federal benefits here in this country?

1 MR. RAMON: Right. We didn't have any
2 problems, so that's why problems weren't raised at that
3 time.

4 MS. GARCIA: And when did the problems
5 begin in a serious way for the nation in terms of
6 ability to cross and ability to produce appropriate
7 documents for the new Border Patrol agent that comes in
8 from New York City? When did that become a problem?

9 MR. RAMON: It started to become a
10 problem in the '90s, and then it became a real problem
11 after the September 11 incident.

12 MS. GARCIA: How many members would you
13 estimate are on the Mexican side?

14 MR. RAMON: 1,400.

15 MS. GARCIA: And on the US side that are
16 U.S. citizens, derivative U.S. citizens, that can't
17 produce documentation because they were born at home,
18 as many O'odham have, how many are in this country
19 without documentation, even though they're citizens?

20 MR. RAMON: 7,000 members.

21 MS. GARCIA: Thank you very much.

22 DR. WEBB-VIGNERY: Mr. Ramon, I want to
23 thank you for coming and sharing with the committee
24 this morning. And what we do here, we will let you
25 know as our meeting progresses.

1 Thank you very much.

2 MR. RAMON: Thank you everybody.

3 DR. WEBB-VIGNERY: Before we continue to
4 the next person, I'd like to recognize Landis Davis and
5 Lynda Leatherman who are here in attendance today from
6 Congressman Pastor's office.

7 And the next person to speak will be
8 Andrew Silverman from the College of Law at the
9 University of Arizona.

10 MR. SILVERMAN: Thank you very much. I'm
11 Andy Silverman. I teach at the University of Arizona
12 College of Law. I teach immigration law which I have
13 done for the past 25 years. And prior to that, I
14 practiced immigration law which as part of my practice
15 was representing farm workers, particularly
16 undocumented farm workers from Mexico.

17 Today I would like to talk with you about
18 civil rights concerns that I have since 9/11, and these
19 are concerns that effect noncitizens and noncitizens
20 coming across the Arizona-Mexico border.

21 Governmental policies of course can have
22 devastating effects. For example, the current Border
23 Patrol policy of putting an enforcement emphasis in the
24 more urban areas along the Mexican border push border
25 crossers out to the rural and more dangerous areas to

1 cross.

2 I would like to talk about other
3 government policies which may also have a potential
4 human and civil rights effect on people who are
5 crossing the border. That is as I indicated what is
6 happening in Congress since 9/11.

7 I feel it's an issue which the Civil
8 Rights Commission should monitor and carefully
9 scrutinize to make sure it does not have an overly
10 adverse impact on people's rights.

11 Since 9/11 under the umbrella of security
12 and terrorism, the administration has had almost free
13 reign in Congress to enact many measures which impact
14 on human and civil rights of noncitizens and effect on
15 the border region.

16 The first of course was the passage of
17 the USA Patriots' Act, a complicated and lengthy
18 statute which was enacted really a mere six weeks after
19 the 9/11 incident. For example, under one of its
20 provisions indefinite detention of noncitizens is
21 authorized upon the certification of the attorney
22 general that he or she has reasonable grounds to
23 believe the noncitizen endangers national security.

24 I think it's important to monitor this
25 situation and see who is being detained, what really is

1 the basis of the conclusion that the person endangers
2 national security. Loss of liberty is clearly a civil
3 rights issue.

4 Other examples are on May 14 of this year
5 President Bush signed into law the Enhanced Border
6 Security and Visa Entry Reform Act. This is an act
7 which placed further restrictions on the admission of
8 foreign students and exchange visitors which is the
9 only part of the act which got any real media
10 attention. But there was more to the act than that.

11 Some of the other provisions, for
12 example, authorized the appropriation of \$150 million
13 to the INS for technology improvements related to
14 border security, and even gives the attorney general
15 authority to increase land border fees to offset
16 technology costs.

17 This increased technology can lead to
18 clearly greater militarization of the border which I
19 know has been a concern of the commission and I know
20 other people today will be talking about it, but it's
21 clearly something that should be monitored and
22 scrutinized.

23 The act also requires that the secretary
24 of state establish a Terrorist Lookout Committee at
25 each U.S. mission abroad. What does this mean? What

1 people are going to be captured that this committee
2 will conclude might be terrorists?

3 The act also tightens passenger manifest
4 requirements by requiring all commercial vessels and
5 aircraft from outside the U.S. to provide extensive
6 information on each passenger and crew member.

7 What kind of effect is this going to have
8 on people as far as coming to the United States and
9 again impinging on people's civil and human rights?
10 And again, we're not just talking about information of
11 noncitizens, but of course of citizens and permanent
12 residents as well.

13 The act also authorizes the secretary of
14 state and the INS commissioner to jointly conduct a
15 study of alternative approaches for encouraging or even
16 requiring Canada and Mexico to develop electronic data
17 systems to facilitate access to each country's law
18 enforcement and intelligence information.

19 So as a result of this kind of
20 information that we're going to be getting from foreign
21 countries, again what effect is it going to have for
22 people coming to the United States for maybe even very
23 legal legitimate reasons?

24 I'm sure all these measures were
25 justified in Congress as being needed for security and

1 terrorist reasons, including even the enhanced
2 militarization of the border, but we need to make sure
3 what civil rights impacts such measures have.

4 Currently pending is a bill to create a
5 Department of Homeland Security, and aspects of those
6 prepared bills is to move in whole or in part the INS
7 to the new department.

8 The various proposals are, one, the
9 administration proposal which would move the entire INS
10 to the Department of Homeland Security, and it would be
11 placed in the department's Border and Transportation
12 Security Division.

13 Again, what does this say about the INS
14 when it's placed in such division?

15 On July 26 the house proposal passed the
16 entire house. The house bill would transfer the INS's
17 enforcement function to the new department and leave
18 the service function within the Department of Justice.

19 The senate version introduced by Senator
20 Lieberman and is now before the committee in which he
21 chairs, the Senate Governmental Affairs Committee,
22 would place the entire INS into the Department of
23 Homeland Security creating a separate division for
24 immigration called the Directorate of Immigration
25 Affairs, and two bureaus within the directorate: The

1 Bureau of Immigration Services and Adjudications, and
2 The Bureau of Enforcement and Border Affairs.

3 I'm fearful of what it may mean to have
4 the INS in a department whose primary mission is
5 security and prevention of terrorist activities.

6 What is that saying about immigration?
7 What is that saying about noncitizens? That is placing
8 all noncitizens who are coming to the United States
9 under a department, as I said, whose main
10 responsibility is not going to be looking really to the
11 service and to assisting people to enter this country
12 legally and even dealing in making a way that we would
13 like it to be dealt, that is with people who come
14 here who are undocumented into an agency whose main
15 mission is to protect us from terrorism.

16 There are many bills in addition to the
17 bill to create the Department of Homeland Security that
18 are now pending in Congress. Some of them go to the
19 restructuring of the INS, which everyone concludes is
20 needed.

21 But there are many bills, again, going to
22 dealing with the security issue but seem to be using
23 immigration and immigrants as kind of the scapegoat for
24 that.

25 Let me just give you a final example of a

1 bill that has been introduced into the House in June of
2 this year by the chair of the House Judiciary Committee
3 Subcommittee of Immigration. The bill is called
4 Securing America's Future Through Enforcement Reform.

5 Congress, I think, is more interested in
6 acronyms than they are in the substance of bills these
7 days. The acronym here is SAFER.

8 So many of these bills have titles which
9 infer that immigration reform is the way for us again
10 to be safe and secure. As I said, sounds to me like
11 immigrants are becoming the scapegoats here.

12 Here are some of the provisions of the
13 Securing America's Future Through Enforcement Reform
14 Act. One, is "additional" means to secure the border.
15 Again, can lead to more militarization.

16 Again, increasing or enhancing the
17 screening of noncitizens seeking admission. Provisions
18 about tracking noncitizens in the United States. A
19 provision to enhance enforcement of the Immigration Act
20 in the interior of the United States.

21 Additional provisions to remove
22 noncitizen terrorist criminal and human rights
23 violators, and I can tell you from someone who teaches
24 this, we have provisions upon provisions upon
25 provisions already dealing with this issue.

1 A provision to eliminate -- and here I
2 quote -- quoting from the act -- excessive review and
3 dilatory and abusive tactics by noncitizens in removal
4 proceedings.

5 The bill would also reduce legal
6 immigration levels by 20 percent and all it will do of
7 course is encourage more illegal entry into this
8 country because what they want to do is eliminate the
9 extended family immigration visa categories.

10 Do you know who now has preferences --
11 family preferences -- under the immigration laws? And
12 are they what we would consider extended family?

13 The people who now have preferences under
14 our immigration laws are spouses, children, parents,
15 brothers and sisters of U.S. citizens, and spouses and
16 children of legal permanent residents.

17 Is that extended families? Or is that
18 what we probably would consider immediate families?

19 It would also eliminate certain unskilled
20 worker categories. As we know, many of the
21 undocumented people who come here are people that we
22 put into the category of unskilled workers, even though
23 I really think all workers have a skill. But the
24 category we place them in is unskilled workers, and
25 maybe it should be a time we are increasing it, but

1 when we eliminate legal ways for unskilled workers to
2 come into the country we're going to be encouraging, of
3 course, more illegal entrants into the United States.

4 So I guess the question is: Are we
5 overreaching under the reasons of security and
6 terrorism, and again using immigration and immigrants
7 as the way to deal with a problem we have and putting
8 it on the backs of immigrants and putting blame there,
9 and as I said using them as scapegoats?

10 I think it's something that the Civil
11 Rights Commission needs to be looking at, needs to be
12 monitoring, needs to be scrutinizing and seeing whether
13 these various measures that are now being enacted, many
14 times with very little consideration by Congress, and
15 what human and civil rights impacts that these measures
16 are having now and may have in the future.

17 Thank you very much.

18 DR. WEBB-VIGNERY: Thank you. Are there
19 questions?

20 MR. OSBORN: Jones Osborn from Yuma.

21 Professor, the 19 persons who have been
22 identified as the persons who attacked on September 11,
23 do you classify those as immigrants from your
24 knowledge?

25 MR. SILVERMAN: You're talking about --

1 you're not talking about the people in Guantanamo?

2 You're talking about the people who were on the --

3 MR. OSBORN: On the airplanes.

4 MR. SILVERMAN: On the airplanes?

5 MR. OSBORN: Yes.

6 MR. SILVERMAN: I actually don't know
7 what the status of each of these people were that were
8 on those planes. I don't know if any of them were
9 technically immigrants. Immigrants in a technical way
10 are permanent residents of this country, and I don't
11 think any of them, from what at least I've learned, are
12 permanent residents.

13 Clearly some of them came in for legal
14 reasons as students. Some of them may have been here
15 for -- or entered illegally.

16 There's no doubt that we need to tighten
17 up certain things, and the student category may be one
18 of them that we need to do some tightening up.

19 There's no doubt that we have not
20 sufficiently monitored foreign students in this country
21 in the sense that students have come here, have either
22 not gone to school, not maintained full student status
23 as required by the law. It's been a problem long
24 before 9/11.

25 The Immigration Service has not really

1 had the administrative wherewithal or probably the
2 structure to sufficiently monitor that, and there have
3 been bills that have been passed since 9/11 to try to
4 deal with that, and I think that will be dealt with.

5 Whether that will stop people from coming
6 to this country who we may consider presenting a danger
7 may not really. There may not be anything we ever
8 really can do, unfortunately, to really make ourselves
9 completely safe.

10 MR. OSBORN: So would it be correct to
11 say, Professor, that much of the new legislation
12 directed at immigrants is misdirected? Is that your
13 opinion?

14 MR. SILVERMAN: I think that some of the
15 things that are being discussed in Congress are
16 probably things that are necessary -- clearly
17 reorganization of the INS, clearly maybe the tightening
18 up of the student categories in some respects, but I
19 think this overreaction is misdirected, yes.

20 DR. WEBB-VIGNERY: Chair recognizes
21 Isabel Garcia.

22 MS. GARCIA: Isabel Garcia here from
23 Tucson.

24 Professor Silverman, who do you believe
25 generally is, in terms of region, in terms of racial or

1 ethnic category will be most impacted by the majority
2 of the legislation that you have enumerated here,
3 particularly I guess the enforcement?

4 MR. SILVERMAN: Again, I think that's in
5 some ways hard to predict at this time. I guess what
6 first comes to mind are looking at the ethnicity of
7 those who were involved in the 9/11 incident with those
8 people who have the same ethnic background as those you
9 would think, and I'm sure you would have, would be the
10 population that this enforcement effort would be
11 particularly directed against.

12 But I think what we find is that we're
13 not always good in sort of discriminating in the sense
14 between one group and another, and when we create these
15 things, this net, this -- you know, this net goes over
16 foreigners in general. And I think that's the fear is
17 that it's not that --

18 First of all, I think there's a concern
19 and should be a concern about racial profiling and all
20 of that and what that may mean, but secondly, what I
21 think we find out is that anyone who is coming to this
22 country, and particularly any foreign person,
23 foreign-looking person who is coming to this country
24 versus those that will blend better into the majority
25 society of the United States, that is those from

1 Canada, Europe and so on, but people from really the
2 rest of the world I'm afraid are going to find
3 themselves in great difficulties with all of these
4 measures that we're putting in place.

5 And we really cannot ensure that it's
6 going to be directed to maybe those particular folks
7 that we may have -- we may have evidence of what their
8 intentions may be in entering the country.

9 So I think Mexicans are going to be
10 affected. I think along this border -- if we
11 militarize this border, we put more technology on this
12 border, it's not just going to affect people from
13 certain countries.

14 And let us say, as we know, it's not just
15 Mexicans and Central Americans that come over the
16 Arizona-Mexican border; it's people from all over the
17 world that now come over that border, both legally and
18 illegally.

19 And once we put this enforcement in
20 effect, once we put now the indefinite detention into
21 effect, I just don't think we're going to be
22 sufficiently able to discriminate necessarily on the
23 basis of nationality, the basis sometimes of even why
24 they may be coming here.

25 MS. GARCIA: Wouldn't you agree that the

1 biggest impact is felt by the Mexicanos on the
2 2000-mile border?

3 MR. SILVERMAN: Yes.

4 MS. GARCIA: And isn't it true that it's
5 already pretty much militarized?

6 Obviously you enumerated proposals for
7 the future, but isn't it correct that at this point in
8 time the people who are feeling the impact of this
9 incredible enforcement are Mexicanos?

10 MR. SILVERMAN: Clearly. First of all,
11 the largest numbers of people who come across the
12 border are people from Mexico, so clearly Mexicanos are
13 going to feel that impact, and I think even in --
14 greater than they are today.

15 MS. GARCIA: My understanding also is
16 that out of 11 million or so undocumented people in
17 this country, that 44 percent are Mexicano, yet 80 to
18 85 percent of all deportations are of Mexicanos; isn't
19 that right?

20 MR. SILVERMAN: Yes, I think those
21 figures are pretty close to correct.

22 The other thing I'm really fearing is are
23 we going to develop a real fear of foreigners, and
24 particularly foreigners who are brown-skinned
25 foreigners, black-skinned foreigners?

1 Are we going to start even becoming --
2 sort of a fear of foreigners? And again the more and
3 more that we put these immigration provisions into
4 effect, I think it just raises that fear.

5 And then when we put immigration into the
6 Department of Homeland Security, what are we saying?
7 We're saying, "You better watch out for these people
8 because where we're going to be administering
9 immigration is in a Department of Homeland Security.
10 What are we saying?"

11 DR. WEBB-VIGNERY: In recent years we
12 have seen a substantial increase in the number of
13 people dying on the border.

14 Are there -- has there been in recent
15 years certain laws which have redirected the traffic
16 pattern from Mexico to the United States which would
17 tell us why this increase has happened?

18 MR. SILVERMAN: I'm not sure I'm in a
19 really good position to answer that. I think clearly
20 the Border Patrol policies, putting their enforcement
21 emphasis into the more urban areas along the border has
22 clearly attributed to the increase in deaths along the
23 Mexican border, that is has pushed people out to the
24 more rural, the more dangerous places along the border.
25 That clearly has had an effect.

1 I think the tightening of immigration
2 clearly has had an effect. When we make it more
3 difficult for people to rejoin their families, when we
4 make it more difficult for people to leave this country
5 and go back to Mexico and be with their family and as a
6 result again just encouraging more and more people to
7 come across the border to reunite families, I think
8 that clearly has had an effect on the numbers of people
9 who have come over that border illegally.

10 As far as the patterns, I think other
11 people who are testifying today can probably give you a
12 better sense of those migration patterns that I
13 probably can't.

14 MR. PAZ: Ramon Paz.

15 Mr. Silverman, going back to policy,
16 particularly policymaking, from your knowledge and just
17 for the record, who are these people that do develop
18 policies, the many policies that you stated, and do
19 they have the involvement or at least solicit the
20 involvement of those people that you identified as
21 being affected by the policies?

22 MR. SILVERMAN: Other than probably
23 forums like this, as far as input from the affected,
24 very rarely.

25 Now, if an agency like the Immigration

1 Service or the Department of State puts forward a
2 regulation which can be a policy, they are required by
3 federal law to seek public input.

4 Now, again what people sort of find out
5 about that they're proposing a regulation and so on,
6 that's always a question, but at least there is some
7 attempt at least and there has to be to get public
8 input.

9 But a lot of policies do not go through
10 that kind of regulatory procedure. And so agencies
11 like the INS and the Border Patrol, of course which is
12 within the INS, will put together policies, procedures
13 and so on that get no input other than from people, of
14 course, maybe within that agency, are put into effect
15 without any notice but just sort of happen to find out
16 about it one way or the other.

17 If we're talking about what happens in
18 Congress, that's a little more public. Whether they
19 get input depends on individual senators and congress
20 people, whether they seek that input and whether people
21 know what's really happening in order to give that
22 input.

23 So, so many of these things really go
24 through Congress, and really no one really knows about
25 it until after it's happened. So, yes, there is some

1 mechanisms for regulations, for congressional acts, but
2 for anything else really not.

3 MR. PAZ: Is it appropriate to ask the
4 previous presenter the same question if he's involved
5 in any kind of activities whereby his input has been
6 solicited?

7 DR. WEBB-VIGNERY: That would be
8 appropriate.

9 MR. PAZ: Vice Chairman Roman, can I ask
10 you the question whether you have been solicited or
11 involved in the process of any regulations or policies
12 that effect the O'odham Nation?

13 MR. ROMAN: No.

14 MR. PAZ: None at all whatsoever
15 throughout the years?

16 MR. ROMAN: None.

17 MR. PAZ: No contact? Nothing?

18 MR. ROMAN: No contacts. We are
19 soliciting the nationality law, but we aren't getting
20 any response.

21 MR. PAZ: So just in essence, the Border
22 Patrol comes into the Nation, not even a courtesy call
23 to say, "I'm here patrolling, I'm here"? Nothing like
24 that?

25 MR. ROMAN: No. On the reservation?

1 MR. PAZ: On the reservation.

2 MR. ROMAN: Yes, we do meet with Border
3 Patrol to discuss about issues that impact the problems
4 that we're experiencing, and some of them have been
5 resolved. But like I said, new people come from
6 different areas and it starts all over.

7 DR. WEBB-VIGNERY: Chair recognizes Paul
8 Gattone.

9 MR. GATTONE: Paul Gattone from Tucson.

10 Professor Silverman, I know when there's
11 been discussion recently about need to seal the border,
12 my perception has been that most of that attention is
13 directed to the U.S.-Mexico border.

14 Is the same emphasis based on the
15 U.S.-Canadian border? And if not, do you have any
16 opinion about why they're treated differently?

17 MR. SILVERMAN: Traditionally the
18 U.S.-Canadian border has been treated greatly different
19 than the U.S.-Mexican border.

20 Canadians have a much easier way,
21 basically almost without documents they can come across
22 the Canadian-United States border.

23 There clearly, since 9/11, has been I
24 think some tightening of the Canadian-United States
25 border. Not anything, I don't think, in comparison to

1 the U.S.-Mexican border. But there has been --

2 Some of the acts that are being discussed
3 and policies do relate as well to the Canadian border
4 as they do to the Mexican border?

5 I think why there hasn't been the
6 emphasis, I think, is tradition. It's obvious for lots
7 of reasons. Particularly, Canadians look like the
8 majority of Americans and we have never feared them for
9 coming here for the same reasons that unfortunately we
10 have feared people coming from the south.

11 DR. WEBB-VIGNERY: I guess we've come to
12 the conclusion. Thank you.

13 MR. SILVERMAN: I appreciate the
14 opportunity to talk with you today.

15 DR. WEBB-VIGNERY: Thank you.

16 Katie Hudak from Border Links.

17 MS. HUDAK: My name is Katie Hudak. I
18 work at a binational nonprofit, a faith-based
19 organization. We function on both sides of the border,
20 and I would like to start with a story that I've been
21 involved in in the past couple of weeks.

22 In the last two weeks I have seen
23 firsthand the devastating effects of someone who almost
24 died from dehydration trying to cross the brutal desert
25 that we have here in Arizona.

1 Clara, not her real name, is from Mexico
2 City. According to her story, which I pieced together,
3 she paid someone to get to the border town of Piedras
4 Niegras, then along with other members of her group she
5 was led by a coyote on a gruelling eight-day journey by
6 foot ending in the desert west of Tucson where she
7 collapsed.

8 And her nephew who was traveling with her
9 was able to get help for her. As far as I can tell,
10 she came into Tucson by helicopter through BorStar, the
11 search and rescue team of the Border Patrol.

12 In the emergency room she was clinically
13 dead twice and resuscitated. She was in the intensive
14 care unit for six to seven days. She was in a regular
15 bed for 12 days.

16 When I met Clara and her sister, who came
17 up come Mexico City to help care for her, Clara was so
18 swollen from dehydration it was virtually impossible to
19 make out her features.

20 She couldn't swallow due to brain damage.
21 She was being fed through a tube, had pneumonia and no
22 one was sure that she would live, let alone ever
23 function again.

24 What does this story illustrate for us?
25 It shows that what for us is an immigration problem for

1 many people has turned into a death sentence.

2 The exact numbers of deaths this year
3 vary slightly depending upon what statistics you look
4 at. It hovers currently at about 120 people who have
5 made this the worst season in Southern Arizona.

6 I think what we need to do is address
7 some of the issues such as standard of living in the
8 countries of origin for migrants through acting as
9 equal partners in just and sustainable development.

10 If NAFTA allowed the free flow of goods
11 and capital on the free market, then it stands to
12 reason that labor should be allowed free flow as well.

13 This could be accomplished by a just
14 guest-worker program where individuals are not tied to
15 a particular sector of the U.S. employment market, and
16 that allows for just salary and benefits.

17 We need to take a look also at not only
18 what pushes people but what pulls people to this side
19 of the border, things such as low wages, poor living
20 conditions, landlessness, lack of education, but also
21 some of the polls are that jobs are apparently waiting
22 for people with the allure of the American dream.

23 Sending U.S. dollars back to Mexico is
24 one of the top three industries in Mexico.

25 Clara's story has a fairly happy ending.

1 Clara has miraculously improved to the point where she
2 can swallow, talk and even walk. She went back to
3 Mexico City this week.

