

CHAOS on the U.S. – MEXICO BORDER:



A Report on Migrant Crossing Deaths,
Immigrant Families and Subsistence – Level Laborers



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Letter of Introduction

The Catholic Legal Immigration Network, Inc. (CLINIC) takes pride in releasing its fifth report - titled *Chaos on the U.S.-Mexico Border: A Report on Migrant Crossing Deaths, Immigrant Families and Subsistence-Level Laborers* - on "at risk" immigrants in the United States. This series of reports combines case studies with legal analysis and research from disparate disciplines, in an attempt to put a human face on U.S. immigration and labor laws and policies. Prior CLINIC "at risk" reports highlighted the problems of immigrant families, low-wage laborers, detainees, and would-be citizens.

CLINIC researched and wrote most of this report prior to the terrorist attacks of September 11, 2001. Since then, the press coverage of U.S. immigration policies has focused on the sparsely guarded U.S.-Canada border, on the screening of visa applicants, on tracking those who receive non-immigrant (temporary) visas, and on various intelligence issues. Although the report does not directly cover these issues, it is timely for two main reasons. First, the report identifies severe problems - migrant crossing deaths, human and civil rights abuses, the division of families, and the exploitation of low-wage workers - that must ultimately be addressed. The migrants discussed in this report have nothing to do with international terrorism and it would be unfortunate, to say the least, if our nation's manifest security concerns were to delay indefinitely consideration of their plight.

Second, the terrorist attacks have understandably created pressure for increased immigration enforcement efforts. The challenge will be to safeguard the rights of immigrants and to integrate them more fully into our nation's life, while attempting to eradicate terrorism at home and abroad. This challenge will play out directly on the U.S.-Mexico border. To develop effective and humane immigration policies will require an accurate assessment of the challenges, problems, and limits of current policies. The report provides such an assessment, detailing in stark human terms the multi-faceted impact of our nation's border enforcement, immigration and labor laws and policies on migrants and border residents.

Donald Kerwin, CLINIC's Executive Director, wrote and researched the report. Molly McKenna, a CLINIC paralegal, developed case studies and did significant research. Jason Monaghan, a CLINIC intern, also contributed important research. Charles Wheeler, a CLINIC senior attorney, offered valuable comments and edited the report.

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This report details the problems and challenges facing migrants and newcomers along the U.S.-Mexico border. It does not seek to imply that these problems are intractable. In fact, the persons whose stories appear in these pages provide abundant cause for hope that these problems need not be a permanent feature of the border region. CLINIC hopes that the report will do justice to the migrants and border residents whose stories it tells, and to the advocates who tirelessly serve them.

Bishop Thomas G. Wenski
Auxiliary Bishop of Miami
Chairman of CLINIC's Board of Directors

Chaos on the U.S.-Mexico Border: A Report on Migrant Crossing Deaths,
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"Mr. R-" and "Mr. I-," brothers from Santana Pinos, a town in Zacatecas, Mexico, came from a family with eight children, all of them farm workers. Mr. R-, aged 24, hoped to find work in the United States so that he could support his wife, who was pregnant with their first child. Four other young men, all in their early to mid-twenties, accompanied Mr. R- and Mr. I- on their journey.

The men paid a coyote to lead them across the U.S.-Mexico border. On the afternoon of May 11, 2000, the brothers and their friends departed on foot with a group of approximately 20 people from a Mexican border town near Laredo, Texas. After walking for 11 hours, the group stopped and slept the night in the brush. They continued walking early the next morning. Around three p.m. on May 12th, Mr. R- began to show signs of dehydration. Since the migrants had exhausted their water supply, they gave Mr. R- water from a nearby pond. About 40 minutes later, Mr. R- began to vomit. Desperate, the group gave Mr. R- more pond water to drink, but he could not hold it down. At around 4 p.m., Mr. R- died.

The migrants buried Mr. R- and split into two groups. One group continued to walk toward its final destination, while the other, which included Mr. I-, searched for help. In the late morning of the 13th, Mr. I-'s group found a Border Patrol agent. The Border Patrol, the Mexican Consulate and Mr. I- returned later to retrieve Mr. R-'s body. After his death, Mr. R-'s wife gave birth to a baby girl. Mrs. R- struggles to support herself and her daughter with her scant earnings from housekeeping work.

In mid-June 2001, Mr. I- left Santana Pinos to brave the U.S.-Mexico border a second time. He promised to contact his family upon arriving in the United States, but for months they received no word from him. Recently, he wrote them.

"Mr. A-" presented himself to U.S. officials at the border in El Paso in April 2000. He had fled Iraq two weeks earlier, flying to Turkey and ultimately to Guatemala. From there, a smuggler transported him through Mexico to Ciudad Juárez. He walked across the bridge to El Paso and asked for political asylum.

Mr. A- had been forced to leave college in Baghdad to begin training in a terrorist camp. The instruction he received in the camp left Mr. A- with little doubt that he would be expected to kill civilians. He learned how to set houses on fire so that their inhabitants could be machine-gunned as they ran outside, how to shoot persons from a moving car, how to use explosives, and how to kill people with knives. Each night, he received political indoctrination in Saddam Hussein's Ba'ath party. Ultimately, Mr. A- learned that he would be sent to southern Iraq to terrorize Iranian-supported Shiite Muslims. Because he did not want to commit the atrocities he had been taught, one night he fled the camp. He returned to Baghdad and quickly left from there to northern Iraq, where the Ba'ath government does not exercise such tight control. His family paid the smuggler's fee and he fled in March 2000. He knew that if he remained, he would be killed. In August 2000, an Immigration Judge granted Mr. A- political asylum. He now works as a trucker in the El Paso area.

Mrs. P-'s husband, the father of her three boys (ages eleven, nine and seven), perished in Hurricane Mitch. Six months later, Mrs. P- began to date the head of a drug trafficking ring. Mrs. P- lived at this man's house in San Pedro Sula for four months, before she left in disgust at his criminal activities.

After moving out of his house, Mrs. P- left to visit her parents in Gualaco, Honduras. While returning from a doctor's appointment with her seven-year-old son, a carload of men drove up and abducted the boy. Mrs. P-'s ex-boyfriend had ordered the boy kidnapped so that Mrs. P- would not report him to the authorities. In a panic, Mrs. P- returned to San Pedro Sula in search of her child. When she arrived at her ex-boyfriend's home, the group kidnapped her as well. For the first six days of her confinement, Mrs. P- could hear her son crying in the next room. For the final three days, the kidnappers placed the two together, saying that they had done so because they planned to kill both of them and describing in graphic detail how they would dispose of their bodies. During this time, three of the gang members repeatedly raped Mrs. P-.

In early March, with only one guard watching them, Mrs. P- and her son jumped from the window of their second-story room to the street below. The boy broke his leg upon landing. A man picked them up in his car and, recognizing their peril, drove them for three hours out of the city. The man tried to convince Mrs. P- to report the kidnapping, but she did not trust the authorities

and felt that if she stayed in San Pedro Sula her former boyfriend would kill her. Instead, she fled to her parents' home. In mid-March, she left the country, leaving her children in the care of her sister and other siblings. Since Mrs. P-'s departure, her sister's house has been regularly staked out by her former boyfriend's gang.

Mrs. P- hired a smuggler in Ocotepeque, Honduras. Mexican officials caught her group of 26 and deported them to Guatemala. Mrs. P- then hired a "coyote" in Guatemala. After crossing into Mexico, she spent a month and a half in Tampico, Tamaulipas, living with a woman in a beauty shop. Ultimately, the coyote led her group of 12 to Matamoros. Last June, she crossed the U.S.-Mexico border. The group traveled for three nights and had passed Sarita, Texas, when an Immigration and Naturalization Service (INS) plane spotted them and Border Patrol agents tracked them down. The INS detained Mrs. P- for several months at a detention center in Texas. CLINIC met Mrs. P- in a shelter for migrants. She had sought political asylum and hoped that her boys would eventually be able to join her in the United States. If she receives asylum, she will work in Atlanta, caring for a handicapped person. If returned to Honduras, she would likely be killed.

In late May 2000, 19-year-old Yolanda Gonzalez and her 10-month-old daughter, Elizama, left their home in the village of San Pedro Chayuco, Oaxaca, Mexico. Yolanda wanted to join her husband, Elizama's father, Hermilo Hernandez Velasco, in Portland, Oregon.¹ Yolanda and Hermilo had grown up in desperate poverty, with her family subsisting on five acres of land and his family on two acres. Yolanda's mother and step-father had worked as migrant laborers in Mexico.

Yolanda and Elizama set out with a group of ten migrants from Oaxaca. The smuggler told them that the journey would take only six hours. Instead, for four days, the group wandered in the desert. Yolanda drank little, saving for Elizama most of her two gallons of water. When Yolanda could no longer walk, two men from the group stayed with her, and others went looking for help. Yolanda died near Sells, Arizona, the fourth migrant to die that week. Despite the parallels with the case of Elian Gonzalez, Yolanda Gonzalez's death received scant national attention. Elizama, badly dehydrated and sun-burned, recovered. She was taken to Nogales, Sonora, where her grandmother ultimately

retrieved her.

Persons migrate to the United States for powerful reasons. They come, like Mr. R-, to escape poverty and to search for work that will allow them to provide for their families. Others, like Mr. A-, flee political persecution or, like Mrs. P-, domestic violence. Still others, like Yolanda Gonzalez, come in an attempt to join family. Many stay only temporarily. By 1992, for example, an estimated 1.1 million of the Mexican nationals who had entered the United States in the preceding five years had returned to live in Mexico.² Few decide to migrate for flimsy reasons. They leave because life has become untenable, if not impossible, in their countries of origin. Better to die trying to cross, they say, than to die slowly at home.³ In recent years, they have died in record numbers trying to cross.

The United States faces a paradox that plays out most dramatically on the U.S.-Mexico border. On the one hand, more foreign-born people - an estimated 30.5 million (more than 11 percent of the total U.S. population) - live in the United States.⁴ They play a crucial role in all of our nation's major institutions, from schools, to the work-place, to families, and to churches. Ten percent of U.S. children, for example, live in families containing at least one U.S. citizen child and a non-citizen parent.⁵ Foreign-born children and the U.S.-born children of immigrants comprise 20 percent of all children in the United States.⁶ This seems fitting in a world characterized by globalization, and in a nation that takes pride in its immigrant heritage. At the same time, U.S. laws and policies toward immigrants have grown harsher in recent years.

Border communities often treat the national boundary line as a fiction. Residents of the sister cities Nogales, Sonora and Nogales, Arizona refer to their community as "Ambos Nogales," which means both Nogales. "Laredo was not placed at the border," say the citizens of Laredo, Texas and Nuevo Laredo, Chihuahua, "the border was placed in Laredo."⁷ Families typically live on both sides of the border. An estimated 5.5 million Mexican nationals have border crossing cards, that allow them to visit family and to shop within 25 miles of the border (or 75 in Arizona) for up to 72 hours.⁸ Many work illegally in the United States.⁹ The severe social problems of the region also have an international dimension. Legal service providers on the border, for example, have represented asylum-seekers who have fled their homes in Central America due to persecution by deported U.S. gang members.¹⁰

Economic integration also represents the norm.¹¹ Eight percent of the economically active population in Mexico's border cities commute to the United States to work; these workers earn a larger share of the total personal income in Mexican border cities because of higher U.S. wages.¹² Thousands of Mexican workers cross the border each day near Yuma, Arizona to work in U.S. citrus fields and processing plants. U.S. corporations rely on hundreds of factories (maquiladoras), primarily in Mexico's northern border cities, to assemble their products. The U.S. retail stores, strung across the U.S. side of the border, face south and cater to Mexican nationals.¹³ The North American Free Trade Agreement Implementation Act of 1993 (NAFTA)¹⁴ has facilitated the flow of goods, services, and capital between the United States and Mexico.

Integration also represents the norm in emergency services,¹⁵ health care,¹⁶ and education.¹⁷ Last year, the Southeast Arizona Medical Center in Douglas provided emergency treatment to 450 people who had been presented by the Mexican Red Cross at the port-of-entry.¹⁸

Border communities bear the brunt of the U.S. border enforcement build-up and the INS's blockade strategy. The crisis of border crossing deaths has resulted, in part, from this policy. The official death toll, though startling, understates the loss of lives and fails to capture the chaos of a situation in which migrants risk their lives (to the elements, to criminals, to accidents) every time they try to cross. The United States has attempted to extend its enforcement reach, raising international law concerns, through the interdiction of migrants on the high seas and through U.S.-funded interception and repatriation efforts in Mexico and Central America.

The inter-connectedness of border communities explains why their residents have suffered the full weight of the anti-family provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("the 1996 Immigration Act")¹⁹, the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA")²⁰, and the Personal Responsibility and Work Opportunity Act of 1996 ("the 1996 Welfare Act").²¹ Similarly, the extension of our criminal laws to formerly civil immigration violations - the so-called "criminalization" of U.S. immigration laws - has had disastrous consequences for border residents and for the criminal justice system in these communities.

The marginalization of low-wage immigrant laborers in the restructured U.S. economy starts at the border, where labor contractors and corporations recruit. The human cost of

subsistence-level wages can be seen in "colonias," the unincorporated communities where migrant and other low-wage laborers make their permanent homes. The border, of course, also has its own local labor problems, including those of seasonal farm workers and long-time factory workers whose jobs have been lost due to the dislocations caused by NAFTA. As for the migrants themselves, they pass through a gauntlet of corruption in Mexico, suffer the predations of smugglers and bandits, and survive some of the most deadly terrain in the United States, only to be victimized in the U.S. workforce.

This report attempts to put a human face on the U.S.-Mexico border from the perspective of "at-risk" migrants and border residents. Section I begins with a discussion of the INS's border enforcement strategy and build-up in recent years. This section describes the multi-faceted impact of U.S. enforcement policies on migrants, their families, and border residents. It also discusses the abuses suffered by migrants in Mexico. Section II details the impact on U.S. immigration laws and policies on border families. It also describes the inequities and burdens created by the treatment of immigration violations as crimes. Section III discusses the need for immigrant laborers in the United States, their exploitation in many industries, the living conditions of subsistence-level laborers, and the foreign-owned "maquiladoras" in Mexico. The report ends with recommendations and a brief analysis of potential solutions.

