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From: GHernandezUSCCR@netscape.net
Date: Thu, 28 Apr 2005 18:00:16 -0400
To: ebohorusccr@netscape.net

Evelyn,

Attached please find the Arizona SAC report on border issues. Please run a copy for John and please email Stanley Agustin (New Mexico) since he attended the hearing. I would email Stanley, but don't have the information.

Thank you for your help.

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Western Regional Office

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Arizona Advisory Committee

SAC Report: Civil Rights Along the U.S./Mexico Border: A Need for Immigration Reform

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Arizona Advisory Committee to the United States Commission on Civil Rights

Civil Rights Along the U.S/Mexico Border: A Need for Immigration Reform

May 2005

A report of the Arizona Advisory Committee to the U.S. Commission on Civil Rights prepared for the information and consideration of the Commission. Statements and recommendations in this report should not be attributed to the commission, but only to participants at the community forum or to the Advisory Committee.

Civil Rights Along the U.S./Mexico Border: A Need for Immigration Reform

Letter of Transmittal

Arizona Advisory Committee to
the U.S. Commission on Civil Rights

Members of the Commission

Gerald A. Reynolds, Chairman
Abigail Thernstrom, Vice-Chair
Jennifer C. Braceras
Peter N. Kirsanow
Elsie M. Meeks
Ashley Taylor
Michael Yaki

Kenneth L. Marcus, *Staff Director*

Attached is a report from the Arizona Advisory Committee based on a fact-finding and community forum held August 27-28, 2004 in Nogales, Arizona to collect information on the impact of border enforcement strategies on area residents, including United States citizens, legal and unauthorized immigrants, and the Tohono O'odham, a federally recognized American Indian Nation whose traditional lands straddle both sides of the border. Prompted by fatalities along the border, the Arizona Advisory Committee studied some of these same issues in a community briefing held August 23, 2002 in Tucson and released, *Tragedy Along the Arizona-Mexico Border: Undocumented Immigrants Face the Desert* (April 2003).

In the present study, the Arizona Advisory Committee gathered data on the impact of strategies to deter illegal immigration implemented since the mid-1990's. These strategies, intended to shift and reduce illegal immigration patterns, have led to significant loss of life but not a reduction in unauthorized border crossings. Border communities now face increased vigilante activity, environmental degradation and increased costs associated with expanded local law enforcement and social service needs that are not reimbursed by the Federal government. The Advisory Committee also heard from human rights organization leaders that Border Patrol agents engage in questionable enforcement behavior and that the process to complain about such activity is cumbersome and too often yields inconclusive or no outcomes. Others noted that cross-border trade and commercial activity have suffered as a result of these strategies.

Representatives of the indigenous people who reside along the border complained that Border Patrol agents impede their ability to conduct and take part in cultural activities involving tribal members on both sides of the border. They are also concerned about the immigration law enforcement responsibilities and costs placed upon tribal resources and urged enactment of legislation to facilitate their crossing the U.S./Mexico border that bisects the reservation.

The Arizona Advisory Committee is hopeful that the U.S. Commission on Civil Rights will support Congressional hearings on immigration to be held at the Border so that the victims of Border Patrol policies, advocates for immigrants, officials of the Department of Homeland

Security and those with a wide variety of viewpoints can present information on this important subject.

The Arizona Advisory Committee values the participation at the open meeting of the Chairpersons and members of the Commission's California, New Mexico and Texas Advisory Committees. The Arizona Advisory Committee also appreciates the participation and contribution of the individuals and organizations who appeared before it to present information.

The Advisory Committee approved submission of this report without objection. It is hoped that the study will add to the body of information that the Commission has developed on immigration issues and provide background for continued dialogue and action leading to appropriate reform.

Respectfully,

June Webb-Vignery, *Chairperson*
Arizona Advisory Committee

Arizona Advisory Committee to the U.S. Commission on Civil Rights

June Webb-Vignery, Ph.D., *Chairperson*

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Acknowledgments

The Arizona Advisory Committee wishes to thank staff of the Commission's Western Regional Office in Los Angeles for their work in the preparation of this report. The project was the principal assignment of Arthur Palacios, with support at the open forum from Grace Hernandez, and John F. Dulles, regional director, Rocky Mountain Regional Office. Arthur Palacios prepared an initial draft with support from Angelica Trevino, and project supervision, editing and writing of the final report provided by Thomas V. Pilla. Preparation of the final product was carried out under the supervision of John Trasviña, regional director.

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I. Introduction

In 1992 and 1993, the Advisory Committees from the States of Arizona, California, New Mexico and Texas conducted a joint study of immigration issues¹ along the shared border with Mexico. This border is considered the longest in the world separating a developing nation from a highly developed world power. The report emanating from the joint study, *Federal Immigration Law Enforcement in the Southwest: Civil Rights Impacts on Border Communities* (March 1997) addressed allegations including: inadequate Border Patrol² complaint procedures; incidents of physical and psychological abuse by Border Patrol agents; violations by Border Patrol agents of the Fourth, Fifth and Fourteenth Amendments; diminished civil and constitutional rights; operational practices of Federal border officials that infringed on the rights of citizens and legal residents; inadequate and poorly enforced Border Patrol firearms policies; deficient selection and training of Border Patrol personnel; increased anti-immigrant sentiment; overzealous enforcement; denial of human rights; under funding of the border patrol; and, inadequate Congressional oversight.

In response to the allegations and issues raised at their joint open meetings, the four State Advisory Committees recommended:

- The complaint processes within the Department of Justice Office of Inspector General and Immigration and Naturalization Service (INS)³ should be restructured to correct deficiencies;
- Citizen advisory panels for Federal immigration law enforcement should be established at the Federal, regional and local levels in border-impact communities;
- Congress should establish a Federal immigration enforcement review commission to independently investigate serious misconduct charges and recommend disciplinary action, as appropriate; and,
- The recruitment, screening, selection, and training programs for the INS and the Border Patrol should be strengthened and improved, in accordance with the findings of Congressional oversight committees and the Inspector General of the Department of Justice.⁴

¹ The United States Commission on Civil Rights and its Advisory Committees have, through time, conducted numerous studies and released reports on immigration issues. For example, see: USCCR, *The Tarnished Golden Door, Civil Rights Issues in Immigration*, (Sept. 1980); USCCR, *The Immigration Reform and Control Act: Assessing the Evaluation Process*, 1989; California Advisory Committee, USCCR, *A Study of Federal Immigration Policies and Practices in Southern California* (June, 1980); Hawaii Advisory Committee, USCCR, *Immigration Issues in Hawaii* (Sept. 1979); Texas Advisory Committee, USCCR, *Sin Papeles: The Undocumented in Texas*, (Jan. 1980); and, Arizona, California, New Mexico and Texas Advisory Committees, USCCR, *Federal Immigration Law Enforcement in the Southwest: Civil Rights Impacts on Border Communities* (March, 1997), (hereafter cited as *Border Communities*).

² According to George Lopez, assistant chief, Tucson Sector, the Border Patrol is the uniformed entity charged with safeguarding the homeland by securing the nation's borders. Arizona Advisory Committee, USCCR, Transcript of Proceedings, Nogales forum, Vol. Aug. 27, '04, p.60 (hereafter cited as *Nogales Transcript*, Vol. I). Unless otherwise noted, all quotations and citations are from both volumes of the Transcript of Proceedings.

³ The Immigration and Naturalization Service (INS) became a bureau of The Department of Homeland Security and was renamed the Bureau of Immigration and Custom Enforcement by the Homeland Security Act of 2002.

⁴ *Border Communities*, pp. 81-82.

In response to the recommendation and on their own initiative the INS “established an advisory board at the Federal level and a number of citizens’ groups at the local level to provide recommendations to the Attorney General on ways to reduce the number of complaints of abuse made against INS employees, and to minimize or eliminate the causes for those complaints.”⁵ According to then Inspector General Michael R. Bromwich, the Federal Citizen Advisory Panel studies “issues relating to civil rights abuse along the Southwest Border.”⁶ In addition, the Department of Justice Inspector General expanded bilingual outreach and made other tracking and reporting changes related to civil rights violation complaints.⁷

In the 1990’s, the INS initiated a multi-state border enforcement strategy consisting of Operation Hold the Line⁸, Operation Safeguard⁹, and Operation Gatekeeper¹⁰, to increase border security at highly crossed areas and shift illegal migration to areas considered to be too difficult, dangerous and deadly to cross, thus discouraging and reducing illegal immigration. As INS records, human rights organization reports and other data demonstrate, illegal immigration patterns shifted to the more difficult and dangerous terrain with deadly consequences.

Following the initiation of these new border strategies, the joint State Advisory Committees continued to receive complaints about abuse of authority by border Patrol agents, violence aimed at unauthorized immigrants¹¹ including activity by anti-immigrant vigilante groups, and deaths of unauthorized immigrants attempting to illegally enter the United States via inhospitable land routes.

The tragic events of September 11, 2001 caused by overseas terrorists also spurred interest in securing the borders of the United States and led to a major reorganization of Federal agencies responsible for national security and border issues. The creation of the Department of Homeland Security to oversee Federal efforts to prevent future terrorist attacks and the transfer of the former INS to that agency caused significant change for border communities and migrants. In particular, transferring immigration matters from a justice-oriented to a national security-oriented agency adds to the precautions with which immigrants and immigration issues are increasingly

⁵ Doris Meissner, Commissioner, INS, letter to Philip Montez, Regional Director, WRO, USCCR, Feb. 7, ’96 (hereafter cited as Meissner Letter). Cited in, Arizona, California, New Mexico, and Texas State Advisory Committees, USCCR, *Federal Immigration Law Enforcement I the Southwest: Civil Rights Impacts on Border Communities*, Mar. ’07, Appendix A and Fact Sheet, pps. 83-98, (hereafter cited as Border Communities).

⁶ Michael R. Bromwich, Inspector General, Office of the Inspector General, U.S. Dept. of Justice, letter to Philip Montez, Western Regional Office, Feb. 16, 1996 (hereafter cited as Bromwich Letter). Cited in, Border Communities, Appendix B and Fact Sheet, pp. 99-106).

⁷ Bromwich Letter.

⁸ Operation Hold the Line was the phase of the National Border Patrol Strategy implemented along the El Paso, Texas sector.

⁹ According to the INS website, “The National Border Patrol Strategy, <<http://www.ins.usdoj.gov.graphics/lawenfor/bpatrol/strategy.htm#southwest>> “Operation Safeguard redirected illegal border crossings away from urban areas near the Nogales port-of-entry to comparatively open areas that the Border Patrol could more effectively control.”

¹⁰ Operation Gatekeeper, begun in 1994, was the phase of the National Border Patrol Strategy implemented along the San Diego, California sector.

¹¹ The phrase undocumented alien is frequently used to identify individuals who may have entered the United States illegally and do not have official Immigration and Naturalization Service documentation establishing their immigration status. In this report, the phrases unauthorized immigrants and undocumented alien refer to those immigrants without immigration status.

viewed. Their impact on economic, social, labor, civil rights and diplomatic matters, simultaneously, receive less emphasis. The risk of overemphasizing immigrants as national security concerns is made clear when considering actual border apprehension data. When asked about apprehensions of individuals who may be suspected of terrorist connections, George Lopez, Assistant Chief of the Border Patrol's Tucson Sector noted that his agency identified special interest aliens as those coming from countries that have known terrorist activity, and apprehended just six [in the Tucson Sector] in the first eleven months of Fiscal Year 2004.¹² In the first nine months of fiscal year 2004, 11 special interest aliens were arrested in the Tucson and Yuma sectors; 13 in fiscal year 2003; and 28 in fiscal year 2002.¹³

Challenges and solutions related to immigration and border issues are complex and multi-faceted. So too, is the interest and approach of the four-State Advisory Committees. The Arizona State Advisory Committee, in particular, questioned whether the strategies had actually decreased the numbers of unauthorized immigrants, or had merely forced unauthorized immigrant traffic away from border towns and checkpoints as avenues for entering the United States and resulted in immigrant deaths.

The *Arizona Republic* and *Tucson Citizen* reported that the Border Patrol made 376,339 arrests of border crossers in Arizona in Fiscal Year 2002.¹⁴ While the number was significant, the Arizona Advisory Committee was concerned about the number of immigrants who died at or near the State's desert border with Mexico. In fiscal year 2001-2002, 320 died;¹⁵ 135 died in calendar year 2002; and the official toll for fiscal year 2002-03 was 139.¹⁶

Because of these reports, the Arizona State Advisory Committee determined that it needed to gather information on the border safety issue and held a briefing on August 23, 2002 in Tucson. Thirteen panelists addressed the Committee, including governmental officials, human rights advocates, and immigration lawyers. As a result of the briefing, the Advisory Committee released, *Tragedy Along the Arizona-Mexico Border: Undocumented Immigrants Face the Desert* (April 2003). The Advisory Committee recommended that the United States:

- demilitarize the border;
- establish a guest worker program;
- increase the number of permanent resident visas available to citizens of Mexico;

¹² Nogales Transcript, Vol. 1, pp. 70-71 (A Federal Fiscal Year begins October 1st. The Advisory Committee assumes the data was for FY 2004, that began Oct. 1, '03, through Aug. 27, '04, the first day of the open meeting. The full fiscal year ends September 30th).