4 But people like Clara and those whose
5 stories do not have happy endings compel us to do more
6 every day.

7 DR. WEBB-VIGNERY: Thank you. Do we have
8 questions?

9 DR. WEBB-VIGNERY: Chair recognizes Mr.
10 Osborn.

11 MR. OSBORN: Jones Osborn, Yuma.

12 Ms. Hudak, you've recommended a
13 guest-worker program. Do you envision a cap of any
14 kind upon the number of workers who would want
15 admittance to the United States?

16 MS. HUDAK: I think what it might look
17 like is that for those who would go back to Mexico
18 would be first in line under a temporary worker
19 program, that it could include something such as
20 transition to permanent residency.

21 I don't know what that cap might be,
22 however.

23 MR. OSBORN: Thank you.

24 DR. JUNE WEBB-VIGNERY: Chairs recognizes
25 Isabel Garcia.

1 MS. GARCIA: Isabel Garcia from Tucson.

2 What about the people that have been
3 living here for many years? Are you suggesting only
4 those that are coming across be given some kind of work
5 permit or what do you believe should happen with people
6 in families that have been here for many years living
7 sort of second class existence here?

8 MS. HUDAK: I think there's some various
9 ideas that are floating around. One of those is a
10 earned legalization program. Another is an amnesty
11 program.

12 I personally would be in favor of
13 anything that would help to get those people into a
14 more permanent better status.

15 MS. GARCIA: And follow-up question: In
16 regards to a guest-worker program, how would you
17 envision this program to operate without impacting
18 labor in this country? In other words, organized labor
19 and not be permitted to exploit people like the
20 braceros in the 1960s?

21 MS. HUDAK: What I would envision is that
22 people would be allowed to organize, to become part of
23 the unions and therefore would work in conjunction with
24 labor in the United States and therefore be able to
25 receive those benefits and protections as well.

1 MS. GARCIA: So in enacting this kind of
2 program you would envision organized labor being
3 involved in these discussions versus the braceros
4 program which was just government and industry
5 involved?

6 MS. HUDAK: That's correct.

7 DR. WEBB-VIGNERY: Any other questions?
8 I want to thank you for coming and sharing your
9 information with this committee.

10 MS. HUDAK: Thank you very much.

11 DR. WEBB-VIGNERY: At this point we will
12 take a short break, 10 minutes, and come back.

13 (15-minute recess)

14 DR. WEBB-VIGNERY: The next person we
15 have on the agenda is Robin Hoover from Humane Borders.

16 If you could give us an overview of what
17 Humane Border has, why Humane Borders exists and what
18 your activities have been and what your perceptions
19 are, what has happened recently on the border and
20 specifically the deaths that we have seen on the
21 border.

22 MR. HOOVER: Humane Borders began as an
23 organization in June of 2000 in response to the
24 incredible rising rate of deaths in the desert. It's a
25 faith-based organization, and in June of 2000 we set

1 about a process where we wanted to implement the
2 provision of lifesaving humanitarian assistance in the
3 desert, specifically in the form of placing out water
4 stations and to begin a program of advocacy for change
5 of United States immigration border and law enforcement
6 policies, each of which contribute in various ways to
7 the rising number of deaths.

8 We produced a mission statement soon
9 after we began and I'd like to read that. It's brief.
10 Humane Borders, motivated by faith will work to create
11 a just and humane border environment. Members will
12 respond with humanitarian assistance to those who are
13 risking their lives and safety crossing the United
14 States border with Mexico.

15 We will encourage the creation of public
16 policies toward a humane nonmilitarized border with
17 legalized work opportunities for migrants in the United
18 States and legitimate economic opportunities in
19 migrants' countries of origin.

20 We welcome all persons of good faith.
21 Humane Borders is a membership organization comprised
22 of approximately 40 different congregations, human
23 rights organizations, immigration service providing
24 legal organizations and a few corporate sponsors.

25 What we are doing at this time is placing

1 water stations in strategic locations on federal,
2 county and private property.

3 I've just come back from setting up water
4 station number 27 at the foot of Kitt Peak.

5 We received word yesterday from the
6 Bureau of Land Management, Department of Interior, that
7 we have been approved now to place three more water
8 stations south of Ajo, and it is imminent that we will
9 receive four more permits to place water stations in
10 the Ironwood Forest National Monument.

11 Collectively these stations are
12 dispensing approximately between four and five hundred
13 gallons of water a week.

14 That doesn't sound like a lot, but
15 they're in very strategic locations where there are not
16 other existing wells, windmills, stock tanks and that
17 sort of thing.

18 The reason that we're here is we say that
19 the numbers are rising at an awesome rate. I hold in
20 my hands a copy of the list of everyone who has died
21 out here, where they're from, where they died. It's an
22 immense piece of data and I would be glad to share a
23 copy of that with you.

24 I wanted to speak only about two things.
25 This is just one citizen's response to what's going on.

1 The question that I began talking about or thinking
2 about with Arthur Palacios when we began the inquiry is
3 just exactly how is this a matter of civil rights? And
4 I wanted to make a couple observations on that point.

5 Civil rights in the United States are a
6 function of citizenship. Citizenship is a function
7 typically of being born on this soil or being blood
8 related to someone, and the point that I would make
9 there is that we have an incredible number of
10 variances, variations to that.

11 If you were born to U.S. citizens on
12 other soil, then that's fine, you're considered a
13 citizen and civil rights pertain to you.

14 If you marry someone, then that's the
15 equivalency of a blood relationship and then that
16 person is able to petition others.

17 If you are military and someone is born
18 to you or your family on foreign soil, then all of a
19 sudden we make that exception.

20 And periodically Congress comes along and
21 says, "Here's a particular classification of people.
22 We are going to extend those benefits even though they
23 were not born here on this soil and even though they do
24 not have a blood relationship."

25 So what happens is you start to find a

1 vanishing reference for what does it mean to be a
2 citizen. And because you have a vanishing reference to
3 what does it mean to be a citizen, we have a vanishing
4 reference to what it means to have civil rights.

5 So we are increasingly according due
6 process and civil rights to persons who are here in the
7 United States who are undocumented by various changes
8 in court decisions that have been passed in recent
9 years and recent months even.

10 So what I'm trying to say is how we deal
11 with persons and how we integrate them into our system
12 a very arbitrary, relative kind of concept.

13 It has to do with what the spirit is of
14 Congress is in the moment. Sometimes it has to do with
15 people reading the polls.

16 Right now we have a situation where the
17 United States Government does not have the political
18 will or the financial resources to close its border.

19 In the meantime we have a phenomenal
20 amount of people who are crossing the border who are
21 without documents. Without those documents they do not
22 have civil rights.

23 We would like to see a number of changes
24 take place where the people who are here who are
25 undocumented would be given an opportunity to have a

1 legal position in the United States, with that they
2 would at least have minimal decency, human kinds of
3 access to healthcare or police protection when it's
4 necessary. Those kinds of things.

5 We would also like to see a legalized
6 work opportunity as we stated in our mission statement
7 where these people can obtain a visa directly and not
8 have it lorded over them from an employer so that they
9 can seek work and transfer where they're working
10 according to their needs.

11 We would like to see an update of the
12 registry of the INS. We'd like to see Mexico exempted
13 from the worldwide quota of visas. Mexico had a baby
14 boom 20 years ago. Their baby boomers are making our
15 baby boomers rich. We need to deal with some economic
16 realities in a responsible way.

17 The other kind of comments I would issue
18 to the group is that we continue to be in a significant
19 discourse, as I refer to it, with public administrators
20 and elected officials in Southern Arizona trying to
21 create an environment where we can be responsible for
22 what's happening on our land under the various watches
23 of the persons charged with that authority.

24 Even if every policy kind of change that
25 we want were in place by magic wand tomorrow, there

1 would still be death in the desert because of persons
2 who do not avail themselves of the legalized process to
3 enter into the United States, because of employers who
4 continue to recruit and bring these people forward.

5 For a variety of reasons we're still
6 going to have people crossing out here. In large
7 measure -- and I don't have a huge bone to pick with
8 Border Patrol or any other law enforcement agency --
9 but the empirical evidence is very clear as we continue
10 to close certain traditional places for crossing that
11 have been exercised for eons, people are put off into
12 dangerous and delicate parts of our desert and it has a
13 very deleterious effect on the environment and a very
14 deleterious effect on our international relations, and
15 so we're going to have to find out exactly what -- how
16 we're going to treat these people and how to respond to
17 it.

18 Some of the land managers are now saying
19 the United States Government does not control the
20 border, we cannot control the border, all we can do is
21 manage the deleterious effects.

22 So we're trying to participate in that
23 discourse. We're encouraging as many people as
24 possible.

25 While we do not extend civil rights

1 directly to the undocumented, from the faith tradition
2 we are obligated out of Tora to treat these people as
3 if they're one of our own.

4 So the invitations that we extend to
5 people who can make policy decisions is that if you are
6 on American soil you need to be treated with at least
7 the same due minimal process and have at least the same
8 access to facilities, to programs, to relief, to rescue
9 -- which means to remove somebody from imminent peril.

10 And if anyone wants to participate in
11 rescue operations we want to be part of that
12 conversation. That's who we are and what we do and
13 what we think about stuff. That's short.

14 DR. WEBB-VIGNERY: Chair recognizes Paul
15 Gattone.

16 MR. GATTONE: Mr. Hoover, thank you for
17 coming. Paul Gattone from Tucson.

18 More a point of clarification I think.
19 I'm not sure if I misunderstood what you said, but
20 actually as an attorney and civil rights lawyer I can
21 say there's been numerous court decisions that have
22 said that anyone who is in this country, documented or
23 undocumented, have to have civil rights extended to
24 them: rights of due process, rights as a defendant in
25 criminal proceedings, civil rights, et cetera.

1 We have unfortunately forgotten that in
2 recent years that all people who are here have civil
3 rights, and as my co-commissioner pointed out to me
4 aside from that there are also human rights that are
5 extended to people, all citizens of the world by the UN
6 Charter and other documents that this country has
7 signed on to.

8 So I think part of our challenge is to
9 remind people that people, whether they're in this
10 country legally or illegally do have civil and human
11 rights.

12 MR. HOOVER: I agree with your statement,
13 and would qualify it, though, significantly that if you
14 took a judicial process in INS court proceedings, if
15 you've sat as long as I have, especially back in the
16 '80s when they were using administrative law judges who
17 had such phenomenal discretion, no judicial review, it
18 was also whimsical.

19 Ph.D. dissertation studies have been
20 written that showed that what the judge had for
21 breakfast had more to do with proceedings on Salvadoran
22 removals than anything else. And those persons did not
23 have the appropriate, what I would consider civil or
24 judicial rights, because they are treated different.

25 And INS court is not a carbon copy in a

1 diminutive form of the American judicial system, even
2 though it comes under their auspices. So those are not
3 direct correlations, so I do not consider those any
4 kind of equivalency.

5 We have a lot of homework to do in that
6 area.

7 MR. GATTONE: I agree. Thank you.

8 DR. JUNE WEBB-VIGNERY: Chair recognizes
9 Isabel Garcia.

10 MS. GARCIA: Isabel Garcia from Tucson.

11 I too wanted to just do a little more
12 clarification. Founding fathers in discussing the
13 constitution had enormous debate about whether
14 constitutional protection should be extended to only
15 citizens or people within the boundaries of the U.S.,
16 and as we all know -- a lot of people don't know --
17 I've talked to Border Patrol agents who don't know --
18 but constitutional protections are extended to
19 everybody found within the territory of the United
20 States.

21 On the other hand, I do agree with
22 Mr. Hoover in that immigration proceedings are called
23 civil in nature. You're not entitled to a lawyer and
24 therefore -- and then the standards for the judges are
25 quite different from a criminal case, for instance, so

1 the arbitrariness is rampant and the service is also
2 represented by a lawyer while most immigrants are not.

3 MR. HOOVER: Right.

4 DR. JUNE WEBB-VIGNERY: The chair
5 recognizes Jones Osborn.

6 MR. OSBORN: Jones Osborn from Yuma.

7 Mr. Hoover you've mentioned -- and I
8 think I'm quoting from you -- legalized work
9 opportunities as being one of the goals of your
10 organization.

11 Could you tell us what your group
12 envisions under that sort of a framework of legalized
13 work opportunities?

14 MR. HOOVER: Yes. I'll be glad to
15 respond.

16 We use a variety of terms in public
17 discourse right now concerning work permits or
18 guest-worker programs.

19 We're putting an umbrella with that term
20 to say "legalized work opportunities" so that we do not
21 continue to perpetuate the undocumented status of
22 people who are gainfully employed in the United States
23 because we have seen significant abuses in other
24 institutionalized work opportunities in the past,
25 beginning with the first bracero program in 1942.

1 Too frequently any scheme or any scenario
2 that has been worked out, the employer had enormous
3 power over another person.

4 And in our society that is a question of
5 democratic values and we don't think that an employer
6 should have that much power over an employee.

7 The cases are littered with this. We've
8 had the situation where the employer says, "Okay, I'm
9 hiring you. You're getting this room and board and \$3
10 an hour and we have sex every Thursday afternoon at two
11 o'clock." That sort of stuff just does not set well.

12 If someone is changing beds or cleaning
13 hotels in Las Vegas and they have a problem, a
14 harassment kind of a situation, that person ought to
15 have the power, legitimate power, to go from that hotel
16 to go down the street and get a different kind of job
17 or the same job at a different place.

18 A number of work scenarios do not allow
19 for that now, so we want to legalize it because if
20 you're coming across the desert anyway in incredible
21 numbers, that is very dangerous.

22 If you legalize that situation, give
23 documents to these people, then they can use public
24 transportation, the employer can work with them to
25 transport. There's a number of scenarios. A relative

1 could pick them up at the border. Some other way.

2 This is another way of rescuing someone,
3 removing them from imminent peril or sustained systemic
4 form of oppression in the employment setting.

5 MR. OSBORN: Who, Mr. Hoover, who does
6 your group see as administering such a program?

7 MR. HOOVER: I have no idea. We can
8 float that balloon.

9 DR. WEBB-VIGNERY: Chair recognizes
10 Lorraine Lee.

11 MS. LEE: Lorraine Lee. Madam Chair.

12 Mr. Hoover, how has your group been
13 received by the surrounding areas where the water tanks
14 exist and by law enforcement, primarily Border Patrol?

15 MR. HOOVER: It requires multiple
16 characterizations. The majority of our water stations
17 are in very remote locations so there's no one around.

18 Cabeza Prieta National Wildlife Refuge,
19 which is 861,000 acres of land and we have seven of our
20 flags flying over existing wildlife watering locations.

21 In the spring an event called the Sonora
22 Desert Shindig was held where a lot of people who
23 support that property and the programs there come and
24 celebrate desert life together.

25 We had a booth, and I would say 80

1 percent of the folks that came there were very
2 supportive, picked up literature, talked to us,
3 encouraged us.

4 One person even said it's safer now to
5 hike in this area because you can see the flags in the
6 distance. And to us it's sort of like playing golf,
7 you go from one pin to the next.

8 Other people said what you're doing is
9 illegal, it's immoral and fattening and everything else
10 and we shouldn't do this. So that's one
11 characterization in very remote areas.

12 Where we place water stations on private
13 property, in every single instance that's where a
14 private individual has approached us and asked if we
15 would be interested in placing a water station in that
16 location, and only when we considered it to be in a
17 strategic area that is still somewhat isolated and
18 therefore would be quite functional do we do that.

19 Later this afternoon when we place a
20 water station we notify Border Patrol of the exact GPS
21 location of the station. It's known. There's no
22 secret. If you're in a patrol helicopter it may have
23 been that someone's already found the flag that's going
24 up today by helicopter. It will be reported one way or
25 another.

1 This is a very public sort of action. We
2 have received significant editorial endorsements far
3 and wide. There are folks who are quite concerned with
4 this activity and what -- we interpret most of the
5 negative comments that we have as anti-immigrant
6 comments and not necessarily anti-Humane Borders
7 comments.

8 Law enforcement has been incredibly
9 cooperative. The Pima County government and their
10 emergency preparedness folks, response folks, are also
11 advised of the location.

12 Pima County government has been a funding
13 source for the work that we do. We're an official
14 contractor for Pima County. We have had conversations
15 with the Border Patrol from the very beginning -- open
16 and frank conversations about their concerns, our
17 concerns, and I would say that we have a strong working
18 relationship each trying to seek ways to mitigate some
19 of the effects of what we're seeing out here in the
20 desert.

21 DR. WEBB-VIGNERY: As a follow-up
22 question, are there stations on the Tohono O'odham
23 Nation?

24 MR. HOOVER: Humane Borders does not
25 operate any water stations on that property.

1 DR. WEBB-VIGNERY: Thank you.

2 MR. PAZ: Roman Paz.

3 The media at one time in the last few
4 months it brought to the attention that there was some
5 discord between the reservation and your organization.
6 What is that relationship right now?

7 MR. HOOVER: My response to that is the
8 Tohono O'odham do not actually speak with one voice on
9 that issue.

10 We've had support from the executive,
11 we've had negative response from the executive. We've
12 had support at the district level. We've had negative
13 response at the district level. It's an ambiguous
14 answer.

15 DR. WEBB-VIGNERY: Chair recognizes
16 Isabel Garcia.

17 MS. GARCIA: But you are aware that the
18 nation has spent millions on rescuing and providing
19 water and food and all of that --

20 MR. HOOVER: Sure.

21 MS. GARCIA: -- not only on an individual
22 personal basis, but as a government; isn't that right?

23 MR. HOOVER: That's correct.

24 MR. PAZ: Madam Chairperson, will it be
25 appropriate for Vice Chairman Mr. Ramon to address that

1 topic if he wishes?

2 DR. WEBB-VIGNERY: I think that would be
3 appropriate.

4 MR. PAZ: Mr. Ramon, would you like to
5 comment on that topic in terms of the relationship you
6 might have with this organization?

7 MR. RAMON: Yes. Our people, like I said
8 at the beginning of my recitation, that our people have
9 been assisting the immigrants from as far back as when
10 they started coming into our land, and that's a
11 traditional way of being part of our tradition, to help
12 each other, and I expressed that in my presentation.

13 And there are many issues concerning the
14 water stations. Some identified as encourage
15 immigration where the terrain, the desert, is very
16 dangerous to anybody crossing that area, especially in
17 the summertime.

18 And with the amount of immigrants coming
19 to our nation, 1,500 to 2,000 a day, there is no way
20 that that amount of water or personnel would prevent
21 people from getting into dehydration and some of the
22 other concerns.

23 Why are we, you know, really making the
24 water station an issue where the problem is the
25 nationality law? Where the Operation Gatekeeper

1 secured all the other areas and left our reservation
2 open where it's probably the most dangerous part of the
3 nation to travel through. All these come into focus.

4 We're trying to tell the Border Patrol
5 who deployed their forces and secured the border so
6 that death wouldn't occur on our reservation.

7 We feel pain ourselves seeing our
8 brothers die, and water station is a minor solution to
9 the problem. We should change the nationality law.

10 DR. WEBB-VIGNERY: Thank you.

11 Chair recognizes Paul Gattone.

12 MR. GATTONE: Mr. Hoover, I know you had
13 a list when you started of people that died. Do you
14 have -- can we also assume that are many people who die
15 anonymously in the desert?

16 MR. HOOVER: That's anecdotal, but there
17 are a variety of authors who have written stories in
18 book form and other manuscripts, et cetera, et cetera,
19 archeologists in Southern Arizona who give witness to
20 the fact that many people are never discovered.

21 Last year I was handed a photograph from
22 Chief Ranger Dale Thompson at Organ Pipe Cactus
23 National Monument, and it was only -- it was of someone
24 who had died of dehydration, we assume. And in that
25 photograph of a person laying on their back you can see

1 one's tennis shoes, ankle bone, Levis and exposed rib
2 cage. No head. And the coyotes had had a feast.

3 And so we have to be aware of this. To
4 determine the cause of death in that situation is very
5 difficult, presents a problem to law enforcement,
6 medical people, et cetera.

7 But had this gone undetected over a brief
8 period of time more, then that person would have been
9 so scattered -- the remains -- that we may not have
10 ever been aware of it.

11 MR. GATTONE: How many people do you have
12 on that official list of people who have --

13 MR. HOOVER: This is the list according
14 to the Consulate of Mexico from beginning -- the first
15 death reported here is 24 January and ending on -- for
16 some reason I don't have the very last page -- 21st or
17 so of August, and it has 100 names here.

18 The various counting entities -- Border
19 Patrol will count one way from a fiscal year, other
20 authorities are counting from January 1.

21 It appears that if you count from all
22 jurisdictions, all reporting sources, that we're in the
23 vicinity of 128 or so deaths.

24 Some of these are unconfirmed and you
25 don't know the source, so no matter who gives testimony

1 it's going to be a variable number.

2 DR. WEBB-VIGNERY: Thank you for coming
3 and meeting with us this morning.

4 The next person is David Aguilar, the
5 Chief of the U.S. Border Patrol.

6 MR. AGUILAR: Madam Chairman, my people
7 are going to set up some slides behind you that I will
8 be referring to. It will take just a second.

9 My name is David Aguilar, the chief
10 Border Patrol agent for the Tucson Sector of the United
11 States Border Patrol.

12 First of all, I want to thank you for
13 giving us the opportunity to be here this morning to
14 answer any and all questions you might have relevant to
15 the Border Patrol, how we operate, where we operate and
16 how we go about enforcing our nation's laws.

17 It is always my feeling that it is
18 important to speak to the communities that we serve.
19 The communities are diversified, and in the case of
20 Tucson Sector, very vast. And you will good get sense
21 of that as I progress through any briefing this
22 morning.

23 What I'd like to do is give you a very
24 brief sense of the Tucson Border Patrol sectors and the
25 Border Patrol organization's strategy, some of the

1 tactics that we utilize, some of the changes,
2 complexities and uniquenesses of the Tucson Sector out
3 here as it relates to enforcement of our nation's
4 immigration laws.

5 I'd like to begin by saying that the
6 Tucson Sector covers approximately 261 miles of border
7 with our neighboring country Mexico. That 261 miles is
8 very diverse in the area of topography and the area of
9 terrain, and in the area of federal lands, the Tohono
10 O'odham Nation that we deal with and the other
11 communities that we deal with.

12 In that aspect we have over 1,700
13 officers that are deployed throughout this sector.
14 Those are Border Patrol agents. That does not include
15 support personnel, detention enforcement, clerical
16 support and classifications of that type.

17 We operate by way of eight Border Patrol
18 stations throughout the sector. The eight Border
19 Patrol stations are deploying their resources in direct
20 support of immediate border enforcement.

21 Even though some of these stations are
22 located in one case over 110 miles from the border, the
23 efforts of our law enforcement officers are in the
24 immediate border area.

25 As we progress I will point out some of

1 those stations. I'd like to begin by pointing out also
2 that the Border Patrol strategy -- and this is the
3 Border Patrol as an organization -- is one of
4 deterrence -- preventing illegal entry from occurring
5 into this country and therefore preventing some of the
6 tragedies that are occurring along our nation's borders
7 as a direct result of that.

8 When we deploy our resources, we deploy
9 our resources against the infrastructure that the
10 smuggler uses in order to facilitate his or her efforts
11 on bringing people into this country.

12 That infrastructure that I refer to
13 exists not only on the immediate border, but it exists
14 south of our nation's border and north of our nation's
15 border.