I. IMMIGRATION ENFORCEMENT

A. The Border Enforcement Strategy and Growth

The INS's border enforcement strategy began in September 1993 with an effort, at the time tepidly supported at INS headquarters, by Silvestre Reyes, head of the El Paso Border Patrol sector. Reyes, now a Member of Congress, decided to seal the border at traditional illegal crossing points in El Paso by concentrating agents and vehicles in an impregnable line.²² As the son of migrant laborers, Reyes made a convincing spokesperson for "Operation Blockade," later renamed "Operation Hold the Line." In a presentation to CLINIC staff in September 1994, Reyes credited the blockade with reducing Border Patrol apprehensions, crime by border jumpers, and the civil rights abuses that occurred when agents chased migrants through city neighborhoods. The strategy enjoyed the virtue of simplicity and a certain symbolic value. It proposed to control the border by simply stopping illegal entries. It seemed, finally, to be doing something to enforce our nation's immigration laws.²³

By 1994, the INS had adopted the El Paso strategy as its model for border enforcement, with "Operation Hold the Line" leading to similar blockades in Tucson in 1994 ("Operation Safeguard"), San Diego in 1994 ("Operation Gatekeeper"), McAllen and Laredo in 1997 ("Operation Rio Grande"), and El Centro in 1998 (extending "Operation Gatekeeper"). Rather than describing these initiatives as a series of discrete blockades, INS has touted its "integrated" and "seamless" border policy.²⁴ It refers to its Integrated Surveillance Intelligence Systems (ISIS) as a "force multiplier," that allows it to monitor remote sites from central command centers.²⁵ This system consists of poles, attached cameras, and ground sensors in the desert. When sensors are triggered, the cameras train on the surrounding site and broadcast any activity to Border Patrol stations.²⁶

The INS describes as the purpose of its strategy "prevention through deterrence"; that is, to convince migrants of the futility of attempting to enter the United States illegally.²⁷ The strategy "concentrates resources in phases to the areas of greatest illegal activity," with planned future concentrations across the Southwest border.²⁸ Through a "phased approach" and "well-laid-out multi-year operations," the Border Patrol hopes eventually to gain control of the border nationwide.²⁹ In the meantime, it seeks to drive migrants either to ports-of-entry or to remote areas where they can be more easily detected and apprehended.³⁰

The "integrated" blockade strategy has four phases. Phases I and II consisted of the blockades in the Border Patrol's El Paso, San Diego, Tucson, Del Rio, Laredo, and McAllen sectors. The strategy has been stalled in this second phase for several years. Phase III will expand the initiative to the remaining Border Patrol sectors along the Southwest border and, in Phase IV, the Border Patrol will turn to the northern Border, Gulf Coast and coastal waterways.³¹

The new border enforcement strategy has been accompanied by steady increases in Border Patrol agents and other resources. In an era of marginal increases in federal discretionary spending, INS enforcement growth has been exceptional. Part of the momentum for growth can be attributed to the 1996 Immigration Act, which required the Attorney General to increase the number of Border Patrol agents by 1,000 each year, beginning in FY 1997 and ending in FY 2001.³² However, the increase began well before 1996. Monies obligated to the Border Patrol had increased from \$82 million in 1980 to \$261 million in 1990.³³ By 1995, the Border Patrol's annual budget had reached \$441 million and by 2000 \$1 billion.³⁴ A total of \$1.2 billion was appropriated in

2001. Border Patrol positions, most of them agents, have more than doubled in eight years, from 4,948 in 1992 to 10,921 in 2000.³⁵ The INS now employs 60 percent of all federal law enforcement agents.³⁶

The growth in agents and other resources in the Border Patrol's Southwest sectors has been particularly dramatic,³⁷ with 93 percent of agents now stationed on or near the U.S.-Mexico border,³⁸ while the far longer border with Canada remains poorly guarded. Since September 11th, some agents in the Southwest have been temporarily re-assigned to the U.S.-Canada border. In addition, the anti-terrorism act signed into law on October 26, 2001 - titled the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the USA PATRIOT ACT)" - has authorized a tripling of Border Patrol personnel, Customs Service officials, and INS inspectors on the United States' northern border.³⁹

Apart from budgetary and staffing increases, 76 miles of fences have been erected along the Southwest border, with 32 more miles planned.⁴⁰ The INS has also installed 130 remote video surveillance systems.⁴¹ The Border Patrol's April 2000, five-year technology plan calls for anywhere from \$450 million to \$560 million, devoted primarily to the installation of 1,100 remote video surveillance systems.⁴² The Border Patrol's "intrusion detection" technology consists of mobile observation posts, night-vision scopes, ground sensors, computerized identification systems, license-plate scanners, heat-detecting scopes, video surveillance cameras, reinforced fencing, miles of high-intensity lighting, aircraft, helicopters, and a fleet of patrol vehicles.

This growth can be seen most dramatically in targeted Border Patrol sectors. As of May 2000, the Tucson sector, for example, had 1,356 permanent agents, 16 anti-smuggling unit agents, 9.1 miles of primary fencing (with two more miles planned for Douglas), more than a mile of permanent lighting on the border, 22 infrared scopes, 1,269 underground sensors, three "skywatcher" mobile towers, 13 cameras, 1,254 vehicles, six helicopters, two fixed wing aircraft, six all-terrain vehicles, and four horse units.⁴³ The enforcement resources in this sector have since increased.

Border Patrol funding has not increased in a void, but as part of a larger expansion of INS enforcement, removal and detention capacity. As discussed below, the INS has also stepped up its efforts to push its enforcement reach beyond the territorial limits of the United States through migrant interdiction and repatriation initiatives. The last several years have also

witnessed an expansion of INS detention capacity. From 1994 to 2000, the average number of persons INS detained on any given night increased from 5,532 to 18,518.⁴⁴ In liaison meetings with non-governmental organizations, INS officials claim to have roughly 22,000 detention beds at their disposal, which represents a 400 percent increase in just seven years. The Administration's 2002 budget would increase detention and removal funding by \$88.8 million, giving the INS another 1,607 beds per night⁴⁵ and allowing for the expansion and enhancements in detention facilities in three border communities: Port Isabel, El Paso and El Centro.⁴⁶ Overall, of the \$3.5 billion budgeted for the INS in 2002 (not counting fees and other revenues), \$2.7 billion would go toward enforcement and border affairs.⁴⁷

In contrast, the Administration has requested \$45 million in additional funding in 2002 to reduce INS application backlogs,⁴⁸ which consist of nearly four million applications.⁴⁹ Total federal spending on the integration of the more than 30 million foreign-born persons and their families has been at best minimal and ad hoc.⁵⁰

The debate among policymakers has been not whether to expand border enforcement, but by how much to increase the agency's budget. Enforcement growth will certainly continue in the wake of the September 11th terrorist attacks. INS's FY 2002 budget of \$5.51 billion represents a 10 percent increase over FY 2001 funding levels, and would add 570 agents, bringing the total number of agents to more than double the FY 1993 level.⁵¹ The Bush Administration has said it would seek another 570 agents in FY 2003, meeting the goal of 5,000 new agents set by the 1996 Immigration Act.⁵² Prior to the attacks, the INS projected that it would need an additional 3,200 to 5,500 agents on the Southwest border alone - with hundreds of millions of dollars in technology, infrastructure and support - to implement its national strategy.⁵³

B. Has the INS Enforcement Strategy and Build-Up Deterred Illegal Immigration?

The nation's border enforcement strategy should be evaluated, in part, on its own terms. Has it led to a decrease in illegal immigration? The U.S. General Accounting Office (GAO) has concluded that this cannot be determined because INS has no baseline data to evaluate the strategy's success or failure, and fails to track vital information, like the number of individuals apprehended as opposed to the total number of apprehensions (which includes multiple arrests of the same person).⁵⁴ According to GAO, the "primary, discernable effect" of the strategy has

been to shift migrant traffic.⁵⁵

In the absence of other data, the Border Patrol uses apprehension rates as a proxy for the success of its enforcement efforts. INS statistics always seem to cut in favor of its policies. When apprehension rates rise, as in the early stages of border blockades, INS claimed that this meant its increased presence had kept greater numbers of undocumented migrants from entering. When apprehension rates fell, this was interpreted to mean that fewer illegal migrants were entering. Of course, apprehension statistics could be interpreted differently. Increases could be due to a more substantial Border Patrol presence, or to increased numbers of migrants attempting to cross, or to some combination of both. In addition, these statistics reflect the subjectivity of individual agents and the methodology of the Border Patrol. At worst, they can represent something of a shell game.⁵⁶ If a correlation can be drawn between apprehensions and deterrence, however, it would seem to cast doubt on, rather than to vindicate, the current enforcement strategy.

Apprehension rates have risen since 1994 and, though they went down in 2001, they continue to exceed pre-1994 levels. This result has not been lost on INS officials, including former high-level Border Patrol officials.⁵⁷ In FY 1992, the Border Patrol apprehended on the Southwest border 1.14 million persons, in 1993 1.21 million, in 1994 979,101, in 1995 1.27 million, in 1996 1.5 million, and by 2000 1.64 million.⁵⁸ In sectors to which migrants have been diverted, apprehensions have risen geometrically since 1993. From 1994 to 2000, for example, apprehensions increased roughly ten-fold in the Border Patrol's Calexico and Douglas stations and nearly six-fold in Yuma.⁵⁹

In recent years, the INS has scaled back its claims of success. It now avers that its enforcement strategy has helped it gain control over "the most heavily trafficked portions of the southwest border,"⁶⁰ and that once "the deterrent effect takes hold, the number of apprehensions declines as the operation gains control over the area."⁶¹ It does not claim - nor could it - that apprehensions have decreased border-wide since 1994, much less that it effectively controls the border.⁶²

Border Patrol apprehensions fell by roughly one-fourth in FY 2001, compared to 2000.⁶³ According to INS Public Affairs officials, Southwest border apprehensions fell from 1.64 million in FY 2000 to 1.23 million in FY 2001. Since the September 11, 2001 terrorist attacks, they have further plummeted. If reduced apprehensions reflect fewer migrant crossings, this may be due to more or other factors than the INS enforcement strategy.

Migrants may be taking more treacherous routes, where the Border Patrol cannot easily follow them. Supporting this scenario, remote areas, like Naco, Arizona, have experienced an upsurge in apprehensions in 2001.⁶⁴ Decreased migrant traffic might also be due to the downturn in the U.S. economy.⁶⁵

Under the most likely scenario, however, the large number of Mexican laborers who used to return to Mexico may now find it too risky to do so.⁶⁶ They do not want to risk possible apprehension and the various bars to admission that would be triggered if they were caught trying to re-enter. As a result, they simply forego visits home.⁶⁷ The large number of women and children crossing, the high rate of women among those who die crossing, and the increasing abandonment by men of their wives and children in Mexico, support this scenario.⁶⁸ More rigorous border enforcement since September 11th seems to have strengthened this trend.⁶⁹ Rather than keeping out the undocumented, U.S. border enforcement policies and immigration laws appear to be sealing them in.

In certain places, like California's Imperial Valley and the Border Patrol's Tucson sector, apprehensions decreased in FY 2001, but crossing deaths rose.⁷⁰ This raises the possibility that migrants are risking their lives on crossing routes so forbidding that even the Border Patrol cannot reach them. The Border Patrol's Tucson sector offers a case in point. In FY 2000, the Border Patrol recorded 491,462 apprehensions in this sector and 74 crossing deaths.⁷¹ In 2001, apprehensions decreased in the sector by roughly 25 percent, but the death toll reached an historic high.⁷² Border Patrol rescues have also increased in the Tucson sector in 2001, with 255 persons saved by mid-July, 176 of them in heat-related distress. Without enhanced search and rescue efforts, fatality rates would be far higher.

The Border Patrol projects that migrant flows will next be diverted to the Eagle Pass, Texas area, because it has the requisite roads, housing, and infrastructure to facilitate transit.⁷³ However, if the Border Patrol's strategy has proven anything, it is that desperate migrants will attempt to cross any terrain and endure any hardship to come to the United States.⁷⁴

Another threshold question is whether the INS enforcement policy, even if fully implemented, would work. As stated, the INS has projected that it will need an additional 3,200 to 5,500 agents on the Southwest border, with hundreds of millions of dollars in additional equipment, infrastructure and support.⁷⁵ It strains credulity to think that this would suffice. The U.S.-Mexico border extends 2,000 miles over some of the country's most

forbidding terrain. According to INS, its Border Patrol sectors cover respectively 7,000 square miles (San Diego), 23,000 square miles (El Centro), 73,000 square miles (Yuma), 89,000 square miles (Tucson), 125,500 square miles (El Paso), 59,541 square miles (Del Rio), 17,000 square miles (McAllen) and 101,439 square miles (Laredo). This vast area offers a potentially endless number of crossing routes and hiding places.

The volume of border traffic also makes a non-porous border difficult to conceive. In FY 2000, INS inspected 534 million persons at ports-of-entry, admitting 437 million persons at land ports-of-entry alone.⁷⁶ More than 300 million persons cross legally from Mexico each year.⁷⁷ The demands of integrated economies make it difficult to prevent undocumented crossings even at legal ports-of-entry.⁷⁸ The interception of a biological or chemical agent presents an even more daunting challenge. In 1999, 16.4 million trucks and more than five million 40-foot containers entered the United States legally.⁷⁹ Border Patrol agents simply laugh when asked what kind of resources they would need to seal the entire border or even targeted sectors. They recognize that the kind of policy changes that would significantly diminish migrant flows must occur at a national and international level.

This is not to dispute the obvious need for a secure and orderly border. Nor is it to deny that the current strategy has brought discrete benefits. Certain types of crossing deaths have decreased and the reduction in heavy flows of illegal entrants has improved the quality of life in some blockaded communities.⁸⁰

Several years later, however, the strategy has failed in its primary purpose - to convince migrants of the futility of trying to enter the United States - and its prospects for success do not appear good.

C. Crossing Deaths

On the morning of May 24, 2001, the Border Patrol encountered four migrants wandering on the "Camino del Diablo" (Devil's Path) east of Yuma, Arizona, in the Cabeza Prieta National Wildlife Refuge.⁸¹ The four had broken away from a party of 26 as they tried to cross the desert in 115 degree temperatures. Over the next 24 hours, search and rescue teams discovered six clusters of migrants from this group, 14 of them dead or near death. Pilots found 17 migrants 30 to 40 miles north of the border and just as far from Interstate 8. They had torn off their clothing, clawed holes in the ground, ripped open cactuses, and resorted to drinking their own urine. According to a treating physician, the survivors looked like mummies, their skin shriveled, burnt dark

and covered in cactus spines. They suffered from severe dehydration and kidney damage.