¹³ Leo W. Banks, "Other Than Mexicans: Are terrorists entering the United States through Arizona's border with Mexico?" *Tucson Weekly*, Sept. 2-8, '04, p. 21 (hereafter cited as Banks). Six countries were dropped from the danger list as of July 8, '03.

¹⁴ Herman Rozenberg and Susan Carroll, "45% of Crossing Deaths Occur Along Arizona Border," *Arizona Republic* and *Tucson Citizen* (azcentral.com), Oct. 3, '02. Cited in, Arizona Advisory Committee report, *Tragedy Along the Arizona-Mexico Border: Undocumented Immigrants Face the Desert* (Apr. '03).

¹⁵ O. Ricardo Pimentel, "U.S. should be outraged at deaths of 320 border crossers," *Tucson Citizen*, Oct. 11, '02 (hereafter cited as Pimentel).

¹⁶ Michael Marizco, "And it begins: 3 crossers die in desert," *Arizona Daily Star*, Mar. 31, '04. During the first 8 months of calendar year 2002, 128 people perished in the Arizona desert, most dying from heat exposure and de-hydration.

- legalize unauthorized immigrants already in the United States; and,
- develop joint programs with Mexico to address immigration challenges.

In the report, the Arizona Advisory Committee noted that the heaviest crossing activity “occurred in the U.S. Border Patrol’s Tucson sector, which runs 261 miles along the border from New Mexico to the Yuma County line”,¹⁷ an area that includes desert terrain. David Aguilar, former chief of the Border Patrol’s Tucson sector blamed the spike in border deaths at that time to increased smuggling combined with a relentless drought.¹⁸ Others said the deaths were caused by at least two factors: the agency’s buildup along population centers, which had pushed crossers to far-flung, waterless areas, and the impact of pre- and post-September 11th laws and INS policies that made it more difficult for people to migrate to the United States legally.¹⁹

It was clear to the members of the four State Advisory Committees that despite their initial combined effort and the additional study conducted by the Arizona Advisory Committee, immigration issues along their shared border with Mexico required another review. The Arizona Advisory Committee was selected to conduct the first phase of the new joint State study. The Advisory Committee conducted a two-day open meeting on August 27-28, 2004 in Nogales, a southern Arizona border city that has a unique and historic metropolitan cross-border relationship with its sister city, Nogales in the Mexican state of Sonora. Seventeen participants²⁰ appeared before the Arizona Advisory Committee panel that also included the chairpersons of the California, New Mexico and Texas State Advisory Committees.²¹

The Advisory Committee heard considerable testimony on a wide variety of border-related topics. The numerous aspects of border and immigration policies mirrored the vastness of the border itself. Experts expressed concerns about Border Patrol practices that affect both arriving immigrants and local residents; changes in Border Patrol interdiction strategy and immigrant smuggler behavior that result in immigrant deaths on both sides of the border; the economic costs of our current border policies; and the unique impact these policies have on the daily lives of members of the Tohono O’odham Nation and other Federally-recognized Native American tribes whose lands straddle both sides of the United States/Mexico border.

¹⁷ Arizona Advisory Committee, U.S. Commission on Civil Rights, *Tragedy Along the Arizona-Mexico Border: Undocumented Immigrants Face the Desert*, Apr. ‘03 (hereafter cited as *Tragedy Along the Border*).

¹⁸ *Tragedy Along the Border*, p.1.

¹⁹ *Ibid*, p. 1.

²⁰ The list of participants in the order they appeared is as follows: Diego Padilla Ramos, representing Gov. Bours, Sonora, Mexico; Pancho Medina, Carlos Galan Salaz, Anti-Proposition 200 Group; Carlos Gonzalez, consul, Mexican Consulate, Phoenix; George Lopez, assistant chief, Border Patrol, Tucson Sector; Jason Brown, investigator, Equal Employment Opportunity Commission; Doralina Skidmore, district aide, Border and Immigration, U.S. Representative Raul Grijalva (D-AZ); Richard Fimbres, director, Arizona Governor’s Office of Highway Safety; Manuel Reese, Board of Supervisors, Santa Cruz County; Richard Saunders, Chief of Police, Tohono O’odham Nation; Tony Estrada, Sheriff, Santa Cruz County; Brook Bernini-Galup and Deborah Noonan, BorderLinks; Kathryn Rodriguez, Derechos Humanos; Alberto Suarez Barnett, representing the Mayor of Nogales, Sonora, Mexico; Ofelia Rivas, Tohono O’odham Nation; Elizabeth Ohman, Humane Borders; Enrique Perez Gomez, League of United Latin American Citizens; Rocio Magana, University of Chicago.

²¹ In addition to the members of the Arizona Advisory Committee, other Advisory Committee participants included: Fernando A. Hernandez, Ph.D., Chair, California Advisory Committee; Hon. Gilbert C. Alston, member, California Advisory Committee; Stanley Agustin, Chair, New Mexico Advisory Committee; and, Hon. Adolph Canales, Chair, Texas Advisory Committee.

The Advisory Committee heard virtual unanimity from a diverse set of voices representing businesses, law enforcement, local government, labor, human rights, Latino civil rights and religious organizations. Border communities are shouldering the burden for a failure at the Federal government level to stem the causes and consequences of unauthorized immigration. The current focus on fences, increased Border Patrol and shifting unauthorized immigrant traffic to dangerous and hard to cross border areas has led to the deaths of individuals seeking to cross, been costly to state, county and municipal governments at the border, jeopardized the desert environment and heightened tensions among the various races and ethnicities in border communities, all without curtailing unauthorized immigration.

The Advisory Committee supports proposals it heard to provide legal status to immigrants who are currently in the United States without authorization. This may be accomplished through a guest worker program that would primarily benefit new and future immigrants. The Advisory Committee supports the attention and efforts devoted to these difficult issues by President George W. Bush and various Congressional leaders. The Advisory Committee encourages more bipartisan and public discussions of meaningful immigration reform. The success of these efforts will weaken what President Bush and others have described as vigilantes at the border and their attendant threats to civil rights of many border residents who are U.S. citizens and legal immigrants and the safety and rights of unauthorized immigrants.

The Advisory Committee supports a community-proposed legalization program that many believe would be more effective in resolving the personal dilemmas of current border residents. A legalization program would provide an avenue to adjust the immigration status of unauthorized immigrants already living and working in the United States and further the goal of reducing illegal immigration. Current immigration policies that tighten the border have the unintended effect of keeping more unauthorized people in the United States without any hope of obtaining legal status. For those individuals who are already here and are law-abiding and economy-contributing residents, a legalization program has historical precedent and the added benefit of addressing labor shortages.

The policy recommendations that the Advisory Committee heard from participants are incomplete without a Federal government commitment to address the underlying and more fundamental questions. In the longer term, our foreign and international economic policies should reflect our national interest in immigration. Participants opined that policies such as NAFTA and proposals such as CAFTA should be evaluated with regard to their impact on immigration flows. Provisions of trade agreements reduce the need for or increase the pressure on Mexican and Central American residents to migrate, with or without authorization, to the United States. While particular changes and recommendations are beyond the scope of the Advisory Committee's study, these policy changes have a decided impact upon the Southwest border generally and the civil rights of residents, whether recent immigrants or native-born United States citizens.

Often forgotten in the debate about border policies are thousands of Native Americans whose ties to this area pre-date the creation of the border between the United States and Mexico. Their present day lives, including their abilities to continue their cultural traditions, to travel to and interact with all tribal members, and to pass down cultural traditions to their next generations are

hampered by present border strategies. Their traditional lifestyle and ability to transverse their homelands will be enhanced by Federal immigration policies that take their unique circumstances into account.

Whether it comes in the form of passing on traditional religious and cultural values, protecting legally authorized individuals from intrusive questioning and border stops, or reducing unnecessary deaths, immigration policy rests at the core of civil rights along the four state border with Mexico at Arizona, California, New Mexico and Texas. The four state Advisory Committees will continue their study of the impact of immigration policy on civil rights in future research, public meetings and reports.

This report summarizes the findings of the Arizona Advisory Committee during its latest study.

II. Historical Background of United States/Mexico Migration²²

Carlos Gonzales, the Government of Mexico consul in Phoenix, told the Advisory Committee,

The border between Mexico and the United States is unique in the world. There is not another border such as the one that [we] share.²³

Kathryn Rodriguez, coordinating organizer, Coalicion de Derechos Humanos, a human rights organization, described the Southwest as a collective of shared history, culture and community.²⁴ Residents on both sides of the United States/Mexico border are culturally, economically, historically and socially linked. In some cases, related families reside on both sides of the border, particularly among the Tohono O'odham tribe of Native Americans whose reservation straddles the border in southern Arizona and northern Mexico. The Tohono O'odham is not the only Native American tribe with members who work and reside on both side of the border. Ms. Rodriguez said, there are approximately eight indigenous communities whose existence predates the border and have continuing interest in mobility and passage that must be considered and protected.²⁵

Throughout the first quarter of the 20th century, Mexican immigrants supplemented the large labor force needs of the United States with few border-crossing restrictions existing in law or practice. Commenting on this history, Ms. Rodriguez said that migrant labor is sought in times of economic well being, and it is discouraged in hard times. As a consequence, typically lax U.S. enforcement of immigration laws becomes harsh in response to economic downturn.²⁶ During the Depression, the number of available jobs declined sharply and thousands of people of Mexican descent, including some U.S. citizens, were deported to Mexico.

During World War II, much of the U.S. labor force was overseas fighting. Their absence from the U. S. provided employment opportunities for migrants from Mexico. Agricultural labor shortages during World War II prompted the governments of the United States and Mexico to institute the Bracero guest-worker program in 1942. By 1956, as the *El Paso Herald Post* reported,

²² This section is not meant as an in-depth history of immigration issues, but simply an effort to provide a context for the Advisory Committee's present study. There are numerous scholarly books and articles on immigration and immigrant labor history that can be researched by the reader.

²³ Arizona Advisory Committee, USCCR, Transcript of Proceedings, Nogales forum, Vol. I, Aug. 27, '04, p. 48 (hereafter cited as Nogales Transcript, Vol. I). Unless otherwise noted, all quotations and citations are from both volumes of the Transcript of Proceedings.

²⁴ Arizona Advisory Committee, USCCR, Transcript of Proceedings, Nogales forum, Vol. II, Aug. 28, '04, p.211 (hereafter cited as Nogales Transcript, Vol. II). The Coalicion de Derechos Humanos is hereafter cited as Derechos Humanos.

²⁵ Nogales Transcript, Vol. II, p. 217.

²⁶ Nogales Transcript, Vol. II, p. 211.

More than 80,000 braceros pass through the El Paso Center annually. They're part of an army of 350,000 or more that marches across the border each year to help plant, cultivate and harvest cotton and other crops throughout the U.S.²⁷

Until it ended in 1964, the Bracero Program enabled 4.6 million Mexican farm workers to work in the fields of the United States. Each guest worker was required to sign a contract written in English. When the worker's contract expired, the worker had to hand over his permit and return to Mexico. While the majority complied, many did not and elected to stay, albeit illegally. By the 1960's, an excess of agricultural workers along with the introduction of mechanical [farm equipment such as the] cotton harvester, destroyed the practicality and attractiveness of the Bracero program.²⁸ When the 22-year program ended, Lee G. Williams, administrator, Bracero program, U.S. Department of Labor described the program as "legalized slavery."²⁹

In the 1960s and 70s, jobs and family ties continued to attract both legal and illegal immigrants. In the 1980s, political unrest in Nicaragua, El Salvador and Honduras prompted immigrants and asylum seekers from Central America.

Economic conditions in Mexico appear to be the leading cause of unauthorized immigration across the southern border. In the 1980's, according to Brook Bernini-Galup, delegation organizer, BorderLinks,³⁰ World Bank and International Monetary Fund Structural Adjustment programs in Mexico forced cuts in government subsidies on staple foods and social service spending.³¹ Ms. Bernini-Galup added,

The 1994 passage of the North American Free Trade Agreement (NAFTA) pushed many small Mexican business owners out of the Mexican market, opening it up to large foreign corporations [offering] jobs that do not pay livable wages and do not pay taxes to support local economies. It also allowed subsidized United States products, such as corn, to flood the Mexican market, making it impossible for small farmers in Mexico to compete.³²

Today, confronted with limited employment opportunities and low-paying jobs, significant numbers of Mexican nationals and others from Central and South America risk health and safety concerns to find work elsewhere. The United States is an attractive and proximate alternative to poverty and minimal survival. According to INS data,

²⁷ *El Paso Herald Post*, Apr. 28, 1956, as cited in The Border Agricultural Workers Project, El Paso, Texas, <http://www.farmworkers.org/bracerop.html> (hereafter cited as Border Workers Project). The Bracero program had begun on Aug. 4, '42.

²⁸ Border Workers Project.

²⁹ Border Workers Project.

³⁰ BorderLinks is a bi-national, nonprofit dedicated to building relationships and understanding between north and Latin Americans and encouraging a shared analysis of the implications of the global economy. Nogales Transcript, Vol. 1, p. 184.

³¹ Nogales Transcript, Vol. 1, p. 185-186.

³² Nogales Transcript, Vol. 1, p. 186.