16 The area where the Border Patrol
17 concentrates its effort is on the border itself. This
18 infrastructure that I refer to are things such as
19 highways leading to the border from Mexico or from
20 other sending locations. Staging areas such as
21 airports. Staging areas such as cities on the south
22 side that will facilitate the smuggler assimilating
23 into general society in order to stage and try to
24 bypass our enforcement efforts.

25 And then there's the border where we

1 deploy in a forward deployed manner in order to prevent
2 these entries from occurring, in order to prevent the
3 smuggler from having free access across our nation's
4 borders.

5 Especially in this day and age it is
6 absolutely important that we as a country be able to
7 manage our borders. That is what the Border Patrol is
8 trying to do.

9 By deploying our resources in such a
10 manner as to protect our nation's border, prevent
11 illegal entries of persons, of narcotics and anything
12 else that might harm this nation.

13 We do this in a variety of ways. We
14 deploy our officers, we deploy technology, we deploy
15 barriers in order to take away that facility that the
16 smugglers concentrate on using to come into the
17 country.

18 Now I have touched on the infrastructure
19 south of the border, the infrastructure on the
20 immediate border and then there's the infrastructure
21 leading away from the immediate border into the
22 interior of our country, which is the ultimate final
23 distinction for people attempting to cross our nation.

24 That translates to highways leading away
25 from the border. Highway 10 just out our door here is

1 one of those pieces of infrastructure that the
2 smugglers utilize. Highway 19 leading from Nogales is
3 another piece of that infrastructure. So the Border
4 Patrol to a lesser degree operates in minimizing and
5 mitigating the smugglers' ability to utilize the
6 infrastructure leading away from the border.

7 In every case the United States Border
8 Patrol and the Tucson Sector operates in immediate
9 support of forward deployment to protect our nation's
10 borders.

11 Those officers that operate along our
12 border, they work out of the Border Patrol stations.
13 They work under direct supervision of supervisors and
14 an agent in charge that deploys our strategy. That
15 strategy is one of deterrence.

16 I will point out to the back there off to
17 my left the first slide that we have up there. Those
18 are what we refer to as entry and decision points.
19 It's a map of points that effect the Tucson Sector, the
20 Arizona community and the Mexican community south of
21 the border also.

22 That is an important aspect of what we
23 speak of, because these decision points, these staging
24 areas impact not only the communities that are along
25 the immediate border, but they also impact south of the

1 line, the Tohono O'odham Nation, our nation's forests,
2 the monuments, the cities and so forth.

3 The reason we point these out is I spoke
4 about infrastructure earlier. In the middle of that
5 first slide you have a major highway leading up to
6 places such as Altar, Caborca, Cananea, Sonoyta, and
7 those areas that are utilized by the smugglers in order
8 to stage, in order to facilitate their entry into the
9 country.

10 You will also notice almost paralleling
11 that border is another highway that literally parallels
12 our nation's border with Mexico. It facilitates the
13 smugglers' ability to basically go up and down that
14 highway in order to pick and choose where they will
15 promote their trade of human trafficking.

16 The reason I point this out is because it
17 is that smuggling infrastructure which the Border
18 Patrol addresses by way of forward deployment of
19 resources, utilization of barriers, creating mobility
20 and accessibility to those areas.

21 To the second slide on -- the second
22 slide off my left, those color-coded areas will point
23 out to you areas such as Cabeza Prieta Wildlife, Organ
24 Pipe Cactus National Monument. The Barry H. Goldwater
25 Air Force Range is in kind of a purplish color up

1 toward the top.

2 The yellow color in the middle depicts
3 the Tohono O'odham Nation which is basically the size
4 of the state of Connecticut if we were to compare it to
5 one of our states.

6 Ironwood National Monument. We have the
7 Buenos Aires Wildlife Refuge. We have the Coronado
8 National Forest, and those three red stars that you see
9 up there are a depiction of the location of our Border
10 Patrol stations.

11 I point this out because that is one of
12 the complexities and challenges that we face as a
13 Border Patrol that we work around and have direct and
14 indirect impacts on the communities that we serve.

15 Off to my left the first star depicts the
16 station of Ajo, Arizona 27 miles from the border. That
17 is the only location where we can have a station,
18 because as you can see it is surrounded by the
19 monuments, by the national forests and by the nation.

20 At the very top is the Casa Grande
21 Station which is 110 miles from the border. And on to
22 the extreme right is the Tucson station.

23 The reason I point those three stations
24 out is because the personnel assigned to those stations
25 are the ones that work in the immediate border area of

1 the Tohono O'odham Nation and those national monuments
2 and forests.

3 Between those three stations we have
4 hundreds of officers assigned there. During a 24-hour
5 period there is a need for those hundreds of officers
6 to transit to the immediate border in order to commence
7 immediate border operations.

8 The nation, some of these national
9 monuments, these national forests will see our officers
10 transiting those communities in order to deploy on the
11 immediate border.

12 On the nation, for example, there are a
13 minimum number of means for us to get to the border.
14 So does the nation now see an elevated level of Border
15 Patrol presence? Yes. Yes, it does.

16 They see us transiting to the border in
17 order to support our forward-deployed deterrence-based
18 strategy.

19 Now in that transition or that transiting
20 to the immediate border, do we run into smuggling
21 cases? Do we respond to the Tohono O'odham Police
22 Department? Do we respond to the Department of Public
23 Safety and Pima County and so forth? Absolutely. As
24 we have always done.

25 But because of the smugglers' shift, the

1 smugglers' shift from other areas across our nation,
2 across our nation's borders into the area that we call
3 the west desert -- which by the way that's what I'm
4 referring to here -- there is a need for our increase
5 in operations out there.

6 The next slide, basically -- and I would
7 -- I think all of us -- as I understand this whole
8 panel is made up of Arizona representatives. I think
9 all of us have experienced the severity of drought that
10 not only this state but this part of the country has
11 gone through over the past four years.

12 This depicts the severity of drought.
13 The lower right-hand corner box depicts the actual
14 rainfall that we have had through I believe June or
15 July had been minimal until our monsoons hit.

16 The reason we put that up there is
17 because this is one of the components, one of the
18 deadly components that has caused some of the deaths
19 that we have seen out there in the nation.

20 That, along with the smugglers operating
21 in some of the most dangerous areas known to man within
22 the United States is a deadly combination.

23 On my far right-hand side basically is a
24 depiction of -- graphical depiction of what it is that
25 the Border Patrol is deployed out there.

1 We have operations where we have shifted
2 air access into the desert. We have moved additional
3 detailed officers in there. We have deployed our
4 transportation assets in order to give us more ability
5 to remove people that have been apprehended. We have
6 deployed additional assets specifically targeting the
7 prosecution of smugglers that deal in human
8 trafficking.

9 We have deployed our anti-smuggling
10 units. We are working close at hand with the other
11 police departments, with the U.S. Attorney's Office and
12 so forth.

13 Madam Chairman, what I wanted to do was
14 give you -- and that's a very brief foundation of the
15 way that we operate. I would welcome any questions
16 that you have. I feel that's probably where a lot of
17 the information exchange would be coming from.

18 DR. WEBB-VIGNERY: Chair recognizes Paul
19 Gattone.

20 MR. GATTONE: Paul Gattone from Tucson.

21 I'm a little bit concerned about your use
22 of the term "smuggler." You're certainly not telling
23 this body that everybody who comes across the
24 U.S.-Mexico border is a smuggler, correct?

25 MR. AGUILAR: Absolutely not. But what

1 I'm trying to communicate is that the vast majority of
2 the illegal entrants that we deal with are under the
3 guidance, management, protection and facilitation of a
4 smuggler.

5 MR. GATTONE: So the vast majority of the
6 people that you deal with on a daily basis certainly
7 are not smugglers, but are these individuals who have
8 paid smugglers to come into the country, correct --
9 from coyotes?

10 MR. AGUILAR: Yes, and that's why I've
11 specified that these are human traffickers.

12 MR. GATTONE: And they're trafficking in
13 individuals who are coming in this country looking for
14 work or to join family members, correct?

15 MR. AGUILAR: There's a variety of
16 reasons for them coming into this country, yes, sir.

17 MR. GATTONE: By way of clarification,
18 too, so were talking about the threat to this country.
19 It's safe to say that the vast majority of the people
20 that you deal with on a daily basis are these
21 individuals looking for jobs or coming to meet family
22 and indeed post no actual threat to this country,
23 correct?

24 MR. AGUILAR: As far as individuals go, I
25 would say that the vast majority of the people we deal

1 with are in fact people that are either economic
2 refugees fleeing some kind of persecution or are
3 wanting to join family members.

4 The one thing that is important I feel to
5 point out is that the criminal element in this country
6 as in any other country is one that will take advantage
7 of any situation that is in disarray.

8 The unfortunate thing about the criminal
9 element is that there is an attempt at all levels,
10 regardless of the crime that they are trying to
11 commitment, to assimilate, to assimilate either into a
12 law-abiding society or to assimilate into a situation
13 that is in disarray that we have -- we as an
14 enforcement community -- have a hard time grabbing a
15 hold of.

16 So the potential for any kind of
17 immigration is there. That is why I qualified my
18 statement earlier that there is an absolute need for
19 border control and border management.

20 MR. GATTONE: Just for the record, the
21 question was that the majority of the people who you
22 deal with on a daily basis who are coming into the
23 country are coming in for nonthreatening reasons; is
24 that right?

25 MR. AGUILAR: I would agree with that.

1 Yes, sir.

2 MR. GATTONE: The smugglers that you
3 talked about are the coyotes. What is the threat that
4 they pose of bringing people into this country?

5 MR. AGUILAR: The biggest threat that
6 they pose right now is unfortunately, I believe, to the
7 human beings that they traffic, that they put in the
8 situations that are causing death. That is one of
9 them.

10 The other potential is of them bringing
11 people into this country by way of routes that they
12 have established or their attempts that would bring
13 harm to this country to members of our society.

14 They are a criminal element. They are a
15 unscrupulous criminal element as they have proven.

16 Last year's situation 14 deaths occurred.
17 On a daily basis -- in fact this morning reporter Susan
18 Carol reported on deaths specific to females.

19 In every report that is done, the one
20 thing that binds just about every report is the
21 continued abandonment of these people in these areas by
22 the human smuggler, the continued lack of care, the
23 continued callousness and the only interest is that
24 dollar that they're after at the cost of lives, at the
25 cost of this country.

1 MR. GATTONE: Just for clarification, for
2 the record the basic threat that these smugglers pose
3 is not to the security of this country but to lives and
4 safety of those who they're bringing into the country,
5 correct?

6 MR. AGUILAR: The threat posed is one of
7 opportunity to anybody wanting to come into this
8 country, that is given by the smugglers to come into
9 the country, whether it be for the purposes of seeking
10 a better life or to hurt our society. That opportunity
11 is offered up by the smugglers.

12 MR. GATTONE: I think you answered a
13 minute ago that primarily it's your belief that the
14 vast majority of the people who are coming into the
15 country through the Mexico-U.S. border are economic
16 refugees or coming in to meet families, correct?

17 MR. AGUILAR: Yes. I believe I stated
18 that earlier.

19 DR. WEBB-VIGNERY: The chair recognizes
20 Isabel Garcia.

21 MS. GARCIA: Isabel Garcia from Tucson.
22 Good morning Mr. Aguilar.

23 MR. AGUILAR: Good morning.

24 MS. GARCIA: I have a series of
25 questions, and I guess I'll begin with the follow-up on

1 the smuggler issue before I get into the question of
2 the operations.

3 In terms of smugglers, isn't it true,
4 sir, that prior to the beginning of Operation Safeguard
5 in Arizona -- let's talk specifically about Arizona --
6 that people crossed in traditional areas, holes in the
7 fence in Nogales, Agua Prieta and Douglas, never
8 usually requiring smugglers and if they did, the
9 smuggler would cost two or three hundred dollars.
10 Isn't it true that now here in the year 2002 most
11 people, because of the militarization of the border --
12 Operation Safeguard specifically -- now seek the
13 assistance of smugglers in a rate that exceeds much
14 more than prior to the operations; isn't that right?

15 MR. AGUILAR: The manner in which I would
16 answer that question is the following: The smuggler's
17 always existed -- smuggler of human beings.

18 I've been in this agency for over 24
19 years. From literally the first week on duty I was
20 dealing as an enforcement officer with smugglers.

21 I commenced my job, my service, in
22 Laredo, Texas. The smuggler then was crossing people
23 cross the Rio Grande causing deaths at that time,
24 causing deaths along Laredo's northernmost desert area.
25 They have always been there.

1 The smuggler is just like any other
2 criminal. They adjust to our enforcement efforts out
3 there.

4 Because the areas of facilitation are
5 being taken away, we are just like any other
6 enforcement agency. We concentrate on that area of the
7 criminal aspect that we have more control over and that
8 is taking away the locations to facilitate the crime.

9 The smuggler is in fact now operating in
10 these more dangerous areas. People will seek them out.

11 The one thing that we always point out is
12 the following: That the conscious decision that is
13 made by a person to enter this country illegally is in
14 fact a conscious decision.

15 The conscious decision that proves mortal
16 is the conscious decision made by the smuggler to
17 manage these people, to guide these people through some
18 of the most dangerous areas known to man.

19 MS. GARCIA: So the answer is, yes, since
20 the beginning of Operation Safeguard more people are
21 utilizing in this particular area the services of a
22 smuggler? I understand there are opportunists and
23 whatever, but the answer is yes? Is that what I
24 gather?

25 MR. AGUILAR: The answer is because we

1 have seen an elevation of illegal entrapment that draws
2 new smugglers to this area, so yes, there are more
3 smugglers operating out here, in comparison to when
4 Operation Safeguard began, the impacts of our operation
5 have in fact diminished the smuggler's ability to
6 operate as put forward, for example, by the fact that
7 as we speak today in this sector apprehensions are down
8 by 29 percent as compared to last year.

9 Last year they were down at the end of
10 the fiscal year by over 28 percent compared to the year
11 before that, so our operations are impacting upon the
12 smuggler's ability to utilize our communities as a
13 smuggling hub.

14 MS. GARCIA: I'm not following which one
15 it is. I understand your apprehensions are down
16 because of the Operation Safeguard; however, the
17 numbers of people that are attempting to cross Arizona
18 of course have dramatically increased in the last five
19 or six years; isn't that right?

20 MR. AGUILAR: The numbers started
21 increasing about 19 -- I don't have any exact figures
22 here with me -- I would say about 1995, 1996. As they
23 increased, they peaked, and now they are dropping as we
24 have seen in other locations along the border.

25 MS. GARCIA: Isn't it correct that the

1 flow to Arizona was impacted by Operation Gatekeeper,
2 Operation Hold the Line in El Paso and, in other words,
3 people have been funneled into this particular area?

4 MR. AGUILAR: The funnel effect has been
5 the smugglers' avoidance of law enforcement operations.

6 MS. GARCIA: And that corresponds to the
7 number of people that are crossing; is that right?

8 MR. AGUILAR: I don't understand.

9 MS. GARCIA: In other words, we have seen
10 a dramatic increase in people crossing in Arizona as a
11 result of those, the effectiveness, as you called them,
12 of those operations; isn't that right?

13 MR. AGUILAR: That in combination with
14 the smuggler's continued attempt to skirt enforcement
15 operations.

16 MS. GARCIA: How many real smugglers has
17 the Border Patrol arrested -- the people making the
18 money? Because the vast majority of people we read
19 about -- the last one where we had the kids in the
20 trunk, the person says, "Yeah, I needed beer money."
21 Do you consider that the average criminal? Is that the
22 person that we really should be after or have you
23 really captured the true smugglers?

24 MR. AGUILAR: The people that we are
25 after is going to be, as you put it, the true

1 smugglers. The ones that we have more contact with on
2 a daily basis are going to be the ones that are
3 carrying out the crime that impacts upon the people
4 that are being smuggled.

5 Going back to callousness -- beer money,
6 but potentially costing the lives of those three
7 children in the back of that trunk.

8 So do we ignore that and go after the
9 head of the deal? No. We take those out and work our
10 way up. Those are not as immediate.

11 That arrest, that disruption, that taking
12 out, if you will, of that top part of the organization
13 does not happen overnight. Those are investigations
14 that are ongoing.

15 This sector, for example, last November
16 Operation Great Basin for an entire organization was
17 dismantled, millions of dollars worth of assets seized.
18 So are we doing that? Absolutely. Is it overnight?
19 No.

20 The ones where the impacts are, though,
21 is going to be those that continue to place people's
22 lives in danger and have the impact on our communities
23 by speeding along the highways and placing people in
24 trucks and placing people in dangerous situations.

25 MS. GARCIA: Now, when Operation --

1 DR. WEBB-VIGNERY: How many more do you
2 have?

3 MS. GARCIA: I have a just a couple more.

4 In terms of Operation Gatekeeper,
5 Safeguard, Hold the Line, Rio Grande, have the number
6 of deaths increased because -- since the inception of
7 those operations?

8 MR. AGUILAR: I'm not sure of what time
9 period you're talking about. Let me answer it this
10 way: The number of deaths nationwide as we speak today
11 are actually down percentagewise nationwide.

12 MS. GARCIA: From last year?

13 MR. AGUILAR: Yes.

14 MS. GARCIA: I'm talking about, let's say
15 since 1993-94 whenever the Hold the Line, started do
16 you know how many deaths were occurring along the
17 border?

18 MR. AGUILAR: Let me answer that question
19 in this manner: Commissioner Doris Miesner in this
20 very building announced a part of the Border Safety
21 Initiative in 1998.

22 The INS and Border Patrol took on the
23 responsibility of trying to capture information
24 relative to deaths that were occurring on the border.

25 Prior to that there was nobody tracking

1 deaths along our border. There were deaths being
2 reported. We were observing those. We were doing what
3 needed to be done, but the United States stepped
4 forward and took on that responsibility.

5 MS. GARCIA: Would you agree that since
6 the beginning of the operations, the deaths have
7 increased? I'm not talking about --

8 MR. AGUILAR: I don't think any one of us
9 are equipped to either agree or disagree with that
10 statement for the following reasons: prior to even
11 Operation Gatekeeper being in place in San Diego, the
12 deaths we were seeing, records are not there. I don't
13 know. All I can tell you is experiences.

14 MS. GARCIA: You know there's a study by
15 the University of Houston that was done on the number
16 of deaths?

17 MR. AGUILAR: Yes.

18 MS. GARCIA: Do you agree with -- pretty
19 much with those findings or those numbers?

20 MR. AGUILAR: Yes. And I also agree with
21 that very same study that basically says the deaths are
22 going to remain constant regardless, they're just
23 changing throughout the border. I believe that's what
24 the study says.

25 If I could clarify, prior to Operation

1 Gatekeeper the deaths that were occurring were
2 occurring on people running across I-5 in San Diego,
3 people falling off into some of the ravines, people
4 preyed upon by the bandits, people being killed and
5 raped out there because of the disarray. That has gone
6 away in that part of the country.

7 MS. GARCIA: Are you aware that the
8 Public Policy Institute of California has recently
9 issued another study stating pretty clearly that with
10 the increased enforcement the numbers of deaths have
11 dramatically increased?

12 MR. AGUILAR: I am not familiar with that
13 study.

14 MS. GARCIA: We'll give you a copy of
15 that.

16 MR. AGUILAR: I would appreciate that.

17 MS. GARCIA: I'm really concerned about
18 American Border Patrol. I want to know what your
19 organization knows about it, if anything, and what the
20 connection is of Ron Sanders, the ex-Border Patrol
21 chief who apparently is the head of it, has with
22 individual agents in your sector and what possible
23 intelligence and maps and grids Mr. Sanders may have
24 access to now as the head of American Border Patrol?

25 MR. AGUILAR: That's a several-fold

1 question.

2 First of all, American Border Patrol I
3 know what I've read in the papers. We probably know
4 about the same amount of information.

5 Second, the person that you referred to
6 is a private citizen, has been for over three,
7 three-and-a-half years and as a private citizen they
8 have -- he has no access to any of our current
9 information.

10 MS. GARCIA: What about the particular
11 agents that remain loyal to him. We've even read in
12 the paper that there is, like most organizations, that
13 there is lots of disagreement of what's going on within
14 Border Patrol. What can you assure us or do to assure
15 us that Mr. Sanders now as a private citizen isn't
16 getting access to particular Border Patrol agents?

17 MR. AGUILAR: The assurances I can give
18 you is that the United States Border Patrol will
19 continue forth as we always have, and that is to take
20 care of what it is we are mandated to do.

21 If there are any allegations of any
22 wrongdoing, of sharing information as you say that is
23 not sharable, that is confidential, that is not
24 available to the public, we will take the appropriate
25 actions.

1 MS. GARCIA: And one last question: What
2 is your policy regarding the shooting of moving
3 vehicles? Since we have had a whole rash of them
4 reported in the paper and in my office as a legal
5 defender we have several of those cases where the
6 driver's then charged with aggravated assault but where
7 we see photos and Border Patrol has unloaded guns and
8 rifles into moving vehicles.

9 I think, the only potential crime that
10 they're investigating at the most is illegal entry.
11 And here with Tucson police, for instance, if you have
12 a bank robber and he goes in a getaway car, they can't
13 shoot up the car. I want to know what those
14 distinctions are.

15 MR. AGUILAR: Our policy on shooting is
16 very solid. It is in defense of self, in defense of a
17 innocent third-party and defense of a fellow officer,
18 period.

19 MS. GARCIA: And what about those rash of
20 cases where --

21 MR. AGUILAR: Everyone of those cases --

22 MS. GARCIA: -- there's vehicles that are
23 shot up?

24 MR. AGUILAR: Every one of those cases is
25 investigated by the local law enforcement community, by

1 the FBI, by the Office of Inspector General, and by our
2 own internal investigative team. Every one of them.

3 DR. WEBB-VIGNERY: I want to thank you.

4 MR. PAZ: Can I have a couple questions?

5 DR. WEBB-VIGNERY: We're running behind.

6 MR. GATTONE: I think this is a very
7 important segment of our hearing.

8 DR. JUNE WEBB-VIGNERY: The chair
9 recognizes Ramon Paz.

10 MR. PAZ: Ramon Paz from Nogales, Tucson.
11 Can you just address a little bit the
12 operations as regards training of your staff, your
13 Border Patrol staff, and familiarity with the region,
14 with the people? What is your training?

15 MR. AGUILAR: Let me begin with the
16 academic training. The academic training is very
17 intense, one of the longest enforcement academies that
18 the U.S. government has.

19 In addition to that, once our agents get
20 on the ground and are assigned permanently to a
21 location, there is an ongoing in-service training.

22 In addition to that there is a very
23 assertive effort for assimilation in the communities
24 that we serve and work in.

25 As an example, we have outreach to the

1 communities. When our officers come into the community
2 we ask -- as we speak now, for example, in Douglas the
3 Chamber of Commerce is coming in and working with the
4 new employees to assimilate them in there.

5 Our people work with -- for example, we
6 have explorer posts. We have citizens advisory board
7 membership. We have community relations officers that
8 spend all of their time reaching out to the community.
9 We are members of all the organizations out there. A
10 tremendous amount --

11 As we speak now, for example, in the
12 Tohono O'odham Nation we are in the process of trying
13 to open up an explorer post for the young people on the
14 nation.

15 I have personally met with the tribal
16 council on more than one occasion. My agents in charge
17 meet on a ongoing basis with the districts out there.