Most of the migrants, including 12 of the 14 who died, came from Veracruz, Mexico. They met with a smaller group from Guerrero, in Sonoyta, Sonora near the U.S. border. An estimated 1,500 migrants arrive each day in Sonoyta. The smugglers told the migrants to pack lightly and to bring only one jug of water. In Cabeza Prieta, they were told that they had only a short walk remaining. In fact, 70 deadly miles stretched ahead of them. Eleven of the survivors have been given temporary work permits, which will allow them to testify at the trial of the 20 year-old smuggler from Sonoyta.

Raymundo Barreda and his 15-year-old son from the mountain village of El Equimite in Veracruz wanted to work in the United States. Both died in the desert. So did Mario Castillo, a 25-year-old father of two, a four-year-old son and five-year-old daughter, from the village of Cuatro Caminos in Veracruz.⁸² Mr. Castillo, who earned 35 pesos a day (less than \$4)⁸³ working on coffee and citrus plantations, hoped to find a job that would allow him to finish work on his cinder-block house.⁸⁴ He took out a \$1,200 loan to pay the smuggler for this trip, which his widow must pay.

The INS did not begin to record migrant crossing deaths in a systematic manner until 1998. In FY 1998, it recorded 261 deaths on the Southwest border, followed by 236 in 1999, and 367 in 2000.⁸⁵ The INS Office of Public Affairs has tentatively reported 322 crossing deaths in FY 2001, a decrease from FY 2000, but an unconscionably high number by any standard.⁸⁶ These statistics do not include crossing deaths that occur in Mexico or, according to Mexican officials, fatalities (including some by vehicle accident) handled by local police in U.S. border communities. The Mexican Foreign Ministry, which counts migrant deaths that occur in both the United States and Mexico, recorded 325 fatalities in (calendar year) 1998, 356 in 1999, 491 in 2000,⁸⁷ and, through October, 343 in 2001.⁸⁸ Nobody disputes that these official records understate the actual death toll. The vast reaches of the Southwest deserts contain many bodies that will never be found. As one writer puts it:

"[Border Patrol] trackers face long odds and many obstacles when trying to locate a missing person. Principal among them is the sheer scope of the killing ground that in southwestern Arizona comprises a four thousand one hundred square mile no-

man's land, and to the east encompasses the daunting expanse of New Mexico's and Texas' Chihuahuan Desert, and to the west includes the grim reaches of California's Colorado and Mojave Deserts. Compound the vastness of the American desert borderlands, its austere rugged terrain, and its sparse population, with the fact that remains are often covered by sand, decompose rapidly after summer monsoons and winter rains, are torn apart by coyotes, eaten by buzzards, remain hidden from view in arroyos or beneath paloverde, mesquite and ironwood trees, and, of late, stolen by ghoulish collectors, and you have the characteristics of an Empty Quarter that has the ability to consume thousands of people over time without leaving any trace of them."⁸⁹

The statistics also fail to capture the chaos of a region that cannot be crossed without risk of death. In certain months, migrants cannot physically carry enough water for the trip. Beyond the deaths, the Border Patrol and border residents regularly find migrants near death. These stories tend to be the staple of immigrant advocates. Father Robert Carney, the pastor of St. Luke's parish in Douglas, Arizona, provided refuge to a 13-year-old Guatemalan girl, who had been found in the hills, afraid to move, stung by cactus and insects. The girl had become separated from her group. In another case, a young migrant couple arrived at St. Luke's, after spending most of the previous night searching in desperation for their one- and three-year-old children. As the Border Patrol approached their group, the parents ran in one direction and a fellow migrant picked up the children and ran in the other. It took the couple six days to learn that the Border Patrol had picked up their children and placed them in a home in Nogales.

Few would argue that this situation can continue. INS officials blame the crossing deaths on smugglers who deceive migrants about crossing dangers and distances and then abandon them to the elements.⁹⁰ The treachery of smuggling rings cannot be denied.⁹¹ At the same time, however, INS enforcement policies have played a significant role in the emergence of smuggling syndicates.

The INS faces a dilemma. It must rethink its enforcement strategy, but it cannot renege on its duty to enforce the nation's immigration laws. A study out of the University of Houston on border crossing deaths from 1985 to 1998 highlighted the difficulties of creating a humane enforcement policy.⁹² The study used as its data source the U.S. vital registration system, which catalogues all deaths that occur in the United States. Within this database, the researchers focused on the accidental deaths of foreign-born non-residents in U.S. counties along the

U.S./Mexico border. It estimated undocumented flows by relying on Border Patrol apprehension records, factoring in the expanded Border Patrol presence. During the 14-year period, it identified 3,676 vital registration death records in 55 border counties.⁹³ The researchers limited their review to deaths from heat, cold, drowning, train accidents, auto-pedestrian accidents, suffocation, motor vehicle accidents, homicides, unknown causes, and other causes.⁹⁴

The report pointed out that the blockades in El Paso and San Diego led to a ten-fold increase in apprehensions in the Border Patrol's El Centro sector from 1994 to 1998, and to a rise in apprehensions in the Tucson sector from 50,000 in 1990 to 400,000 in 1998.⁹⁵ The Border Patrol's McAllen, Laredo and Del Rio sectors also arrested significantly more migrants.⁹⁶ The authors concluded that "these changes ... make the spatial restructuring effects of targeted enforcement clear."⁹⁷ In other words, the blockade strategy redirected migrant flows.

Redirected flows, in turn, led to "unprecedented levels" of crossing deaths due to environmental causes.⁹⁸ Over the 14-year period, 328 migrants (nine percent) died from dehydration, hypothermia, and other environmental causes, with far higher percentages in blockade years.⁹⁹ In 1998, for example, 84 migrants (28 percent) died from environmental causes.¹⁰⁰ The authors also found that deaths due to unknown causes dramatically increased in relation to redirected flows and appear an "extension of environmental deaths."¹⁰¹ The re-channelling of migrants from urban to rural areas also led to more drowning deaths in the All-American Canal in Imperial County in eastern California.¹⁰² The researchers found it likely that many bodies had not been discovered and saw no end in sight to deaths from exposure and weather-related causes.¹⁰³

At the same time, while the causes of crossing deaths changed, the total number of deaths increased only slightly as the result of the new enforcement strategy.¹⁰⁴ Drowning, for example, caused 25 percent of all deaths during the 14-year period, but the researchers attributed drowning increases to redirected migration flows only at the All-American Canal.¹⁰⁵ Drowning rates remained primarily a function of water flow, not migration levels. Deaths due to auto-pedestrian accidents, particularly on Interstate 5 in San Diego County and on the Border Highway (now Cesar Chavez Highway) in El Paso, decreased due to the blockades.¹⁰⁶ Overall, an astounding 648 homicides were committed against migrants during the 14-year period, 41 of them attributed to law enforcement agents.¹⁰⁷ Homicides declined by nearly 70 percent from 1991 to 1998,¹⁰⁸ with significant decreases in the San Diego

area.

The report concluded that a change or reversal in the blockade strategy would not eliminate crossing deaths, but would lead to deaths based on earlier patterns. It recommended expanding legal migration channels as the surest way to reduce deaths.

The University of Houston study quantified the increase in environmental-related crossing deaths due to the blockade strategy, while providing a timely reminder that migrant crossing deaths did not begin with "Operation Hold the Line." Indeed, several tragedies in recent years have grim, pre-blockade precursors. On July 5 and 6, 1980, for example, 13 Salvadorans died in the Organ Pipe Cactus National Monument, the site of many recent deaths.¹⁰⁹ On July 2, 1987, at Sierra Blanca, 18 undocumented immigrants perished in a 120-degree railroad car.¹¹⁰ Had INS not discovered 40 migrants in the back of a trailer truck with one vent at its Sarita, Texas checkpoint on April 1, 2001, the same fate may have befallen them.¹¹¹ The 14 migrants who perished in May 2001 are the latest in a long line who have been died along the "Camino del Diablo" crossing route, named thus during the California gold rush.¹¹²

Since 1998, crossing deaths have occurred at a rate that far exceeds the rate over the 14 years studied. In June 2001, the GAO reported that since 1998, 1,013 migrants had died crossing.¹¹³ Recent Border Patrol estimates have put the figure at 1,379.¹¹⁴ According to the more inclusive Mexican government statistics, 1,515 migrants have died since 1998. This compares to 3,676 migrant deaths in the United States over the 14 years studied. By any measure, the number of migrant fatalities pre- and post-blockade has been scandalously high. Statistics simply fail to do justice to the human dimensions of this crisis. A few cases follow:

- On August 5, 1997, 12 migrants, including three women and a small child, crawled for nine blocks in a storm drain from Agua Prieta, Sonora to Douglas, Arizona, until a wall of water from a flash flood hit them.¹¹⁵ Seven people drowned. The survivors clung to a shaft for two hours.
- In March 1999, a van driven by a Border Patrol agent plunged down a 300-foot ravine on the Otay Mountain in San Diego County, killing the agent and three migrants.¹¹⁶ Prior to the blockade, the Border Patrol did not patrol the Otay Mountain, believing it too treacherous for migrants to attempt to climb. It now catches roughly 3,000 migrants each month on the mountain. Gonzalo Cardeña, from Xalapa in Veracruz, who

died in the accident, hoped to find a job in the United States to support his mother, fiancée and four-year-old daughter.

- In June 2000, a television camera captured three men jumping into the rain-swollen Rio Grande at Brownsville in an attempt to avoid U.S. immigration officials. As U.S. and Mexican officials looked on, the current dragged two of the men to their deaths.¹¹⁷
- In July 2000, Margarita Alvarado, a 32-year-old native of Durango, Mexico, died in an attempt to join her husband, who worked as a cook in Dallas.¹¹⁸ A smuggler had led Mrs. Alvarado, her brother-in-law and another migrant to a desolate area, where the help he promised never materialized.
- In June 2001, a husband, wife and three children traveled for a week with a group headed to Phoenix, before the woman fell ill.¹¹⁹ The family flagged down the Border Patrol near Sells, Arizona in the Tohono O'odham reservation, but the mother subsequently died at Tucson Medical Center.
- On July 14, 2001, a 25-year-old woman died on Tohono O'odham land, abandoned by her group and comforted by only her 18-year-old nephew.¹²⁰ On July 15, 2001, a 23-year-old pregnant woman perished near Sells, Arizona.¹²¹

Perhaps the most tragic cases involve the migrants who have never been identified. Of the estimated 491 migrants who died crossing in 1999,¹²² 114 have not been identified.¹²³ Kenedy County, Texas, located 100 miles north of Mexico and 270 miles south of Houston, has spent roughly \$100,000 in autopsy and burial expenses over the last 11 years for migrants who tried to skirt the Border Patrol checkpoint on U.S. 77 by walking through the desert.¹²⁴

Since 1995, Imperial County has buried unidentified migrants in Holtville, California.¹²⁵ To reach the pauper's graveyard where the migrants rest, one must walk through the Terrace Park Cemetery, to a dirt field, separated by a row of hedges and invisible from the road. The anonymous migrants have taken over their section of the graveyard. They rest 40 to a row, with bricks engraved Jane or John Doe marking their graves. Somebody has laid small white crosses on each grave that read "No Olvidado," which means not forgotten. The county has begun its seventh row of plots.

D. Border Patrol Rescues

In June 2001, a 62-year-old migrant and his grandsons, ages 25, 11, 9 and 7, ran out of water on a desert mountain.¹²⁶ The grandfather sent the 25-year-old to seek help. After walking most of the day, the young man reached Why, Arizona. At 10 p.m. that night, the Border Patrol's search and rescue agents began to retrace the man's steps. Helicopters could not locate the grandfather and children. By 7 a.m. the next morning, the agents themselves had run out of water. When they reached the area where the migrants had last been seen, the agents called out and heard a reply. By this time, the migrants had become so desperate that they had resorted to drinking their own urine.

In another case, in May 2001, the Border Patrol converged on a vehicle that drove over the border in the Buenos Aires National Wildlife Refuge in Arizona. The migrants abandoned the vehicle and split up. Persons apprehended from the group reported that two women, with a baby, had accompanied them. The Border Patrol tracked the women and found them hiding under a tree, with the seven-month old infant. The women did not know where they were and had no idea how to reach their final destination. They did not have water or even diapers for the infant.

The INS attempts, often uneasily, to balance its enforcement mission with the humanitarian challenges raised in its daily encounters with migrants who risk death on their journeys. The blockade strategy, which has shifted crossing patterns, has brought this tension into sharp relief.¹²⁷

The Border Patrol enjoys a long history of rescuing migrants in distress, sometimes intentionally and other times as part of its enforcement duties.¹²⁸ In recent years, it has regularly announced the expansion and strengthening of its humanitarian and search and rescue efforts.¹²⁹ Its efforts have saved lives, but have not proven adequate to a crisis of this magnitude.