In FY 2000, 173,919 Mexican citizens were admitted into the United States. In the same year, 616,346 unauthorized immigrants were arrested in the Tucson Sector alone and 1.74 million Mexican unauthorized immigrants were arrested.³³

In Fiscal-Year 2003, Mexican admissions dropped to 115,000, but still exceeded all other nationals. The 956,963 Mexican unauthorized immigrant arrests accounted for approximately 90 percent of all arrests. Every day, the United States Border Patrol apprehends over 4,000 undocumented aliens at or near the U.S./Mexico border. Over 2,000 of them attempt to cross the border in Arizona.³⁴

While economic survival is the general reason, now that the Department of Homeland Security has jurisdiction over the Border Patrol, the issue of border security and apprehension of potential terrorists has been introduced into the equation.

Immigration is a complex issue³⁵ with political and social implications.³⁶ It is an issue that generates emotional reactions and affects virtually every family, community and industry within the Western Region. Heated, emotional arguments and debates are often exchanged between those who champion immigrant rights, and proponents of strict measures to prevent unauthorized immigrants from entering the U.S. Consul Carlos Gonzalez told the Advisory Committee, "I wish we could discuss this issue without becoming emotional, [but] that is impossible."³⁷ Emotions aside, unauthorized immigrants continue to attempt border crossings, and the Border Patrol continues to develop programs to stop them.

³³ Arizona-Mexico Commission, *Labor Shortages & Illegal Immigration: Arizona's Three-Pronged Strategy*, Feb. 01, p.7 (hereafter cited as Arizona-Mexico Commission).

³⁴ Arizona-Mexico Commission, p. 6.

³⁵ Statement of U.S. Representative Raul M. Grijalva (D-AZ) as read into the record at the open meeting by Doralina Skidmore, district aide, Border and Immigration, Nogales Transcript, Vol. 1, p. 103.

³⁶ Some of these political and social implications were addressed by the Commission and its State Advisory Committees in studies that reviewed the implementation of the Immigration Reform and Control Act of 1986 (IRCA). See, Colorado Advisory Committee, USCCR, *Implementation in Colorado of the Immigration Reform and Control Act: A Preliminary Review* (January, 1989); New Mexico Advisory Committee, USCCR, *Implementation in New Mexico of the Immigration Reform and Control Act: A Preliminary Review* (May, 1989); California Advisory Committee, USCCR, *Implementation in California of the Immigration Reform and Control Act: A Preliminary Review* (December 1989); Utah Advisory Committee, USCCR, *Implementation in Utah of the Immigration Reform and Control Act: Phases One and Two* (January 1990); Texas Advisory Committee, USCCR, *Implementation in Texas of the Immigration Reform and Control Act: A Preliminary Review* (1989); Arizona Advisory Committee, USCCR, *Implementation in Arizona of the Immigration Reform and Control Act* (1990). IRCA represented a compromise of sanctions on employers who knowingly hire immigrants not authorized to work in the United States; and, amnesty for undocumented aliens who had resided in the United States continuously since January 1, 1982, or who had worked in agriculture for a requisite period of time. The law also contained an amendment outlawing discrimination on the basis of national origin or citizenship status. According to the Arizona-Mexico Commission, "the INS does not have the resources to adequately monitor and enforce employer sanctions, and employers know it." Arizona-Mexico Commission.

³⁷ Nogales Transcript, Vol. 1, p. 48.

III. Border Strategies and Impacts

Border Patrol strategies have featured fencing, walls, the use of advanced technology and increased border patrol agents to impede crossers. U.S. Representative Raul M. Grijalva (D-AZ), whose Congressional district has more border area than any Member of Congress, wrote, “The increased militarization on our border is not creating solutions to the immigration issue in our community.”³⁸ Jennifer Allen, co-director, Southwest Alliance to Resist Militarism defined the term at the Arizona Advisory Committee’s open meeting in 2002 as:

Solid steel walls, stadium-style lighting that dots the landscape, 30-foot tall surveillance towers, underground surveillance towers, underground surveillance equipment, armed military troops, military equipment and military-provided training to all law enforcement agencies that operate on the Southwest border.³⁹

U.S. Representative Grijalva wrote:

Reports in local and national papers regarding raids in our neighborhoods, stores and other locations raise concerns as to the impact on the quality of life of our communities near the border.⁴⁰

In 1994, the INS initiated the Southwest Border Strategy with the goal of shifting illegal immigrant traffic from entry points commonly used in Arizona, California, New Mexico and Texas, to more difficult terrain. Theoretically, the various physical impediments and the border strategy would discourage and reduce attempts at illegal border crossing.

Operation Hold the Line in El Paso, Texas, Operation Gatekeeper in San Diego, California, and, Operation Safeguard in Arizona increased INS visibility and presence in key border areas. Since 1998, partially due to the success of the border enforcement operations deployed in California and Texas, Arizona has emerged as the border crossing location of choice for undocumented aliens attempting to enter.⁴¹ While these prevention programs changed migration patterns,⁴² they had limited impact on curtailing the flow of illegal immigration. In Fiscal Year 1994, INS apprehended 979,101 unauthorized immigrants along the entire Southwest border.⁴³ In the following seven fiscal years, apprehensions numbered between 1.2 million and 1.6 million per

³⁸ Arizona Advisory Committee, USCCR, Transcript of Proceedings, Nogales forum, Vol. I, Aug. 27, '04, p. 101 (hereafter cited as Nogales Transcript, Vol. I). Unless otherwise noted, all quotations and citations are from both volumes of the Transcript of Proceedings.

³⁹ Allen believes the militarization of the border has essentially turned the region into a war zone. Arizona Advisory Committee, USCCR, *Tragedy Along the Border: Undocumented Immigrants Face the Desert*, (Apr. '03), p.39 (hereafter cited as *Tragedy Along the Border*).

⁴⁰ Nogales Transcript, Vol. I, p. 100.

⁴¹ Arizona-Mexico Commission, p. 7.

⁴² Arizona-Mexico Commission, p. 7.

⁴³ INS Statistical Yearbook, Table 59, Deportable Aliens Located By Program, Border Patrol Sector, And Investigations District: Fiscal Years 1992-1998 (hereafter cited as 1998 Statistical Yearbook).

year. However, in both Fiscal Years 2002 and 2003, apprehensions dropped back to the low 900,000 range.⁴⁴

Dramatic change came in the location of apprehensions. At the beginning of the Southwest Border Strategy in 1994, the Tucson Sector accounted for only 14.2 percent of Southwest border apprehensions. In Fiscal-Year 2000, the high point at the sector and the entire Southwest border, the Tucson Sector accounted for 37.5 percent of Southwest border apprehensions.⁴⁵ By Fiscal-Year 2003, the Tucson Sector accounted for 38.3 percent of all Southwest Border apprehensions, while apprehensions at the San Diego Sector, previously the busiest, dropped by 80 percent.⁴⁶

The Public Policy Institute of California (Policy Institute) found no evidence that the border enforcement build-up had substantially reduced unauthorized immigration.⁴⁷ In 2002, the Policy Institute estimated that there were more than 8 million immigrants working in the United States without legal authorization. An additional 300,000 now join that population each year.⁴⁸ Some immigration activists have suggested that the figure is closer to 10 million unauthorized immigrants. Utilizing figures from the 2000 Census and INS, it is estimated that there are 324,000 illegal immigrants in Arizona.⁴⁹

Most immigrants attempting to cross the U.S./Mexico border are seeking employment. George Lopez, assistant chief, Border Patrol, Tucson Sector said, the majority of the people [the Border Patrol] encounters state that their reason for coming is to try to better their lives and earn [higher] wages.⁵⁰ BorderLinks wrote,

Migrants do not want to stay permanently in the United States. They want to work for a few years in order to put their children through school, save to start their own business or build their own house and then return to their place of origin.⁵¹

The Policy Institute found a change in this pattern, finding evidence that unauthorized migrants are now staying longer in the United States:

Data from a 1992 survey in Mexico indicated that 20 percent of the people who moved 24 months before the survey year returned to Mexico within 6 months. By 1997, this portion had declined to 15 percent. By the time of the Mexico 2000 Census, only 7 percent of those who moved 24 months before the survey returned within the first six months and only 11 percent had returned within a year.⁵²

⁴⁴ INS Statistical Yearbook, Table 37, Deportable Aliens Located By Program, Border Patrol Sector, And Investigations SAC: Fiscal Years 1997-2003 (hereafter cited as 2003 Statistical Yearbook).

⁴⁵ 2003 Statistical Yearbook.

⁴⁶ Ibid.

⁴⁷ Public Policy Institute of California, Research Brief, "Has Increased Border Enforcement Reduced Unauthorized Immigration?" Issue 61, July '02 (hereafter cited as Research Brief).

⁴⁸ Research Brief, p. 1.

⁴⁹ The American Graduate School of International Management uses INS and Census figures to calculate an estimate of unauthorized immigrants.

⁵⁰ Nogales Transcript, Vol. 1, p. 69.

⁵¹ BorderLinks statement, p.3.

⁵² Research Brief, pp. 1-2.

Richard Fimbres, Arizona Office of Highway Safety said, "It's always been an open border where people came over and provided a service and then went back. But increased border enforcement has stopped that."⁵³ Some immigration experts have also concluded that making it harder to cross the border keeps people in the United States once they get here. At a conference sponsored by the Tomas Rivera Policy Institute, Wayne Cornelius, director, Center for Comparative Immigration Studies, University of California, San Diego told participants that Mexican migrants are staying longer and more are settling permanently in the United States because we've succeeded in making it too costly and dangerous to cross back.⁵⁴

U.S. Representative Grijalva wrote:

Every year hundreds of people die making their way across the U.S./Mexico border in search of work to take care of their families. This is in part due to an impractical and irrational policy with regard to the border and immigration. Until the need for just and sustainable development throughout the Americas is addressed, the flow of people embarking on a desperate journey of hope will continue.⁵⁵

Sheriff Estrada said,

I have a lot of compassion for these people. I can understand how difficult it must be for them to try to make a life for themselves and how difficult it must be to try to cross the desert. I drive to Puerto Penasco in my air-conditioned car and get out for a minute and I wonder how can these people be walking miles and miles through the desert with nothing? You have to be desperate in order to do something like that.⁵⁶

Bernini-Galup of BorderLinks said, urban Mexican workers and poor farmers feel that in order to support their families, they must seek work in the United States. She added that jobs exist for undocumented workers here and that much of the United States economy is based on the work of undocumented workers.⁵⁷

In their desperation, these unauthorized immigrants ignore the dangers that may be caused by smugglers of people (often termed coyotes), other perils of the trip, and/or the desolate and isolated areas of southern Arizona that they choose to cross. In many instances, the immigrants are not aware of the particular perils of the route and may not have chosen it. Assistant Chief Lopez of the Border Patrol added:

⁵³ Nogales Transcript, Vol. I, p. 125.

⁵⁴ Wayne Cornelius and Idean Salehyan, "How U.S. Border Enforcement Has Shaped Mexican Migration, 1993-present," power point presentation, Conference on Immigration and U.S. Citizenship In An Era of Homeland Security, Tomas Rivera Policy Institute, Los Angeles, Mar. 31, '05 (hereafter cited as Cornelius and Salehyan). See also, Laura Wides, "Immigrants staying longer," *Pasadena Star News*, Apr. 1, '05 (hereafter cited as Wides).

⁵⁵ Nogales Transcript, Vol. 1, p. 98-99. Read into the record by Doralina Skidmore, district aide, Border and Immigration, Office of U.S. Representative Raul Grijalva.

⁵⁶ Nogales Transcript, Vol. 1, p. 167.

⁵⁷ Nogales Transcript, Vol. 1, p. 187.

[The routes were] an adjustment on the part of smugglers who chose areas they perceived easier [because of a lack of Border Patrol agents]. These routes are pretty desolate, adversely affected by weather, have snakes and scorpions and are dangerous places to try to trek across.⁵⁸

Migrants interviewed by staff of BorderLinks said that, “risking death crossing through the desert is better than watching their children starve to death at home because of their inability to feed them.”⁵⁹ The motivation is so great that many make multiple attempts. A survey of 600 migrants conducted by the Center for Comparative Immigration Studies at UC San Diego found that “despite increased security more than half were able to get into the U.S. on their first or second try.”⁶⁰ Thirty six percent of unauthorized immigrants entered successfully on their first try; 40 percent were successful on their second try; 16 percent on their third try; and 9 percent on their fourth or fifth try.⁶¹

Border Fatalities

The backbone of the Southwest border strategy is the expected reduction in illegal immigration when traffic is shifted to more difficult and dangerous crossing points. Its deterrent value is marred by the border deaths associated with the strategy. Due to the ruggedness of the terrain and the vastness of the area, exact numbers of immigrant deaths are difficult to tabulate. The Border Patrol may not come into contact with all victims, especially those who had not yet crossed the border. Non-governmental researchers tend to report higher numbers because they work and see victims who were crossers or who attempted to cross, on both sides of the border. No More Deaths, a coalition of border rights groups concerned about the crisis and migrant safety, estimated that from 1998 to 2004 more than 2,000 men, women and children had lost their lives trying to cross the border between Mexico and the United States.⁶²

According to the University of Houston’s Center for Immigration Research (CIR), between 1985 and 1998 there were 3,495 border deaths. For this 14-year period, the number of deaths ranged from a high of 344 in 1988 to a low of 171 in 1994, averaging 250 deaths per year. For a breakdown by calendar year, see Table 1, Border Deaths, 1985-1998.