18 I work hand-in-hand and face-to-face with
19 Mr. Rick Clifton who is the director of Public Safety
20 and Mr. Richard Sanders. Mayor Belrain (phonetic),
21 Mayor Lopez.

22 The relationship is, I think, absolutely
23 great. We are constantly working to enhance that.
24 That is the job that will never be finished.

25 MR. PAZ: A member of the council of the

1 reservation earlier spoke to that issue and said that
2 there's always been a harassment, intimidation by the
3 Border Patrol but that harassment and intimidation has
4 increased since 9/11; can you respond to that?

5 MR. AGUILAR: Yes. I'd be happy to.

6 One of the things that I mentioned
7 earlier is the unfortunate part of a criminal element
8 attempting to assimilate into the law-abiding
9 community. As a direct result, any law enforcement
10 officer, not just Border Patrol agents, have a need to
11 be able to discern between the general law-abiding
12 public and the criminal element trying to pose as the
13 general law-abiding public.

14 I spoke earlier about those hundreds of
15 agents traveling to and from the border out there.
16 Doing those travels, for example, our officers will see
17 things, reasonable suspicion, rise to the area of
18 reasonable suspicion which under our statutory
19 authority we will then approach, interview, ask
20 questions.

21 Has that increased since 9/11? Probably
22 so. The reason for that is because of heightened
23 security concerns throughout our nation's borders.

24 Something that is very unique on the
25 nation is the border out there. Tribal members coming

1 across that border. Our officers know a lot of these
2 people, know a lot of the vehicles.

3 There are also crossings on that border
4 out there where our officer have a need to stop and
5 interview to make that determination whether that
6 person is in fact a part of that nation.

7 The interaction between the tribal
8 members and us, the need for the interaction has in
9 fact increased since 9/11 and as a direct result of the
10 smugglers shifting their operations in there.

11 It is that interaction that we work on.
12 It is that relationship development that is absolutely
13 essential as we speak. It is an interaction between us
14 at our levels to try and mitigate that need for
15 interaction.

16 MR. PAZ: How aware is your staff of the
17 fact that they may not have the necessary documents to
18 present to you?

19 MR. AGUILAR: Very much so. We have gone
20 to the degree, and Mr. Ramon has spoken to several of
21 our musters, several of our people. When we get people
22 coming into our stations, brand new people that have
23 been permanently assigned, we actually ask the
24 Department of Public Safety, some of their elders to
25 come and talk to our people to sensitize them to some

1 of the cultural importance that exists out there.

2 Some of their elders have helped us by
3 generating videotapes, training videotapes, to increase
4 that level of sensitivity and cultural awareness as a
5 part of our training that we do with our people.

6 There was not done before. This is
7 something that the relationship building has not only
8 promoted but has also facilitated.

9 DR. WEBB-VIGNERY: Chair recognizes
10 Lorraine Lee.

11 MS. LEE: Lorraine Lee, Tucson.

12 Mr. Aguilar, as we have heard earlier
13 today in terms of the situation on the Tohono O'odham
14 Nation in terms of citizens that go through and feel
15 that they are harassed where they have light shining
16 behind them or stopped or asked for documentation, and
17 you mentioned that if there is, I think you said
18 reasonable suspicion, that they can stop someone or
19 that gives them a reason to, I guess, maybe to do what
20 I just described, what would be defined as reasonable
21 suspicion, one, and if there is someone on the nation
22 that feels that they have been unduly stopped or
23 harassed, what recourse would you suggest for that
24 individual to take?

25 MR. AGUILAR: Let me begin with your last

1 question first.

2 The recourse is one of immediate
3 notification -- immediate notification to our office,
4 to the Office of Inspector General if they don't feel
5 comfortable reporting to our office. Certainly to
6 their local government offices: their Department of
7 Public Safety, their police department which they are
8 very good in reporting and getting with us so that we
9 can follow through -- and when I say "we," we the
10 government through the Office of Inspector General --
11 for a follow-through investigation in looking at the
12 situation.

13 So there are several means of getting
14 that information to us. In fact as we speak, Ms.
15 Alexandra, who is the special assistant I believe to
16 the chairman, and my community relations officer have
17 ongoing dialogue about the actual complaints that are
18 out there so we can receive them and follow through on
19 them.

20 This is a direct result of a meeting we
21 had with tribal members about three or four weeks ago.

22 Reasonable suspicion basically is an
23 articulation of the ability of an officer to articulate
24 things that he or she sees that rouses suspicion to
25 believe that there are illegal aliens being transported

1 in a vehicle, for example, or that a person is
2 illegally in a country.

3 I spoke earlier about a forward
4 deployment. Our forward deployments are on the
5 immediate border. There is no designated port of entry
6 anywhere on the nation. No designated port of entry.

7 So anybody crossing that line is amenable
8 to inspection without reasonable suspicion because they
9 are now entering our country. Those are our laws.

10 So a vehicle crossing from Mexico into
11 the United States, yes, I want my officer stopping that
12 vehicle to see what's coming in. That's our mandate.
13 Those are our laws. Without reasonable suspicion we
14 can do that.

15 Once a vehicle is inside the United
16 States then, 15, 20, 30 miles from the border, then at
17 that point based on reasonable suspicion and if it's
18 present, the officer will stop the vehicle, do the
19 interviews. Once he or she is satisfied, then that
20 person can go on.

21 And of course if there's illegal aliens
22 in the car or narcotics, then we follow through with
23 that.

24 Factors: proximity to the border, route
25 of travel, type of vehicle, time of night. Things such

1 as -- Tohono O'odham Nation, if we have a vehicle from
2 Flagstaff down there a mile from the border, that's
3 going to rouse our suspicion. What's it doing down
4 there?

5 Or if we run a tag and it's stolen out of
6 Phoenix, absolutely we're going to stop them. Or if it
7 comes back as unregistered.

8 As I said earlier, a lot of our officers
9 -- and we encourage this -- know the people that live
10 out there in those areas. They see a vehicle that
11 they've never seen before, in and of itself that is not
12 enough to stop that one vehicle, but all of these
13 components coming together and the officer's knowledge
14 of the border, the area, the time of day, the
15 information available to him or her electronically by
16 way of radio, all of these things coming together are
17 what generate a stop. And when I say "stop," I don't
18 mean just stopping a vehicle, but stopping and
19 interviewing that person also.

20 DR. WEBB-VIGNERY: Chair recognizes
21 Catherine Medina.

22 MS. MEDINA: My question was addressed.

23 MR. OSBORN: I have one question. I know
24 you're rushed for time.

25 Mr. Aguilar, no doubt you're familiar

1 with the March 1997 Report on Federal Immigration Law
2 Enforcement in the Southwest. I'm not going to try to
3 trip you up, but I want to refer to it.

4 In the introduction it refers to a 1980
5 report. That's two years after you went into the
6 service I guess.

7 MR. AGUILAR: Yes.

8 MR. OSBORN: Called the Tarnished Golden
9 Door, Civil Rights Issues in Immigration. And it
10 addresses the problem of the complaints about the
11 treatment of people by the Border Patrol, and it
12 recommends six specific steps.

13 I won't get into all of them, but it
14 recommends a process that is swift, thorough and fair
15 for handling complaints.

16 MR. AGUILAR: Yes.

17 MR. OSBORN: The sixth recommendation is
18 for public disclosure, including publication of
19 statistical summaries of complaint records, complete
20 records of complaint reception, investigation and
21 adjudication must be maintained.

22 Is that being done to your knowledge?

23 MR. AGUILAR: Yes, sir. That is being
24 done by the Office of the Inspector General.

25 MR. OSBORN: Are copies available to this

1 committee?

2 MR. AGUILAR: Yes, I believe so.

3 MR. OSBORN: We'd like -- I'd like at
4 least to see that.

5 DR. WEBB-VIGNERY: We'll enter it into
6 the record.

7 MR. AGUILAR: I believe that your contact
8 here in Tucson -- unless you'd like for me to get it
9 for you. Either way.

10 Mr. Bill King, who is the special agent
11 in charge of the Office of Inspector General.

12 MR. GATTONE: Madam Chair, I was
13 wondering if we could give him the contact of this body
14 in San Francisco and maybe Mr. King could provide the
15 information.

16 DR. WEBB-VIGNERY: In Los Angeles.

17 MR. GATTONE: It would be swifter if it
18 could be provided to this committee instead of us
19 having to --

20 DR. WEBB-VIGNERY: To the regional
21 office. To the person who made contact with you. If
22 we could have information.

23 MR. AGUILAR: Mr. Palacios?

24 DR. WEBB-VIGNERY: Yes. If the
25 information could be sent to him.

1 MR. AGUILAR: I'll talk to Mr. King and
2 have it sent to Mr. Palacios.

3 DR. WEBB-VIGNERY: At this point I want
4 to say thank you very much for coming and meeting with
5 us today. You've been very informative and very
6 forthcoming and we approach appreciate that and we will
7 let you know what other steps the committee takes after
8 we have decided.

9 The next person to speak is Bruce Pascoe
10 from the Asylum Program of Southern Arizona.

11 MR. PASCOE: Good morning. I very gladly
12 cede a great deal of my time. I feel it's very
13 important for you to listen to Mr. Aguilar.

14 As you may or may not know, the Asylum
15 Program of Southern Arizona is the very proud
16 grandchild of both the Sanctuary Movement and the TECLA
17 organization.

18 I am going to necessarily be very brief.
19 Our client base has changed dramatically since TECLA.
20 Our client base is coming out of Africa. We are not
21 seeing asylum applicants coming through the border.

22 What we don't know is has persecution
23 suddenly diminished so substantially in Central and
24 Latin America that there are no longer claims, or is it
25 that somehow they're getting stopped at the border?

1 And quite frankly I leave that question
2 open to the committee because we don't know the answer
3 to that.

4 I will at this point see if you have any
5 questions which I may be able to answer.

6 DR. WEBB-VIGNERY: Chair recognizes
7 Lorraine Lee.

8 MS. LEE: Lorraine Lee, Tucson. Madam
9 Chairman, Mr. Pascoe.

10 In terms of asylum, you mentioned people
11 from Africa. Are you seeing people from Asian
12 countries also, or others besides the African
13 countries?

14 MR. PASCOE: Primarily they're coming out
15 of Africa. We're getting some Middle Eastern, we're
16 not seeing many from Asia.

17 As I say, the only people from Latin
18 America that we are seeing at this point are
19 Columbians.

20 We're concerned because the community
21 which is coming across the border, rumors are rampant
22 and it spreads like wildfire. They hear that if
23 they're going to cross the border without
24 documentation, which many former clientele of TECLA
25 came in without documentation, that they're subject to

1 expedited removal.

2 And so the tendency is to prefer, I
3 believe, to try to avoid border crossings and that's
4 where our concerns dovetail with the concerns that this
5 committee has.

6 We just quite frankly don't know how many
7 people who are crossing through the border may have
8 legitimate asylum claims. We just don't know.

9 DR. JUNE WEBB-VIGNERY: Chair recognizes
10 Paul Gattone.

11 MR. GATTONE: Paul Gattone.

12 Mr. Pascoe, so the Africans that you see,
13 the Columbians and others are coming to the
14 U.S.-Mexican border or their destination is just
15 Tucson?

16 MR. PASCOE: Their destination is Tucson.
17 They generally come in through Los Angeles, New York,
18 flying in with valid passports and generally with
19 visitor's visas.

20 So obviously the big difference is that
21 clients which would be trying to reach us from Central
22 America would generally be without documents. And
23 quite frankly if you don't have documents it is a very
24 frightening experience to try to apply for asylum at
25 the border.

1 MR. GATTONE: So it's your fear that
2 there may be victims of human rights abuses in other
3 countries who are not even making it into this country
4 because of being stopped at the border?

5 MR. PASCOE: That's correct. And we only
6 have anecdotal evidence coming from churches in Mexico
7 that a lot of people are not getting through. But we
8 don't have any concrete evidence of that.

9 But I just, quite honestly having lived
10 in Latin America for 17 years, I cannot honestly
11 believe that there's suddenly no issue of persecution
12 coming out of the various countries.

13 DR. WEBB-VIGNERY: Are there any sources
14 of information that you can cite where this could be
15 validated? Any tangible sources?

16 MR. PASCOE: I just know that the UN High
17 Commission on Refugees, and also the University of
18 Hastings, which has been investigating this, would be
19 the best source for you to find suggestions of this.

20 DR. WEBB-VIGNERY: I want to thank you
21 for sharing your time with the previous person and
22 thank you very much.

23 The last person this morning is Chris
24 Ford from the Southwest Alliance.

25 MS. ALLEN: I'm Jennifer Allen with the

1 Southwest Alliance to Resist Militarism, and this is
2 Chris Ford, and if it's all right we're both presenting
3 and responding to questions.

4 I wasn't very familiar with the format,
5 so I had prepared a bit of documentation of some of the
6 issues and examples of some of the civil rights abuses
7 that we hear about and work on.

8 I'm not sure if you'd like to hear that
9 or sort of have more of a question and answer.

10 DR. WEBB-VIGNERY: Both. If you would
11 give a short presentation and then if you could respond
12 to questions from the panel.

13 MS. ALLEN: I want to start off by
14 thanking you all for the opportunity to come and speak
15 with you and your ongoing interests in civil rights
16 issues along and Mexico border.

17 I'm Jennifer Allen. I'm the co-director
18 of SWARM, the Southwest Alliance to Resist
19 Militarization. We're a grass-roots membership based
20 organization that works throughout Southern Arizona.

21 We're challenging the criminalization of
22 immigrants and also protecting the Sonoran desert as
23 well as human and civil rights for all people in the
24 area.

25 The recent deaths totaling over a hundred

1 people now of men women and children in the desert who
2 are looking for work, joining their families or coming
3 to better their lives in this country is the clearest
4 and most devastating consequence of current U.S. border
5 policies and immigration policies.

6 The militarization of the border has
7 essentially turned the region into a war zone. And by
8 the "militarization of the border," we're referring to
9 the solid steel walls, stadium-style lighting that dots
10 the landscape, 30-foot tall surveillance towers,
11 underground surveillance towers, underground
12 surveillance equipment, armed military troops, military
13 equipment and military-provided training to all law
14 enforcement agencies that operate on the Southwest
15 border. Not to mention all the inter-agency task
16 forces as well as that are brought in.

17 The civil rights and human and
18 environmental impacts of this militarized condition
19 have been tremendous. The deaths of immigrants
20 crossing in remote and dangerous areas trying to avoid
21 the most militarized areas is clearly the most
22 egregious and demands immediate remedy by the federal
23 government.

24 We strongly believe that a legalization
25 program of current immigrants in the U.S. coupled with

1 an expedited and expanded work visa program that
2 provides immigrants with full worker protection and
3 full rights would greatly reduce the horrible tragedies
4 such as the deaths on the border.

5 Perhaps a lesser discussed issue in the
6 region, but of equal importance are other civil rights
7 consequences of current border policies and immigration
8 policies.

9 From our work and discussions that we had
10 with immigrants in border communities we want to draw
11 your attention to impacts of Border Patrol build-up in
12 border communities, the lack of oversight or
13 investigation into the Border Patrol, the growing
14 anti-immigrant movement in Southern Arizona, and lastly
15 the increasing criminalization of immigrants and its
16 devastating consequences on their families and their
17 lives.

18 Border enforcement efforts along the
19 Southwest border account for over 70 percent of the
20 INS's budget, and 90 percent of its staff are
21 concentrated on the U.S.-Mexico border region.

22 The Border Patrol has an astounding
23 employee turnover rate, but despite David Aguilar's
24 promises that Border Patrol agents are integrated into
25 the community, with such a high turnover rate they

1 constantly move people into the community that do not
2 know the community and are not familiar with the people
3 nor the cultural practices or norms of those
4 communities.

5 The result is that the over 1,200 agents
6 that are operating in the Tucson Sector, which is a
7 huge expanse -- and I think the INS provided you a map.

8 Those agents and the agency as a whole
9 have shown great disregard for the rights and the
10 dignity of the people that live on the border:
11 citizens, legal permanent residents and undocumented
12 immigrants alike.

13 Examples of this include: In May 1999,
14 Arizona Border Patrol agent Matthew Hemmer separated a
15 21-year-old Salvadoran woman from her friend and drove
16 her to a remote location and tied her hands together,
17 forced her to kneel naked on the ground and raped her.

18 Agent Hemmer was arrested in August of
19 2000 charged with kidnapping, sexual assault and sexual
20 abuse.

21 He pled guilty for aggravated assault and
22 for transporting the woman without telling her where
23 she was going. If he completes his 36-month probation
24 his record will only show a misdemeanor. That's it.

25 The Romero family is a family in

1 Pirtleville, a small town outside of Douglas. They
2 tell of Border Patrol agents driving over dirt
3 neighborhood streets chasing suspected immigrants at 80
4 miles an hour.

5 The dust plumes from the speeding
6 vehicles aggravates their children's asthma and the
7 parents fear to let their children outside.

8 Another mother in Pirtleville told about
9 agents stopping her and following her daily because she
10 drives a Suburban with tinted windows as she's going to
11 and from the store, or to pick her children up from
12 school.

13 Another woman from Sasabe talked about
14 Border Patrol agents stopping and harassing her child,
15 and she was riding her bicycle to the store to buy
16 milk.

17 The Border Patrol agent Jason Wood based
18 in Nogales was on paid administrative leave in February
19 2002. That's when this story came out.

20 He was the lead suspect in the murder of
21 his uncle. He was hired in spite of a long history of
22 run-ins with law enforcement agencies, including a 1997
23 memo from a police sergeant in Nogales already pointing
24 to and wanting the agent's supervisor to red flag the
25 agent's behavior because of the repeated run-ins with

1 law enforcement.

2 Also in 1998 Wood was also arrested for
3 aggravated assault, intimidation, stalking and domestic
4 violence for which two children were sent to the
5 hospital for care.

6 In February of 2002, Border Patrol agent
7 Matthew Scheffler was a prime suspect in the murder of
8 his girlfriend and fellow Border Patrol agent in 2000.

9 As of February 2002 he was still working
10 at a Border Patrol checkpoint outside the town of
11 Douglas.

12 These are just a few stories. These
13 weren't even necessarily the most egregious. These
14 were the ones closest at hand as I prepared for today.

15 Other stories including incidences of
16 agents shooting at people and in some cases killing
17 people, running them over with vehicles, sexually
18 assaulting women, harassing people in their
19 communities.

20 And our sources are coming from people
21 themselves who are living in border communities,
22 immigrants who have been deported, people who are
23 afraid to go through the complaint process, reports
24 from the Office of the Inspector General, and
25 investigative reports from local newspapers.

1 Adding insult to injury, most people
2 within the border communities report that they do not
3 know how to file a complaint against an agent if
4 something was to happen, and moreover they feel if they
5 know how to file a complaint that people express doubt
6 that anything would result other than retaliation
7 against them.

8 The Office of the Inspector General is
9 responsible for investigating complaints; however, the
10 office has seven investigators that are responsible for
11 monitoring 1,500 Border Patrol agents in this area,
12 plus other INS agents, please U.S. Customs, plus U.S.
13 Marshals in the Arizona-Nevada area.

14 So clearly the system that exists for
15 monitoring the Border Patrol and ensuring fair
16 expeditious review of cases and complaints is not
17 working.

18 As the budgets of the INS and the
19 Department of Defense, who is also playing a greater
20 physical role along the border, border enforcement
21 reached nearly \$20 billion for fiscal year 2003.

22 It's critical that the impacts of these
23 activities be heavily monitored and have strong federal
24 oversight and independent oversight so that these
25 examples do not continue in the border communities.

1 Another area of concern is the growth of
2 anti-immigrant white supremacist groups along the
3 border. American Patrol and Ranch Rescue have
4 organized militias to patrol private boundaries.

5 These groups have advertised for people
6 to come, have fun in the sun, bring their watch dogs
7 and their night vision goggles, their motor homes, and
8 only those that have received military training are
9 requested to come.

10 The groups wear a uniform complete with
11 patches with their own insignia. Border residents have
12 sighted these groups of militias caravanning through
13 their communities and have sighted groups in their
14 military -- unofficial military militia garb doing
15 operations, walking through ravines and washes out in
16 the remote areas of the desert.

17 In the last month it was announced that
18 another new group, the American Border Patrol, would
19 begin driving through the desert looking for immigrants
20 who they would then turn over to the Border Patrol.

21 In the last two years the much publicized
22 Barnett Brothers and their friends have essentially
23 held immigrants hostage and at gunpoint waiting for
24 Border Patrol agents to pick them up

25 These acts are not individual acts. They

1 are organized and are receiving significant media
2 action and continue to follow the same premeditated
3 course of rounding up immigrants, detaining immigrants,
4 harassing immigrants. Nonetheless, they continue.

5 The Mexican Consulate has filed a
6 complaint with the state attorney general to push for
7 charges against the vigilantes, but to no avail.

8 The federal government's inaction and
9 failure to press charges against these rights
10 violations is tacit approval giving a green light for
11 the growth and spread of these types of organizations
12 and their actions continue in harassing, kidnapping and
13 holding immigrants at gunpoint.

14 My last point is one that I believe you
15 have probably heard from other immigrant advocates from
16 across the country, so I will focus on the civil rights
17 issues that we face, particularly in the Southwest, and
18 that's the increasing criminalization of immigrants.

19 With passage in '96 of the Illegal
20 Immigrant Reform and Immigrant Responsibility Act, the
21 Anti-terrorism and Effective Death Penalty Act, and the
22 recent USA Patriot Act and the many changes and
23 overrides of immigration and border policies that
24 Attorney General Ashcroft has pushed through, we're
25 seeing immigrants increasingly being pulled into the

1 criminal justice system and targeted by the criminal
2 justice system.

3 In fact, in the Southwest we had been the
4 subject of a proposal from the Bureau of Prisons to
5 build up to four privately run for-profit prisons that
6 are just for immigrants who have committed crimes.

7 That proposal was canceled in March 2002;
8 however, we've heard that the same private prison
9 companies who wanted to build the prison have been told
10 to hold their sites in that there's a strong chance
11 that the INS is going to propose new privatized
12 detention centers for the same companies at the same
13 sites.

14 It appears to us that immigrants are
15 being doled out to then boost the profits of these
16 private prison companies and being pushed into a sort
17 of profit-making arena, as opposed to the federal
18 government honoring and fulfilling its obligations for
19 protection of rights and for upholding laws that are
20 all being relegated to private companies that are
21 profiting off of people.

22 These same private prison companies are
23 also known -- they're renown for heavy brutality, lack
24 of oversight, poor management, high rates of escapes
25 and terrible working conditions inside those

1 facilities.

2 Furthermore, the current sentencing
3 structure in regards to immigrants, whether they're
4 undocumented, asylum seekers or legal residents, are
5 spending -- people are spending incredible amounts of
6 time in detention centers and as well as prisons for
7 petty nonviolence crimes.

8 Someone that we have talked to in
9 Nogales, Sonora, recently had been deported. He moved
10 to North Dakota when he was four years old. He is a
11 legal permanent resident.

12 He had an unpaid traffic violation. He
13 was picked up about a year and a half ago now for
14 another traffic violation. He was sentenced to three
15 years in prison and then he was deported where -- to a
16 country where he no longer identifies with. He had
17 grown up in the U.S. and was deported.