The INS's Border Safety Initiative, which has been formally in place since June 1998,¹³⁰ has never been well-funded. The INS's FY 2002 budget included \$1.5 million (out of a total budget of \$5.5 billion) for its discrete safety program.¹³¹ More resources for safety and rescue efforts, in the form of agent time and equipment, come from the INS general operating budget.¹³² The initiative educates would-be migrants on the dangers of crossing, rescues migrants, and identifies those who die.¹³³ These activities assume a certain (unacceptable) level of deaths. Among other steps, warning signs have been posted in Mexico and

at dangerous crossing areas, like the All American Canal. INS has developed a broad and often graphic public education and media campaign on the dangers of crossing.¹³⁴ This campaign extends into Mexico and complements similar public education efforts by Mexico.¹³⁵ Border Patrol vehicles have been equipped with extra water and medical trauma bags. A toll-free hot-line has been established to report migrants in distress. Recently, the Border Patrol announced that it would place 30-foot metal poles at select crossing sites that will allow migrants to press a button for help,¹³⁶ and Mexico plans to put 20 emergency aid stations in Andrade and La Rumorosa in Baja California, Mexico.¹³⁷

The Border Patrol has also expanded its search and rescue efforts, including the work of its Border Search, Trauma and Rescue (BORSTAR) teams.¹³⁸ BORSTAR agents have been trained on land navigation, first-aid and rescue techniques. According to the INS officials, 46 agents in the Tucson sector, 52 in San Diego, and 12 each in El Centro and Yuma, have undergone the 10-day BORSTAR class. The INS has also added aircraft and helicopters, which can assist in spotting and rescuing migrants.¹³⁹

The Mexican government has agreed to increase its "Grupo Beta" immigration squads on its northern and southern borders, although this unit has been so ineffective and corrupt that 90 percent of its agents may need to be replaced,¹⁴⁰ including 70 who face criminal charges or investigations and many more who have been charged with smuggling.¹⁴¹ Grupo Beta officers originally were tasked with breaking up smuggling rings and trying to dissuade migrants from crossing,¹⁴² but their mission has now been narrowed to search and rescue.¹⁴³ Mexican officials have also decided to block migrants trying to cross a hazardous 45-mile stretch of desert between Tecate and Mexicali in Baja California Norte.¹⁴⁴

The line between rescues and apprehensions often blurs as, for example, when the Border Patrol tracks migrants through the desert and apprehends (or rescues) those who might or might not have been able to survive the trip. The search and rescue agents come from the pool of enforcement agents and, according to Border Patrol officials, view enforcement as their primary job. The line also blurs when the Border Patrol promises not to stake out water stations placed by humanitarians in the desert, but refuses to agree to leave the stations alone,¹⁴⁵ or when equipment, like seven planes in the Tucson sector used to identify migrants in distress, also serve to deter illegal crossings.¹⁴⁶

The Border Patrol's efforts to save lives do not suffice. In fairness, however, it would be difficult to envision a level of staffing and resources that would lead to an adequate reduction

in crossing deaths. Even Border Patrol agents cannot guess at the number of search and rescue agents it would take to cover so vast an area of land. Last year, the four-agent rescue team in El Centro was responsible for an area stretching over 1,000 square miles.¹⁴⁷ The terrain and scope of the crossing areas explains why it took the Border Patrol most of a day, once they began to search, to locate the splintered group of 26 migrants, 14 of whom died in the desert on May 24 and 25, 2001. In fact, BORSTAR agents generally learn of migrants in distress from other migrants. In many emergencies, either no migrants in a group can reach help or, because of their status, they do not want to expose themselves to deportation. Even if search and rescue teams are available in an area, they will not be able to rescue all the migrants who need them.

Since 1998, more than 1,500 migrants have died trying to cross the Southwest border. This does not include bodies never found. Over the same period, the number of BORSTAR rescues has increased. In FY 1999, the Border Patrol rescued 1,050 people in 199 incidents.¹⁴⁸ In 2000, it conducted 510 rescues of 2,464 people, with large increases in the Arizona desert.¹⁴⁹ Border Patrol agents admit that a solution to the deaths lies beyond their often heroic efforts. In fact, their work points to the daunting scope of the problem.

E. Families of the Dead

Daniel Hernandez has worked for the Mexican Ministry of Foreign Affairs since May 1982. Since August 1999, he has served as Mexican Consul in Laredo, Texas, assisting Mexican nationals in the United States. Among his other responsibilities, Mr. Hernandez must handle the sad aftermath of border crossing deaths of Mexican nationals.

After the Border Patrol finds a body, it contacts the local sheriff (if the body is found outside the city limits) or the police (if the body is found within the city limits). This can become complicated when, as happened recently, two bodies were found within 100 yards, one inside and the other outside the city limits. If the dead person appears to be a Mexican national, the local sheriff or police contact the Consulate. The Consulate first tries to determine whether the death resulted from criminal violence unrelated to a crossing. Since migrants often get attacked and killed by bandits, this can be difficult. However, local residents can identify most non-migrant homicide victims.

Once the local police or sheriff calls the Consulate, Mr. Hernandez goes to look at the body and to search it for belongings. In most cases, he finds some form of personal identification. However, the identification may not belong to the deceased migrant. Last March, for example, Mr. Hernandez found a Mexican voter registration card on a decomposed body whose facial features could not be compared to those of the person on the card. The card had a Mexico City address. The Consulate contacted the mayor's office in Mexico City, who discovered that its owner had lost his card two months earlier. The man stated that he did not have any relatives who had left for the United States, and the body remains unidentified. On other occasions, the bodies have letters with return addresses. In these cases, the Consulate sends local officials to the address to ask if a family member can come identify the body.

For poor families, travel expenses to the United States can be exorbitant. After the family identifies the body, the Consulate helps them make arrangements for returning it to Mexico. For financial reasons, the Consulate tries to convince most families to cremate the body. However, Laredo has no crematoriums. Therefore, the bodies must be sent to San Antonio. Complicating the financial situation, all of the funeral homes in Laredo now charge \$650 to transport a body to a funeral home, secure a death certificate and obtain a burial transfer permit in Mexico. In the past, only the most expensive funeral home, which the local sheriff invariably used, charged \$650. This cost does not include embalming. In Mexico, families incur additional expenses for transporting the body and for the burial. In total, the cost to a family can easily reach \$2,000. For many families, this amount equals their total annual income.

Mr. Hernandez tries to assist families financially, but in recent years he has exceeded his budget for this purpose. He also contacts the mayor of the family's home-town to see if the town can help defer these costs. Sometimes it can, but this often requires local fundraising, which cannot be done within the necessary timeframe. As a result, the families often incur debt.

Mexican and U.S. officials have had limited success in decreasing crossing deaths from causes other than dehydration. Prior to 1997, many migrants died in the Laredo region trying to jump from railroad cars. As a result, government officials on both sides began to guard the areas where the largest number of death were occurring. This resulted in a decrease in deaths in these areas.

Similarly, in 1998 and 1999, the Border Patrol and Mexican officials started safety initiatives to reduce drowning. However, the total number of migrant deaths remains high. Through mid-July 2001, the Mexican Consul had recorded 18 crossing deaths in 2001, 11 by dehydration, six by drowning, and one from hypothermia. To Mr. Hernandez, the problem lies with U.S. enforcement policies that push migrants to more remote and dangerous crossing routes. He does not think that migration has decreased, but that migrants are crossing more to the east and west of the city. They walk longer distances and zigzag through harsh, semi-deserted land to avoid detection. This has led to more deaths by dehydration. While migrant crossing deaths have decreased in the Laredo area this year, the Mexican Consul in the more remote area around Eagle Pass, Texas has recorded more deaths this year.

In the past, frequent crossers might use a "coyote" to assist with their first or second crossing. After that, they learned the routes themselves and no longer needed traffickers. Due to the new enforcement strategy, migrants must now hire smugglers with the expertise and resources to find new routes. The new smugglers do not care what happens to the migrants, and frequently abandon them. In a case last summer, a trafficker and his group left behind two brothers, one of whom had grown weak with dehydration. The Border Patrol ultimately found the two brothers, one dead, the other alive. The use of traffickers has also resulted in an increase in deaths by automobile accident. Traffickers watch for a change of officials at Border Patrol check-points along state and local roads. When this occurs, they drive through at high speeds, which has caused deadly accidents.

In Mr. Hernandez's experience, migrants die in specific areas. Deaths by dehydration, for example, frequently occur on the northern edge of Webb County, toward San Antonio, where three roads meet to create a triangle. Migrants die in this triangle as they try to make their way to one of the three roads to be picked up. Mr. Hernandez does not always know how to respond to a series of deaths in a specific area. If he were to ask the Border Patrol to increase its presence in an area, this would likely lead to more security there, forcing migrants to take even longer and more difficult routes. As Mr. Hernandez sees it, requests to the Border Patrol can ultimately place migrants at greater risk.

The composition of migrants has also changed, as more women and

children attempt to cross. Women often cross by foot, while their babies cross at ports-of-entry with a trafficker posing as a parent or relative. The traffickers claim that the babies are U.S. citizens, presenting the birth certificates of other children. If they are detected, the Consulate must attempt to reunite the baby and mother, who might already be in Austin or Houston. A Catholic shelter in Nuevo Laredo cares for babies until their mothers come to retrieve them. The Consulate usually learns of the mother's location from the smugglers. Mr. Hernandez once handled the case of a baby only a few days old. He has also seen an increase in the number of unaccompanied minors attempting to cross. The Mexican Consul takes these children to Mexican Protective Services, which, through UNICEF, moves them to shelters.

Finally, the Consulate works with poor people from southern Mexico, who have few friends in the unforgiving border region. Many migrants who have been caught and returned to Mexico a few times have depleted their life savings and have no way to return home or, in some cases, no home to which to return. In addition, they may be distraught or ashamed at the idea of returning. The Mexican government, in Mr. Hernandez's view, does not offer sufficient support to these migrants. In Nuevo Laredo, a Catholic priest provides shelter and some assistance. The mayor also assists with the cost of bus fare home. However, Mr. Hernandez does not think that this should be solely the city's responsibility.

Meanwhile, the deaths continue. In 2000, Mexican officials in Nuevo Laredo recorded 31 migrant deaths in Mexico, and the Mexican Consul in Laredo recorded 55 crossing deaths in the United States, bringing the total to 86 deaths. Mr. Hernandez worries that as more migrant deaths occur, the response to them will become more standard and resigned. He wonders what the reaction would be if the same number of U.S. citizens were dying along the border.

G. Criminal Smuggling Enterprises

Perhaps of all the perils faced by migrants on their journey north, the new type of smuggler represents the most serious. In the past, migrants often knew and trusted the "coyotes" they used. These guides tended to operate by themselves or in small groups, and often traveled with migrants from their hometowns. In recent years, smuggling has become an organized and lucrative criminal enterprise.¹⁵⁰ Many attribute this to the border

blockade strategy that has made it impossible for migrants to cross the border on their own or with traditional "coyotes." The new smugglers use cell phones, global positioning devices, and even night goggles.¹⁵¹ While their fees vary,¹⁵² smugglers now charge significantly more than they did in the past. In Agua Prieta, for example, they charge \$700 to \$1,000 to Mexican nationals, and \$5,000 to persons from other nations.¹⁵³ While their clients are primarily Mexicans and Central Americans, migrant streams can be immensely diverse.

The smugglers exert nearly total control over the migrants during their journeys. Coyotes often abandon migrants if they cannot keep pace with the rest of the group or if the Border Patrol approaches.¹⁵⁴ They also lie to migrants about the length and dangers of trips.¹⁵⁵ Beyond imperiling their clients, smugglers may be responsible for a significant percentage of the homicides committed against migrants. From 1985-1998, the United States recorded 648 homicides against migrants on its side of the border. Many migrants have been robbed and abandoned by coyotes. In other cases, smugglers work in consort with border bandits.¹⁵⁶

Drivers who pick up migrants in the United States often force them to abandon their possessions, leading to large concentrations of trash and debris at pick-up sites. Often the Border Patrol forces migrants to do the same. The drivers then pack the migrants into unsafe trucks and vans. In one case, 61 migrants had been stuffed in a Ford cargo van that broke down on Arizona 87, east of Casa Grande.¹⁵⁷ In another, the Border Patrol apprehended 153 migrants attempting to board three vans in Bisbee, Arizona.¹⁵⁸ The purchase and sale of migrants reflects the extent to which they have become commodities in a criminal enterprise.

Once in the United States, smugglers often confine migrants in filthy, overcrowded "safe houses" until their fee or whatever they can extort, has been paid.¹⁵⁹ They terrorize and abuse migrants whose families delay paying the ransom.¹⁶⁰ Smugglers also kidnap each other's clients from safe houses or even while they are in transit. In one case, smugglers took a group of 41 at gunpoint.¹⁶¹ In another case, smugglers killed a man trying to reclaim a group that had been kidnapped by another group.¹⁶² Predation by smugglers is a steep price to pay for persons who seek only to work in the United States or to reunite with family members.¹⁶³

H. Border Patrol Abuses

"Mr. S-," a 17-year-old, grew up in Malacatan in the Department

of San Marcos, Guatemala, near the border with Chiapas, Mexico. At age eight, Mr. S- began to work with his father in the fields of large estates in Guatemala and Chiapas. At age 12, he left home because his parents could no longer support him and his seven younger siblings. For roughly two years, Mr. S- worked in a pool hall in Chiapas; he worked from 7 a.m. to 11 p.m. each day, except for Sunday when he worked a half day. In return, he earned a small wage and was allowed to sleep in the back room of the hall. At age 14 or 15, he began to work on a poultry farm. By January 1999, he had saved enough money to begin his journey to the United States. For three months, Mr. S- traveled by foot and train through Mexico, spending much of his time avoiding immigration authorities and check points. When he finally reached Agua Prieta, Sonora, across from Douglas, Arizona, he did not know where he was.

In April 1999, Mr. S- and his group left with a guide, who said they might be able to cross the border quickly. Mr. S- carried only two water bottles. After three days, with no water left, Mr. S- became separated from his group and lay under a tree. In the early morning, he awoke to a Border Patrol agent kicking him and telling him to get up. The agent broke Mr. S-'s leg and forced him to walk on it.

The agent repeatedly warned Mr. S- to say that he had broken his leg accidentally in a fall. Over several days, Mr. S- received treatment at a local hospital. His fractured leg required the insertion of screws and two surgeries. Ultimately, he was released to Child Protective Services.

By and large, Border Patrol agents acquit themselves with professionalism and restraint. Agents who witness the aftermath of crossing deaths and injuries, particularly BORSTAR agents, may themselves need more attention and support. Certainly, they take the loss of life personally. In addition, the build-up in our nation's border enforcement resources has been supported by successive Congresses and Administrations. In general, the Border Patrol has tried to carry out policies that originated elsewhere. Thus, this report distinguishes between the work of individual agents, the Border Patrol as an institution, and the nation's immigration policies.

At the same time, it recognizes the INS's responsibility, given the inherent power it exercises over migrants, typically beyond the public's eye, to assure the integrity of its agents. At the outset of its border blockage strategy, INS officials argued that

it would reduce the number of civil rights abuses by the Border Patrol, which often take place during pursuits and searches. This has not occurred. In 1995, the INS Office of Internal Audit (OIA) received 1,500 complaints of INS misconduct.¹⁶⁴ In 2000, it opened 4,527 cases.¹⁶⁵ Roughly ten percent of these cases involved allegations of abuse or civil rights violations.¹⁶⁶ Of the cases it closed in 2000, OIA referred 504 to the Department of Justice's Civil Rights Division (CRT) for investigation.¹⁶⁷ However, fewer than ten percent of referred cases result in a criminal investigation and only one percent lead to prosecutions.¹⁶⁸

In a recent survey of law enforcement abuses in the El Paso area, 55 of 79 documented abuses took place in central El Paso.¹⁶⁹ This suggests that abuses by the Border Patrol remain a significant problem, even in areas where the Border Patrol concentrates its resources.