⁵⁸ Nogales Transcript, Vol. 1, p. 69.

⁵⁹ BorderLinks, *Presentation to the Arizona State Advisory Committee to the USCCR*, Aug. 27, '04, written statement, p. 3 (hereafter cited as BorderLinks Written Statement).

⁶⁰ Wides.

⁶¹ Wayne Cornelius and Idean Salehyan, “How U.S. Border Enforcement Has Shaped Mexican Migration, 1993-present,” Center for Comparative Immigrations Studies, UC San Diego, presentation, Conference on Immigration and U.S. Citizenship in an Era of Homeland Security, Tomas Rivera Policy Institute, Los Angeles, Mar. 31, '05 (hereafter cited as Cornelius Survey).

⁶² N.F. Myers letter to Pancho Medina, member, “No More Deaths in the Desert”, Apr. 21, '04.

Table 1.
Border Deaths, 1985-1998

<u>Year</u>	<u>No.</u>	<u>Year</u>	<u>No.</u>
1985	301	1992	207
1986	294	1993	173
1987	303	1994	171
1988	344	1995	206
1989	261	1996	210
1990	252	1997	256
1991	231	1998	286

Total 3,495

Source: Center for Immigration Research (CIR),
University of Houston, Texas

The *Los Angeles Times* reported “a record 154 immigrants died while crossing into Arizona in the fiscal year ending September 30, [2003].⁶³ Derechos Humanos obtained information directly from medical examiners and reported 175 migrants who died between October 1, 2003 and August 3, 2004.⁶⁴

The Tucson Sector of the U.S. Border Patrol reported a total of 1,095 border deaths during fiscal years 1999 through 2004. The Border Patrol’s data on reported deaths ranged from a high of 367 in FY 2000 to a low of 78 in FY 2001. See Table 2, Border Deaths, Fiscal Years 1999-2004.

Table 2.
Border Deaths, Fiscal Years 1999-2004

1999	236
2000	367
2001	78
2002	134
2003	139
2004	141

Total: 1,095

Source: United States Border Patrol, Tucson
Sector, Public Affairs Office

⁶³ Associated Press, “5 Migrants Perish Trying to Cross Arizona Desert,” *Los Angeles Times*, Aug. 10, ’04.

⁶⁴ Arizona Advisory Committee, USCCR, Transcript of Proceedings, Nogales forum, Vol. II, Aug. 28, ’04, p. 220 (hereafter cited as Nogales Transcript, Vol. II).

More telling than the number of deaths is their cause. According to CIR statistics, environment-related deaths were 14 times greater in 1998 (84 deaths), than in 1992 (6 deaths). In fact, total annual border deaths increased by 79, all but one environment-related. Community activists contend that the increased migrant deaths caused by environmental factors is the direct result of the Border Patrol's Southwest Border Strategy that forced migrants to cross through isolated, dangerous environments.

Elizabeth Ohmann, Humane Borders, told the Advisory Committee:

Closing down urban areas with fences or walls, technology and more personnel may have a certain logic, but it also has certain consequences. Closing these urban areas [through Operations Gatekeeper, Safeguard and Hold the Line] fed the coyote or the smuggler industry and forced migrants into the remote and most dangerous desert areas.⁶⁵

Based upon the expert presentations, including that of the U.S. Border Patrol, received at the open meeting, the Advisory Committee agreed that the deaths are a result, however unintended, of the combination of the Border Patrol's initiatives to force people away from the urban entry points, and the smugglers' tactics devised in response to the Southwest border strategy.

The direct effect of the Southwest border strategy on immigrant deaths is difficult to calculate because INS did not keep statistics on border crossing deaths prior to the implementation of the Border Safety Initiative.⁶⁶ Assistant Chief Lopez disclosed however that Border Patrol agents "have always encountered people that become injured, fall into distress or die in the process of crossing the border." If this is the case, the Advisory Committee believes that the historical data on injured, distressed and fatalities can be analyzed to assist in determining the strategy's impact.

Lopez agreed that the Border Patrol has specifically focused its enforcement efforts on populated, urban areas to create less access, and also saw the change to desolate areas as an adjustment by smugglers.⁶⁷ He concurred with the Advisory Committee's observation that despite the dangers people continue to cross the border in search of economic opportunity.

Border Safety Measures

In response to concerns about immigrant deaths resulting from its change in border strategy, the INS, Assistant Chief Lopez said:

Implemented several initiatives to prevent these occurrences or provide needed medical attention. These initiatives are intended to prevent deaths and injuries and violation of civil rights to those who choose to enter the United States at a location outside of a port of entry.⁶⁸

⁶⁵ Nogales Transcript, Vol. II, p. 273-274.

⁶⁶ Nogales Transcript, Vol. 1, p. 71.

⁶⁷ Nogales Transcript, Vol. 1, p. 68.

⁶⁸ Nogales Transcript, Vol. 1, p. 61. Program descriptions are found on pages 61 through 66.

He provided a list and brief description of these initiatives: Border Search Trauma and Rescue (BORSTAR unit)⁶⁹; Border Safety Initiative (BSI)⁷⁰; Arizona Border Control Initiative (ABCI); and, the Interior Repatriation Program; and described them to the Advisory Committee.

The Tucson Sector set up its BORSTAR program in 1999 with 45 members including 35 certified emergency medical technicians (EMTs). Its mission is to provide a rapid response to medical calls and search and rescue requests involving Border Patrol agents, civilians and unauthorized immigrants throughout the border areas.

The BSI is composed of 4 elements: prevention; search and rescue; identification; and tracking and recording. The United States and Mexico agreed to conduct joint training operations in search and rescue technique and aquatic safety, exchange intelligence related to migrant smuggling and enhance the effectiveness of their joint outreach efforts to [advise] migrants on the dangers of unauthorized border crossing, especially in remote areas during the hot summer and the cold winter months.⁷¹ Lopez added,

In cooperation with Mexican officials, the Border Patrol identifies dangerous crossing points along the entire Southwest border, discourages illegal crossings and addresses safety problems. The Border Patrol has deployed 10 rescue beacons, and, in 2004, agents responded to 7 incidents and rescued 61 subjects.⁷²

A significant element of the BSI is a 3,000 square-foot detention area in a remote part of the Tohono O'odham Nation designed to get migrants out of the sun and agents back in the field quickly.⁷³ According to Ron Bellavia, commander, BORSTAR, the BSI facility also serves as a staging area for search and rescue missions.⁷⁴

The Arizona Border Control Initiative (ABCI) is a cooperative effort among the Department of Homeland Security and other agencies "to achieve operational control of the border."⁷⁵ The agencies seek to reduce the effects of illegal smuggling.

The Interior Repatriation program returns Mexican nationals to Mexico City or Guadalajara if their homes are close to those cities. Previously, apprehended migrants, even those considered potentially at risk such as minors, females with children, the elderly and those found in distress or sick,⁷⁶ were returned just across the U.S./Mexico border. Many were destitute and could not afford to return to their hometowns from the border cities. Now, as Lopez of the Border Patrol noted,

⁶⁹ The BORSTAR unit was created in 1998 as part of a bi-national border safety initiative.

⁷⁰ The BSI program was established by the INS in June 1998 with the intent to secure the border and save lives.

⁷¹ Nogales Transcript, Vol. 1, p. 63.

⁷² Nogales Transcript, Vol. 1, p. 65.

⁷³ Gabriela Rico, "Migrants jam holding pen, Up to 500 at a time temporarily held in 3,000-square foot facility," *Tucson Citizen*, Mar. 30, '04, p. 1 (hereafter cited as Rico). In the article the holding area is referred to as the Border Security Initiative, while in the Transcript George Lopez mentioned the Border Safety Initiative.

⁷⁴ Rico.

⁷⁵ Nogales Transcript, Vol. 1, p. 65.

⁷⁶ Nogales Transcript, Vol. 1, p. 66.

Our intent is to provide an opportunity for these people to go home and remove themselves out of the dangerous terrain. The participants are interviewed by the Mexican consulate and then returned to Mexico City or Guadalajara.⁷⁷

The Border Patrol believes the repatriation program removes them from dangerous border settlements and makes it more likely that they will remain in their hometowns and not immediately attempt to cross into the United States from a border city starting point.

In August 2004 Border Patrol officials reported there were fewer exposure deaths and attributed the decrease to “a massive crackdown this summer on illegal immigration.”⁷⁸ Between January 1 and March 30, 2004, the Border Patrol’s Tucson Sector apprehended 50 percent more illegal immigrants than in the same period in 2003.⁷⁹

In addition, troubled by the deaths, community-based organizations and agencies in Arizona also established humanitarian programs to assist unauthorized crossers. Ark of the Covenant, a group of approximately 250 volunteers, works around the clock in the summer from two established camps to assist with food, water and medical aid for those who continue to cross the border from Mexico into Arizona.⁸⁰ The camps are part of a larger faith-based movement called No More Deaths⁸¹ that organized in 2004 in response to the number of deaths.⁸²

Elizabeth Ohmann of Humane Borders,⁸³ said her organization had chosen to provide water in the desert to save the lives of migrants particularly in the heat of summer.⁸⁴ By regularly studying maps that show where people have died, Humane Borders determined where to place water stations. Ohmann added, “we have permission from three Federal government agencies, Pima County and private landowners”⁸⁵ for placement of these stations. She said,

We are well aware that supplying water is only a band-aid. Band-aids help the healing process. However, our border has wounds that are much bigger than band-aid size. Therefore, we also advocate for border policy change. ...We have a matter of life and death that must be addressed. The U.S./Mexico border policies are fatally flawed and migrants are dying.⁸⁶

To reduce border deaths, Mexican Federal and State officials, sometimes with non-governmental organizations, have produced educational materials and advisories warning potential crossers of

⁷⁷ Nogales Transcript, Vol. 1, p. 66.

⁷⁸ Arthur H. Rotstein, “Border Patrol: Fewer exposure deaths,” *Arizona Daily Star*, Aug. 28, '04, p. B-4 (hereafter cited as Rotstein).

⁷⁹ Rico.

⁸⁰ Stephanie Innes, “No More Deaths, Biblically inspired volunteers work to save crossers’ lives,” *Arizona Daily Star*, July 26, '04, p. 1 (hereafter cited as Innes).

⁸¹ Innes.

⁸² Nogales Transcript, Vol. II, p. 282.

⁸³ Humane Borders is a non-profit, humanitarian organization developed to respond to the deaths taking place in the State’s desert. Their work is financed totally by donations. Nogales Transcript, Vol. II, pp. 270-271, 283.

⁸⁴ Nogales Transcript, Vol. II, p. 271.

⁸⁵ Nogales Transcript, Vol. II, p. 272.

⁸⁶ Nogales Transcript, Vol. II, p. 272-273. By maintaining that their humanitarian aid remains within immigration law these groups have avoided being charged with any violation by the Border Patrol.

the dangers. In certain border areas, agents from Mexico's Grupo Beta, the government's migrant protection force, hand leaflets to immigrants warning of the dangers they face.⁸⁷ The Governor of Arizona has met with Mexican President Vicente Fox and the Governor of Sonora to discuss border enforcement and safety issues.⁸⁸

According to Diego Padilla Ramos of the Sonora State government, Mexican President Fox and Sonora Governor Bours have met several times to address the problem of border deaths⁸⁹ and as a result, the Mexican Federal and State governments have signed a Memorandum of Understanding to assist with health, tourist aid, weather information warnings, and shelters for those attempting to cross the Sonora border.⁹⁰ The Government of Mexico and the Immigration and Naturalization Service of the United States also entered into a Memorandum of Understanding to participate in joint training exercises to keep agents on both sides of the border prepared and trained in public safety measures, share critical information and, where appropriate, equipment that will allow both governments to increase public safety.⁹¹

Padilla Ramos added that Sonora has joined with the Mexican government's security office and its Ministry of the Interior to place information booths in the Sonora towns of Sasabe, Naco, Agua Prieta and San Luis Colorado to protect and assist Mexican citizens and Central Americans attempting to cross.⁹²

Local governments in Mexico are also assisting those who have been returned across the border. Nogales, Sonora has developed El Programa Paisano to help crossers deported back to this city. According to Alberto Suarez Barnett, a representative of the Mayor of Nogales, Sonora, El Programa Paisano offers returned crossers work and certain social service benefits for a short period of time and encourages them to use their pay to return to their homes.⁹³

While immigrant deaths remain of paramount concern, despite their apparent drop, immigrant rights activists allege that Border Patrol agents routinely engage in abusive behavior toward migrants and that the process to complain about these actions remains ill-defined and elusive. Derechos Humanos has documented abuses in the migrant community that have occurred at the hands of Federal and State law enforcement. Kathryn Rodriguez of that organization said, reports from citizens and non-citizens have ranged from abuse that is verbal, physical and sexual in nature, and alleged:

Situations where off-duty agents have pulled their weapons on civilians in public places, police have violated regulations in unlawfully detaining and pursuing individuals because of their perceived immigration status, racial profiling has become a daily occurrence

⁸⁷ David Kelly, "A Tribe Caught in Middle, Arizona Indians believe their safety and sovereignty are being threatened by hordes of illegal immigrants and federal agents," *Los Angeles Times*, Mar. 21, '04 (hereafter cited as Kelly).