18 During that process his wife gave birth
19 to their baby who he has only seen for 15 minutes
20 behind plexiglass, and now he's sent to Nogales,
21 Sonora, with his green card having been revoked, trying
22 to figure out a way to get back to his family and to
23 the only country he's known to grow up in.

24 These are just snapshots of the many,
25 many lives who have been lost, who have been destroyed

1 and threatened by current U.S. border policies and
2 immigration policies.

3 The federal government is responsible for
4 protecting the rights of all people that call this
5 country home. Our border policies are in fact
6 undermining all the principles and values that we
7 espouse, particularly in the international forum.

8 I thank the panel for taking the time to
9 hear from us today and hope that you will take up the
10 responsibility of carrying these stories, these voices,
11 our voices, to those that need to hear it most.

12 MR. FORD: If it please the panel, I'd
13 like to briefly discuss some of the reasons behind the
14 number of deaths that we've been seeing here in
15 Southern Arizona.

16 As I'm sure you've been told by my
17 coworker Jennifer, over 120 people have died crossing
18 the harsh desert into the United States to find work.

19 The main question is: Why are these
20 people dying? In order to answer that question I
21 believe we need to look at the policies that are
22 routing people into the harsh environment.

23 In the mid-1990s the Border Patrol began
24 a new policy in Texas called Operation Hold the Line.
25 The gist behind this operation is to keep migrants from

1 crossing the border in or near urban areas, and route
2 them into harsh and more remote environments where
3 there is little shelter from the elements.

4 The idea was, as then INS director Doris
5 Miesner stated in 1995, that if people were routed into
6 these harsh environments and started dying, it would
7 deter other migrants from crossing into the desert, and
8 this idea is the cornerstone of that policy.

9 The Border Patrol soon began implementing
10 this policy along other areas of the U.S.-Mexico
11 border, adding Operation Gatekeeper in California, and
12 Operation Safeguard here in Southern Arizona.

13 Soon after this new policy was
14 implemented, we began to see a sharp rise in the number
15 of people dying attempting to cross the border. And
16 that number continued to rise, with each year bringing
17 a record number of migrant deaths.

18 We are now seeing the culmination of this
19 policy here in Southern Arizona. Migrants are now
20 being forced into one of the driest and harshest desert
21 environments in the world, and this year's record of
22 deaths is a result of that.

23 Yet despite the sharp rise in the number
24 of people that have died crossing the border since the
25 implementation of these policies, and despite the human

1 tragedy that is being played out here in our own
2 backyard, the Border Patrol is refusing to consider the
3 possibility that the reason so many people are dying in
4 these harsh desert environments is that the Border
5 Patrol is routing people into these harsh desert
6 environments.

7 So that's all I'd like to say. My
8 coworker, Jen Allen, already addressed some of the
9 solutions that we see.

10 DR. WEBB-VIGNERY: Chair recognizes Paul
11 Gattone.

12 MR. GATTONE: Paul Gattone from Tucson.
13 Thanks for your comments. I appreciate it.

14 Ms. Allen, have you ever documented -- do
15 you have documentation, maybe statements, et cetera,
16 from some of these people regarding these civil rights
17 violations?

18 And if you do, would you feel comfortable
19 providing these to this body's staff so that -- we are
20 here to collect information and I think that would be
21 important information for us to have.

22 MS. ALLEN: We're in the process of
23 surveying about seven border communities asking people
24 about their opinions and interactions with the Border
25 Patrol and then documenting some of the stories to

1 complement the survey results.

2 I can provide what we have thus far, and
3 other anecdotal stories that we have. I think other
4 organizations as well in the community could also
5 provide a lot of documentation.

6 DR. WEBB-VIGNERY: Art Palacios is in the
7 back of the room and he's the one -- it's his office
8 where this information will be sent, and he can give
9 you a card.

10 MS. GARCIA: Would you tell the members
11 of the committee what impact there has been on the
12 environment as a result of specifically Operation
13 Safeguard at this point?

14 MR. FORD: We've seen considerable impact
15 on the environment mostly through the construction of
16 the border walls, road construction, rampant road
17 construction, installation of lights, cameras and so
18 forth.

19 And there's massive environmental
20 destruction caused by the Border Patrol themselves
21 driving through the desert, not actually trying to pick
22 up people but just driving the desert chasing each
23 other.

24 We've heard numerous reports from people
25 who live in the area who've seen the Border Patrol both

1 in off-road vehicles and in Border Patrol vehicles
2 playing games of cat and mouse with each other, driving
3 through the desert environments without any regard for
4 the desert environment.

5 A lot of people have been seeing the
6 Border Patrol -- they're required by law to put out
7 environmental impact statements and environmental
8 assessments.

9 Many times on many occasions we've
10 actually seen the Border Patrol begin and actually
11 complete construction activities before these documents
12 are even released.

13 We see this as a violation of the
14 National Environmental Policy Act, but yet the Border
15 Patrol still beginning construction activities, still
16 completing construction activities and undertaking
17 other kinds of activities without completing the
18 necessary environmental statements that are required by
19 law.

20 A lot of the impacts that we've seen
21 specifically address -- specifically affects species
22 such as the lesser longnose bat, the jaguar, and plant
23 species such the Cochise pincushion cactus.

24 But the Border Patrol seems to really not
25 address these environmental concerns whatsoever.

1 DR. WEBB-VIGNERY: Chair recognizes Jones
2 Osborn.

3 MR. OSBORN: Thank you, Madam Chairman.

4 Ms. Allen, you spoke of the high turnover
5 right amongst Border Patrol officers.

6 MS. ALLEN: Yes.

7 MR. OSBORN: Could you quantify that for
8 the committee?

9 MS. ALLEN: No. I was trying to look
10 before I left for the number. There was --

11 It's been one in four agents are turned
12 over this year.

13 MR. OSBORN: Thank you.

14 DR. WEBB-VIGNERY: Chair recognizes Jesse
15 Rodriguez.

16 MR. RODRIGUEZ: Jesse Rodriguez.

17 It seems obvious that you've done a lot
18 of homework. I'm curious. You also must have done a
19 lot of advocacy that is directly affiliated with going
20 to agencies and trying to work with them in reference
21 to these problems. What has your perception been with
22 the Border Patrol in trying to communicate with them?

23 MS. ALLEN: Not very receptive. I've had
24 interactions with agents who have been pretty much
25 unprofessional and trying to engage me in arguments over

1 national level policies which neither of us have
2 control.

3 In fact it's been brought in earlier a
4 few months ago by a resident of Arivaca who had called
5 a complaint in to the Border Patrol because an agent
6 was speeding back and forth on the dirt roads, which is
7 a common issue for folks in rural communities that
8 agents drive at high speeds on dirt roads.

9 Nobody maintains the roads in rural
10 communities, so residents have to pay for it. The more
11 traffic and the more high-speed there is the more the
12 roads are eroded so people have to pay for it.

13 It turns out the vehicle was driven by an
14 officer that's involved at some level of providing
15 training on driving to other agents.

16 So because of that they wanted to set up
17 a meeting and brought out a couple agents and the
18 resident of Arivaca asked if I would go along.

19 The agents that we met with were just
20 insulting, paternalistic, and were arguing with us
21 about policies, immigration policies, which wasn't our
22 point of discussion. Our point of discussion was how
23 to resolve this particular issue.

24 And that has pretty much been the nature
25 of our interaction.

1 DR. WEBB-VIGNERY: Chair recognizes Ramon
2 Paz.

3 MR. PAZ: Ramon Paz from the Tucson area.

4 Earlier chief of the Border Patrol
5 Aguilar testified that they have a very comprehensive,
6 intense training program for Border Patrol unequal to
7 any other agency for law enforcement agents, and you
8 seem to know a little bit of their training, or at
9 least based on the turnover.

10 What are your observations with regard to
11 training for Border Patrol as it relates to cultural
12 awareness, sensitivity courses, language and of course
13 law enforcement?

14 MS. ALLEN: We have attended an INS
15 public meeting that was held in September of 2000 with
16 the INS presenting information about their expanded
17 operations.

18 They showed a film or piece of a film
19 that they use within their training for agents. It's a
20 15- or 20-minute film that combines both environmental
21 concerns and the importance of protecting the
22 environment and cultural issues or sort of culture of
23 the Southwest.

24 And at that point -- and they were
25 questioned afterwards if that is sort of the extent of

1 the cultural competency and environmental training that
2 they receive, and the answer was yes.

3 DR. WEBB-VIGNERY: I believe that brings
4 us to the end of this discussion, and I want to thank
5 you for coming and sharing with us this morning the
6 information that you conveyed.

7 And if you could give touch base with Art
8 Palacios at the back of the room and we'll get that
9 information.

10 MS. ALLEN: Thank you all very much for
11 your time and your interest.

12 DR. WEBB-VIGNERY: That brings us to the
13 end of the morning session. We'll be back here at one
14 o'clock for the afternoon session.

15 (Lunch recess)

16 DR. WEBB-VIGNERY: If we could reconvene
17 for the afternoon session, and we have as our next
18 invited speaker Andrea Black from the Florence
19 Immigrant and Refugee Rights Project.

20 MS. BLACK: Good afternoon. I was not
21 able to make it this morning. I just strolled in from
22 Florence so I don't know what kind of format this is,
23 but I understand I'm to give you a presentation and
24 have questions.

25 I have materials to give you, background

1 about the project and also about immigration and
2 detention.

3 Thank you for the invitation to come
4 speak. I know several of you already, but it's a great
5 opportunity to come tell you a little bit more about
6 one aspect of immigration that often isn't discussed,
7 which is immigration detention.

8 And people often talk about detention as
9 the back end. We keep hearing this back end phrase,
10 but we really see it as a continuum, because it's very
11 much a part of the process and the experience, not only
12 for people who are coming into the country, recent
13 arrivals, but unfortunately people on their way out of
14 the country facing deportation.

15 Even though we're not geographically very
16 close to -- physically close to the community here on
17 the border, we feel we're very much linked with the
18 issues that we're all facing in the Arizona community.

19 I don't know how many of you are familiar
20 with the detention system in the United States, but
21 there are currently 1,900 people detained on any given
22 day here in Arizona.

23 That is about ten percent of the detained
24 population in the United States, so it's a big business
25 here in Arizona.

1 And just in general, detention
2 deportation is a major component of the INS's
3 functions, along with their adjudication processes.

4 People are housed in both INS facilities
5 and also private contract facilities because there are
6 not enough INS facilities to house people.

7 The number of people who are being
8 detained has tripled in the last nine years, so it's an
9 incredible growing industry.

10 There's no right to government appointed
11 counsel, and as a result about 80 percent go
12 unrepresented, and it's a very complicated confusing
13 process, made more difficult because of language
14 barriers and different levels of education.

15 When you're talking about people crossing
16 the border, people who are apprehended by the INS, some
17 people are returned immediately. There's a voluntary
18 repatriation process at the border.

19 But if people are apprehended inside the
20 United States or if that have had previous crossings,
21 they're going to go into immigration detention.

22 And anyone who wants to pursue their case
23 is going to go into immigration detention, so that's
24 part of the process of what people are facing once they
25 cross the border.

1 The Florence project has been in
2 existence since 1989 and we're there to provide free
3 legal services to people who are detained.

4 We give everybody an orientation and
5 screening interview. Anyone who wants to talk to us
6 can, and beyond that we provide targeted legal
7 services, representation, referral to pro bono
8 attorneys, as well as assistance to help people
9 represent themselves.

10 Last year we provided service to over
11 9,000 people and we are actually a
12 nationally-recognized model that we've developed here.
13 And there's a growing movement to try to replicate.

14 There are a handful of groups working
15 across the country as well providing the type of
16 services we are, but there is a growing movement to try
17 to replicate this model and push to federal funding.

18 We talk about the savings to the taxpayer
19 as well as the justice component of providing services.

20 People that we're seeing in detention are
21 a whole mix: people who are recent arrivals, both
22 individuals who are seeking a better life for their
23 families as well as people who are seeking asylum,
24 fleeing persecution in their home countries.

25 We also work with undocumented immigrants

1 who have been here for many years with deep family and
2 community ties. We also work with legal permanent
3 residents who have been here -- we've had clients
4 who've been here since they were three or six months
5 old who are now facing deportation in their twenties,
6 thirties, forties or fifties -- we had a grandfather
7 recently -- because of a criminal conviction.

8 And with the new laws in place since
9 1996, it's increasingly minor criminal convictions that
10 can put someone into the deportation process.

11 We also work with children, unaccompanied
12 minors who are coming on their own either to reunite
13 with family members who are already here or fleeing
14 persecution or neglect or abuse in their home country
15 and are seeking a safe haven here in this country and
16 don't know where else to turn because their countries
17 are not protecting them and they're increasingly
18 subject to detention and also coming through the
19 borders as well as the airports.

20 While there have been significant
21 changes, detention has become an issue now,
22 particularly since September 11, and I don't want to
23 downplay the seriousness of some of the civil rights
24 issues that we've been seeing -- the secret detentions,
25 the secret hearings.

1 What I'd like to emphasize is this
2 process has been in place for many years. This is not
3 new. Immigration detention has been with us at least
4 since the mid-'80s, if not before, and it's really
5 becoming a huge part of INS's work.

6 What we're seeing, particularly since
7 1996 when two different laws came into effect back to
8 back, is increasing criminalization of immigration
9 issues and immigration violations and the increasing
10 use of detention.

11 With regard to border issues, a large
12 percent of the individuals we see in INS detention are
13 in proceedings because they're -- the charge is present
14 without admission. They have entered without
15 inspection. These are the legal terms.

16 This is a violation of the law -- the
17 federal law -- and for that they are subject to
18 deportation from the United States.

19 They are also often subject to detention
20 while they're going through the immigration process.

21 For those of you who haven't visited our
22 immigration detention center or immigration court it is
23 a factory. It is -- you see 80 people going through
24 court every single day. They're in very remote
25 facilities for two to four weeks before they see

1 anybody. Very limited access to the outside world.

2 Once they finally get into the process
3 it's quick, it's very speedy, it's in English with
4 interpreters and people are getting deported within
5 five minutes.

6 So if anyone wants to see it, you're
7 welcome to come out. It's really quite astonishing to
8 see bureaucracy at work, and the difficulty with which
9 people are trying to uphold their rights in the
10 process.

11 In terms of the individuals that are
12 crossing, a large number of people we work with are
13 crossing from Mexico, but we do work with people from
14 over 50 countries every year.

15 I'm sure some of my colleagues have
16 commented, Arizona, as a result of the crackdown on the
17 Texas and California border, really there is a push as
18 we all know -- a real push coming through the Arizona
19 desert.

20 And the stories we hear of the
21 complicated journeys people are making -- visas through
22 12 different landings in 12 different countries before
23 they made that arduous trek up from Central America or
24 Mexico up through the border.

25 A number of different countries. We just

1 had two gentlemen from North Korea, for example. We
2 see people from all over the world every year. This is
3 really a hot spot, as I'm sure you all know.

4 In trying to think and analyze what we're
5 seeing and why we're seeing more and more people coming
6 through the border in addition to the issues of the
7 crack downs on the other border sectors, really we can
8 look to the restriction that have been put in place
9 since 1996.

10 One big component of the '96 laws was a
11 new process called expedited removal, so anyone who
12 goes to a border crossing or international airport is
13 subject to deportation and removal, return to their
14 country by an INS inspector at the border without
15 having a chance to see an immigration judge.

16 So in the past, a person who did not have
17 proper documents or had invalid documents would have
18 this opportunity to go see a judge and be able to
19 explain why they wanted to go to the United States and
20 what relief they might have.

21 Right now an immigration inspector can
22 turn that person around, keep him in detention and ship
23 him out in less than five hours.

24 This is a concern for a lot of people,
25 but particularly for asylum-seekers who are coming to

1 this country and who are often afraid of officials from
2 their home country are now trying to face and seek
3 protection in this country, and they have a much higher
4 burden of proof at the very entry.

5 Unless they can explain why they're
6 afraid to go home within that five-minute interview
7 with the inspector, they're back on the plane.

8 So in terms of people who are seeking to
9 come in and seeking protection, again the border
10 crossing in some ways is a more safe or more secure way
11 of coming into the United States, ironically, than
12 having to go through the new border procedures.

13 Everywhere I go I talk to people
14 who want to come into the United States, bring family
15 members in on even temporary visas, family visas, but
16 it's increasingly hard to come in even temporarily.

17 Again the burden of proving they're only
18 going to come temporarily, they have sufficient money
19 in their bank account to sustain themselves means that
20 a lot of people can't come even if they just want to
21 visit their family members, so they're denied legal
22 crossing just to be able to visit their family.

23 We also see a lot with legal residents
24 who have been deported, and this is an increasing
25 issue. They're re-entering illegally after an order of

1 deportation.

2 It's a federal crime to re-enter after an
3 order of deportation, and individuals are subject to
4 one to 20 years in federal prison.

5 This is hard to explain to the young man
6 or the young woman who's trying to reunite with the
7 family in a country where he or she's lived for years.
8 The border is keeping you from your family and if you
9 cross it's a federal crime.

10 We're also seeing people come through the
11 land borders for those reasons.

12 In terms of looking at what the -- I have
13 no answers. There's a lot of discussion about this,
14 but looking at what are the problems and where are the
15 pressure points, I think most definitely we need to
16 have some kind of amnesty program or a realistic work
17 program so that people can come and that we can,
18 despite the changes that we've had since September 11
19 and understanding the need for greater security, we
20 also have to recognize the realities of migration,
21 intercountry migration and globalization which our
22 country and our economy is encouraging and really
23 recognizing the realities of the communities that we
24 live in.

25 So some kind of amnesty program or work

1 program so people have the ability to unite with family
2 members, to come visit, to make the daily crossings
3 that are an important part of their lives is really
4 crucial.

5 Beyond that there's really a larger need
6 for immigration reform to repeal some of the draconian
7 measures that were put in place in '96 that
8 criminalized immigration detention and have the ability
9 to have reasonable release policies while people are
10 going through this.

11 Also, to look at the standards of
12 conditions and access that need to be implemented as
13 regulations. There are standards which govern
14 immigration detention, but they're just general
15 guidelines. They have no teeth to them, so really --

16 People are now housed in over 900
17 facilities across the country, only 17 of which are INS
18 facilities. The rest are contract facilities or even
19 local or county jails.

20 So there's no uniform standard by which
21 people are treated, so we really think that's a very
22 serious issue.

23 One aspect that I would point out in
24 particular is the whole issue of detained immigrant
25 children. This has become real serious, a growing

1 problem here.

2 In Arizona alone we have 80 or more
3 children detained on any given day, both in a shelter
4 care facility in Phoenix and at a juvenile detention
5 center in Globe.

6 There is a real movement in Congress.
7 There's an Unaccompanied Child Protection Act which has
8 been introduced by Senator Feinstein, which we really
9 do hope will be passed and become part of the Homeland
10 Security Bill, but these are some of the -- when we
11 talk about reforming immigration detention, I feel like
12 we're just tinkering around the edges, because it's not
13 really affecting the bigger issues.

14 DR. WEBB-VIGNERY: Chair recognizes Jones
15 Osborn.

16 MR. OSBORN: Thank you, Madam Chairman.

17 Ms. Black, did I understand you to say
18 that the present authority of an INS inspector to
19 deport arose because of the change in the 1996 law?

20 MS. BLACK: Yes, and I believe it was --
21 I don't know if it was with --

22 There are two laws back to back. I could
23 find out which one specifically, but yes.

24 MR. OSBORN: Legally speaking the INS
25 inspector is within his authority to do that at the

1 present time?

2 MS. BLACK: Correct.

3 MR. OSBORN: Thank you.

4 DR. WEBB-VIGNERY: Chair recognizes Paul
5 Gattone.

6 MR. GATTONE: We've had people earlier
7 talk about stories that they hear from their clients
8 about their interactions with the Border Patrol.
9 Obviously people are in detention because they've been
10 stopped or detained or whatever.

11 Do you, from some of your clients, do you
12 hear stories about how they're treated by not only
13 immigration personnel but by the Border Patrol?

14 MS. BLACK: Unfortunately I don't think I
15 can cite -- we hear different stories, both by Border
16 Patrol and also by detainees or other individuals. I
17 don't have any particular stories to offer at this
18 time. Sorry.

19 DR. WEBB-VIGNERY: Chair recognizes
20 Catherine Medina.

21 MS. MEDINA: Would you speak briefly
22 about this concept of credible fear and what that means
23 and the type of believable documentation that would be
24 needed.

25 MS. BLACK: Thank you for that question.

1 This is part of this expedited removal
2 process. One of the few exceptions to an individual
3 who has invalid documents or lack of documentation to
4 come into the United States is if he or she is able to
5 show a credible fear of been returned to his or her own
6 country.

7 They would have to express initially in
8 front of the inspector some form of -- they would have
9 to make a statement, articulate their fear in a clear
10 enough way that the inspector can cite it.

11 If they make that statement and the
12 inspector accepts it, they would actually be -- they
13 would be detained and they would have the opportunity
14 to talk to an asylum officer.

15 And at that point they would have an
16 interview. Usually have a wait about 24 hours, usually
17 to help them recover. And they would have more of an
18 in-depth nonconfrontational interview.

19 My sense is that when they reach
20 individuals who are able to get to the credible fear
21 interview, overall the process goes very well, and they
22 haven't been huge amounts of problems.

23 My understanding there's been a study
24 that's been going in the last few years and a lot of
25 the problems are at that initial interview with the

1 inspector, and a lot of it has to do with issues of
2 language, cultural issues.

3 There's been in terms of the studies of
4 people who have been allowed to remain in the country,
5 overwhelmingly male, overwhelmingly educated, and
6 overwhelmingly from higher economic countries who are
7 able to articulate their claim.

8 Unfortunately, there's not been much
9 access to that secondary inspection moment. I know
10 that the UN Commission for Refugees has fought a long
11 time to be able to view that process.

12 You have to see from who was able to come
13 in. You're not able to see who actually got deported
14 to know what their experience is like, but there is an
15 issue of how much they do have to state their case,
16 even in front of that inspector.

17 MS. MEDINA: Would it be safe to say that
18 these interviews are a bit idiosyncratic based on the
19 personal attributes the person brings to the process?

20 MS. BLACK: Yes.

21 MS. MEDINA: Namely articulated, educated
22 people who can present their case well?

23 MS. BLACK: Yes. And also for -- just
24 the idiosyncrasies of the different personnel involved
25 as well, which you could see even in a different kind

1 of setting -- a court or administrative setting.
2 However, there's usually more of a process in place to
3 safeguard against that; whereas, if you have one
4 individual talking to the applicant, it's a much more
5 even process.

6 DR. WEBB-VIGNERY: Chair recognizes Jose
7 Matus.

8 MR. MATUS: Jose Matus from Tucson.

9 In your detention visits with some of
10 your clients -- immigrant clients -- have you ever had
11 any complaints on abuses, conditions of -- living
12 conditions in prison? and if so, what remedies do you
13 have and how have you dealt with those issues?

14 MS. BLACK: Are you talking about the
15 conditions when apprehended or --

16 MR. MATUS: In the prison.

17 MS. BLACK: In the prison? I have to say
18 over all, conditions are fairly good here in this
19 sector.

20 The Florence INS facility is held up
21 actually as a model across the country would that
22 people who are detained in other areas of the country
23 have these kinds of conditions.