One would expect an increase in civil rights violations over the last decade, given the spectacular growth of the INS and the relative inexperience of the Border Patrol force. By July 1998, 39 percent of agents had two or fewer years of experience, compared to 15 percent in October 1993.¹⁷⁰ This has created a particular need for training and effective supervision by first-line supervisors.¹⁷¹ It also raises questions as to the quality of new agents. The Border Patrol union called for a hiring slowdown, based on concerns regarding the screening of new hires and the danger inexperienced agents posed to veterans.¹⁷² In 1999, the Department of Justice (DOJ) supported a moratorium on hiring,¹⁷³ and INS requested no additional agents for FY 2000 for the same reason.¹⁷⁴

Exacerbating matters, the massive build-up of the Border Patrol has been accompanied by high rates of attrition. The Border Patrol began FY 1993 with 4,076 agents, hired 102 during the year, and lost 213, for an attrition rate of less than five percent.¹⁷⁵ By 1996, attrition rates had nearly doubled and they have remained high since then.¹⁷⁶ Increased attrition rates can be attributed, in part, to the adjustment difficulties experienced by agents who have been transplanted into border communities and the stifling boredom agents experience lined up in their vans hour after hour in blockaded areas.

These factors argue for a strong system of investigating, tracking and punishing agent misconduct. However, the INS complaint process has long been criticized as ineffective. Part of the problem has been the system's complexity and its layers of overlapping bureaucracy. As it stands, INS must forward an

alleged civil rights violation to DOJ's Office of Inspector General (OIG) and to INS's own OIA.¹⁷⁷ OIG presents the allegation to the DOJ's CRT which can direct the Federal Bureau of Investigations (FBI) to investigate and provide a report on the complaint.¹⁷⁸ While the CRT can begin a prosecution at this juncture, it opts to do so in only a small percentage of cases, roughly one percent. Immigrant advocates have consistently reported that U.S. Attorney's offices have decided not to prosecute in cases in which they did not even interview the complainant.¹⁷⁹ If the CRT decides that an FBI investigation is not justified, it refers the case to OIG, which can then initiate its own investigation or refer the case to OIA.¹⁸⁰ The OIA can investigate the case internally or assign it to the appropriate INS field manager for an inquiry. A separate process governs non-civil rights allegations, which typically involve alleged misconduct reported by INS employees to OIG and OIA.¹⁸¹

Apart from failing to prosecute the overwhelming majority of alleged civil rights violations,¹⁸² the system makes it difficult for an immigrant to track the progress of a complaint.¹⁸³ As an INS appointed advisory panel reported in 1997, the process is "not visible to the community it serves" and frequently "does not result in any visible response."¹⁸⁴ By the time the process runs its course, agents who have committed relatively serious offenses, but who have not been prosecuted, can escape even administrative sanctions.¹⁸⁵ In addition, INS has not traditionally used complaints as a warning system regarding possible problems or to show trends.¹⁸⁶

Undocumented migrants do not normally file complaints, "fearing reprisals, lengthy detention pending investigation, or believing that complaints are futile."¹⁸⁷ Contrary to INS internal guidance, Border Patrol stations and individual agents often make it extremely difficult to file a complaint. In 1998, Amnesty International reported that certain stations did not keep complaint forms and others provided them only reluctantly or only in English.¹⁸⁸

Abuses by Border Patrol agents have been notoriously difficult for immigration advocates to monitor and corroborate. The United States has criticized Mexico for deporting victims of abuse, making prosecution of offenders effectively impossible.¹⁸⁹ However, the problem of lost (or reluctant) witnesses also undermines the U.S. complaint process.¹⁹⁰ In addition, the growth of the Border Patrol has simply overwhelmed the monitoring capacity of human rights and immigrant advocate agencies. Despite these methodological and resource problems, several trends have emerged regarding Border Patrol abuses.

First, most migrants submit to arrest without resistance. Some groups scatter, based on prior instructions from smugglers, when the Border Patrol approaches. However, even large groups can be surprisingly passive when faced with only one or two agents. This seems part of an unspoken pact between migrants and the Border Patrol. When migrants run or hide, however, Border Patrol agents have frequently responded with force.¹⁹¹

In one case, "Mr. R-" and six other men had crossed into the United States when Border Patrol agents began to pursue them.¹⁹² The agents chased the other men, but Mr. R- hid behind what he believed to be an empty Border Patrol vehicle. An agent pushed open the door from the inside, hitting Mr. R- in the chest. He then lifted Mr. R- by his collar. When Mr. R- protested, the agent replied that he could do what he wanted. He then dragged Mr. R- to the back of his vehicle, threw him into it, and pulled out his gun. Mr. R- felt a hard blow on the back of his head, lost his balance and fell. He began to bleed profusely. The agent called an ambulance, reporting that an injured person had entered the country. After Mr. R- was lifted into the ambulance, the agent offered him \$3,000 or permission to stay in the United States for two years if he would not report the incident.

In 1998, Amnesty International reported several cases of Border Patrol beatings of migrants who had attempted to flee.¹⁹³ In a typical case, on February 14, 1997, Daniel Rodríguez Biúrquiz crossed into San Diego's East County. When he tried to run away, Border Patrol agents hit him with batons.¹⁹⁴ The agents removed him from his group and had him deported at Calexico without processing him.¹⁹⁵ His injuries included a broken nose and heavy bruising on his face, body and legs.

In August 2000, an INS agent near Playas de Tijuana allegedly fired at several migrants as they retreated toward the U.S.-Mexico border fence.¹⁹⁶ One man stopped and attempted to surrender, but the agent shot him.¹⁹⁷ The man fell down an embankment, seriously injuring his head.¹⁹⁸ Five months after the shooting, he remained in the University of San Diego Medical Center with apparently permanent disabilities.¹⁹⁹ INS officials have confirmed to CLINIC that its agents use hollow-point bullets. These explode and fracture inside their victims, maximizing internal injuries.

In the Border Patrol's McAllen sector, an agent severely injured a migrant by striking him in the head with a flashlight while attempting to arrest him and several others.²⁰⁰ The agent was subsequently convicted of a civil rights violation. INS agents reportedly refer to the practice of striking migrants with flash-

lights as "tonking."²⁰¹

In some cases, a mere assertion of rights or a simple request can apparently be enough to provoke a violent response. Two agents detained "Mr. V-" and a group of border crossers near Interstate 8 in San Diego County.²⁰² Mr. V-'s requests to relieve himself apparently angered the agents, who denied his request. One of the agents cursed Mr. V- and called him a "wetback." Another challenged him to a fight. An agent then took out a metal rod and ran after Mr. V-, threatening to kill him. The agent fell and cut his nose. When Mr. V- finally gave up, the agent threw him down and handcuffed him. He emptied the contents of his backpack on the ground, throwing away what he found, including medication for Mr. V-'s brother. When Mr. V- complained, the agent picked him up by his arms and dropped him on his chest. At one point, the agent took out a knife and cut Mr. V-'s pant leg to check his injured leg. The agent repeatedly passed the knife over Mr. V- and threatened to kill him. He said that he planned to tell others that Mr. V- had hit him in the face with a rock. When they reached the Border Patrol station, the agent made good on his threat. Several agents dragged Mr. V- into a cell and beat him.

Second, Border Patrol agents have shot migrants who have thrown rocks at them or who otherwise threatened or menaced them. Rock-throwing has occurred with such regularity at certain locations that the Border Patrol uses vehicles with caged windows that agents call "rock proofs." At least six times between June and September 1998, agents responded to attacks, including rock and bottle throwing, with gunfire.²⁰³ The use of hollow point bullets in these incidents raises fundamental concerns.²⁰⁴ Other times, agents have attempted to intimidate would-be crossers, by pointing their guns at them.²⁰⁵ In the aftermath of an attack or killing of a Border Patrol agent, agents seem more likely to respond with force, in what appears to be an effort to re-establish control of an area.

Third, there have been regular reports of illegal crossers, including children, not receiving food or even water during their detention.²⁰⁶ INS officials stopped providing meals to detainees in short-term detention at the Nogales port-of-entry, due to funding shortfalls at the end of the quarter.²⁰⁷ The INS district director in Phoenix subsequently reversed this policy. In typical reports, in June 2000, INS allegedly denied food to "Mr. N-," a 30-year-old from Guerrero, Mexico, during his 12-hour detention, and to "Mr. S-," a 40-year-old from Puebla, Mexico during his 36-hour detention.²⁰⁸

Fourth, INS and U.S. Customs agents at ports-of-entry often commit stunning abuses against U.S. citizens, lawful permanent residents, and migrants who they mistakenly suspect of fraud.²⁰⁹ Of the 79 law enforcement abuses documented by the El Paso-based Consejo Regional Ciudadano during the three-day period from December 8 to 10, 2000, 28 percent occurred against U.S. citizens and 43 percent against persons lawfully present.²¹⁰

In May 1998, a man took his five-month old son, "Isaac," from El Paso to Ciudad Juárez for medical treatment.²¹¹ Upon examining the child, the doctor said that he needed emergency medical care in the United States. At the international bridge, INS agents asked to see the child's U.S. birth certificate, but his father had forgotten to bring it with him. The agents accused the father of kidnapping his son. He pled with the officers to call an ambulance, but the officers delayed and continued to interrogate him. During this time, the child's condition deteriorated. By the time paramedics reached the bridge, the child had died.

In another case, two U.S. citizens, "Mrs. M-" and her 16-year-old daughter attempted to re-enter the country one night through the pedestrian crossing at San Ysidro, California.²¹² The INS let the daughter pass without incident, but directed Mrs. M- to secondary inspection. When Mrs. M- protested, an agent repeatedly told her to shut up. At one point, he yelled: "'You are nothing here! You have no rights. If you don't be quiet, you'll be here all night.'" In secondary inspection, agents pressured Mrs. M- to admit (falsely) that she was a Mexican citizen. Meanwhile, despite repeated requests to join her mother, the daughter remained outside where passing men repeatedly propositioned her. After two hours, the INS released Mrs. M-. The following day, her husband ("Mr. M-") went to the same office to file a complaint. Mr. M- asked to speak to an INS supervisor and was referred to an agent who told him that he should not file a complaint since the situation had been resolved. When Mr. M- insisted, the agent threw a complaint form at him. Before Mr. M- left, another agent asked him if he "wanted problems."

On March 15, 1997, a 61-year-old lawful permanent resident drove three of her grandchildren from Ciudad Juárez to El Paso.²¹³ Her U.S. citizen brother, a schizophrenic and diabetic, accompanied her. One grandchild showed his border crossing card. The other two were U.S. citizens. The INS took the two to secondary inspection, and told the grandmother to call somebody who could bring the children's birth certificates. Ultimately, the woman's daughter brought them. Due to the stress, compounded by threats that her van would be confiscated, the grandmother passed out and

was taken by ambulance to the hospital. Her brother was later found, wandering in an agitated state in downtown El Paso.

On November 20, 1996, Brenda Catalina Ramos, a 21-year-old U.S. citizen, tried to cross with friends at a pedestrian crossing.²¹⁴ Immigration officials denied her entry, insisting that her identification card, social security card and birth certificate did not belong to her. Ms. Ramos had been born in Chula Vista, California, but raised in Mexico. Officers ridiculed her, asking her to sing La Cucaracha. They also denied her request to call her mother. She was detained for three days. When she finally appeared before an Immigration Judge, she did not assert her U.S. citizenship because INS officials had instructed her that if she contested deportation, she would remain detained. During her three-day absence, her family had been searching desperately for her.

On March 27, 1999, Yadira Gutierrez Huerta, a U.S. citizen, attempted to return to the United States after visiting Tijuana with friends. She showed officials at the San Ysidro pedestrian crossing her U.S. passport, but the officer called her an imposter. Ultimately, INS officials fingerprinted her and claimed (falsely) that her prints did not match her identification document. They also refused to allow her to call her parents who could have brought further proof of her identity. Different officers bullied and threatened her, including one who said that she would be jailed with very bad people if she did not cooperate. Frightened, she identified herself as a native of Tijuana, using the name of one of her friends.²¹⁵

Fifth, some agents prey on migrants for base criminal reasons. INS officers have faced sexual assault charges with disturbing regularity.²¹⁶ In one case, an INS inspector in McAllen received a sentence of 15 years and nine months for a sexual assault.²¹⁷ He had demanded sex from a Mexican woman, offering (in return) to give back false documents that he had taken from her.²¹⁸

In another case, an INS Border Patrol agent from the Nogales station faces criminal charges for his alleged sexual abuse against women in his custody.²¹⁹ After processing three women, the agent allegedly took them to a remote location and sexually assaulted one of them, prior to their deportation.