⁸⁸ Nogales Transcript, Vol. I, pp. 124-125.

⁸⁹ Nogales Transcript, Vol. I, p. 22.

⁹⁰ Nogales Transcript, Vol. I, pp. 23-24.

⁹¹ Arizona-Mexico Commission, *Labor Shortages & Illegal Immigration: Arizona's Three-Pronged Strategy*, Feb. '01, p. 9 (hereafter cited as Arizona-Mexico Commission)..

⁹² Nogales Transcript, Vol. I, p. 21.

⁹³ Nogales Transcript, Vol. II, p. 243.

[and] treatment of migrants and conditions at detention centers have alarmed human rights monitors.⁹⁴

Community activists complained of the use of pepper balls or pepper spray on unauthorized immigrants by Border Patrol agents. Assistant Sector Chief Lopez told the Advisory Committee that the use of pepper balls began in either 2001 or 2002, and when questioned on their use, added:

There is a written protocol to use [pepper spray] to de-escalate a situation that could lead to the use of lethal force. The policy is in place, and to our knowledge, these weapons are not being used for anything other than defense, when the agent is in fear of his life. It is a tool that we use to [avoid using] lethal force.⁹⁵

Lopez noted that Border Patrol records reflect that [pepper] spray or pepper balls have been used seventy times since the policy was implemented. If pepper is not used in a defensive manner, he said, the agency would take corrective action.⁹⁶ Diego Padilla Ramos, Sonora's official representative in Arizona also objected to the use of pepper spray and noted that there was no agreement between the governments of Mexico and the United States on its use.⁹⁷

Complaint Processing

The Advisory Committee also heard allegations that other types of abuses are not reported because of the widespread belief that the complaint process is flawed and not likely to result in change. Enrique Perez Gomez, League of United Latin American Citizens (LULAC) of southern Arizona stated, you hear of Border Patrol incidents in Nogales and the first thing [people say] is it doesn't matter because nothing will be done.⁹⁸ Doris Meissner, former Commissioner, INS, wrote:

The Office of Internal Audit reviews each case to identify deficiencies that foster misconduct, allow preventable misconduct to occur, or permit misconduct to go undetected, and recommends solutions to those problems. We have prepared strong, new policies in areas directly bearing on enforcement activities.⁹⁹

George Lopez, assistant sector chief, Tucson, noted that there is a complaint process in place:

When we receive a complaint from an undocumented alien or [a] third party, several things happen. The Joint Intake Center under the new Department of Homeland Security gets a report from the office. [Notifications are given to both] the offices of Professional Responsibility, and the Inspector General, [who have] authority to investigate allegations of abuse and civil rights violations against Border Patrol agents. Border Patrol does not

⁹⁴ Nogales Transcript, Vol. II, p. 213.

⁹⁵ Nogales Transcript, Vol. I, p. 81-83.

⁹⁶ Nogales Transcript, Vol. I, p. 83.

⁹⁷ Nogales Transcript, Vol. I, pp. 30-32.

⁹⁸ Nogales Transcript, Vol. II, p. 294.

⁹⁹ Doris Meissner, Commissioner, INS, letter with comments to Philip Montez, Regional Director, WRO, USCCR, Feb. 7, '96. See, Border Communities, Appendix A, pp. 83-98.

‘do the investigation. We detain the individual making the allegations so that he is able to make a full report. Once the investigator and the consulate of the country the alien is from speak to the detainee, we then decide whether his continued custody is necessary.¹⁰⁰

The Advisory Committee heard that detaining abuse victims is counterproductive. Rocio Magana, anthropology doctoral candidate at the University of Chicago told the Advisory Committee:

In order to make a formal complaint you have to remain at a detention center in the U.S. They are very cold, dirty, crowded and depressing. So, faced with those conditions in order to make a report they say, we rather go home. If they don’t stay in the detention center they are taken to another facility [perhaps the prison] in Florence or one of the jails. These people say, I am not a criminal; I am just here for a better job and do not want any more trouble. So, they end up writing a little statement and that will be the end of it. They just become little, unverified stories of abuse and we do not have the hard facts.¹⁰¹

Others allege that even if a complaint is filed and investigated no one learns of the outcome. Kathryn Rodriguez said,

Once you send the complaint in, you never hear anything else after that and never find out what happens to the agents. The public is never advised regarding whether the allegations were substantiated or what happened to the agents.¹⁰²

Former Inspector General Michael Bromwich agreed that “one of the criticisms often heard of the complaint process is the lack of acknowledgement to the victims that a complaint has been received,”¹⁰³ but disagreed with this allegation. He wrote:

OIG Special Agents in border communities often respond on an immediate basis to complaints that civil rights abuses have occurred. What better acknowledgement of a complaint could there be than for an OIG Special Agent to take a sworn statement from the victim of the complaint? In certain cases, statements of victims are videotaped.

In order for an allegation that rights have been abused to be prosecuted criminally, it must be supported by evidence beyond a reasonable doubt. A preponderance of the evidence, which is a lower but still substantial standard, must exist to support disciplinary action against an employee. Most complaints, particularly those which are untimely or

¹⁰⁰ Nogales Transcript, Vol. I, p. 73-74.

¹⁰¹ Nogales Transcript, Vol. II, p. 301-303.

¹⁰² Nogales Transcript, Vol. II, p. 221-222.

¹⁰³ Michael R. Bromwich, Inspector General, US Department of Justice, Letter to Philip Montez, Regional Director, WRO, USCCR, Feb. 16, 1996, p. 3 (hereafter cited as Bromwich Letter). As cited in, Arizona, California, New Mexico, and Texas State Advisory Committees, *Federal Immigration Law Enforcement in the Southwest: Civil rights Impacts on Border Communities*, Mar. '97, Appendix B and Fact Sheet, pp. 99-106 (hereafter cited as Border Communities).

incomplete, do not produce evidence that meets these standards and therefore do not result in either prosecution or employee discipline.¹⁰⁴

Lisa Reed, community relations, Border Patrol, Tucson Sector told Commission staff that notification to a complainant depends upon the nature of the complaint and is done on a case by case basis. If it is a minor allegation, Border Patrol staff will take care of it locally and telephone the complainant; if the complaint is a criminal, civil rights or abuse of power allegation it goes to the Department of Homeland Security's Joint Intake Center. There is no standard protocol for a response to a complainant and it depends on the case. The notice may be a letter or telephone call saying, if appropriate, corrective action was taken.¹⁰⁵ Ms. Rodriguez said the complaints are treated as internal investigations and the community is not aware of any disciplinary actions imposed on agents.¹⁰⁶ She suggested that greater accountability is needed.

Anti-Immigrant Fears

The Nation's proud immigrant history, contains a persistent stain of anti-immigrant sentiment that has been exhibited in the Know Nothing movement of the 1840's, anti-Chinese violence in the late 19th Century, national origin quotas and anti-German laws in the early 20th Century, and more recent developments. Today, anti-immigrant sentiment retains its appeal in some quarters and is used as a political tool or "wedge issue" with varying degrees of success to pursue particular, and perhaps, personal agendas.

Pancho Medina of the Anti-Proposition Coalition, Pima County told the Advisory Committee that anti-immigrant sentiments increased after September 11, 2001 and the war in Iraq.¹⁰⁷ Doralina Skidmore agreed that a culture of fear started after September 11.¹⁰⁸ Kathryn Rodriguez, Derechos Humanos, added that "scapegoating" migrants has resulted in nothing more than fear, division, and xenophobia in our communities and is an unacceptable response on the part of government officials.¹⁰⁹

In Arizona, anti-immigrant fear led to passage of Proposition I-200, the Arizona Taxpayer and Citizen Protection Act.¹¹⁰ The initiative read:

This state finds that illegal immigration is causing economic hardship to this state and that illegal immigration is encouraged by public agencies within this state that provide public benefits without verifying immigration status. This state further finds that illegal immigrants have been given a safe haven in this state with the aid of identification cards that are issued without verifying immigration status, and that this conduct contradicts federal immigration policy, undermines the security of our borders and demeans the

¹⁰⁴ Bromwich Letter, p. 3.

¹⁰⁵ Lisa Reed, community relations, Border Patrol, Tucson Sector, telephone call, Apr. 27, '05.

¹⁰⁶ Nogales Transcript, Vol. II, p. 226. To obtain Border Patrol reaction to the lack of accountability concern Western Regional staff telephoned the Border Patrol's Tucson Sector on April 25, '05.

¹⁰⁷ Nogales Transcript, Vol. I, p. 40.

¹⁰⁸ Nogales Transcript, Vol. I, p. 110.

¹⁰⁹ Nogales Transcript, Vol. II, p. 219.

¹¹⁰ Center for New Community, *Protect Arizona Now Selects White Supremacist Leader to Chair National Advisory Board*, Chicago, Ill., Aug. '04, p. 2 (hereafter cited as Center for New Community).

value of citizenship. Therefore, the people of this state declare that the public interest of this state requires all public agencies within this state to cooperate with federal immigration authorities to discourage illegal immigration.¹¹¹

On its surface, the Act states the obvious and the basic allegation that illegal immigration is against Federal law is accurate. The extent of economic hardship is uncertain, and the Advisory Committee doubts that public agencies encourage illegal immigration. The Act bars public benefits to illegal workers, mandates that government employees report illegal residents to immigration authorities, requires that new voters show proof of citizenship and that all voters provide identification at polling sites.¹¹²

According to the statewide Coalition to Defeat 200, the Act will require reporting to immigration authorities [regardless of citizenship status] those seeking public benefits,¹¹³ and its implementation affects legal as well as unauthorized immigrants.

The main statewide group supporting the initiative was Protect Arizona Now (PAN).¹¹⁴ Supporters alleged that Arizona spends hundreds of millions annually to provide food stamps, welfare and other social services to illegal immigrants,¹¹⁵ and that illegal immigrants cost Arizona taxpayers \$1.3 billion a year¹¹⁶ for education, medical care and incarceration.¹¹⁷ The figure is an unverified estimate provided by the Federation for American Immigration Reform (FAIR)¹¹⁸ in a study that looked “at the fiscal costs and tax payments associated with illegal immigration”, but not “at the goods and services provided by illegal alien workers, i.e., their economic contribution.”¹¹⁹ The Advisory Committee believes that an estimate is flawed if it does not consider the economic contribution provided by immigrants and their expenditures in local economies. By overlooking such data, a fair assessment is unlikely. Mr. Medina alleged that FAIR is a Washington-based anti-immigrant lobby, designated a hate group by the Southern Poverty Law Center.¹²⁰

According to the Coalition to Defeat Prop. 200,

¹¹¹ The initiative measure proposed amending Sections 16-152, 16-166, and 16-579 Arizona Revised Statutes, amending Title 46, Chapter 1, Article 3, Arizona Revised Statutes, by adding section 46-140.01; Relating to the Arizona Taxpayer and Citizen Protection Act.

¹¹² Tyche Hendricks, “Issue of illegals roiling Arizona, New law denies public services to such immigrants,” San Francisco Chronicle, Feb. 27, '05 (hereafter cited as Hendricks). See, <http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2005/02/28>

¹¹³ Coalition to Defeat Prop. 200, leaflet, “Summary of Prop 200: The Arizona Taxpayer & Citizen’s Protection Act,” 2004 (hereafter cited as Coalition Leaflet).

¹¹⁴ Center for New Community, “Protect Arizona Now Selects White Supremacist Leader to Chair National Advisory Board,” Special Report, Chicago, IL, Aug. '04.

¹¹⁵ Ananda Shorey, associated press, “Arizona activists look to cut services for illegals,” *Santa Monica Daily Press*, Oct. 6, '04, p. 10 (hereafter cited as Shorey).

¹¹⁶ Margot Roosevelt, “Border War In Arizona,” *Time*, Oct. 11, '04, p. 23 (hereafter cited as Roosevelt).

¹¹⁷ Jack Martin and Ira Mehlman, “The Costs of Illegal Immigration to Arizonans,” Federation for American Immigration Reform, undated report (hereafter cited as Martin and Mehlman).

¹¹⁸ Martin and Mehlman, p. 1.

¹¹⁹ Ibid, p. 2.

¹²⁰ Nogales Transcript, Vol. I, pp. 41-42.

The text of Prop 200 includes numerous false and misleading arguments. It states that undocumented immigration to AZ is costing taxpayers more than these same immigrants contribute in taxes and labor. The reality is that migrant workers in AZ pay nearly \$600 million in taxes every year. It states that undocumented workers are utilizing public benefits when current laws already exclude undocumented workers from receiving most public benefits. Despite the claims it contains, Prop 200 will not make the state safer or have any impact on Federal/national border policies.¹²¹

Although they did not cite any examples, proponents of the initiative also alleged that illegal immigrants and non-citizens were perpetrating voter fraud by voting in Arizona's elections. In response, Mr. Medina told the Advisory Committee,

Public officials and the county attorney were unable to provide any substantive proof of these allegations of alleged voting by undocumented people. In the last 10 to 15 years there has only been one prosecution for voter fraud.

State law presently prohibits illegal immigrants from voting. According to the Coalition to Defeat 200, the current voter registration form requires the registrant to sign an affidavit affirming that they are a U.S. citizen and it is a class 6 felony to lie on the form.