24 So detention is never a pleasant
25 experience, but relatively speaking the INS facility is

1 very well run. And we've been there for 13 years.
2 We've seen changes in administration that overall goes
3 well.

4 I think some of the problems go into
5 place when there's use of contract facilities. And
6 right now INS currently uses two contract facilities:
7 Correction's Corporation of America runs a facility in
8 Eloy, Arizona, and they also run one in Florence,
9 Arizona.

10 And overall the conditions at the Eloy
11 facility have been good. In Florence they have had
12 some problems. It's a new contract and they have --
13 there have been a number of problems. A lot of
14 problems in educating the staff as to what it means.
15 Who is a detained immigrant? What does detention mean
16 versus criminal incarceration?

17 Because there's a huge difference but a
18 lot of law enforcement people don't understand the
19 differences. So there's been a lot of complaints about
20 harsh treatment and disrespectful interactions and undo
21 -- some difficulty with conditions, particularly with
22 the women that have been detained.

23 As a summary, I would say there have been
24 some problems, but more with the contract facility. I
25 would have to say the INS has been handling it very

1 responsibly, and I know they have been pulling people
2 out because they're not meeting the standards.

3 DR. WEBB-VIGNERY: I want to thank you
4 for coming and sharing with us today your insights.
5 And we will make a decision of where we will go at the
6 end of this meeting with the information that we've
7 gathered.

8 MS. BLACK: Thank you very much for the
9 opportunity.

10 DR. WEBB-VIGNERY: Next person is Georgia
11 Vancza.

12 MR. FIFE: Madam Chair, I'm going to sit
13 in for Georgia. My name is John Fife. I'm pastor at
14 Southside Presbyterian Church in Tucson, Arizona.

15 Southside church was the first church in
16 the United States to declare itself a sanctuary for
17 Central American refugees in 1982.

18 Since then our congregation and I have
19 been directly concerned with the border and border
20 issues during that 20-year period of time.

21 Our practice of sanctuary was funded on a
22 principle called civil initiative -- the right of
23 civilians and civilian or civil organizations to
24 protect and aide victims of violations of human rights
25 and civil rights and to advocate through that action a

1 change in policy that results in gross violations of
2 human or civil rights.

3 You'll be glad to know, since it's
4 probably been a long day, that Georgia told me I have
5 five minutes, and I also have a friend who says if you
6 see a Presbyterian minister take his watch off and look
7 at it like this it means absolutely nothing.

8 I would like to talk to you about an
9 organization that came into being this summer called
10 Samaritan Patrol.

11 Two years ago the faith communities that
12 had been involved in advocating for those persons --
13 refugees and migrants -- whose human rights were being
14 systematically violated by government agencies and
15 policy during the 1980s came together because of the
16 reason we're having this discussion this afternoon, the
17 record increasing number of deaths of the poorest and
18 most helpless persons in the Sonoran desert borderlands
19 region.

20 At that time we determined that one
21 action that was feasible at that time was to put water
22 stations in the desert and I believe Reverend Robin
23 Hoover has described to you the work of Humane Borders,
24 which has now continued for two years.

25 It was clear that more needed to be done.

1 It was clear to all of us as this hot summer began that
2 the policies and practices of immigration and Border
3 Patrol official were continuing to funnel the
4 traditional migration pattern in Southern Arizona into
5 the most hazardous and deadly areas of the desert.

6 And it did not take a fuzzy-headed
7 Presbyterian minister to figure out we were headed for
8 once again a record number of migrant deaths in the
9 desert.

10 To tell you the truth, this summer has
11 exceeded all of our anticipated numbers and I am
12 devastated by the prospects for the rest of this summer
13 and the year to come.

14 So in response to that human rights and
15 civil rights crisis, 11 faith communities in Tucson,
16 protestant, Catholic, Jewish, the Diases of Tucson,
17 various protestant and Jewish congregations formed an
18 organization called Samaritan Patrol.

19 It was founded on the same principle of
20 the right -- of the right and the responsibility --
21 let me add particularly "the responsibility" of
22 civilians and civil organizations and institutions to
23 protect and aide victims of violations of human and
24 civil rights.

25 In this case Samaritan Patrol decided to

1 place volunteers from those faith communities and other
2 persons of good will in the Sonoran desert borderlands
3 region, to place them in four-wheel drives in those
4 areas of the desert -- west desert -- where the most
5 deaths had occurred, with medical personnel, food and
6 water to rescue migrants in distress that we located
7 during those patrols.

8 We provide for persons we encounter in
9 distress in the desert medical assistance immediately.
10 We have physicians, nurses and EMTs who accompany each
11 Samaritan Patrol.

12 Everyone who goes has had training by the
13 American Red Cross in emergency first aid, and those
14 medical personnel determine in the context of those
15 persons we encounter what is appropriate medical
16 treatment and what is needed in that situation.

17 We have a protocol that includes
18 transporting those persons to hospitals or clinics if
19 necessary, if they are in that dire distress, or in
20 some instances we have encountered people where the
21 physicians have indicated to us that they did not need
22 IV treatment or hospitalizations and we have taken them
23 then to churches where they can receive hydration and
24 food and to get in out of the desert for a period of
25 eight to ten hours is usually what physicians

1 recommend.

2 And at the end of that time they are
3 given the option of walking out the door of the church,
4 if they so choose, or if they wish to return to Mexico
5 we transport them or call the Border Patrol to return
6 them to Mexico.

7 Each Samaritan Patrol vehicle is equipped
8 with a satellite phone. We even acquired an air force
9 this summer. Pilots have volunteered with air to
10 ground communication to patrol the west desert for us
11 and to direct the four-wheel drive vehicles and
12 volunteers to places where they find migrants in
13 distress.

14 When we do, we have the ability to
15 request helicopter assistance to call BorStar or the
16 Border Patrol if there is emergency assistance of that
17 nature necessary, or to transport them ourselves to a
18 hospital or clinic or to a church.

19 I am pleased to report that our largest
20 problem since July 1st has been we have been
21 overwhelmed with volunteers.

22 The reason for that should be obvious.
23 People throughout the Sonoran desert and borderlands
24 region have been morally distressed, troubled, by what
25 you have heard today, by the record increasing number

1 of deaths and the human tragedy that is occurring in
2 our borderlands region, and they find that writing a
3 letter to their Congressperson or senator is not an
4 adequate moral response to the public health and human
5 tragedy that we are seeing.

6 So given the opportunity to provide
7 direct aide to migrants in the desert has meant that we
8 have had to scramble to meet the requests of all the
9 volunteers to be a part of Samaritan Patrol.

10 Samaritan Patrol has had three basic
11 purposes. One, of course, you already understand and
12 that is directly to save as many lives as possible with
13 volunteers in the desert. That's obvious. But it is
14 also obvious that that's a Band-Aid, that we may save a
15 few lives but the 120 just in the Tucson Sector alone
16 of bodies that had been found and documented -- there
17 are many more of course that have not been found --
18 people who have died in the desert -- is a systemic
19 problem that has to be dealt with systematically, not
20 with as many volunteers as we've been able to put out
21 there.

22 The second purpose has been to reopen a
23 space in the borderlands region that has been closed
24 down since 1994 by the increasing militarization of the
25 border.

1 When I first arrived in the borderlands
2 in 1963, people here taught me as an immigrant from the
3 East, about the values of the Sonoran desert and the
4 people of the borderland, particularly the indigenous
5 people of the borderland, and that value was to provide
6 hospitality to migrants in the desert.

7 Everywhere I went, people said, "Of
8 course we always provide water and food and we let them
9 sleep out in the ramada, or we let them sleep in the
10 bunk house, or of course we do whatever is necessary to
11 provide just plain humanitarian aide to folks in this
12 desert climate."

13 What my experience since 1994 in this
14 area is that the militarization, the checkpoints, the
15 fear that has been engendered, the oppressive presence
16 of patrols and National Guard and all of the things
17 that you have probably had great deal of testimony
18 about has closed down that space.

19 There is an increasing climate of fear
20 among people to just provide basic humanitarian aide to
21 migrants.

22 And one of the purposes of the Samaritan
23 Patrol was to reopen that space so that systematically
24 through recovery of a very highest ethical value among
25 the indigenous and other people of the Sonoran desert

1 region more lives might be saved.

2 It's not only a tradition of the Sonoran
3 desert but of every desert people that I've encountered
4 globally.

5 It is essential that that ethic be
6 practiced, whether we're talking about the Middle East,
7 the Bedoin people there, or people of North Africa, or
8 the people of the Sonoran desert or of other desert
9 regions across the globe, every one of those people
10 practice hospitality as the highest ethic and that's --
11 the reason for that is apparent. It's required to save
12 lives.

13 Current immigration law provides for
14 humanitarian assistance to migrants, and that space
15 that had been closed down needs to be re-opened.

16 And the third purpose of Samaritan Patrol
17 is by our action and by our witness to change the
18 current policy and strategy of Border Patrol and
19 immigration officials on the border. It is the only
20 way that the record number of deaths are going to be
21 stopped.

22 From a civil rights perspective on this
23 human tragedy in the Sonoran desert, I think each of
24 those purposes of Samaritan Patrol has a civil rights
25 imperative to it.

1 First, of course, is the simple right to
2 life itself. I hear a lot of conversation and a lot of
3 commentary about how these people coming across the
4 desert without documents are criminals, and it's a
5 violation of the law. Well, we need some perspective
6 on how serious a violation that is.

7 I often talk to Presbyterians and say,
8 "How many of you have ever been given an traffic
9 ticket?" And everybody's hand goes up.

10 Well, this is not as serious a violation
11 of the law as a traffic ticket. At least they fine you
12 for that.

13 The only penalty for this is you're
14 subject to deportation back across the border with a
15 sack lunch, hopefully.

16 We need to talk about how we need to get
17 out of the rhetoric of violations of the law and
18 crimes. These are people who are desperate to provide
19 the basic life itself and food to their families and
20 who this nation desperately needs to supply the
21 necessary labor for our economy and our economic
22 activity.

23 The second civil right that I have
24 already mentioned, but I hope that you will emphasize
25 in your report is the right to provide humanitarian

1 aide to migrants in distress.

2 The law recognizes that, but the law is
3 terribly and inadequately ambiguous about what is and
4 what is not permissible in terms of humanitarian aide
5 and assistance to migrants in distress.

6 For example, a colleague of mine, Father
7 Tony Clark, one of the priests at Sacred Heart Church
8 in Nogales, Arizona, was convicted of harboring illegal
9 aliens in 1986 when his crime was to provide a sandwich
10 and couple of hours rest on the couch in the rectory at
11 Sacred Heart Church when migrants showed up there at
12 the door of the rectory. For that he was convicted of
13 a federal felony.

14 What we have negotiated carefully with
15 Border Patrol officials here in Southern Arizona this
16 year is the protocol of Samaritan Patrol, and that is
17 the right to provide food, the right to provide water,
18 and the right to transport migrants in distress to
19 either a hospital or a clinic or a place where they can
20 receive appropriate medical assistance. That's a
21 negotiated understanding that we have.

22 There's no guarantee of even that space
23 available right now, but it is our policy and protocol
24 and practice within Samaritan Patrol, and that space
25 needs to be opened even wider if lives are going to be

1 saved and we return to a humane policy.

2 And of course the third matter is to
3 change the policy and strategy so that -- of the Border
4 Patrol and immigration officials -- so that we do not
5 have another summer of record deaths next year.

6 The proposals are already on the table.
7 Doesn't take any inventiveness or imagination to know
8 what is necessary to be done. From the governor of
9 Arizona to the mayor of Douglas to members of Congress
10 to the president of the nation of Mexico, the proposals
11 are on the table and need to be implemented as soon as
12 possible.

13 We need to document -- temporarily
14 document -- the migration back and forth between the
15 United States and Mexico. It is a historic fact in
16 this borderlands region and it is a migration that has
17 benefitted both nations historically. It needs to
18 continue. It must continue and it must continue in a
19 humane and just way.

20 That migration could be negotiated each
21 year by the political and economic leaders of both
22 Mexico and the United States. And if you look at this
23 question from a national security perspective, which
24 seems to be the primary agenda since 9/11, it is
25 apparent that this border cannot -- let me say it one

1 more time -- cannot, will not ever be sealed or
2 controlled. It is impossible.

3 There's 2,500 miles of desert and
4 mountain out there and what it takes to control a
5 border we learned from the example of the migration
6 between East and West Berlin during the cold war.

7 That wasn't a remote desert wilderness
8 area. It was an urban area of about 37 miles. And
9 border officials tried to control and seal that border
10 with everything that you've heard about going on down
11 at this border now -- and more.

12 They increased the number of border
13 agents. That didn't do it. They built a wall. That
14 didn't do it. They militarized the border with
15 military units. That didn't do it. They tried
16 helicopters and dogs. That didn't do it. They built
17 two walls. That didn't do it.

18 What did it was to mine the area with
19 land mines between those two walls, put a machine gun
20 nest every 50 yards and issue shoot-to-kill orders.

21 And that's what it took in an urban area
22 of just 37 miles to seal off that border. You can
23 image the cost to do that over 2,500 miles, let alone
24 the human and moral cost of putting machine gun nests
25 and land mines along that border and issuing

1 shoot-to-kill orders. And that's what it will take.
2 It's absolutely nonsense.

3 So from a national security perspective,
4 the only choice we have is to document the migration
5 back and forth so we know who is here, where they're
6 going and where they are.

7 And the only way to do that is document
8 that migration. There's no other way. And to document
9 the people who are here now without documents. There
10 is no other way. And especially from a national
11 security standpoint, if that's the agenda it's
12 imperative.

13 I guess the closing comment is from too
14 much, too many of our immigration and Border Patrol
15 officials and from members of Congress what we hear is
16 the way to solve this problem is to do more of the same
17 thing: more agents, more electronics, more
18 helicopters, more vehicles. All the stuff that is
19 currently a part of the militarization of the border.

20 As I've always understood it, the
21 definition of insanity is to do more and more of the
22 same thing and expect a different result, and that's
23 exactly what we have.

24 We have irrational and immoral and
25 devastating violations of human rights on this border.

1 We cannot do more of the same. We must have
2 substantial systemic change. Thank you.

3 DR. WEBB-VIGNERY: I recognize Jones
4 Osborn.

5 MR. OSBORN: Thank you, Madam Chairman.

6 Pastor Fife, you mentioned that your
7 group has negotiated with the INS and the Border Patrol
8 over the protocols and so forth that you operate under.
9 Do you deal directly with Chief David Aguilar of the
10 Border Patrol?

11 MR. FIFE: Yes, sir.

12 MR. OSBORN: Person to person?

13 MR. FIFE: Yes.

14 MR. OSBORN: How would you describe his
15 degree of cooperation?

16 MR. FIFE: It's been cordial. Chief
17 Aguilar, when he came to Tucson the director of the
18 Immigration and Naturalization Service, Doris Miesner,
19 and I had known each other for some time through some
20 adversarial relationships during the sanctuary
21 movement, and Doris introduced me to David Aguilar and
22 said, "He's the very best at public relations that we
23 have. That's why we're sending him to Tucson."

24 And he certainly has fulfilled that
25 reputation. He's worked hard at providing channels of

1 communication with various organizations in the Tucson
2 Sector, and I've been grateful for his willingness to
3 sit down and talk.

4 We have not always agreed about a number
5 of matters, particularly the policies and practices of
6 the Border Patrol, but where we have been able to reach
7 some agreement and some understandings, I found that
8 very helpful. It's certainly a change from previous
9 administration around here.

10 Might know that the former chief of the
11 Border Patrol, Ron Sanders, is publicly promoting an
12 organization called American Border Patrol around here.

13 American Border Patrol has direct Web
14 links to white supremacist organizations on their Web
15 site.

16 For a former chief of Border Patrol
17 Tucson Sector to be associated with that sort of thing,
18 that sort of organization, I think is a commentary on
19 just how difficult it was to relate to previous
20 administrations of the Border Patrol here, and I think
21 Chief Aguilar has been a welcome change.

22 MR. OSBORN: Thank you.

23 DR. WEBB-VIGNERY: Catherine Medina.

24 MS. MEDINA: Madam Chairman.

25 Mr. Fife, could you please elaborate on

1 how many people are served under the Samaritan Patrol
2 now that individuals are taking greater risk in
3 crossing over?

4 MR. FIFE: Since July 1st when we put our
5 first patrol out, we've had at least one four-wheel
6 drive unit and most days two out every day.

7 And the number of people -- I'm sorry, I
8 don't have the statistics on the number of people we've
9 encountered or served, but it's an increasing number.
10 We're getting better at where we should be and where
11 the migrants are most in need.

12 We've also had good relationships with --
13 sometimes we come across groups of migrants who have
14 been picked up by Border Patrol and are awaiting
15 transportation in the desert by bus or larger vans.

16 We've been able to provide them with food
17 and water and even Border Patrol has jump started a bad
18 battery we had one time.

19 MS. MEDINA: Thank you.

20 DR. WEBB-VIGNERY: I want to thank you
21 for coming and sharing with us what you've been up to
22 and at the end of this meeting today the panel will
23 decide what the next step will be with the information
24 that we've gathered.

25 MR. FIFE: Thank you for your service

1 here today.

2 DR. JUNE WEBB-VIGNERY: The next person
3 on the agenda is Lynn Marcus from the College of Law.

4 The process has been that you give a
5 brief overview and then answer questions from the
6 committee. If you could introduce yourself.

7 MS. MARCUS: My name is Lynn Marcus and
8 I'm the director of the Immigration Law Clinic at the
9 James E. Rogers College of Law at the University of
10 Arizona, and have been an immigration lawyer for about
11 12 years specializing in deportation defense work.

12 I'm also the co-chair of the Asylum
13 Program of Southern Arizona.

14 First I wanted to thank you for your time
15 and effort that you're putting into this ongoing
16 nightmare and for taking up the challenge.

17 It's a problem that's been going on for a
18 long time, as you know. Operation Gatekeeper's been
19 going on for a long time.

20 A couple of years ago some of us got
21 together, a woman from the American Friends Service
22 Committee urged us to talk about problems along the
23 border and immigration issues and see if we could come
24 up with some proposed solutions.

25 And it was a working group and I've

1 listed the names here of the people who were involved,
2 and we came up with some ideas and so I wanted to talk
3 to you about some of those today. They may not all
4 seem directly relevant to the issue of people dying
5 along the border, but in some ways I believe that they
6 are.

7 The first -- one of the first issues is
8 so many people in the United States who have been here
9 for a long time and taken up and have deep roots here;
10 family ties, employment ties, community ties.

11 Since I believe -- U.S. immigration law
12 has always recognized that people who have been here
13 for a long time and have good character at some point
14 need to be able to legalize their status and not be
15 subject to exploitation and deportation.

16 That's always been the case but it's been
17 a long time since that provision of law, the registry,
18 has been updated. And as a result you just do not see
19 people who qualify for registry any more.

20 You have to have entered since January
21 1st of 1972. There have been people who have been here
22 since 1982 and people who have been for a long time,
23 and the registry needs to be updated.

24 The link, I think, between people with
25 strong roots here and deaths on the border -- and I

1 have no statistical knowledge or no way of knowing how
2 much of how many of the people crossing are people who
3 call the United States home.

4 I would be surprised if there weren't
5 some, because essentially some of these people, if
6 you're sending them back, it's kind of like cutting off
7 their legs and say "walk."

8 People don't have a choice in the sense
9 of this is where their life is, and you or I or anyone
10 else would come back any way we could and probably even
11 risking our lives to do it.

12 I'm sure that some of the people who are
13 crossing have been put in that situation, so the
14 registry needs to be updated.

15 If you skip to one of the other areas
16 that I'm most familiar with from my work, if you look
17 at number six. Congress went too far in 1996 and most
18 Congress people -- many Congress people at least would
19 agree with that.

20 They didn't know what all the provisions
21 of the 205 pages of the Anti-terrorism Act was that
22 they were passing. It happened too fast and then with
23 when the Illegal Immigration Reform -- I'm mixing up
24 two statutes here -- Illegal Immigrant Reform and
25 Immigrant Responsibility Act of 1996 came shortly

1 thereafter.

2 We're left with these laws that don't
3 make any sense in the way the people live their lives,
4 so long-term legal permanent residents are being
5 deported with no regard to their family ties, with no
6 regard to all of the things that ought to matter to us
7 as a community, such as the children and what kind of
8 parents are these people?

9 And so, based on old criminal
10 convictions, based on the relatively minor criminal
11 convictions, the deportation has gotten out of hand and
12 we need to restore discretion of judges in these cases.

13 When I think about that so many people
14 grew up here since they were less than one, they were
15 two, they came here, they were little, they have to
16 come back here. And now they're serving time for it
17 and now they're having to risk their lives to come back
18 here. So there are a number of specific provisions.

19 As far as specific civil rights laws and
20 what that violates, I can't tell you, but the
21 International Human Rights Law does look at things like
22 keeping families together, and there's been a judge at
23 least in, I think it was the Eastern District of New
24 York, Judge Weinstein, who looked at these provisions
25 of the International Human Rights Law and said, "We

1 need to consider children too."

2 And these laws go against our treaty
3 applications to keep families together and weigh the
4 best interest of the child.

5 I won't go through all of the
6 recommendations here because I've given them to you and
7 what interests you I'm sure you'll focus on.

8 Obviously one of the biggest problems is
9 people coming here to work, or people who are already
10 working here who don't have the manner of doing so
11 legally. And there are some proposed solutions here
12 that would look at the fact that you can't tie a person
13 -- if you are going to allow a worker to come and work
14 legally, you can't tie that person to a particular
15 employer because of the exploitation that invites.

16 But rather there are ideas to allow a
17 designated number of workers per industry so that
18 people could move within a field, and after putting in
19 a certain number of days working in that field would be
20 eligible to become legal permanent residents.

21 And then not everyone wants to become a
22 permanent resident. There are also people who really
23 want to live in Mexico but aren't able to make a living
24 there.

25 And so there's -- number three addresses

1 the idea of temporary workers and the ability of people
2 in industries where the United States needs the work to
3 be able to cross and then be able to return to their
4 families without having to risk their lives to do so.

5 There are other -- many other specifics
6 provisions as I said. The one that I come into contact
7 most are the deportation grounds, and this includes not
8 only legal permanent residents, but people who are
9 married to U.S. citizens, have U.S. citizen children
10 and just no bending and no give in the law as there
11 used to be much more so before '96.

12 The final point I'll address along those
13 lines is the expiration of Section 245(i) which allows
14 a person to immigrate, to join, for example, a U.S.
15 citizen spouse if even if they had one time crossed the
16 border illegally.

17 That expired in '98. It was renewed and
18 it expired again April 30 of 2001, so now people have
19 to leave the United States and are subject to ten-year
20 bars before they can enter.

21 What do they do? They enter. How do
22 they cross? We know.

23 And families -- there's a pull, there's
24 an attraction among families. We love our families and
25 we have to have some legal means of being able to stay

1 with our families and not having to risk people having
2 to risk their lives to be with their families, so the
3 registry needs to be updated. 245(i) needs to be
4 restored.

5 Harsh positions such as a false claim to
6 U.S. citizenship never being waiveable, not even for a
7 spouse or child of a U.S. citizen, these things the
8 Congress needs to look at again.