An agent at the Douglas Border Patrol Station faces charges for allegedly apprehending a Salvadoran woman who was riding in a vehicle with other undocumented persons, and driving her to a remote site where he sexually assaulted her.²²⁰ In 1993, a Border Patrol agent raped a migrant from Nogales, Sonora.²²¹

In a few cases, agents have closed ranks around offending agents, failing to prevent their misconduct, refusing to report them, and committing reprisals against those who do.²²² In May 1999, a Border Patrol agent, after telling his colleagues what he planned to do, shot a rubber raft carrying migrants across the All American Canal.²²³ Once the migrants fell into the river, the officer left the scene and disposed of the gun he had used.²²⁴ In another case, an agent reported to his supervisor that other agents had thrown rocks at a migrant wading in the Tijuana River near San Ysidro.²²⁵ The reporting agent had to be transferred to New York to protect him from reprisals. A Border Patrol agent in the Temecula station beat a man he suspected of being a smuggler after stopping his vehicle.²²⁶ He then instructed his partner to omit the incident in his report.²²⁷ The agent ultimately pled guilty to obstruction of justice.²²⁸

Occasionally agents have committed the very crimes that they exist to combat. An agent assigned to the INS's anti-smuggling unit in Los Angeles, for example, recently pled guilty to a conspiracy involving his release of previously smuggled migrants to co-defendants, who then held them for ransom from their relatives.²²⁹ In another case, an INS immigration inspector at San Ysidro received a 12-year sentence for federal racketeering for using his position to allow the smuggling of persons and drugs across the border.²³⁰ Another inspector at San Ysidro received a five-year sentence for smuggling numerous migrants across the border while on duty.²³¹

Problem agents cast doubt on the screening procedures for would-be agents. A new agent in Nogales had previously sold cocaine and murdered a drug dealer in New York.²³² Another agent had allegedly helped to plan a murder in south Texas.²³³

Adding to the volatility of the border has been the presence of the U.S. military, in the form of the "Joint Task Force-6 (JTF-6)", which coordinates counter-drug smuggling operations out of Fort Bliss.²³⁴ Since October 1, 1990, JTF-6 has provided military support 690 times in Arizona.²³⁵ It has recently announced that it will resume helicopter patrols in New Mexico.²³⁶ JTF-6 has also helped to erect border fences, lights, and provided other support to the Border Patrol.²³⁷ The notion of a possible domestic law enforcement role for the U.S. army, combined with the secrecy of the JTF-6's activities, has concerned civil libertarians and immigrant advocates.

These concerns came to a head when U.S. Marines killed an 18-year-old U.S. citizen in Redford, Texas, a remote farming community on the border. In the early evening of May 20, 1997,

Ezequiel Hernandez, walked his family's goats to the Rio Grande.²³⁸ He brought with him his grandfather's ancient rifle to fend off wild dogs and rattlesnakes. For three days, a U.S. military surveillance team had been camped in the desert brush near Redford, waiting for drug smugglers. The Marines wore heavily camouflaged suits, leading to speculation that Ezequiel may not have recognized them as humans. Regardless, he shot at them and they shot back, apparently as he was running away. The Marines waited 20 minutes before summoning help. In early 1998, the Department of Defense announced that it would cancel armed military patrols along border, but that unarmed troops would remain to assist in non-combat projects like repairing and building walls, fences and roads, intelligence gathering, and aerial reconnaissance.

Support for a U.S. military presence on the border has increased in response to the terrorist attacks of September 11th.²³⁹ As of this writing, the House had approved an amendment to the Department of Defense Authorization bill that allowed the Secretary of Defense, upon a request by the Attorney General (for the INS) or Secretary of the Treasury (for the Customs Service), to assign members of the Army, Navy, Air Force, or Marines to assist in preventing the entry of terrorists, drug traffickers, terrorist weapons, or illegal drugs.²⁴⁰

IX. Ranchers and Humanitarians

Wendy and Werner Glenn have worked the Malpai Ranch near Douglas, Arizona since 1963. The Malpai is located in the San Bernardino Valley, 16 miles east of downtown Douglas. The ranch borders Mexico for four miles, with the Glenn's house five miles from the border. It consists of 15,000 acres, 11,000 of which are leased from the State of Arizona. The Glenn's ranch house also serves as the headquarters of the Malpai Borderlands Group, a unique coalition of ranchers and environmentalists devoted to protecting a "healthy, unfragmented landscape" that supports a "diverse, flourishing community of human, plant and animal life."

Until five years ago, perhaps 15 to 30 migrants would pass through the Malpai Ranch each month. They would offer to work before moving on. The Glenns would feed them, and they'd head on their way, mostly to do agricultural labor in the north. Since 1996, however, massive numbers of migrants have crossed the Malpai and surrounding ranches. They come in groups that often number more than 100. If the Border Patrol did not have a significant presence in the area, the Glenns believe that their ranch would be even more inundated with border crossers and crime

would be higher as well.

Mostly the migrants stay away from the Glenn's ranch house. They tend to travel at night and the Glenn's dogs scare them away from the house. The migrants do not want to be seen for fear that they will be reported to the Border Patrol. However, the Glenns and their neighbors occasionally find migrants in desperate condition on their property. Unlike the migrant laborers who crossed years before, the new migrants have no knowledge of the landscape or where they are headed. They often fall prey to ruthless smugglers who guide their groups. The "coyotes" typically lie about the distances to their destinations and abandon those who cannot keep pace with the group. They also occasionally rob migrants, after charging them exorbitant rates. Recently, a group of men approached the Malpai ranch house, wondering if they had reached Phoenix. As it turned out, they had been walking in circles in the desert for six days. A neighbor has a windmill with the word "Chicago" on it. Migrants recently arrived at her ranch, asking if they had reached Chicago, Illinois.

Last May, Wendy encountered a migrant woman at the side of a ranch road. The woman, by appearances in her 50s and very thin, wore only a bra and underwear. She had taken off her other clothing in a desperate attempt to cool off. The night before, she had fallen asleep as her group rested and awoke to find herself alone. When Wendy promised to return in a few minutes, the woman wouldn't let Wendy leave her. She later told Wendy that she came from south of Mexico City and was headed to Tucson to find her daughter. She had sold her family's farm and house to finance the trip. The Border Patrol took the woman to Douglas for medical care. In other cases, the Border Patrol presents Mexican nationals in need of medical care to the Red Cross in Mexico. The Glenns have been impressed with the care that the Border Patrol agents show the migrants they apprehend. Like most ranchers, the Glenns call the Border Patrol to pick up migrants who need help.

In another case, a pregnant Mexican woman had arranged with a mid-wife in Phoenix to give birth. However, after walking about five miles, the woman went into labor near the Malpai Ranch. The woman's husband and brother delivered the child, a healthy girl. They cut the umbilical cord with a piece of broken glass and tied it with the raveled yarn from a sweater. The rest of the group abandoned her. The Border Patrol sent an ambulance to take the family to the hospital, where they checked the mother (who seemed

near shock) and the baby.

On two other occasions, single men have approached the ranch to say that their wives had hurt themselves and could not continue. After several hours of searching for them on horseback, Warner found each of the women. Both were heavy-set and seemed ill-suited to cross the desert. Both women had hurt their legs and had been abandoned by their groups. The Glenns' neighbors have all had similar encounters with desperate migrants. Migrants often approach the homes of ranchers and ask them to call the Border Patrol.

While the Glenns do not see most of those who cross their property, they do see the trash and debris left behind. The Malpai is not a loading area for smugglers, who fit as many people as possible into their vehicles and insist that the migrants leave behind all their belongings. In these areas, the trash can be knee-deep. The Glenns do find, however, the trash and the detritus of migrants who can no longer carry their possessions. These include plastic bags, opened cans, human feces, disposable diapers, clothes and other belongings. Wendy keeps several envelopes of family photographs and videotapes that one migrant left behind. She hopes that she might return them one day.

The Glenns do not support putting water stations in the desert. They do not favor anything that they think might encourage people to cross through the desert. The risks to the migrants are too high, and the threat to their ranchers' land and livelihood cannot be discounted. The foot traffic has been so heavy in many places that grass, necessary for cattle grazing and wild-life, has been destroyed. In addition, cattle have swallowed the plastic bags left behind, which have balled up in their intestines and killed them. Small animals have died after their heads have gotten stuck in the openings in discarded cans. Fences and water lines have been cut, and gates left open. The Glenns have not suffered great monetary losses due to the human traffic, but they must spend a significant amount of time checking their fences and gates.

Ultimately, the Glenns think that the crisis must be solved in Mexico. They see migration as an economic issue, both in Mexico and in terms of the jobs the migrants fill in the United States. Although migration flows have diminished in recent months, they remain high, particularly on nights when the moon shines brightly. The human tide ebbs and flows, depending on the Border

Patrol's activities, with large numbers passing through when migrants are hard hit in other locations.

The utter chaos of the border region has placed great strain on its residents. The Glenns and other border ranchers have contended with cut water lines, poisoned dogs, dead cattle, and literally acres of defaced land.²⁴¹ When the author visited Douglas in September 2000, a group of volunteers had filled several pick-up trucks with garbage from a local ranch, without making a significant impact on the area. Some of the debris, like family photos, can be quite poignant. In other areas, ranchers complain that damages caused by the Border Patrol parallel those caused by migrants.²⁴² The Glenns continue to aid migrants in distress, but worry about their livelihood, the integrity of their land, and their safety.

The national press has tended to cover the extreme responses to this crisis, which non-residents often inflame. In April 1999, 20 Arizona ranchers signed a proclamation to the County Board of Supervisors, state legislators and Arizona Congressional delegation, warning that "friction between invaders and property owners" might increase "to the point of blood being shed."²⁴³ The Glenns' neighbor, Roger Barnett, claimed to have arrested more than 3,000 migrants on his ranch, including 174 at one time.²⁴⁴ Some citizen arrests have allegedly occurred on state highways and state land leased by ranchers, exacerbating already serious civil rights concerns.²⁴⁵ These self-help actions, regardless of one's perspective, highlighted a problem that threatened to spin out of control. Many ranchers supported them, primarily as a way to dramatize the severity of the situation they faced. Immigrant advocates viewed them as vigilantism, evoking earlier anti-migrant incidents, like the arrest and torture of four migrants in August 1976 by ranchers Patrick, Thomas and George Hanigan.²⁴⁶ A rally in support of Barnett in Sierra Vista, Arizona in May 2000, which attracted national anti-immigrant groups, seemed to confirm these fears.²⁴⁷ One speaker reportedly fulminated against "alien savages," claiming that every person arrested by armed citizens was "'one less illegal alien taking a job that rightly belongs to an American citizen. One less alien bringing in communicable diseases, one less illegal alien smuggling deadly drugs, one less illegal alien gang member to rob, rape and murder innocent citizens.'"²⁴⁸ Others saw the migrants as part of a plan by the Mexican government to conquer the Southwest, a long-standing conspiracy theory.²⁴⁹ An anti-immigrant group called the Neighborhood Ranch Watch subsequently attempted to recruit volunteers to help patrol ranchers' property.²⁵⁰

Around the same time, Mexican Foreign Secretary Rosario Green announced that he had documented 32 vigilante acts against Mexican nationals in border communities since 1994, including 27 in Arizona.²⁵¹ These included shootings, assaults, and beatings.²⁵² In May 2000, for example, a 75-year-old border resident fatally shot Eusebio de Haro, a 23-year-old Mexican, who had stopped to ask for water near the man's home near Del Rio, Texas.²⁵³

Other border residents, by contrast, continue a tradition of hospitality toward migrants and, in varying degrees, suspicion of the federal government. Several groups provide humanitarian assistance to migrants - water, food, shelter, and assistance in reunifying migrants with their families -- trying at the same time to skirt federal laws that prohibit the harboring and transport of undocumented migrants.²⁵⁴ Others collect the trash left behind and set out food, blankets and water on established trails.²⁵⁵

In June 2000, 80 Arizonans met to plan a response to the migrant crossing deaths. The participants agreed to place water stations in the desert to aid migrants, following the example of a group in the El Centro area of California.²⁵⁶ The resulting agency, Humane Borders, headquartered at First Christian Church in Tucson, began to negotiate with an array of federal, state, and Native American officials to place water stations at various sites under their jurisdiction. In March 2001, the National Park Service allowed it to place its first two water stations, 15 miles apart, along an electricity line that runs north from the border through Organ Pipes National Wildlife Refuge. This area serves as a major crossing route for migrants because the town of Sonoyta, Sonora is only a few miles from the border. Migrants head through the park toward Routes 85 and 86 and the town of Ajo. From the start, the two water stations have been heavily used, with roughly 20 gallons taken from them each day.

In March, the group requested permission from the U.S. Game and Wildlife officials to put stations in the Cabeza Prieta National Wildlife Refuge. In April, officials denied permission. On May 22, 2001, a group of Humane Borders volunteers met three migrants at their north water station in Organ Pipes Cactus National Monument. The first two, who looked little more than 12 and 13 years old, had attempted to cross the border on bicycles. A pedal on one of their bikes had broken. Exhausted, they asked to be turned over to the Border Patrol. The third migrant was an older man, perhaps in his late 50s or 60s. Delirious, the man could not speak in complete sentences. Over the next few days, 14 migrants in a group of 26 would die in Cabeza Prieta,

apparently after passing the site that Humane Borders had proposed for a water station.

The juxtaposition of the near-dead crossers in Organ Pipes, with the deaths in Cabeza Prieta, hit the Humane Borders' volunteers hard. It also seemed to mobilize government officials. Cabeza Prieta officials reversed course and, pending an environmental review, agreed to mark and maintain 22 existing water sources within the park. The Border Patrol, worried about another large-scale tragedy, expanded its search and rescue work in the area.

Since then, Humane Borders has obtained permits to place two stations in the Buenos Aires National Wildlife Refuge which extends north and east from Sasabe, with five additional stations scheduled to be in use later in the summer. They have also applied for land-use permits in several other sites.

This work highlights the stark reality of crossing deaths. Thousands of miles of desert trails, however, remain untended by humanitarians, who do not see water stations as an adequate solution to this crisis.²⁵⁷ Migrants need to get out of the desert, the group argues, and the best way to do this would be to allow them to pass back and forth legally. On the need to remove migrants from the desert, no concerned border resident would disagree.

J. Indian Nations

The INS enforcement strategy and build-up has also impacted the most ancient of border residents, Native Americans whose lands straddle Mexico and the United States. The Treaty of Guadalupe-Hidalgo in 1848, ending the U.S.- Mexico war, and the Gadsden Purchase in 1854, created the current border between the United States and Mexico.²⁵⁸ The Gadsden Purchase split the largest of the Native American nations, the Tohono O'odham. The Tohono O'odham, formally recognized by Congress as a sovereign nation in 1937, has 24,000 members, who live on 2.8 million acres, with 75 miles of mostly unguarded border in Arizona.²⁵⁹ For generations, the members of the Tohono O'odham and other border tribes -- like the Yaqui, Cocopah and Kickapoo -- have moved freely across their tribal lands.²⁶⁰ The attempt to seal the border has changed this historic practice and, in the process, raises weighty issues of sovereignty for the Indian Nations.²⁶¹

An estimated 8,400 Tohono O'odham members, including U.S. military veterans, cannot establish their U.S. citizenship. They have difficulty returning to the United States after traveling to tribal land in Mexico. Of these, roughly 7,000 live on tribal

land in the United States, and the other 1,400 live in Mexico. The latter have difficulty coming to the United States for health services, tribal ceremonies, and family visits. In one case, the INS deported a Tohono O'odham ranch hand, subjecting him to a five-year bar on re-entry.²⁶² The high rate of diabetes among the Tohono O'odham and their advanced age make it particularly important for members to have access to the tribal hospital in Sells.²⁶³

The INS has issued border crossing cards to Tohono O'odham members, but these do not address sovereignty, religious, or more practical concerns. In June 2001, a delegation of Tohono O'odham elders and leaders traveled to Washington, D.C. to lobby Congress and the Administration regarding these problems. They propose to make tribal membership cards proof of U.S. citizenship.²⁶⁴ As of this writing, a bill to accomplish this end has stalled in Congress.