Carlos Galvan Salaz, also of the Anti-Proposition 200 Coalition, Pima County, stated, we are on the right path correcting civil and human rights abuses and then we have Proposition 200, a racist proposal. We do not want Arizona to be known as a white, racist, Klan state.¹²² Supporters of the initiative deny any bigoted motives, contending that the measure is the best way to tighten the border and shore up the state's budget.¹²³ Daniel Ortega, a Phoenix attorney attempting to invalidate the initiative said in a media interview, the majority of the measure's supporters are not hostile to immigrants or Latinos in general, but simply frustrated by the government's inaction on immigration reform. He believes, however, that this frustration should not deny people's civil liberties.¹²⁴

Sheriff Estrada believes that one of the major impacts will be that victims, out of fear, will refrain from coming forward and reporting crimes to authorities. He said,

Now, they know that they can call the police and they will be helped without us asking [their status]. We just want to know about the problem, whether they are a victim, and how can we help. Proposition 200 may change that.¹²⁵

Ms. Bernini-Galup believes it would have a detrimental effect on migrants who end up staying in Arizona and on all residents currently living in the State, including U.S. citizens.¹²⁶ Mr. Medina said, people do not realize nor know what it means to [have to] prove your citizenship and

¹²¹ Coalition Leaflet.

¹²² Nogales Transcript, Vol. I, p. 36.

¹²³ Hendricks.

¹²⁴ Ibid.

¹²⁵ Nogales Transcript, Vol. I, p. 179.

¹²⁶ Nogales Transcript, Vol. I, p. 201.

answer questions all your life about your status,¹²⁷ adding, Arizona can not afford to pass this piece of legislation.¹²⁸

Opponents of the measure say it would do nothing to stop illegal immigration; that there has never been a problem with non-citizen voting; and that checking for unauthorized immigrants applying for benefits is too cumbersome and costly.¹²⁹ Ms. Bernini-Galup added that there would be increased bureaucracy and governmental spending in the State.¹³⁰ Richard Fimbres, director, Governor's Office of Highway Safety agreed that the PAN initiative would bring burdensome costs to law enforcement agencies and extensive delays for government and emergency services.¹³¹ Officials for the State estimate that the initiative would cost an additional \$23 million in services and staffing to implement.¹³²

Those opposed also believed the measure would promote racial profiling.¹³³ Mr. Salaz said there is potential for a lot of civil rights violations if this initiative passes in Arizona.¹³⁴ The Arizona Advisory Committee agreed that Proposition 200 would have a negative effect on civil rights and passed a resolution to oppose it.¹³⁵

Despite opposition from Federal, State, County¹³⁶ and municipal¹³⁷ elected and appointed officials, immigrant rights groups and representatives of hospitals, unions and fire departments,¹³⁸ Proposition 200 won with 56 percent of the vote and went into effect in December.¹³⁹ Although its implementation was delayed by legal efforts questioning its constitutionality, Proposition 200 withstood Federal and State court challenges. Its implementation is now in the early stages.

Vigilantes at the Border

In addition to the hardships of desert crossing and anti-immigrant sentiment, unauthorized immigrants are threatened by vigilante organizations along the border. Despite opposition from President George W. Bush, Arizona's Congressional delegation, State, business and religious leaders, a well-publicized civilian effort numbering fewer than 1,000 individuals, stationed

¹²⁷ Nogales Transcript, Vol. I, p. 39.

¹²⁸ Nogales Transcript, Vol. I, p. 38.

¹²⁹ Roosevelt.

¹³⁰ Nogales Transcript, Vol. I, p. 201.

¹³¹ Nogales Transcript, Vol. I, p. 118.

¹³² Nogales Transcript, Vol. I, p. 122.

¹³³ Shorey.

¹³⁴ Nogales Transcript, Vol. I, p. 46.

¹³⁵ The Arizona Advisory Committee sent a letter dated Sept. 22, '04 to the Commission on Civil Rights alerting it to the Proposition's potential impact on civil rights including potential intimidation of people of color who wish to vote and/or register to vote. The Advisory Committee also held a press conference in Tucson on Sept. 28, '04 publicly voicing its disapproval.

¹³⁶ Pima County, Board of Health, *Resolution in Opposition To Proposition 200 on the November 2, 2004 Arizona General Election Ballot*, 2004.

¹³⁷ Shirley Villegas, Mayor, South Tucson, AZ, *Proclamation in opposition of the adoption of Proposition 200 in the City of South Tucson*, Aug. 10, '04.

¹³⁸ Shorey.

¹³⁹ Hendricks.

themselves at or close to the border in Arizona for much of the month of April, 2005. The Border Patrol made clear that their offers of assistance were neither wanted nor needed.¹⁴⁰ Organizers of the vigilante effort called upon participants to call the Border Patrol and not personally confront or detain suspected unauthorized immigrants. Nevertheless, vigilantes have steeped the border in military sentiment.

When questioned regarding his “opinion about people hunting migrants along the border,” President Bush replied, “I’m against vigilantes in the United States of America. I’m for enforcing law in a rational way. That’s why you got a Border Patrol, and they ought to be in charge of enforcing the border.”¹⁴¹

U.S. Representative Grijalva sees vigilantes as intensifying and bringing considerable danger to an area that is already in the grip of crisis.¹⁴² Elizabeth Ohmann, Humane Borders, said, there is a concern about vigilantes in southern Arizona [because] these groups favor militarization.¹⁴³

Kathryn Rodriguez told the Advisory Committee:

The increased activities of anti-immigrant, vigilante and militia style organizations have created many problems in border communities. These organizations, most from outside of Arizona, seek to promote anti-immigrant, extremist agendas. Several of them have ties to white supremacist and separatist organizations and have created an atmosphere of division.¹⁴⁴

Representative Grijalva suggested that vigilantism breeds when there is the appearance of official sanction by law enforcement authorities.¹⁴⁵ In his statement, Representative Grijalva wrote, “you just can’t allow vigilantes and hate groups to exist without a consequence. They need to know that they cannot take the law into their own hands and cannot violate people’s civil or human rights.”¹⁴⁶

There have been allegations by undocumented crossers of unlawful detention, physical abuse and the brandishing of weapons by vigilantes. Kathryn Rodriguez said, the lack of action on the part of law enforcement to deter these activities has permitted these organizations to continue their criminal actions unfettered.¹⁴⁷

When questioned by the Advisory Committee about the response by the Border Patrol to vigilante actions Lopez said,

¹⁴⁰ Lisa J. Adams, “Rice Will Confront Resentment Over U.S. Meddling During Visit to Mexico,” Associated Press Writer, GMT, Mar. 9, ‘05.

¹⁴¹ Presidential News Conference, Waco, TX, Mar. 23, ‘05.

¹⁴² Nogales Transcript, Vol. I, p. 100.

¹⁴³ Nogales Transcript, Vol. II, p. 274.

¹⁴⁴ Nogales Transcript, Vol. II, p. 216.

¹⁴⁵ Nogales Transcript, Vol. I, pp. 100-101.

¹⁴⁶ Nogales Transcript, Vol. I, p. 100.

¹⁴⁷ Nogales Transcript, Vol. II, p. 216.

The Border Patrol responds to any and all calls and every person that reports illegal activity. When we arrive in places where people are being detained, we have a protocol. We immediately report [the detention] to the local enforcement authorities, county attorney's office and the consulate of the country of origin of the detainee. Once jurisdiction is identified, the proper authorities will decide if there is a prosecutable case.¹⁴⁸

On March 4, 2005, the Mexican American Legal Defense and Educational Fund (MALDEF) filed a civil lawsuit on behalf of 16 migrants who allege they were detained and assaulted by a group of border vigilantes,¹⁴⁹ who kicked one of the woman, used a dog to menace them, aimed a gun at the entire group, and illegally detained all of them.¹⁵⁰ According to a MALDEF staff attorney, the lawsuit stems from just one of many instances of violent vigilante activity along the Arizona Mexico border that have been reported to the Cochise County Sheriff.¹⁵¹

Representative Grijalva wrote:

I am deeply disturbed by these senseless acts of violence justified by a feigned and misplaced sense of patriotism. My opposition to vigilante practices and my letter to the Attorney General regarding [vigilantes] made me a target of these groups.¹⁵²

Pima County Sheriff Estrada told the Advisory Committee:

At one time a vigilante group raised its ugly head, but fortunately the people from this community said, 'we do not want you.' They were here for a little while, made one seizure of an individual with marijuana and received some press coverage. [Local law enforcement] told them they could not transport the drugs and that kind of put them on notice so they left and to my knowledge have not been back.¹⁵³

The Advisory Committee joins reasonable voices against vigilante activity and urges continued efforts, including meaningful immigration reform, that will reduce border tensions and the threats to civil rights.

Indigenous Peoples/Native American Nations and Tribes

Prior to recorded history, the Tohono O'dham Nation, and several other Indian tribes, had a continuous residency within the Southwest. The current U.S./Mexico border, put in place relatively recently by Indian standards, bisects the traditional and existing Indian lands. As a

¹⁴⁸ Nogales Transcript, Vol. I, pp. .80-81.

¹⁴⁹ Press Release, "MALDEF Files Civil Lawsuit On Behalf Of Migrants Detained And Assaulted By Border Vigilantes, Mar. 4, '05 (hereafter cited as MALDEF lawsuit press release).

¹⁵⁰ Ana Maria Vicente, et al v. Roger Barnett, et al, U.S. District Court, District of Arizona, CIV 05-157TUC-JMR, Mar. 4, '05.

¹⁵¹ MALDEF lawsuit press release. In the period, 1999-2003, the Border Patrol received approximately 40 reports of incidents where the defendants illegally detained immigrants. Twenty of these incidents were filed with the Cochise County Sheriffs Department and 15 were filed with the Office of the Cochise County District Attorney.

¹⁵² Nogales Transcript, Vol. I, p. 99.

¹⁵³ Nogales Transcript, Vol. I, pp. 174-175.

consequence, more than 50,000 members of the Tohono O’odham of Sells, Ak Chin of Maricopa, Colorado River of Parker, Gila River of Sacaton, Pascua Yaqui of Tucson, and Quechan of Yuma are divided on both sides of the border.¹⁵⁴ While exact numbers are unavailable on how many Indian tribal members live south of the U.S./Mexico border, Richard Saunders, Chief of Police, Tohono O’odham Nation told the Advisory Committee that over five percent of tribal members (in excess of 1,400 O’odham) reside in nine traditional communities there.¹⁵⁵

The U.S./Mexico border has significance to all tribal members, not just those who live south of the border. Current border security policies of the governments of both the United States and Mexico impede Native American transport and commerce within their own lands across the border. Ofelia Rivas, a member of the O’odham Nation, stated that the two countries have disengaged the O’odham from their sacred territories by imposing border, land and immigration policies that jeopardize the integrity of the primary principles of their way of life.¹⁵⁶

The extent of the disruption of Indian traditions and daily life go beyond the existence of an international border. Government policies enforcing and defending the border threaten Indian cultural identity, according to Kathryn Rodriguez of Derechos Humanos. She told the Advisory Committee,

Problems have been reported in harassment, racial profiling, and destruction of sacred cultural objects at the hands of customs officials, many of whom are ignorant of the indigenous culture that has existed in this region since time immemorial.¹⁵⁷

The indigenous people living along Arizona’s southern border are also concerned about the number of unauthorized immigrants crossing their lands to enter the United States and the impact on the safety of tribal members. They are also concerned about maintaining the integrity and environment of their reservations, the ability to freely transverse their traditional lands and utilize tribal resources without intimidation by the Border Patrol and smugglers, and free access for tribal members and relatives who live on traditional tribal lands south of the U.S.-Mexico border.

According to Tohono O’odham Nation Police Chief Saunders a seventy-five mile stretch of the border lies within the reservation,¹⁵⁸ and under the jurisdiction of three Border Patrol stations.¹⁵⁹ Over the past five to eight years, the number and group size of unauthorized immigrants crossing the border and instances of drug smuggling have risen significantly.¹⁶⁰ In Fiscal-Year 2004, with

¹⁵⁴ The Ak Chin of Maricopa have an enrollment of 729; Colorado River of Parker have 3,611 enrolled members; Gila River of Sacaton have 18,359; Pascua Yaqui of Tucson have 13,976; Quechan of Yuma have 3,102; and, the Tohono O’odham of Sells have 27,551. Individual Tribal leaders provided the statistics. None of the tribes have precise numbers for tribal members who may reside south of the U.S. border. To contact tribal leadership, the Western Regional Office staff utilized the Bureau of Indian Affairs, “Official Listing of Agency Superintendents & Tribal Council Officials,” Western Regional Office, Phoenix, AZ, revised Feb. 3, ’04.

¹⁵⁵ Nogales Transcript, Vol. I, p. 152.

¹⁵⁶ Ofelia Rivas, “Testimony from the O’odham Voice Against the Wall and the Indigenous Alliance Without Borders,” written statement, Aug. 28, ’04 (hereafter cited as Rivas written statement).

¹⁵⁷ Nogales Transcript, Vol. II, p. 217.

¹⁵⁸ Nogales Transcript, Vol. I, p. 144.

¹⁵⁹ Nogales Transcript, Vol. I, p. 145.