9 And they're not going to risk United
10 States security by doing so. It's just that when I
11 think we were on the verge of some change and
12 recognition among Congress that it had gone too far,
13 that's when September 11th happened and has really
14 derailed a lot of these efforts.

15 So I hope the United States can get back
16 on track and I hope that this committee will be able to
17 make some recommendations along those policy lines.

18 And thank you so much for putting all
19 your time into this project.

20 DR. WEBB-VIGNERY: Chair recognizes Paul
21 Gattone.

22 MR. GATTONE: Paul Gattone from Tucson.

23 Madam Chair, considering the time and
24 effort that obviously went into compiling this document
25 and thoroughness of the suggestions, I'm just hoping

1 this can be part of the official record of our
2 deliberations.

3 And since we are on a fact-finding
4 mission today, it seems there are significant facts and
5 information here and ask that this be part of our
6 official record.

7 DR. WEBB-VIGNERY: I agree and we will
8 make sure that this is part of the official record
9 that's entered in.

10 I want to thank you for coming and
11 visiting with us and sharing your very valuable
12 information.

13 MS. MARCUS: Thank you for inviting me.

14 DR. JUNE WEBB-VIGNERY: We have an
15 additional person, Kathryn Rodriguez.

16 MS. RODRIGUEZ: I'm Kathryn Rodriguez
17 from Coalicion de Derechos Humanos/Alianza Indigena Sin
18 Fronteras.

19 I have a few statements to make and
20 copies of some abuse reports that we have. They're
21 fairly typical of the situations we're seeing with the
22 Border Patrol in the desert, the treatment of
23 immigrants.

24 As a grass-roots human rights
25 organization we are constantly being presented with the

1 human aspect of these tragedies. As the numbers climb
2 and statistics change, we end up talking daily to
3 brothers, sisters and children who are faces of these
4 horrible deaths.

5 For over ten years we've worked to
6 document abuses of individuals by law enforcement
7 agencies and are witnesses to the exploitation that
8 begins as immigrants desperately seek to come to this
9 country, responding to the advertisements promising
10 work and pay, and continues all the way to the lucky
11 ones who survive the gauntlet of death our government
12 has installed and seek underpaid, thankless jobs that
13 result in mistreatment, exploitation, exposure to
14 pesticides and many other dangers.

15 The fact that U.S. border policies have
16 predicted and planned for these deaths is an atrocity.
17 That policies would be designed to discourage people
18 with the deaths of others is a cold-hearted calculation
19 that results in human suffering, pure and simple.

20 Our border policies have failed and I do
21 not think that there exists anyone who truly believes
22 that they are working.

23 Migrants have been routed to remote
24 desert regions with the prediction that a few would
25 die, thereby discouraging others from following.

1 That these deaths were and are acceptable
2 to policymakers is an indication of the regard our
3 government has for our fellow human beings.

4 But these policies have failed. They
5 have not deterred border crossers from attempting to
6 come to this country, and they have not stopped the
7 deaths that are a direct result of such policies

8 Border policies have also caused division
9 and disruption of indigenous communities. The Alianza
10 Indigena works to document the abuses against
11 indigenous communities.

12 There are approximately six tribes
13 directly affected by the border. Problems of
14 harassment of members who do not have the correct
15 documentation to attend ceremonies on their own land is
16 rampant, and the desecration of ceremonial regalia and
17 land has taken its toll on the spirit of those that
18 live in the border region.

19 Many of these deaths occur on indigenous
20 land, and it is a great sadness to find bodies of
21 individuals that are considered guests, fellow spirits
22 of the earth, individuals whose deaths have come about
23 by policies the indigenous community had no say in.

24 Derechos Humanos has worked to document
25 and bring to public light these situations. In this,

1 we have coordinated marches, vigils and protests.

2 Our efforts have even gained the notice
3 of the American Patrol, who have gone to the extent of
4 pasting one of our co-chairs', Isabel Garcia's, face on
5 their Web site, presenting misinformation.

6 Last year Garcia was notified by the FBI
7 that they had gone so far as to paste a map of a vigil
8 we would have, with a little cross depicting where she
9 would stand.

10 Such actions and sentiments are intended
11 to intimidate us in our work, but only show us that the
12 real enemies of human rights are right here in our
13 communities.

14 We, as a country, society and community
15 united under the common bonds of human decency must
16 band together to demand a stop to the border deaths, an
17 end to the militarization of the U.S.-Mexico border,
18 and the implementation of policies that work to create
19 a border of friendship between our two nations.

20 Should I read the other statement?

21 DR. WEBB-VIGNERY: We'll confine it to
22 the statement you just made. Are there questions from
23 the panel?

24 I recognize Paul Gattone.

25 MR. GATTONE: I'm Paul Gattone.

1 Ms. Rodriguez, one of the things we've
2 been doing today is collecting information and
3 obviously these are helpful abuse documentation forms.

4 I wonder if you could compile some that
5 you would feel comfortable sharing with us and
6 potentially direct them to the advisory board staff to
7 be attached to the information we're collecting today?

8 MS. RODRIGUEZ: Okay.

9 MR. GATTONE: Madam Chair, is that
10 acceptable?

11 DR. WEBB-VIGNERY: Yes. You would send
12 the information to our Los Angeles regional office and
13 you can receive that address from Art Palacios who is
14 at the rear of the room.

15 MS. RODRIGUEZ: As you're looking at
16 these reports, one of the stories that I think
17 illuminates the treatment that we are not always aware
18 of is of Benito Moreno. I believe it's the last name
19 of the attachment.

20 This is a man who is documented here in
21 this country. The situation basically ended up where
22 he was a passenger in a vehicle that was stopped for a
23 traffic violation and forgot his wallet, of all days.

24 They refused to allow him to call his
25 wife to bring his wallet to him. The bottom line is

1 Border Patrol was called, he was taken and by the end
2 of the day a 15-passenger van was crammed with 23
3 individuals.

4 They were given no water. Picked up at
5 approximately one o'clock in the afternoon, finally
6 dropped off at 10 p.m. No water this entire time. 23
7 individuals.

8 And basically the way that Derechos
9 Humanos feels about it is we know this is happening a
10 lot. The only reason we know about this particular
11 case is because this particular individual is
12 documented, and once he was allowed to make his call,
13 his wallet was brought to him, he was allowed to prove
14 he was allowed to be here, so it's by pure chance that
15 we know about this incident, but we know that it's
16 happening several other times.

17 The Border Patrol is constantly
18 condemning coyotes and smugglers in the desert for the
19 way they cram people into vehicles and mistreat them.
20 And this I believe illustrates that they themselves are
21 doing the exact same thing.

22 These are human rights violations carried
23 out by the Border Patrol and nobody is monitoring them.
24 Nobody is following up. And it's by pure dumb luck, if
25 you will, that we know it happened. So look at some of

1 those.

2 DR. WEBB-VIGNERY: This is the
3 information you would send to the regional office
4 that's been requested. Thank you very much for your
5 presentation.

6 We have Eugenia Cabrera, Deputy Counsel
7 General for the Consulate of Mexico.

8 MS. CABRERA: Good afternoon. Ladies and
9 gentlemen, shall I begin?

10 DR. JUNE WEBB-VIGNERY: Please state your
11 name for us.

12 MS. CABRERA: My name is Eugenia Cabrera.
13 I am deputy counsel from Mexico in Tucson.

14 I am going to speak to you briefly about
15 Mexican migration into the United States, about the
16 specific situation that the Consulate of Mexico in
17 Tucson attends and about some of the actions our
18 government is taking to mitigate this problem.

19 Which are the main causes of Mexican
20 migration to the United States? There are two main
21 causes: one originates in Mexico and the other one
22 originates in the United States.

23 In the whole of Mexico there are certain
24 states which are the main providers for migration due
25 to unemployment. Also there are some states in which

1 land can be cultivated only once a year. This is the
2 reason why farmers want to immigrate temporarily out of
3 Mexico.

4 The second very important cause of the
5 migration of Mexicans into the U.S. originates in this
6 country. It is, as we all know, the ample and great
7 offer of jobs in sectors which have been traditionally
8 occupied by Mexican migrants workers and which are not
9 covered by U.S. nationals.

10 You may not be aware of this, but many
11 U.S. employers in this sector prefer to hire Mexican
12 migrants because it is cheap labor. Also because they
13 are not granted all the benefits generally provided to
14 other employees, although Mexicans do pay taxes on
15 everything they earn and buy.

16 Mexican migrant workers try to come to
17 this country as they are sure a job is waiting for
18 them. Those who make it into this country are
19 virtually guaranteed a job, but their lack of legal
20 status makes them vulnerable to those employers who
21 undercut the competition by exploiting undocumented
22 workers.

23 Due to the above causes or the
24 just-mentioned causes as well as to the fact that there
25 are only limited work visas available, Mexican

1 nationals cross to the U.S. without work permits and to
2 the part of the border which appears less controlled
3 but is by far more dangerous.

4 In Arizona this area is Pinal County,
5 Pima County, mainly in the territory of the Tohono
6 O'odham Nation. This is the area where most of the
7 deaths have been taking place this year.

8 The present migratory situation in this
9 area could not be more disastrous and ominous. One of
10 the most important responsibilities of the Consulate of
11 Mexico is involved with Mexican nationals who have died
12 or are crossing through counties of Pima and Pinal.

13 In this country at the Mexican Consulate
14 we have been living an unprecedented tragic situation
15 since the summer began, specifically since the
16 beginning of June.

17 From the sixth of June to this date there
18 have been 75 deaths of Mexican nationals seeking jobs
19 in the United States, 75 people who died mainly of
20 dehydration in the desert.

21 Counting from the beginning of the year
22 from January to this date, the death count of Mexican
23 nationals is 100. 100 deaths in comparison to 56
24 deaths last year.

25 The number of deaths has been increasing

1 in giant steps since 1999 where there were 28 deaths in
2 total.

3 Of these deaths of Mexican nationals, we
4 have to consider also those in vehicle rollovers,
5 people suffering from dehydration and various types of
6 road accidents, including car, truck and railroad
7 truck.

8 The use of the Consulate of Mexico is to
9 give consular protection to Mexicans in distress. Our
10 office looks after hospitalized people, provides them
11 with food, clothing and shelter until they can be
12 safely back in Mexico.

13 In order to preserve family unity,
14 consular officers have returned lost children to their
15 parents and are always trying to keep together the same
16 members of the family on their way back to Mexico.

17 In the case of death, the consulate
18 notifies the family and provides the means of
19 identification and repatriation of the body to Mexico.

20 In the case of arrested people, the
21 consulate offers counseling provided we are notified of
22 the detention by the proper law enforcement
23 authorities, which is generally the case.

24 What actions does the government of
25 Mexico taking to diminish the tragedies at the border?

1 First of all, one of the priorities of economic policy
2 of President Fox is to invest in economic growth in
3 Mexico, and particularly in the region of Mexico where
4 migration originates in order to create more jobs.

5 In this way over the next years fewer
6 Mexicans will be compelled to leave their homes.

7 The objective of this policy is to make
8 migration a conscious and realistic choice.

9 Another important action being taking by
10 foreign affairs in Mexico and all the consulates of
11 Mexico in the United States is the campaign of
12 preventive consular protection, which consists of drug
13 testing, announcements on radio and television which
14 warn about dangers of hiring services of smugglers, as
15 well as about the risks of crossing the border without
16 proper documents.

17 These announcements are broadcast all
18 through Mexico, especially in the regions where
19 migration originates.

20 Also the consulates of Mexico along the
21 border are implementing such a preventive campaign
22 which includes the distribution of pamphlets informing
23 Mexican nationals about the rights they have in case
24 they are detained by U.S. authorities, as well as the
25 right to communicate to the Consulate of Mexico.

1 The third important section the
2 government of Mexico is undertaking is the dismantling
3 of smuggling rings. In this respect, last year to this
4 date there had been approximately 200 trials and
5 incarcerations of smugglers, and recently just last
6 weekend four important smuggler rings which operated in
7 the frontier here in Arizona were thoroughly
8 dismantled.

9 Ladies and gentlemen, from what I have
10 said before, I think it is evident that there is a need
11 for Mexico in the United States to address the issue of
12 migration on the basis of shared responsibility
13 recognizing that the issue of migration is crucial, not
14 just for Mexico but also for the United States because
15 of the increasing economic and trading partnership that
16 NAFTA has made possible.

17 Mexico is today the second trading
18 partner to the United States. More than \$500 million
19 of goods and services cross the U.S.-Mexico border
20 every day.

21 There is a need to establish a regime
22 that ensures a safe, legal and orderly movement of
23 people that cross our common border. This could be a
24 perfect opportunity and benefit for both nations,
25 rather than the source of conflict and tension that it

1 is today.

2 An immigration agreement could represent
3 a win/win situation for both countries because among
4 other things Mexicans in the U.S.A. will be able to
5 live, work legally and participate more fully into
6 their local communities.

7 Future migrants will be able to cross
8 borders safely through conventional ports of entry and
9 their labor would be offered with the certainty that
10 their civil rights would have full protection in the
11 United States.

12 Mexican and U.S. authorities will be able
13 to work together to target the criminal smugglers who
14 exploit migrants to danger and foster lawlessness along
15 the border.

16 U.S. employers will be able to hire
17 migrants without fear of breaking the law or being
18 undercut by unscrupulous competitors.

19 The Mexican economy will benefit from
20 both increased remittances and the targets of
21 investment so that in time migration pressures will
22 gradually be reduced.

23 All these reasons make up an
24 unquestionable win/win situation to the interest of
25 both Mexico and the United States. Thank you very

1 much. DR. JUNE WEBB-VIGNERY: Thank you.

2 Are there questions from the committee?

3 Chair recognizes Lorraine Lee.

4 MS. LEE: Madam Chair.

5 Ms. Cabrera, you had mentioned that the
6 consulate provides, or that you provide counsel to
7 detainees; did I understand that correctly -- to all
8 detainees?

9 MS. CABRERA: Yes. When we are advised
10 that they are detained or arrested, mainly we give them
11 advice how to behave with the authorities, what they
12 can say. And if we cannot give them the proper advice,
13 then we provide assistance of a lawyer.

14 MS. LEE: Madam Chair, I'm not sure if
15 maybe I can ask a question of Ms. Black who had
16 presented earlier because if I understood what Ms.
17 Black had mentioned earlier in Florence that there were
18 80 percent of the detainees that were there that were
19 not given counsel. Am I mixing apples and oranges
20 there?

21 MR. GATTONE: You're misinterpreting the
22 word "counsel."

23 MS. GARCIA: 80 percent of immigration
24 deportation proceedings, and Ms. Cabrera is talking
25 about consulate call.

1 MS. LEE: So the consulate provides
2 advice but not legal representation?

3 MS. CABRERA: No. We can recommend some
4 lawyers, but not -- we do not provide legal
5 representation.

6 DR. JUNE WEBB-VIGNERY: Chair recognizes
7 Ramon Paz.

8 MR. PAZ: We're heard all day people
9 bringing out situations regarding abuses, harassment,
10 intimidation by the Border Patrol, and I'm sure your
11 office has heard a lot of them too.

12 Am I correct in assuming that you've
13 heard a lot of complaints about particularly the Border
14 Patrol throughout the years in terms of how they handle
15 migrants that cross the border?

16 MS. CABRERA: Well, in this area we have
17 some complaints. We have some cases of grave
18 violations to human rights, specifically three cases of
19 Mexican nationals who were killed by or while in --
20 they were in the care of the United States or Border
21 Patrol.

22 But -- and we also have had some
23 complaints about violations, maltreatment at the time
24 of the detainment, but these are not very frequent and
25 really these violations are relatively minor. They

1 have not caused great consequences.

2 So in relation to the main problem we
3 have here, which are the deaths and the accidents,
4 these complaints of violations of human rights are
5 really not many. As I told you before, only three
6 grave cases of Mexican nationals.

7 MR. PAZ: Do you have a reason why? Why
8 would you think that would be the case knowing that we
9 have already heard of so many complaints?

10 MS. CABRERA: Sometimes they are afraid.
11 They are afraid to make a complaint because they think
12 -- they're afraid to tell us because they think that
13 the authorities will punish them more.

14 MR. PAZ: The Mexican authorities?

15 MS. CABRERA: No. The U.S. authorities.
16 And they do not tell us the truth. Sometimes they have
17 a confusion. They confuse us with U.S. authorities.

18 MR. PAZ: So you're giving me the
19 impression that the Mexican Consulate perhaps is not a
20 user-friendly agency to a lot of --

21 MS. CABRERA: No. What happens is when
22 people -- Mexican migrants -- come here, they know they
23 are not crossing in a legal way. They are afraid of
24 authority.

25 We try very hard to tell them we are

1 going to help them, but many times they don't say
2 really what's happening. Or they tell us, but they are
3 not -- they don't want to testify. They don't want to
4 involve other people. They don't want to get into more
5 trouble in the United States.

6 MR. PAZ: With the treatment of migrants,
7 is your agency or office concerned of how it's being
8 caught in the middle with anti-terrorism activity on a
9 global sense as it affects the Mexican migrants coming
10 in differently than it used to since September 11?

11 MS. CABRERA: Well, the migration was
12 reduced a little bit after September 11 last year, but
13 it has returned to the old numbers of crossings.

14 MR. PAZ: I'm talking specifically about
15 the perception that we don't look at Mexican people
16 crossing over as just simply undocumented workers or
17 migrants, but now part of a terrorist threat to the
18 United States; does that concern your office?

19 MS. CABRERA: I don't understand what you
20 mean. Do you mean Mexicans may be terrorists?

21 MR. PAZ: There is a completely different
22 attitude towards migration both from militarizing the
23 border to preventing access to this country, and the
24 migrant that is coming over for the reasons you
25 described, for economic reasons, that has gotten lost a

1 little bit so the approach towards Mexican migrants is
2 different. Is your office concerned about that
3 attitude, about that perception?

4 MS. CABRERA: What we are concerned about
5 is the reinforcement at the border because there has
6 certainly been more accidents in the frontier and more
7 and more complaints about mistreatment of the detainees
8 crossing the border.

9 DR. WEBB-VIGNERY: I want to thank you
10 for coming and speaking this afternoon and providing
11 information for the state advisory council. And at the
12 end of this session we will make a decision how we're
13 going to move forward with the information that we've
14 received today, so thank you very much.

15 We have another presenter now.

16 MS. CASTILLO: My name is spelled
17 E-r-e-n-d-i-r-a C-a-s-t-i-l-l-o. I'm an attorney at
18 the Federal Public Defender's Office. I represent
19 people who have been accused of federal crimes. I
20 represent people who have been charged with illegal
21 entry.

22 I also represent people who are charged
23 with illegal entry after deportation, and people who
24 have been accused of transportation, harboring,
25 assisting individuals avoid inspection as well as

1 material witnesses in those cases.

2 I think one of the most important
3 distinctions I have to make and inform you about is
4 while Ms. Black and Ms. Marcus have spoken about the
5 civil immigration laws, I'm here to inform you about
6 the criminal statutes which the act makes no
7 distinction of; however, they have been increasingly
8 prosecuted since 1996.

9 These laws have been in existence since
10 1952; however, not until '96 have there been actual
11 real prosecutions in this area.

12 Tucson is a very unique jurisdiction in
13 that we are only second to San Diego in prosecutions.
14 We represent over -- myself alone last year represented
15 over 500 individuals charged with illegal entry,
16 re-entry, and other immigration-related crimes.

17 Our office in 1996 started an Immigration
18 Unit where we specifically represent people who are
19 charged with immigration-related crimes.

20 Our biggest concerns as defense attorneys
21 is that we are very limited in defending individuals.
22 We are principally mitigation specialists. We are here
23 to try to obtain the least sentence possible for
24 individuals charged with these offenses, because they
25 are individuals who under the law basically have no

1 rights, especially when we talk about
2 immigration-related offenses because a person's
3 identity is not protected by the law, and unfortunately
4 this is the only offense when a person commits an
5 immigration offense. Their identity is all you need
6 basically to prove they've committed offenses.

7 We are looking at individuals who are
8 looking at anywhere from a few days if you're charged
9 with illegal entry and you have no prior criminal
10 history, to individuals who are looking at a maximum of
11 20 years just crossing the border.

12 Now what is important to note is that
13 when a person is arrested by Border Patrol, that person
14 is enrolled into their, what they call an ident system,
15 which is basically a system that was set up by the
16 United Nations to enroll refugee by their fingerprints.

17 Their fingerprints are taken into the
18 system. They are basically in their database, and then
19 after they reach a certain number of what they call
20 ident hits, they are then prosecuted criminally for
21 illegal entry.

22 Once they have been prosecuted for
23 illegal entry they go to INS. There they are processed
24 through the civil immigration system and they are
25 deported or removed from the United States.

1 People there, as you're well aware, are
2 not entitled to right to counsel; however, in the
3 criminal setting when they are facing illegal entry
4 charges, they do have attorneys.

5 We see them for approximately 15 minutes,
6 depending if we have an opportunity to go see them
7 ahead of time at the prison facility in Florence,
8 Arizona.

9 However, the right to counsel is severely
10 inhibited by the fact that it's an hour and 15, 20
11 minutes away, and to go see somebody for a consultation
12 that takes about 20 minutes when you have so many other
13 cases, it's very difficult.

14 However, I would like to tell you that
15 they do have a right to advise their consulate and that
16 is through the Geneva Convention, however that right is
17 basically a nullity. It doesn't provide them with
18 anything more than somebody telling them to invoke
19 their rights if they do that.

20 Unfortunately what we see is people not
21 having faith in any system, whether it's the consulate,
22 whether it's their criminal defense lawyer or whether
23 it's the INS, we see people who have been so abused and
24 have so little faith in the system that they'd just
25 rather grin and bare it.

1 The effect of 9/11 in my experience over
2 the last four years, comparing the last four years
3 until now, is that what I have seen increase is the
4 increased number of complaints regarding violence.

5 There seems to be a distinct experience
6 on my behalf of my clients telling me the Border Patrol
7 is more readily using physical force against them.

8 I have seen more violence, more people
9 having injuries. And unfortunately what is normally
10 the case and what has been my experience has been when
11 people are abused by Border Patrol they are usually
12 returned, so this is not information that we get. This
13 is not information that any human rights organization
14 or interfaith committee here would receive.

15 Once in a while they decide to bring them
16 anyway because they are able to probably charge them
17 with assault on a federal officer which only requires
18 them interfering with a federal officer's duty, which
19 could be as much as running away, which would be
20 considered interfering. So therefore it's a win/win
21 situation on their behalf.

22 Often they bring them here and they
23 complain of having been abused by Border Patrol, and
24 then our only recourse is to bring it to the court's
25 attention.

1 At that point we often file complaints
2 with the Office of the Inspector General; however, our
3 experience with that office is it's incredibly
4 overwhelmed and has no resources really to follow
5 things up.

6 Not only are there not any resources, but
7 there aren't any consequences to their actions. So
8 once Border Patrol is found to have been at fault, they
9 are rarely, if ever, reprimanded for their actions.

10 So this is something of great concern to
11 me because as a person who wishes to be proactive it's
12 really just a drop in the bucket.

13 I have seen an increased risk placed on
14 people crossing the border, not necessarily by those
15 who are just walking, but what I'm talking about is the
16 severity of alien smuggling cases has gotten worse.
17 We're looking at people put in much graver dangers.