K. Border Residents: Civil Rights Issues

Border residents live in what has been characterized as a "de-constitutionalized zone." U.S. law gives immigration officers broad discretion to interrogate anybody they believe to be undocumented, to board and search vehicles within "a reasonable distance" of the border, to access private lands (but not residences) within 25 miles of the border, and to arrest those they have "reason to believe" are guilty of an immigration violation and otherwise likely to escape.²⁶⁵ The Supreme Court has affirmed that otherwise unconstitutional searches can "take place not only at the border itself, but at its functional equivalent," like an established station on roads coming from the border.²⁶⁶ Stops in border communities, however, still require an officer to have "a reasonable suspicion based on specific articulable facts"; race or alienage alone do not suffice.²⁶⁷

Beyond its broad authority, the Border Patrol has become omnipresent in border communities. In some communities, one cannot walk a block or drive a mile without encountering a Border Patrol van or agent. In Douglas, for example, 560 agents, most transplants from other parts of the country, work in and around a town of 14,000 people. In Arizona, the number of Border Patrol agents rose from 495 in 1992 to 1,830 in 2000. Even residents who support blockades worry that their communities cannot accommodate so many new agents.²⁶⁸

The Border Patrol's influence in border communities can also be measured financially. The "general funds" (i.e., local taxpayer supported) of all U.S. border counties equal \$2.6 billion a

year,²⁶⁹ compared to a proposed INS budget in 2002 that earmarks more than \$2.7 billion for enforcement and border affairs.²⁷⁰

The broad police power, combined with the increased federal police presence, has led to regular abuses against border residents,²⁷¹ including U.S. citizens and lawful permanent residents.²⁷² In Brownsville, Border Patrol vans patrol the Old Military Highway, which parallels the Rio Grande, occasionally stopping priests on their way to visit the Diocese of Brownsville's office building and even chasing people in the diocesan parking lot. In South Texas, a Border Patrol agent pulled over a federal judge and three aids, whom he had apparently mistaken for drug smugglers.²⁷³ An agent prevented a Cameron County judge from boarding a plane until he stated his citizenship.²⁷⁴ In Tierra Del Sol, California, an agent ordered an 80-year-old man out of his pick-up and frisked him near the ranch where he had lived his entire life.²⁷⁵ In another case, a 19-year Border Patrol agent filed suit for having been regularly stopped and searched while off duty.²⁷⁶ Local residents refer to these as "DWMs" or "driving while Mexican" stops, although this phenomenon has more to do with appearance than national identity.

In Pine Valley, California, residents complain that agents drive through property, cut their fences, and unlock gates, letting livestock escape.²⁷⁷ As one rancher put it, citing similar damages: "'We are living in fear of the Border Patrol. They are on our property. We have no right to keep them off. They can come and go whenever and wherever they want.'"²⁷⁸

The Border Patrol's presence also affects local, minority-owned businesses. One family, for example, that runs a shuttle business from Nogales to Tucson, reported that they had been regularly stopped, sometimes for hours, and accused of smuggling.²⁷⁹ In National City, California, agents regularly detained, arrested, and intimidated would-be customers at a shopping center.²⁸⁰

The Border Patrol's rapid growth, combined with its overwhelming presence in border communities, has led to enforcement activities in places of traditional sanctuary. At roughly 8:30 p.m. on May 11, 2001, INS agents entered the Opportunity Center, an emergency shelter for the homeless in El Paso. In the prior week, agents had stationed themselves on both sides of the alley that leads to the shelter's entrance, screening residents as they passed. When confronted by the shelter's director, the agents said that they had heard of "coyote activity" inside the shelter. On May 11th, when staff opened the door to leave the shelter, five Border Patrol agents walked inside. For the next 45 minutes, the agents

went from room to room, interviewing shelter residents and checking their documents. They apprehended nine undocumented residents.

A few weeks later, on June 6, 2001, Border Patrol agents attempted to arrest three women, including one pregnant woman and four children, in the parking lot of St. Patrick's Cathedral in El Paso, which abuts the diocesan legal services office for immigrants. This violated, at least in spirit, an injunction in a lawsuit filed by the staff, students, and graduates of Bowie High. The high school, which is located directly on the border in El Paso, had been the site of regular Border Patrol searches. Under the settlement, the Border Patrol agreed that its agents would not detain or question persons regarding their right to remain in the United States without a "reasonable suspicion, based on specific articulable facts involving more than the mere appearance of the person being of Hispanic descent ..." ²⁸¹ The settlement also required the Border Patrol to train its new officers on the agreement and to file quarterly reports on complaints received against agents.

A related INS memorandum set forth as INS policy "to attempt to avoid apprehension of persons and to tightly control investigative operations" at "schools, places of worship, funerals and other religious ceremonies." ²⁸² The memorandum further instructed that planned enforcement actions at such places would require advance, written approval from the District Director or Chief Patrol Agent. Of the five agents in St. Patrick's parking lot, none seemed aware of these prohibitions. The lead agent said that he had only recently joined the Border Patrol, and claimed that the Bowie High School injunction had expired.

Subsequently, the local Border Patrol Chief conceded that these actions did not reflect INS policy, but refused to extend the Bowie High School injunction to legal or social service agencies. Enforcement policies that target churches, shelters, schools and hospitals can have grave consequences. Recently, an undocumented man delayed bringing his sick daughter to the hospital because he feared deportation. ²⁸³ When he finally relented, it was too late and the child died of pneumonia the following day. ²⁸⁴ While this constitutes an extreme example, many undocumented persons in border communities fear accompanying their children to school, walking to church, and using public health facilities or emergency rooms. Some parents require their children to carry copies of their birth certificates with them to avoid accidental deportation. ²⁸⁵

Enforcement actions at places of traditional sanctuary highlight the inexperience of many Border Patrol agents. They also speak to the excesses that inevitably occur when a large federal police presence comes into a local community.

L. The Expanding Border and Refugee Protection

In early February, a group of 11 persons from the Republic of Georgia presented themselves to U.S. officials at a bridge in El Paso, seeking political asylum. The group had suffered persecution as the result of their membership in the political party of former President Zviad Gamsakhurdia. INS officials at the port-of-entry (illegally) denied them the right to seek political asylum in the United States, telling them that they had to contact the U.S. consulate in Ciudad Juárez. They then handed the group over to Mexican immigration officials, who detained them and sent them to Mexico City for deportation. Ultimately, Mexican officials relented and, after intense advocacy, the office of the INS General Counsel agreed that they should be allowed to seek political asylum in the United States. This apparently angered local INS officials, who began to make inquiries into whether the legal agency that intervened on their behalf had been involved in smuggling them.

The Georgians knew how to contact counsel in the United States. Subsequently, the INS determined that all 11 have a credible fear of persecution, and they await their asylum hearings. Other migrants, however, may be denied the right to seek asylum.

Many speak of the border less as a fixed boundary than as an elastic line that expands outward and inward. For present purposes, it represents the locus of our nation's enforcement policies, extending into the United States and outside its territorial limits. As an example of its inward reach, the INS has established "quick response teams" throughout the country to work with state and local law enforcement officers to arrest and remove undocumented persons.²⁸⁶ In FY 2001, the INS received \$11 million for the deployment of these teams. During the first quarter of the year, the teams received 2,532 requests for assistance from State and local law enforcement.²⁸⁷

Partnerships between the INS and local police have the potential to dissuade undocumented persons from contacting the police. In El Paso, this has occurred.²⁸⁸ In one case, a woman who had been battered by her husband called the police, only to find a Border Patrol agent in tow.²⁸⁹

The expansion of the enforcement efforts beyond the nation's territorial limits has been even more pronounced, albeit beyond the public's eye. It has also cast doubt on U.S. compliance with international law, which precludes the return of persons to countries where their life or freedom would be threatened or they would likely be tortured. The 1980 Refugee Act²⁹⁰ enshrined into domestic law the 1951 United Nations' (U.N.) Convention relating to the Status of Refugees and the 1967 U.N. Protocol relating to the Status of Refugees.²⁹¹ The relevant statutory language provides that the U.S. "shall not deport or return any alien ... to a country if the Attorney General determines that such alien's life or freedom" would be threatened on a stipulated ground.²⁹² In 1994, the United States became a party to the U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("the Torture Convention.")²⁹³ In 1998, the United States enacted the Convention into domestic law, stipulating that it would not "expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States."²⁹⁴

Despite its international obligations, the United States continues to interdict foreign-born nationals on the high seas and to repatriate them.²⁹⁵ In 2000, the Coast Guard intercepted 4,217 migrants, including 1,394 Haitians, 781 Dominicans, 928 Cubans, and 513 Ecuadoreans.²⁹⁶

In 1993, the Supreme Court held that the interdiction and repatriation of foreign-born nationals, without determining whether they were refugees, did not violate domestic or international law.²⁹⁷ It held that the statutory non-return language applied only to deportation or exclusion procedures, and did not create extraterritorial obligations. This opinion does not cover claims under the Torture Convention which precludes return "regardless of whether the person is physically present in the United States."²⁹⁸

The 1996 Immigration Act further eroded the international regime of refugee protection by creating a system that provides for the expedited removal of migrants who lack adequate documents at the U.S. border unless they request asylum or express a fear of persecution.²⁹⁹ Persons fleeing persecution frequently cannot secure travel documents, and many lack the English-language proficiency, the knowledge of U.S. laws, and the trust in government officials, to meet this threshold burden. This system creates an ongoing risk that bona fide asylum-seekers will be returned to their persecutors.³⁰⁰

Although less documented than expedited removal, U.S.-funded migrant interception programs in Mexico and Central America raise similar problems. In October 2000, the INS announced the completion of an enforcement action called "Operation Forerunner," which is part of a global, multi-year interdiction initiative. Operation Forerunner intercepted nearly 3,500 migrants from 47 locations in Mexico, Guatemala, El Salvador, Belize, Honduras, and Panama, and netted 38 smugglers.³⁰¹ Subsequently, a delegation from the United States Conference of Catholic Bishops visited interdicted migrants at the Central Penitentiary in Tegucigalpa, Honduras and heard testimony on the treatment of others intercepted in Guatemala and El Salvador. The migrants had been detained in unsanitary conditions for weeks, had no access to legal representation and no idea when they would be returned to their countries of origin. Other groups have reported the commingling of migrants with criminals and starvation diets.³⁰²

The bishops concluded that Operation Forerunner "had the effect of targeting migrants more than the persons who smuggle them, resulting in many migrants being placed in substandard prisons in the region without representation or the opportunity to apply for asylum."³⁰³ To date, INS has failed to respond to two Freedom of Information Act requests from CLINIC for interdiction statistics and information on refugee screening procedures for those caught in U.S.-funded programs.

Over the last year, in El Paso alone, legal services agencies have represented bona fide asylum-seekers from Iraq, the Republic of Georgia, Colombia, Bulgaria, Rwanda, Somalia, Algeria, Honduras, Guatemala, Mexico, Croatia, Belarus, Tajikistan, and many other countries. Initiatives like Operation Forerunner raise the specter that asylum-seekers from these and other countries will never reach the United States.

The delegation of bishops also recognized that the United States, which provides 'advisors' to Central American governments and agrees to pay for the repatriation of interdicted migrants, represents the driving force behind these initiatives. A U.S. official admitted to the delegation that it costs the United States less "to take care of the problem here than when they reach the United States."³⁰⁴ In fact, the sweeps appear to have less to do with smuggling than with stopping migrants before they reach the United States.³⁰⁵

Subsequently, the INS announced the arrest of 7,898 migrants from 39 countries, along with 75 smugglers and illegal document vendors, in an effort led by national police and immigration

officials of other countries.³⁰⁶

The United States and Mexico have made interdiction a centerpiece of their negotiations on immigration and economic development. In return for tighter enforcement by Mexico of its northern and southern borders, the United States has agreed to consider plans to expand legal immigration avenues to Mexican workers in the United States.³⁰⁷ In 2000, Mexico expelled in excess of 168,000 migrants, a significant increase from the year before.³⁰⁸ It now returns Central Americans to Guatemala which (with U.S. support) repatriates non-Guatemalans to their countries of origin.³⁰⁹ Mexico hopes to interdict 250,000 migrants in 2001.³¹⁰ Mexican negotiators have also agreed to consider actions to prevent Mexican nationals from crossing into the United States at high-risk areas.³¹¹ Since September 11th, President Fox has championed the idea of a North American "security zone" that would increase the interdiction and repatriation of migrants before they reached the United States.

The INS ultimately hopes for a comprehensive agreement between the 11 nations who participate in the Regional Conference on Migration (RCM) (i.e. the United States, Canada, Mexico, and Central American nations) to intercept and return extra-regional migrants to their countries of origin.³¹² Through these initiatives, the United States has attempted to extend the border beyond its territorial limits, to the detriment of refugees and the international system of refugee protection.