¹⁶⁰ Nogales Transcript, Vol. I, p. 143.

five weeks remaining, Chief Saunders told the Advisory Committee that Border Patrol agents from the Casa Grande Station had made almost 83,000 arrests.¹⁶¹

Although Tribal police do not have Federal immigration authority, they apprehend and detain 6,000 unauthorized immigrants annually, a small fraction of the 1,500 unauthorized immigrants who attempt to cross every day according to tribal intelligence data.¹⁶²

Ms. Rivas stated that O’odham community members are forced to leave their homes for their family’s safety and survival [because] they face threats of armed violence and abuse from non-O’odham Mexican and American citizens involved in drug [smuggling] and human trafficking.¹⁶³ Because of the heightened criminal activity and law enforcement response on the reservation, Vivian Juan-Saunders, tribal chairwoman, Tohono O’odham, told the *Los Angeles Times*, people fear for their lives.¹⁶⁴

Police Chief Saunders agreed that tribal members live in fear of migrants and suspicious activity on a daily basis, and as a result, his department spends 60 percent of tribal police time and resources on [United States border and] Federal immigration issues.¹⁶⁵ He cited examples:

There were 85 migrant deaths in 2001. In calendar year 2003, tribal police seized 107,000 pounds of narcotics coming through tribal lands and investigated 18 crashes with 15 migrant fatalities. Between January-August, 2004 we seized in excess of 50,000 pounds of narcotics, and investigated 37 migrant deaths within tribal lands.¹⁶⁶

Besides the safety of tribal members and migrants, indigenous peoples are also concerned about their ability to interact within their traditional tribal lands, to visit relatives or engage in ceremonies on either side of the border. In 1937, the Tohono O’odham was recognized as a sovereign nation by the United States, and throughout the years members in both the United States and Mexico were allowed to cross the border to work, attend schools and religious ceremonies and visit relatives.¹⁶⁷ When the level of illegal immigration increased, the Border Patrol tightened security and regularly stopped and asked tribal members for proof of United States citizenship, which many cannot produce.

Ms. Rivas added, that tribal members attempting to cross the border at traditional routes are subject to personal searches and handling of sacred ceremonial bundles and medicinal plants by Border Patrol agents, detained, threatened with deportation, and that the routes are compromised by newly installed road hazards such as metal spikes embedded in the road that cause severe tire damage.¹⁶⁸ Police Chief Saunders said, on occasion we receive reports of tribal members attempting to come through and receive services of the Nation who are stopped and deported.¹⁶⁹

¹⁶¹ Nogales Transcript, Vol. I, p. 145.

¹⁶² Nogales Transcript, Vol. I, p. 146.

¹⁶³ Rivas written statement.

¹⁶⁴ Tribe Caught in Middle.

¹⁶⁵ Nogales Transcript, Vol. I, p. 148.

¹⁶⁶ Nogales Transcript, Vol. I, pp. 146-147.

¹⁶⁷ Tragedy.

¹⁶⁸ Rivas written statement.

¹⁶⁹ Nogales Transcript, Vol. I, p. 152.

Doralina Skidmore of Representative Grijalva's staff said, if we are made aware of any [entry] problems we call the American consulate in Nogales.¹⁷⁰

Vivian Juan-Saunders, chairwoman, Tohono O'odham, wrote, "it is critical that all recognized members of the Tohono O'odham Nation maintain the right to cross the border to see families and friends, to receive services and to participate in religious ceremonies and other events."¹⁷¹ Representative Grijalva supports border crossings for cultural affairs for indigenous peoples and has had discussions [to ensure such rights] with the former and present Mexican consul in Phoenix.¹⁷² Police Chief Saunders noted that the Tohono O'odham Nation [needs] the U.S. Congress to deal with this citizenship issue. The tribe believes all enrolled members should be granted the same border crossing rights as United States citizens and would like to see tribal documents recognized as the legal equivalent of a state-issued birth certificate or a federally issued certificate of citizenship.¹⁷³ The Advisory Committee supported prior legislative efforts, including the Tohono O'odham Citizenship Act of 2001, to address these concerns.¹⁷⁴

Environmental Concerns

Unauthorized immigration and efforts to deter it have taken their toll on the desert environment. While the Advisory Committee focused on the Arizona border, the belief that environmental concerns have not been considered or addressed applies to the entire border. Kathryn Rodriguez, Derechos Hermanos said,

The fragile environment of the Southwest has been seriously jeopardized by the plans to further militarize the border. The Department of Homeland Security has failed to conduct meaningful analysis of impacts to sensitive species found along the border. There has been no meaningful analysis of the cumulative impacts that past, present and future Border Patrol projects have and will have on the resources and the wildlife dependent on the border region for survival.¹⁷⁵

Ofelia Rivas agreed with the allegation that border projects proposed by the Department of Homeland Security have not addressed environmental devastation and have disregarded sacred sites and burial places.¹⁷⁶ She wrote,

The O'odham northern territory [is] intruded by all-terrain vehicles, dirt bikes, hummer vehicles, jeeps, various vehicles and immigration buses, helicopters, portable lookout posts, manned and unmanned airplanes, satellite monitoring sensors, and an unknown

¹⁷⁰ Nogales Transcript, p. 113.

¹⁷¹ Vivian Juan-Saunders, chairwoman and Ned Norris, jr., vice-chairman, Tohono O'odham Nation, letter to United Nations, Secretariat of the Permanent Forum on Indigenous Issues, July 26, '04 (hereafter cited as U.N. Letter).

¹⁷² Nogales Transcript, Vol. I, p. 113.

¹⁷³ Tragedy, p. 14. The U.S. House of Representatives considered the Tohono O'odham Citizenship Act of 2001, H.R. 2348, but no action was taken. The Arizona Advisory Committee supported the tribe's position.

¹⁷⁴ The Act would have made all enrolled members U.S. Citizens, including those living in Arizona and in Mexico.

¹⁷⁵ Nogales Transcript, Vol. II, p. 218.

¹⁷⁶ The O'odham "Voice Against the Wall and the Indigenous Alliance Without Borders." written statement, submitted to the Arizona Advisory Committee, Aug. 28, '04, p. 2 (hereafter cited as Indigenous Alliance).

number of government, Custom Border patrol, drug, special and immigration agents and Tohono O'odham police, rangers and special trackers.¹⁷⁷

In addition to the effect of projects and manpower, the impact of undocumented crossers on the environment cannot be overlooked. Elizabeth Ohmann of Humane Borders said, migrants cross desert [areas] that are both dangerous and environmentally delicate, trespass on private lands causing distress, breaking down fences [and] allowing animals to escape.¹⁷⁸ Ms. Ohmann added:

The many feet walking across the land have trampled down much of the vegetation...Great areas are damaged by vehicles and by dragging. [The Border Patrol drags tires behind the car so that the ground is fresh for seeing tracks]. This has damaged much of the desert vegetation and it will take years, environmentalists [say], for the desert to restore itself once given the opportunity. ...Another consequence of the flow of migrants through the desert has been the deposit of large amounts of trash.¹⁷⁹

The Advisory Committee agrees environmental concerns need to be addressed as part of any proposed border project and in future dialog on immigration reform. The Advisory Committee disapproves of the approach taken by the REAL-ID Act that waives the application of all environmental laws for border construction projects.¹⁸⁰ Policymakers can and should balance and reconcile border management needs with environmental concerns.

Economic Issues

The Advisory Committee received information on the impact of Border Patrol enforcement strategies on the economic climate of border cities. Some participants suggested that border strategies to curtail unauthorized migration hurt border community economics by shifting illegal immigration to particular areas without reimbursing the municipalities, counties and states for police, medical, environmental cleanup and other costs. Supervisor Manuel Reese, Santa Cruz County, added,

Overall our community depends upon our neighbors to the south. They bring a lot of money into our community. For example, a couple of years ago Wal-Mart opened 10 super stores throughout the Nation. The Wal-Mart super store they opened here is the highest grossing store in the Nation. There is a lot of buying power among our neighbors

¹⁷⁷ Indigenous Alliance, p. 2.

¹⁷⁸ Nogales Transcript, Vol. II, p. 274.

¹⁷⁹ Nogales Transcript, Vol. II, p. 277.

¹⁸⁰ H.R. 1268, Sec. 102. Waiver of laws necessary for improvement of barriers at borders amends Section 102 (c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1103 note). (1) The Secretary of Homeland Security shall have the authority to waive, and shall waive, all laws in his sole discretion that he determines necessary to ensure expeditious construction of the barriers and roads under this section; (2) Notwithstanding any other provision of law (statutory or non-statutory), no court, administrative agency, or other entity shall have jurisdiction (A) to hear any cause or claim arising from any action undertaken, or any decision made, by the Secretary of Homeland Security pursuant to paragraph (1); or (B) to order compensatory, declaratory, injunctive, equitable, or any other relief for damage alleged to arise from any such action or decision.

to the south. If we are able to facilitate the crossings and speed up our commerce and tourism then all the communities along the corridor benefit.¹⁸¹

In 2001, Mexican immigrants, legal and illegal, had an estimated \$3.86 billion in purchasing power in Arizona and their expenditures within the local economies provided a fiscal surplus above generated costs of approximately \$106 million.¹⁸² Also for that year, over \$8.1 billion in commercial transactions were generated between Arizona and Mexico.¹⁸³ A study conducted by the American Graduate School of International Management concluded that the relationship between Mexico and Arizona is worth over \$13.6 billion per year.¹⁸⁴

Some participants concluded that tighter border strategies impinge upon the area's economic vitality and legitimate commerce. Diego Padilla Ramos, Sonora State government representative stated,

Trade is very difficult especially since 9/11 because security is tighter. The flow of people is slower. Border crossing has been slower for people and for normal commercial traffic such as exports/imports and that has been detrimental.¹⁸⁵

The *Cross-Border Economic Bulletin* agreed that, "a significant increase in border wait times creates additional problems for the cross border economy."¹⁸⁶

Although difficult to ascertain its exact amount, one of the largest un-reimbursed costs for local governments is health care for unauthorized immigrants. A study done on health care by the U.S./Mexico Border Counties Coalition concluded that 28 border counties in Arizona, New Mexico, Texas and California had lost \$200 million treating unauthorized immigrants in 2003.¹⁸⁷ According to a study by the Government Accounting Office (GAO), "hospitals generally do not collect information on their patients' immigration status, and as a result, an accurate assessment of uncompensated care costs remains elusive."¹⁸⁸ In 2004, Congress set aside \$1 billion to reimburse states for treating illegal immigrants, and Arizona will get \$40 million annually over four years starting in 2005.¹⁸⁹ The Arizona Advisory Committee agrees with municipal, county and State officials who recommend Federal reimbursement to local jurisdictions on a formula basis without the requirement of asking patients about their immigration status, a procedure that

¹⁸¹ Nogales Transcript, Vol. I, p. 140-141.

¹⁸² Thunderbird, The American Graduate School of International Management, *Economic Impact of the Mexico-Arizona Relationship*, May, '03, p. 1 (hereafter cited as Economic Impact).

¹⁸³ Economic Impact, p. 1.

¹⁸⁴ Ibid, p. 1.

¹⁸⁵ Nogales Transcript, Vol. I, pp. 27-28.

¹⁸⁶ Jim Gerber, "The Cross-Border Economy After September 11," *Cross-Border Economic Bulletin*, Oct. '01, p. 3 (hereafter cited as Gerber). <http://www.sandiegodialogue.org/Report/oct01/pg7.html>

¹⁸⁷ David Kelly, "A Hospital on Border Going Over the Edge," *Los Angeles Times*, June 20, 2004 (hereafter cited as Kelly); See also, "Flood of illegal immigrants threatens to drown hospitals," *Los Angeles Times*, June 21, 2004, (hereafter cited as Flood). http://www.freewhite.com/story_print.php?storyid=980

¹⁸⁸ U.S. General Accounting Office, "Undocumented Aliens, Questions Persist about Their Impact on Hospitals' Uncompensated Care Costs," *GAO Highlights*, May, '04. The GAO surveyed 503 hospitals and interviewed Medicaid and hospital officials in 10 states and obtained data from Homeland Security officials.

¹⁸⁹ Flood.

would perhaps discourage a patient's seeking treatment thus endangering their, and potentially the community's, health and safety.

Realizing that migrants provide a needed labor resource, Supervisor Reese supports a guest worker program.¹⁹⁰ Sheriff Estrada saw the guest worker program as one concept [that might] provide opportunities for people of Mexico to help the work force of the United States in areas where they are needed.¹⁹¹ Representative Grijalva wrote:

It is an undeniable fact that undocumented immigrants make an economic contribution to the U.S. economy. If every undocumented worker in the U.S. were to be deported, we would literally not be able to feed ourselves for lack of workers to pick our lettuce, tomatoes and other produce. Hotels would close for lack of dishwashers, cooks and busboys. Thousands of children would be left without day care. The role these workers play in our economy is an integral part of our nation's way of life.¹⁹²

Richard Fimbres believes a viable guest worker program should be part of any dialog on immigration, and suggests reviewing such programs developed in Canada and Japan.¹⁹³

Elizabeth Ohmann added,

Numerous efforts to draft guest worker legislation are underway. As our attention turns to both national security and economic interests, we believe a guest worker program would be useful. However, the guest worker programs that are being established or envisioned need some fine-tuning.¹⁹⁴

Others suggest that economic opportunities in their homelands would provide would-be illegal migrants reasons to remain home. Borderlinks wrote:

The crossing of men, women and children through the deserts and mountains of the Sonora-Arizona border and resulting deaths will not stop until there are legal immigration and migration options as well as opportunities for sustainable work in Mexico.¹⁹⁵

Elizabeth Ohmann, Humane Borders agreed that an increase in employment opportunities with a concomitant raise in the standard of living in their homelands¹⁹⁶ is a viable solution to deter unauthorized immigration.