18 Case law is pretty clear, for example, in
19 the New York area where people are being put in grave
20 danger because they're put in shipping containers and
21 such. We're seeing more people being brought, for
22 example, in tractor-trailer trucks, in the back without
23 any kind of breathing devices, any kind of facilities
24 for bathroom use.

25 We've seen more people left in safe

1 houses along the border area without food and water.
2 These are all things that are occurring because of the
3 policies, and rather than Border Patrol --

4 People who are there often try to
5 negotiate terms for moving on. Border Patrol has now
6 become a plain clothes law enforcement facility as
7 well; therefore, they often go into safe houses and
8 negotiate terms with individuals who have been left
9 there in a safe house and therefore that individual is
10 now culpable of an offense and is prosecuted for
11 negotiating terms for their entry into the country.

12 Material witness detention is a concern,
13 especially here, especially with what's happened in the
14 last year. We've had individuals who are having to be
15 held in prison facilities while they are held as
16 material witnesses for alien transportation charges.
17 These are all things that are of grave concern for us.

18 Another concern of violations of civil
19 rights that are egregious is the increased number of
20 people who are of Native American descent, living in
21 the Tohono O'odham Nation, who are being prosecuted
22 criminally for transporting undocumented people because
23 of the fact that it's such a large economic engine
24 growing in these areas where the Native Americans are
25 being criminalized as well as the Mexican immigrants

1 crossing the border.

2 These are all things that are I think
3 only getting worse. They've only gotten worse since
4 September 11, and there are many more that I could go
5 into, for example, the civil rights violations that
6 occur in the prisons.

7 CVA is a facility, a contract facility.
8 They contract also for immigration and also the marshal
9 service there called pre-trial detainees. Allegedly
10 they have more rights than a person convicted of a
11 crime, yet they are held in a facility that has very
12 little activity for individuals.

13 Because of the large number of people
14 that they decided have become gangs, the Border
15 Brothers, there is an increased number of people who
16 are being held for illegal entry and re-entries who if
17 identified as a Border Brother are held in a lockdown
18 situation where they're only released one hour every
19 other day.

20 And there is no due process. A person
21 who is determined to be part of a gang, they go ahead
22 and are required to put that in. There's reason to
23 believe it's related to the government's interest in
24 being safe. There's no due process. And these are the
25 type of facilities that people are being held in.

1 There are no employment opportunities for
2 undocumented people in the Bureau of Prisons because of
3 the fact they're undocumented.

4 DR. WEBB-VIGNERY: We need to call time
5 because I promised you ten minutes, and see if there
6 are questions. Isabel.

7 MS. GARCIA: Can you give us
8 approximately the perjury of people that are prosecuted
9 in this U.S. District Court, how many of those are
10 immigration-related offenses generally speaking?

11 MS. CASTILLO: I would approximate a
12 guess at about 90 percent.

13 MS. GARCIA: And your Immigration Unit at
14 the Federal PD consists of how many attorneys?

15 MS. CASTILLO: Currently we have 12
16 attorneys and one supervisor, and that will be
17 increasing to 15. In the next five years they project
18 an increase to 24 lawyers in that unit.

19 MS. GARCIA: And I gather that the
20 prosecuting office has a similar counterpart of 15 to
21 25 attorneys doing nothing but immigration violations?

22 MS. CASTILLO: No. The U.S. Attorney's
23 Office has what they call a Border Crimes Unit;
24 however, they don't -- they have a more diverse case
25 load.

1 However, their office compared to most
2 U.S. Attorneys Offices in the United States, each U.S.
3 attorney carries approximately 150 cases, which is very
4 high compared to most districts.

5 DR. JUNE WEBB-VIGNERY: Other questions?

6 Jose Matus.

7 MR. MATUS: Jose Matus from Tucson.

8 Two questions: One is, can you clarify
9 -- you made the statement that no rights under the law,
10 and the second question is some of the abuses that you
11 have mentioned, do you have documentation so we can get
12 a copy of those?

13 MS. CASTILLO: Yes. First what I mean by
14 no right is while a person is being charged with
15 illegal entry or re-entry we have a right to file a
16 motion, for example, for an illegal stop; however,
17 there is nothing to be able be suppressed by the law.

18 The law provides that if constitutional
19 rights have been broken, there is the exclusionary
20 rule. The exclusionary rule applies to whatever the
21 law enforcement officers have found as a result of the
22 violation of the constitutional right.

23 So if a person is stopped in their
24 vehicle and they search the vehicle without having
25 consent or having probable cause to search -- let's say

1 they find a gun, in a regular criminal proceeding that
2 gun could be suppressed.

3 You could file a motion to suppress and
4 that gun could be suppressed; however, in a situation
5 where you have a person driving a vehicle, let's say
6 the Border Patrol officer looks at you. He says you're
7 holding on to the wheel tightly, you're looking -- you
8 didn't look at him or you looked at him and you waved
9 and he didn't recognize you.

10 Or your car is registered in Phoenix and
11 that's uncommon to see in that area of the border, and
12 he goes ahead and stops you, goes ahead and looks and
13 sees in your car that you have three other individuals
14 in your car and he asks them if they have any papers
15 and they say no.

16 As a lawyer, if I were to file a motion
17 to suppress based on lack of reasonable suspicion or
18 lack of probable cause to prosecute this case, there is
19 nothing that could be suppressed under the law.

20 There is no legal remedy for a person's
21 identity being suppressed; therefore, that's why I say
22 we've become mitigation specialists, or we have to have
23 a few guinea pigs, a few people who are willing to go
24 ahead and look at a sentence of anywhere from 76 to 96
25 months, which are the guidelines for illegal re-entry.

1 DR. WEBB-VIGNERY: Other questions?

2 I want to thank you.

3 MS. CASTILLO: He asked me a question
4 about abuse, regarding things that have been abused.

5 One thing I did bring and can provide are
6 -- currently the Border Patrol is using these motion
7 inflation devices.

8 They use them where they see an
9 individual driving a car and they believe that somebody
10 has been stopped, should be stopped. They roll these
11 things out and people, sometimes 15, 20 people in a
12 vehicle, and as a result there's often accidents.

13 I've brought some reports and I'll submit
14 those to the committee.

15 DR. WEBB-VIGNERY: If you could give that
16 to Art Palacios who is in the back of the room. Thank
17 you very much. We have a decision to make here as a
18 committee.

19 The hearing has come to an end and the
20 committee is going to meet and decide what is next.

21 (Hearing adjourned at 3:00 p.m.)

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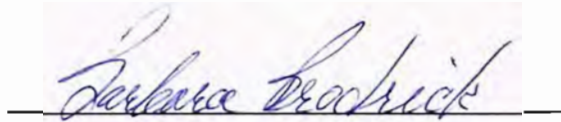
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C E R T I F I C A T E

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

I, BARBARA BRODRICK, Certified Court Reporter No. 50188, do hereby certify the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Dated September 2, 2002.



Barbara Brodrick, RPR
Certified Court Reporter No. 50188

**SUGGESTIONS FOR IMMIGRATION LAW REFORMS
BY A SOUTHERN ARIZONA WORKING GROUP¹**

Submitted on 8/25/02 by Lynn Marcus²
to the Arizona State Advisory Committee to the U.S. Commission on Civil Rights

1. Legalize Those Already Here; Update the Registry Date on a Regular Basis.

The Problem: Most of the undocumented people in the United States are productive members of our society. Their undocumented status makes them vulnerable to exploitation by unscrupulous employers and, as organized labor recognizes, undermines the bargaining power of the work force as a whole.

Currently, the only mechanism in U.S. immigration law for long-term, law abiding, undocumented residents to adjust their status to that of lawful residents is "registry" at 8 U.S.C. Section 1259, which allows for legalization of continuous residents present in the U.S. as of a certain date. In 1986, the date by which one had to have moved to the U.S. in order to qualify for registry was moved from 1948 to 1972. Since then, the date has not budged, and the provision therefore benefits only a negligible (and ever decreasing) number of people every year. A solution is needed to bring those already living and working in the U.S. -- as well as their families -- out of the shadows, to ensure that U.S. workers maintain the ability to organize, and to ensure the availability of a legal work force for U.S. employers.

Failing to update the registry not only causes hardships for those forced to live in the shadows. It also forces them to cross the border illegally after, having no legal defense, they undergo deportation proceedings and are "removed." As we know all too well, this puts their lives at risk.

¹A group composed primarily of long-term residents of Arizona participated in a working group that met under the auspices of the American Friends Service Committee in Tucson in the fall of 2000. Our purpose was to consider some of the problems with the current immigration laws and to propose solutions. The individuals who participated in the working group are John Fife, Dave Perkins, Lynn Marcus, Lica Macias, Lola Gonzalez, Alicia Weber, Maria Jimenez, Kitty Ufford-Chase, Jim Corbett, Juan Pascoe S., Russ Ferrell, Barbara Crummitt, Fernando Garcia, Margo Cowan, Ross Flanagan, Rick Ufford-Chase, Andy Silverman, Valerie Hink, Robin Hoover and Bob Carney. Some attended only one meeting, and it should not be assumed that all participants agree with all suggestions made in this document. In addition, while attempting not to make substantive changes to the list of suggestions, Lynn Marcus updated this document in August of 2002.

²Lynn Marcus is an immigration attorney and director of the Immigration Law Clinic of the James E. Rogers College of Law at the University of Arizona. She is also co-chair of the Asylum Program of Southern Arizona.

Proposed Solution: First, persons of "good moral character" (a term defined by law) who have already settled in the U.S. should be granted amnesty. At the same time, the registry should be updated to legalize all those continuously present since ten years before the date of enactment; thereafter, the registry should be automatically updated one year annually (e.g., moved to 1/1/1992 in 1/1/2002, to 1/1/1993 on 1/1/2003, etc.). Because those who cross illegally or overstay visas after passage of the amnesty would not be entitled to legal status for a full decade, this system is unlikely to generate a flood of undocumented immigrants. Even if no amnesty is implemented, the registry date *must* be updated, with an entry date of no fewer than ten years ago (and good moral character) required in order to qualify for legal status.³

2. Create Conditional Immigrant Visas By Employment Sector⁴

The Problem: Employers in certain fields B such as farming, hospitality (hotels), food service, and construction B complain of worker shortages and currently rely, in part, on undocumented labor. This makes both documented and undocumented workers subject to exploitation. Legislative proposals that would condition legal resident status ("green cards") on employment with a sole employer or that would require more hours of labor per year than most undocumented workers are currently able to obtain would result in a power imbalance decried as indentured servitude. Also, providing visas for only the workers but not their families would result in a significant increase in undocumented immigration of family members.

Proposed Solution: Designated numbers of workers in these industries should be eligible for immigrant (legal permanent resident) visas conditioned on two years of work in a field. Each immigrant visa would be conditioned upon completion of two years of work for *any employer in the field of employment* for which it is issued.⁵ The number of days of employment required per year would be based on levels most workers currently in that field could meet. Spouses and children would be eligible for derivative benefits. Audits would be conducted to detect and discourage unauthorized employment and to direct employers to legal sources of labor (but the INS would cease conducting raids, which terrorize workers and disrupt production). Workplace monitoring for labor law abuses would be essential to prevent minimum wage and other types of violations that now occur frequently in agriculture.

³"The Immigration Adjustment Act of 2002," (H.R. 4999), sponsored by Congressman Ed Pastor, would amend the registry date to January of 2000.

⁴The proposal outlined here derives from T. Alexander Alienikoff's article, "The Green Card Solution," which appeared in the December 20, 1999 issue of The American Prospect.

⁵Precedent for conditional legal resident status already exists for two categories of immigrants: 1) those who invest \$1 million in a U.S. enterprise that creates 10 or more jobs (The conditional status terminates if the enterprise is still viable after two years.), and 2) those sponsored by U.S. citizen or legal resident spouses (The conditional status terminates if the marriage survives for two years.).

3. Create Visas for Temporary Workers⁵

The Problem: Many who come to the United States come for capital accumulation or to diversify income sources as a means of creating a safety net during local crises -- not for permanent resettlement. A Rand Corporation study showed that 70% of undocumented migrants returned to their home countries permanently within ten years of arrival in the U.S. The current policy of increased border militarization and enforcement has the perverse effect of inducing people to migrate for fear that conditions at the border will worsen, and then inducing them to stay longer to avoid the hazards of crossing again. The policy also has great human costs in terms of injury and death, and is expensive financially. In addition, there is no evidence that the current policy actually prevents undocumented migration. Finally, if suggestion #2 were adopted, temporary visas would become increasingly necessary as some workers in the conditional visa program satisfied the two-year requirement and moved into fields of work outside of the mandate of their temporary visas.

Proposed Solution: Grant temporary visas to workers that permit the bearer to enter, live, and work in the U.S. without restriction for two years. Migrants could freely leave and re-enter the country during this period. The visa would be renewable after the migrant returned and remained abroad for a given period (for example, six months or one year). These visas would be issued to migrants rather than to specific employers. They would be available for residents in Canada and Latin America. They would cost \$300 up front or in low interest installments. The fees and the federal taxes paid by the employees would be earmarked for immigration-related initiatives. Possible initiatives would include: 1) Funding a binational insurance program that allows all migrants to purchase low-cost insurance for a variety of purposes (providing an alternative means of risk management to migration); 2) Establish a bi-national agency for economic development that would make matching grants to Mexican communities for the construction or improvement of local infrastructure; and 3) Create a migrant savings bank that pays dollar depositors above-market interest rates as a means of attracting earnings back to Mexico, and makes low-interest loans to individuals and families for both production and consumption.

All workers in this program would be protected by U.S. labor laws. Farm workers in this program would be afforded full protection of the law according to the Migrant and Seasonal Agricultural Worker Protection Act.

4. Eliminate Punitive Measures Which Split Families Apart and Restore Section 245(i)

The Problem: In 1996, Congress enacted laws intended to deter illegal entry and encourage an exodus of people who had entered the U.S. illegally by delaying or thwarting their ability to obtain lawful status. Because people are reluctant to separate or remain apart from their U.S. citizen and lawful permanent resident spouses, parents, and children, thousands nonetheless remained without status, subsequently entered without documents, and/or returned illegally. Moreover, in January of 1998, Section 245(i) of the Immigration and Nationality Act expired; the provision had allowed

⁵The proposal outlined here derives from Massey, Douglas S., "March of the Folly: U.S. Immigration Policy After NAFTA," *The American Prospect*, March-April, 1998, pp. 22-33.

people who had entered without documents but were otherwise eligible for immigrant visas to obtain them in the U.S., upon payment of a fine (also, it had substantially increased INS coffers). A subsequent statute renewing Section 245(i) expired on April 30, 2001. Since the laws now make many both ineligible to adjust to legal status in the U.S. and subject to lengthy -- or even lifelong -- bars if they should leave, an ever-increasing number of people are condemned to life in the shadows. The result is social and economic instability as well as constant uncertainty for the individuals and families affected.

Other draconian provisions are the automatic bar to admissibility for anyone who makes a false claim to U.S. citizenship and for anyone who has *ever* possessed or used a controlled substance, regardless of how minor the offense or how long ago. These provisions, too, are separating U.S. citizens and legal permanent residents from their loved ones.

The would-be immigrants affected by these provisions, when "removed," often have no realistic choice but to cross the border illegally in order to reunite with their loved ones.

Proposed Solution: In addition to reenacting Section 245(i), Congress should eliminate the bars to immigration (8 U.S.C. Sections 1152(a)(9)(B) and (C)) which require people who have been in the U.S. without legal status to remain outside the country for three years (for 6 months to one year here illegally), ten years (for one year or more), or forever (for an illegal reentry, in many cases). Congress should also eliminate the automatic bar to admissibility based on a false claim to U.S. citizenship (8 U.S. C. Section 1152(a)(6)(C)(ii)) and the bar based on any controlled substance violation (8 U.S.C. Section 1152(a)(2)(A)(i)(II), instead allowing for waivers in certain cases, such as when the offense was long ago, or when there are humanitarian or family unity grounds for granting the visa application.

5. Increase the Number of Visas For Family Members of US Citizens and Legal Permanent Residents.

The Problem: The quotas for permanent resident visas available to Mexicans and Canadians are no higher than those for other countries: 20,000 per year. Maintaining such low quotas for nations to which we are so closely bound by history, geography, and treaty (e.g., NAFTA) is absurd, yielding excessively long waiting times for many legally qualified immigrants.⁶ Moreover, waiting times for certain relatives of U.S. citizens and legal permanent residents overall (including children and spouses of permanent residents), are unconscionable.

The Proposed Solution: The number of permanent resident visas available to Mexicans and

⁶This observation and the attendant recommendation are taken from Massey, Douglas S., "March of Folly: U.S. Immigration Policy After NAFTA," *The American Prospect*, March-April, 1998, p. 33.

Canadians should be increased to 60,000 per year. The overall number of family visas should be doubled.

6. Modify Provisions That Separate Families Without Regard to Individual Circumstances

The Problem: It is widely acknowledged that many of the 1996 changes to the deportation laws went too far, claiming thousands of individuals and families as unintended victims. The combination of the drastic expansion of the definition of "aggravated felony" (to include many relatively minor offenses), the retroactivity of the new definition, and the elimination of case-by-case humanitarian waivers of deportation for all "aggravated felons" (and for one who committed an offense within the first seven years of U.S. residence, no matter how long ago) has resulted and continues to result in the imposition of punishments on legal permanent residents that bear no proportion to the severity of their offenses, without regard to the emotional and financial impact of deportation on law abiding U.S. citizen and lawful permanent resident children, spouses, and parents of the targeted immigrants.

Again, the ties of many of these immigrants to the U.S. are so strong (some have no chance of establishing a new life in a "foreign" country) that they are being forced to cross the border illegally in order to do what any rational human being would do.

Proposed Solution:

The definition of the term "aggravated felony" should be modified so as to include only truly severe offenses, such as murder and rape, and the discretion of immigration judges should be restored so that they are able to weigh relevant factors – such as criminal history, rehabilitation, family ties, and U.S. military service – in determining whether an offense merits deportation. Legislation introduced prior to September 11th, including the Immigrant Fairness Restoration Act (S955) and the Family Reunification Act of 2001 (H.R. 1452) is no less compelling or important today than it was before the terrorist attacks on our nation, and there is nothing in these proposed laws that would undermine U.S. security.

7. Restore Provisions Allowing Those Who Fear Persecution to Obtain Political Asylum

The Problem: The current laws fail to provide adequate protections to those who arrive in the U.S. fleeing persecution. When Congress enacted a one-year-from-arrival deadline for political asylum applications and a bar to second-time applications in 1996, it was apparently attempting to address a problem of frivolous applications, despite the fact that the problem had been virtually eliminated by reforms in the work authorization laws in 1995. Unfortunately, these provisions are taking their toll on *bona fides* refugees, including some who were unaware of the existence or details of U.S. asylum provisions or who found themselves unable to surmount other barriers (e.g., language, educational, cultural, financial) in time. Even those who are recognized by U.S. authorities as deserving of protection under international law are cruelly unable to immigrate their

spouses and children because their failure to apply in time renders them ineligible for asylum.

The expanded definition of the term "aggravated felony" mentioned above, is also taking its toll on refugees because a conviction at any time for such an offense bars a grant of asylum, preventing an immigration judge from exercising his or her.

Long periods of detention, often in harsh conditions, also takes its toll on U.S. asylum seekers, some of whom become so distraught and discouraged that they abandon valid claims.

In addition, the process of "expedited removal," (screening out and returning, without a hearing, people who arrive at U.S. ports of entry without valid entry documents) does not adequately protect the rights of those fleeing persecution. Although those who articulate a fear of persecution are given an interview with an officer, there is no right to counsel at the screening stage and no automatic right to a hearing before an immigration judge. Also, while those seeking to study the expedited removal process have often been denied access to data by the INS, what data they have managed to obtain indicates that more educated and articulate refugees are better able to survive the screening process. Therefore, it is believed that, because of fear, confusion, fatigue, trauma, lack of information, cultural barriers, language barriers, or other problems, an unknown number of refugees are being returned to countries where they face persecution.

Proposed Solution:

The one-year deadline for political asylum applications should be eliminated and the Attorney General should once again have the discretion to grant asylum to anyone who meets the definition of a "refugee." Moreover, there should be an exception for "good cause" or in the interests of justice to the rule disqualifying a previous asylum applicant. In addition, if the expanded definition of "aggravated felony" is not modified so as to apply only to truly serious crimes, the Attorney General's discretion to grant asylum should be restored so that the bars in U.S. law mimic the bars to asylum under international law (which disqualifies a person who was convicted of a "particularly serious crime" and constitutes a danger to the community).

As for the expedited removal process, it should not be applied to individuals who indicate a desire to apply for political asylum or a fear of returning. Prior to being questioned regarding a fear of return, each person should be given an oral and written explanation of the right to political asylum in plain language and in a language he or she understand (Use of videotaped explanations developed in conjunction with non-governmental organizations dealing with refugees should be encouraged.). Those who express a fear of return or desire to apply for asylum should be given interviews with political asylum officers and, if their claims are denied, should be allowed the opportunity to present the claims before immigration judges. As soon as possible prior to the interviews and hearings, the applicants should be given access to counsel (not at government expense). Waivers of these rights should be valid only if made after both an oral and a written explanation of rights in a language the individual understands. To ensure that refugees' rights are protected and that the public has confidence in the system, the INS should allow the public better

access to data concerning the expedited removal process.

In addition, those awaiting adjudication of their asylum claims should be released or allowed to petition an immigration judge for release; unless there is evidence that the individual is dangerous or poses a flight risk, there should be a presumption in favor of release pending a final determination of the asylum application.

Congress should pass "The Refugee Protection Act" (S 1311), which includes many of the above recommendations.

8. Recognize U.S. Citizenship of Members of the Tohono O'odham Nation.

The Problem: The Tohono O'odham Nation, comprised of 24,000 enrolled members, is located in southern Arizona, with twelve traditional O'odham communities and countless sacred sites lying south of the Mexican border. It is the only transborder Indian sovereign in the U.S. that has historically enrolled members based on blood quantum without regard to U.S. or Mexican citizenship. Since time immemorial, members of the Nation have freely traversed what are now southern Arizona and northern Sonora, but today, due to a "tragic historical oversight,"⁷ thousands of O'odham members are no longer free to travel across their lands because they fear arrest and deportation. Significant numbers of members born in the U.S. lack birth certificates and cannot meet state requirements to obtain "delayed" birth records. Others, born in Mexico, have lived and worked in the U.S. all their lives, and many have served in the U.S. military. Even many whose parents are U.S. citizens are unable to establish their own U.S. citizenship because either their parents' births were unregistered or they cannot prove their parents' residency north of the border for a set number of years, as required by current law.

Strict enforcement of immigration laws against the O'odham impedes attempts by tribal members to visit family members and participate in religious events, and those transporting Mexican-born relatives or friends, even for such legitimate purposes, risk prosecution for harboring, transporting, or aiding and abetting the entry of "illegal aliens." Many feel the O'odham lands have turned into a "war zone."

The Proposed Solution: Congress should enact "The Tohono O'odham Citizenship Act of 2001 (HR2348), which would recognize all enrolled members of the Nation as U.S. citizens. Members of a federally-recognized American Indian sovereign should not be treated as "illegal aliens" in their own traditional lands.

⁷The quotation is from Henry A. Ramon, Vice Chairman of the Nation.