According to Kathryn Rodriguez, economic policies have historically dictated immigration policies and enforcement. Repulsion and attraction of migrant labor is the reality of the American work force.¹⁹⁷

¹⁹⁰ Nogales Transcript, Vol. I, p. 136.

¹⁹¹ Nogales Transcript, Vol. I, p. 173.

¹⁹² Nogales Transcript, Vol. I, p. 99.

¹⁹³ Nogales Transcript, Vol. I, p.126, p. 130.

¹⁹⁴ Nogales Transcript, Vol. II, p. 276.

¹⁹⁵ BorderLinks statement, p. 5.

¹⁹⁶ Nogales Transcript, Vol. II, p. 276.

¹⁹⁷ Nogales Transcript, Vol. II, p. 210.

The Advisory Committee supports the contention that economic opportunities will continue to attract undocumented workers until such time as their homelands develop and expand their economic base. In the interim, some participants noted that illegal migrants provide a needed source of labor for the United States while contributing financial support to their homelands.

Consul Carlos Gonzalez agreed with the observation that the remittances sent back to Mexico represent a substantial part of that country's economy. In 2002, remittances from the U.S. to Mexico totaled \$9.81 billion, generating approximately \$1.16 billion in transaction cost revenues that remained in the U.S.¹⁹⁸ About \$490 million was sent from Arizona to Mexico in 2002, leaving \$57.9 million in money transfer fees within the State.¹⁹⁹ Consul Gonzalez said, this year [2004] remittances from Mexicans in the U.S. will surpass the income from oil.²⁰⁰ Since the financial amounts involved are large and benefit both countries, the Advisory Committee questions whether either has a great incentive to curtail illegal migration.

¹⁹⁸ Economic Impact.

¹⁹⁹ Ibid, p. 26.

²⁰⁰ Nogales Transcript, Vol. I, p. 57.

IV. Conclusion and Recommendations

Immigration reform is of fundamental national importance and has significant international impacts. The Arizona Advisory Committee heard from many individuals who acknowledged that immigration issues are complex. However, commitment to a fair, reasonable and just immigration policy and the implementation of appropriate policies can mitigate the complexity. The Advisory Committee believes that the President and Congress must make this commitment and craft legislation that will accomplish the goal of immigration fairness.

The promise of economic opportunity draws migrants to the United States. The certainty of depressed economies push immigrants out of their home countries. The magnet of employment in the United States is so great that toughened border enforcement, by itself, will not reduce unauthorized immigration. In fact, the Advisory Committee heard repeatedly that migrants ignore hardships and risk death to cross the border in order to obtain jobs in the United States to provide economic resources for their families remaining in their homelands. The United States has a high demand for inexpensive labor that migrants provide. Despite the current immigration strategy's reliance upon walls, fences and military technology, the movement of unauthorized immigrants will not abate or cease without the United States addressing economic issues within sending countries.

The implementation of various border strategies and initiatives to prevent illegal entry has not deterred unauthorized immigration. Notwithstanding sustained high levels of apprehensions, the number of undocumented immigrants is now somewhere between 7 and 10 million, an all-time high. The strategy to shift entry points to more isolated and dangerous areas, particularly in southern Arizona, has had deadly consequences. Since not all bodies are found and some deaths go unreported, studies of border fatalities tend to under report and are inexact estimates. Available data reflect an increase in number and percentage of environment-related deaths along the border following the strategy that channels unauthorized immigrant traffic into dangerous and hard to cross border areas.

The Advisory Committee also heard allegations of abuse of authority by Border Patrol officers and dangerous behavior on the part of smugglers of both people and drugs. Although not new complaints, they suggest that an unacceptable level of violence remains.

The strategies have also harmed the economic viability of border trade and communities. Participants described a decrease in cross-border shopping, exports and imports that has damaged border community economies and tax revenues. At the same time, increased Federal border enforcement is associated with increased and unfunded local government costs for law enforcement, medical treatment, and detention of apprehended unauthorized immigrants. The Advisory Committee believes that Federal reimbursement of the costs to counties, local municipalities and Native American tribal governments is warranted.

Some participants alleged that the sheer numbers of people moving through the desert and Border Patrol efforts to stop such crossing, including the use of vehicles of all types, have had a detrimental and long-term effect on the fragile environment. Environmental experts believe that

the current border strategy results in increased degradation and devastation to plant and animal life.

Native Americans expressed concern about their ability to safely traverse their tribal lands, utilize medicinal and herbal plants and visit sacred sites, all of which have been affected by the presence of unauthorized immigrants and Border Patrol agents. Some complained that tribal members who reside south of the border cannot visit relatives or participate in various aspects of their traditional life because they do not possess documentation required by Border Patrol agents. They urge that tribal identification and membership should be adequate proof of their status to permit them to cross the U.S./Mexico border.

Government border strategies, the build up of Border Patrol manpower and equipment, the increased militarization, the activity of coyotes and drug smugglers, the unabated flow of illegal immigrants, and the presence of vigilante groups have created a battleground atmosphere along the border. The Advisory Committee is hopeful that constructive reform of immigration policy and laws will eliminate this atmosphere and create a climate for fair treatment of migrant labor and immigrants who wish to pursue the American Dream. The Advisory Committee is of the firm belief that existent commonalities of interest can be utilized as a basis for reform, and that successfully addressing immigration policy challenges will improve civil rights for all residents of the border area.

Recommendations

In prior reports, the Advisory Committee offered recommendations to achieve equitable immigration policies and eliminate certain practices at the border that have proven to be ineffective, discriminatory and, in some cases, deadly. The Advisory Committee renews the recommendations and urges the relevant agencies to review them and report on the status of their implementation.

From the Arizona, California, New Mexico and Texas report, *Federal Immigration Law Enforcement in the Southwest: Civil Rights Impacts on Border Communities*:²⁰¹

- The complaint process within the Office of Inspector General and the Immigration and Naturalization Service should be restructured to correct the deficiencies noted by the Commission in *The Tarnished Golden Door*²⁰² in 1980 and reconfirmed by its Advisory Committees in the Southwest 15 years later.
- Citizen advisory boards for Federal immigration law enforcement should be established at the Federal, regional, and local levels in border-impacted communities.²⁰³

²⁰¹ Arizona, California, New Mexico, and Texas Advisory Committees, USCCR, *Federal Immigration Law Enforcement in the Southwest: Civil Rights Impacts on Border Communities*, Mar. 1997, pp. 81-82.

²⁰² USCCR, *The Tarnished Golden Door, Civil Rights Issues in Immigration*, Sept. 1980.

²⁰³ The Advisory Committee is cognizant of the fact that a Federal Advisory Panel on immigration issues was implemented. Additional local level panels should be established.

- Congress should establish a Federal immigration enforcement review commission to independently investigate serious misconduct charges and recommend disciplinary action, as appropriate.
- The recruitment, screening, selection and training programs for the INS and Border Patrol should be strengthened and improved, in accordance with the findings of Congressional oversight committees and the Inspector General of the Department of Justice. Management and accountability structures, including supervisory and disciplinary provisions, also need to be strengthened.

From the Arizona Advisory Committee report, *Tragedy Along the Arizona-Mexico Border: Undocumented Immigrants Face the Desert*, the Advisory Committee supported panelist recommendations including:

- Demilitarize the border;
- Establish a guest-worker program;
- Increase the number of permanent resident visas available to Mexicans;
- Legalize undocumented immigrants already in the United States;
- Modify immigration laws that deport immigrants for minor criminal offenses;
- Encourage cooperation with Mexico;²⁰⁴
- Protect the rights of asylum seekers; and,
- Recognize United States citizenship of the Tohono O'odham.²⁰⁵

As a result of the 2002 study and 2003 report, the Arizona Advisory Committee requested via letter that the U.S. Commission on Civil Rights make a formal request for Congressional hearings to be held at the border.²⁰⁶

Readers may recognize that certain immigration issues addressed by the recommendations offered in prior reports remain unresolved. Based upon its latest study, and in an effort to add to the dialogue for constructive change, the Arizona Advisory Committee recommends the following additional action:

1. The Border Patrol should reevaluate the strategies developed to force crossers to inhospitable areas and consider environmental impacts when devising new efforts to curtail illegal immigration.

The present policies and strategies of shifting unauthorized entries to areas that are isolated and remote sometimes results in immigrant deaths. Deaths related to dehydration, extreme cold and other environmental factors have increased and account for a substantial portion of annual

²⁰⁴ The Advisory Committee is aware of cooperative efforts between both governments focusing on safety, training, and the sharing of certain resources.

²⁰⁵ Arizona Advisory Committee, USCCR, *Tragedy Along the Arizona-Mexico Border: Undocumented Immigrants Face the Desert*, (Apr. '03), pp. 10-12.

²⁰⁶ June Webb-Vignery, chairperson, Arizona Advisory Committee, USCCR, letter to Mary Frances Berry, Chair, USCCR, July 23, 2003. The Commission discussed the matter at meetings held Feb. 20, and Mar. 19, '04 concluding that Congress has held hearings on immigration issues.

increases in immigrant deaths. In spite of laudable Border Patrol programs and efforts to prevent tragedy and cooperation with the Mexican government to ensure public safety, fatalities continue. The strategies have also lead to environmental degradation.

2. The Immigration and Naturalization Act should be amended to remove Mexico and other nations of North America from the per country ceiling, create legalized work opportunities for migrants and implement a viable guest worker program.

Unauthorized immigrants who have, after their arrival, lived law abiding lives, contributed to the economy, paid taxes and raised families should be able to participate in a system to adjust their immigration status to conditional-temporary that will lead to legal permanent resident status. Family reunification should be an important part of immigration reform. New laws should be considered to provide opportunities to legalize the status of workers who only want to work in the U.S. temporarily, and address the status of workers currently living in the U.S. to provide opportunities for permanent residence and eventual citizenship for workers and their families.

3. The President and Congress should develop an immigration program that recognizes the special North American border relationship with Mexico, Canada and Caribbean nations and their common and mutual economic needs and interests.

The joint, long-term economic needs of the United States, Mexico and Canada must be recognized. It was suggested that models such as the European Union are available and can be reviewed and studied to see how money and resources can be invested to help raise the standard of living and create an infrastructure where all three nations have an equal footing as trading partners. The United States should assist Mexico in improving its economy by encouraging the development of sustainable work opportunities.

4. To ensure that its policies and strategies do not fiscally impact the budgets of local governments, the Department of Homeland Security should provide additional resources to State, County, municipal and Tribal enforcement and service agencies that are at the border.

The financial impact on County and municipal governments along the border is significant. While there is some Federal assistance, the Advisory Committee was apprised that the amount of financial aid is far short of that needed to provide adequate support and local taxpayers are bearing the burden of services such as police, fire, medical care, clean-up, and detention.

5. The Border Patrol should reform its complaint policy. An independent counsel is needed to investigate claims of abuse by Border Patrol and Department of Homeland Security officials, and where practical make public its findings without compromising employee confidentiality rights.

There is a need for a transparent and accountable mechanism to ensure that the human rights of both migrants and border residents are protected. The Department of Homeland Security has a responsibility to be accessible and there must be a reasonable expectation that complaints will be investigated, results released, and action taken.

6. Congress should evaluate the North American Free Trade Agreement to determine if it is benefiting the Mexican work force and thus reduce a cause of illegal migration, what impact it has had on both Mexican and American businesses and how it has affected Mexican farmers. The Central American Free Trade Agreement (CAFTA) should include labor protections and enforcement mechanisms in all signatory countries.

In theory, trade agreements provide an opportunity for development and economic growth. It was alleged that policies of the World Bank and the North American Free Trade Agreement have not benefited certain sectors of the Mexican economy and this has led some to believe their only chance for economic survival is to cross into the United States. Some question whether the Central American Free Trade Agreement will have any value for the residents of those Nations and will simply add to the number of crossers. The Advisory Committee believes raising wages in Mexico, Central and Latin American along with a reevaluation of trade policies so that small business owners and farmers can be protected are strategies that will stem illegal immigration

7. Congress should address the unique situation of the indigenous people of the border area, provide them legal immigration status upon verification of their Tribal identity, enrollment and membership, and remove unnecessary impediments to their entry to the United States.

The Advisory Committee agrees that indigenous people whose traditional lands are now bisected by the U.S./Mexico border have a special need. Tribal membership enrollment and identification should be considered valid documentation for transverse of these traditional areas and for access to services and benefits offered by the tribe within the United States.

8. Congress should hold hearings on immigration issues at a border community location as soon as practical, and in any event, prior to acting on immigration reform legislation.

The Advisory Committee believes that a Congressional subcommittee needs to travel to the Border and conduct hearings on the fatalities and the impact of Border Patrol strategies on the cross-border economy, environment, indigenous people and the undocumented, some of whom have died in their attempt to provide a secure economic future for themselves and their families. The Advisory Committee is certain that Congressional awareness can be enhanced by viewing the problems and hearing the concerns directly from local elected and appointed officials, Border Patrol agents, community leaders and representatives of immigrant groups.