M. Abuses in Mexico

To reach the U.S.-Mexico border, migrants must survive a gauntlet of extortion and criminality at the hands of Mexican officials, smugglers, and bandits.³¹³ The violators can be indistinguishable to migrants and, indeed, often overlap.³¹⁴

Central Americans face dangers at Mexico's southern border that may exceed those they encounter at the U.S.-Mexico border region. Between 1997 and 1999, the bodies of more than 300 unidentified migrants were found near the main border crossing between Mexico and Guatemala.³¹⁵ More than 120 Central American migrants died near the southern Mexico border last year.³¹⁶ Migrants have drowned, been run over by trains and murdered by bandits.³¹⁷ Thousands of Honduran migrants have lost touch with their families; some have not survived the journey, others have suffered severe injuries, and still others live in shame that they failed to reach the United States and cannot send money home.³¹⁸

In Mexico, migrants and their smugglers must pay bribes to a variety of Mexican officials. A typical toll includes 300 pesos (\$32) to Mexican immigration authorities, 300 to federal judicial police, 300 to immigrant-welfare caseworkers, 200 each to federal highway police and state judicial police, 100 each to customs, state police and municipal police, and 50 to health workers who fumigate vehicles crossing the border.³¹⁹ Mexico's special immigration force, the Grupo Beta, has been linked to migrant smuggling and extortion.³²⁰

Once they reach the northern border, migrants from rural areas face a kind of pressure and predation utterly foreign to them. During the three-day period from December 8 to 10, 2000, an El Paso-based human rights monitoring coalition interviewed migrants in Ciudad Juárez who had suffered human rights abuses that ran the gamut, from beatings, to robbery and extortion. Perhaps most striking was the range of perpetrators and the heavy involvement of government officials, including men in brown uniforms, policemen in various uniforms, policemen on bikes, municipal police, military police, and judicial police.³²¹ One commentator describes the situation as follows:

"On Mexico's northern border ... added to the list [of Mexican military and paramilitary groups who abuse migrants] are agents of the Federal Judicial Police (frequently members of the military 'on leave'), officers of various State Judicial Police (PJE) units, and municipal policemen, who, taken together, represent the region's primary perpetrators of human rights violations Perhaps to a greater extent than any other sector of the population, migrant workers seeking to enter the United States suffer particularly extreme violations of their human rights. Utterly vulnerable, many of the thousands of Mexicans and Central Americans who arrive at Mexico's northern border each day hoping to cross north have been the victims of aggression by various Mexican law enforcement agencies. This abuse includes rape, beatings, incarceration, robbery, and even murder. Once in the border zone, would-be crossers -- especially those from other countries-- are hounded on the streets and in their hotel rooms by police looking for pay-offs. Meanwhile, the region's so-called 'coyotes' or pateros (smugglers) frequently enjoy police protection and, therefore, experience impunity to commit abuses against migrants as well."³²²

The Mexican Centro de Estudio Fronterizos y de Promoción de los Derechos Humanos, A.C. (CEFPROD HAC) documented 113 abuses against immigrants near the Rio Grande in Tamaulipas in 1997 and the

first nine months of 1998.³²³ The attacks included five bludgeoning deaths and 22 beatings and robberies near Nuevo Laredo, five sexual assaults against women trying to cross the Rio Grande, a rape by four smugglers in Reynosa, and the rape of two women (including a gang rape by seven smugglers) near Brownsville.³²⁴

Robberies and attacks against migrants in Mexico have become endemic.³²⁵ According to GAO, the increase in crimes has resulted from INS policies that push migrants to remote areas "where criminal activity is less likely to be detected and more difficult to respond to."³²⁶ In April 1999, six heavily-armed men attacked a group of 38 migrants west of Nogales.³²⁷ The men forced the migrants down, kicked them, hit them with pistols and rifle butts, knifed three, and raped two women within ear shot of the others. Since the border has been sealed, migrants have also resorted to passing through the labyrinth of dangerous tunnels under Nogales, where homeless youth have victimized them.³²⁸

Violent attacks and robberies have occurred frequently in the Arizona desert north of Sasabe, such as the killing of 23-year-old Hector Guadalupe Sanchez Murrieta of Caboca, Sonora, and the shooting of his 19-year-old brother, Gabriel.³²⁹ In January 2000, robbers sexually assaulted seven women (in a group of 20 people) three miles outside of Douglas, Arizona.³³⁰ In May 2001, a group of 27 migrants flagged down the Border Patrol in fear that they would be robbed by bandits who had robbed others down the road.³³¹ Mexican authorities have reported that 273 Mexican migrants have been robbed so far in 2001 while trying to cross into the United States.³³²

Migrants rarely report human rights abuses in Mexico, particularly abuses by government officials.³³³ Mexico's National Human Rights Commission (CNDH) has repeatedly been criticized as ineffective. According to the Lawyers' Committee for Human Rights, the Commission has no prosecutorial authority, cannot review violations that result from an assertion of labor or electoral rights, cannot review the sentences of those convicted unjustly, and requires victims to bring complaints within a year.³³⁴ The CNDH can make only non-binding recommendations on abuse cases, which federal and state officials often refuse to follow or dismiss due to allegedly faulty procedures, lack of witnesses, or statute of limitations problems.³³⁵

II. THE IMPACT OF U.S. IMMIGRATION LAWS AND POLICIES ON BORDER FAMILIES

"Mr. S-" came to the United States in 1962. He married, raised his children, bought a home, and worked for 24 years in the same job. In 1998, INS agents arrested Mr. S- in a sweep that netted 533 persons who had been convicted multiple times for driving under the influence (DWI).³³⁶ The Immigration Judge recognized Mr. S-'s significant ties to the United States, but said that the law did not allow these to be considered. After a three-year legal battle, the INS deported Mr. S- in June 2000. He had been a lawful permanent resident in the United States for 35 years. He left behind his U.S. citizen wife ("Mrs. S-"), two U.S. citizen daughters (ages 15 and 13), two sons from a prior marriage, his mother and siblings. He has no remaining family in Mexico.

During the family's lengthy and expensive legal ordeal, Mrs. S- and her two daughters had to leave their home, file for bankruptcy, and return the family van since they could no longer afford payments. The family now rents their home for \$500 a month, which goes to satisfy their bankruptcy debts. Mr. S- had earned \$24,000 a year working in a grocery store and Mrs. S- made \$15,000 as an accounts payable clerk at a plumbing wholesale company. She must now provide for herself and her children, as well as for Mr. S- in Mexico.

Mr. S- used to work nights and Mrs. S- days. This allowed Mr. S- to meet his daughters when they returned from school each day. When the family had to move from their home, the girls switched schools. They have also been troubled by the details of their father's arrest, which occurred in the early morning with INS agents surrounding their home. INS agents have since told family members that if Mr. S- returns to the United States, he will be prosecuted and serve prison time.

Each Thursday night, Mrs. S- meets in a community center in El Paso with other women (and their children) whose husbands have been deported. Hundreds of families belong to such groups across the country.³³⁷ Like Mrs. S-, many women have lost homes and been forced into bankruptcy. Some have moved in with extended family. Most have taken jobs or second jobs, that keep them apart from their children. The children have been traumatized by their fathers' arrests, the loss of a parent, and the many ways their lives have changed. Many women worry that their husbands will opt to make new lives for themselves. They

hope for legislative relief that will return their husbands and restore their families.

U.S. immigration laws and policies -- particularly those that arose from the 1996 Immigration Act, AEDPA and the 1996 Welfare Act - include a multitude of impediments to obtaining legal status and to family reunification.³³⁸ These laws: have led to the removal of long-term permanent residents (without reference to their families in the United States) based on old criminal convictions; mandate the detention of large categories of immigrants; establish multi-year and permanent bars to re-entry into the United States for a variety of immigration offenses; condition family reunification on the income of a sponsoring U.S. citizen or lawful permanent resident; and treat many immigration violations as crimes. The laws have severely impacted border families due to their high rates of poverty, high incidence of multiple or "mixed" immigration statuses, and frequent visits to and from Mexico.

A. U.S. Border Families with Members with Past Criminal Convictions

"Mr. G-," a lawful permanent resident for 50 years, was watching television one afternoon when his grandson, who lived with him, rushed into the house followed by police officers.³³⁹ After the police found narcotics in the boy's room, they arrested him and Mr. G-. Mr. G- spent 90 days in jail before pleading guilty to a drug possession charge on the advice of counsel. He received probation. Twenty years later, the INS deported the 81-year-old man as an aggravated felon.

The 1996 Immigration Act and AEDPA expanded the crimes for which immigrants could be removed, limited their ability to contest removal based on equitable ties (including family) in the United States, and required the detention of broad categories of immigrants. Lawful permanent residents, whose families live here, can now be removed for any of an exhaustive list of crimes that they committed, even years before. One category of such crimes - "aggravated felonies" -- has no parallel in criminal law, and includes relatively minor offenses like shoplifting, tax evasion, fraud, receipt of stolen property, obstruction of justice, perjury, document fraud, smuggling family members into the country (in some cases), and certain gambling offenses.³⁴⁰

These laws have led to the removal of thousands of persons, with dire consequences for their families.³⁴¹ An estimated 87 percent

of those arrested and deported for DWI convictions in the INS enforcement action that caught Mr. S-, for example, had spouses and children.³⁴² In fact, the human hardship worked by these provisions has been so egregious that the architects of the 1996 Immigration Act have criticized the INS for enforcing the law, arguing that the agency should exercise its "prosecutorial discretion" not to seek removal in certain cases.³⁴³ On November 17, 2000, her last day as INS Commissioner, Doris Meissner issued an internal INS instruction that set forth the criteria INS officials should weigh in determining whether to investigate and initiate proceedings. While a positive step, the possibility of a favorable exercise of discretion does little to soften the underlying laws.

Like the other anti-family provisions of U.S. immigration laws, this one particularly affects border communities. In one case, for example, a U.S. citizen teenager from San Diego committed suicide following the removal of his father. The father, a 29-year lawful permanent resident, had received a 90-day sentence for selling \$10 worth of marijuana ten years earlier. In Garland, Texas, a lawful permanent resident construction worker, faced deportation and separation from his wife and young sons for a third DWI offense he had committed ten years earlier.³⁴⁴ The man had given up drinking seven years before. In another case, the INS deported a 72-year-old man, who had been a lawful permanent resident since 1962, based on a theft conviction for which he received three years probation.³⁴⁵ The man now ekes out a living as a taxi driver in Tijuana. Although he has four U.S. citizen children living in San Diego, he sleeps on a family's living room couch in colonia "La Paciencia." His children can see his new community from Chula Vista, but they cannot bring him back.

The 1996 Immigration Act also mandates the detention of most immigrants who are in removal proceedings due to criminal convictions. As a result, INS detention capacity has more than doubled since 1996, from 8,592 beds per night to roughly 20,000 at present.³⁴⁶ The INS has consistently refused to pursue home detention or other legally permissible alternatives that would mitigate detention's impact on immigrant families.³⁴⁷ To the contrary, the remoteness of detention facilities, frequent transfers, predatory telephone contracts, and strict visitation policies create significant barriers to even the most cursory kinds of family contacts.³⁴⁸

B. Bars to Lawful Permanent Residence

"M-" and "J-," ages 20 and 21, have resided in a U.S. border

community since they were infants.³⁴⁹ The sisters have frequently returned to Mexico during holidays and on school vacations to visit relatives. Their mother is a lawful permanent resident and their step-father a U.S. citizen. Their step-father has filed visa petitions for them. In June 1999, M- and J- completed their high school studies and both were offered partial scholarships to state universities. Shortly after this, they went to Mexico to spend an evening with relatives. Upon their return, they claimed to be U.S. citizens. They are now permanently barred from re-entering. If they attempt to reenter illegally, their prior orders of removal will be reinstated and they could face criminal prosecution.

The 1996 Immigration Act created a series of bars to lawful permanent resident status and to readmission to the United States, based on undocumented status, previous removals (deportations), illegal re-entries, and a range of deceptions and mistakes that are common-place in immigrant communities. These provisions have consigned thousands of immigrant families to the socio-economic margins and even to physical separation. Because they are triggered by attempts to re-enter the United States, the bars disproportionately impact border families.

The 1996 Immigration Act imposed a three-year bar on re-entry for those who have been unlawfully present for more than 180 days and a ten-year bar for those unlawfully present for more than one year.³⁵⁰ With the undocumented population estimated to have reached 8.5 million,³⁵¹ provisions that target the undocumented could affect millions of U.S. families. The law allows for a possible waiver if the immigrant can demonstrate "extreme hardship" to a U.S. citizen or lawful permanent resident spouse or parent.³⁵² The hardship worked on a U.S. citizen or permanent resident child (in a mixed-status family) due to his or her parent's removal cannot be considered. Even those who ultimately qualify for a waiver must still wait outside the country, apart from their families, for months or years while their request is adjudicated.

The three- and ten-year bars present a cruel dilemma for persons required to leave the United States to secure family-based visas. They can either subject themselves to the bars and long-term separation from their families by departing, or they can remain and lose their chance at permanent residency. In December 2000, Congress extended in-country adjustment to permanent resident status to those with visa petitions filed by April 30, 2001.³⁵³ Unless this provision is further extended, families who have not met this deadline will face the very dilemma that this short-term fix sought to address.

The law also created a permanent bar for those unlawfully present for more than one year or who have been ordered removed, and who later illegally reenter or attempt to reenter.³⁵⁴ "Mr. E-" came to the United States with his family as a child. After he became engaged to his U.S. citizen high-school sweetheart, the couple traveled to Mexico so that Mr. E-'s fiancé could meet his extended family. The INS caught Mr. E- as he tried to re-enter the country. His prior unlawful presence, combined with his attempted illegal re-entry, has made him permanently inadmissible to the United States.

The law is unforgiving to U.S. families with members who were once removed or ordered removed. It bars the admission of those who were ordered removed upon their arrival in the United States for five years, persons ordered removed in normal removal proceeding for 10 years, those removed a second or subsequent time for 20 years, and those convicted of an "aggravated felony" forever.³⁵⁵ Between 1996 and 2000, the INS removed an estimated 721,000 persons, many away from their families.³⁵⁶ All of them now face bars to re-entry.

Immigrants who illegally re-enter or attempt to re-enter, after being removed, face severe immigration and even criminal penalties. The immigration consequences include reinstatement of the prior removal order, without reference to the impact of removal on the U.S. family.³⁵⁷ In a familiar scenario, "Mr. Q-" departed from the United States after the date designated by an immigration judge. Three years later, he re-entered illegally, and four years after that, married a U.S. citizen. At this point, he is the sole supporter of his wife and child, but he cannot secure lawful status and will face immediate deportation if he is ever apprehended by the INS.³⁵⁸

Immigrants often make mistakes that, under our immigration laws, permanently prejudice their ability to gain legal status or otherwise live in the United States. Each year hundreds of lawful permanent residents, particularly in border communities,

claim to be U.S. citizens or improperly vote, often in the mistaken belief that they are, in fact, citizens and can legally vote.³⁵⁹ As M- and J- can attest, these offenses lead to permanent exclusion from the United States, with no possibility of a waiver based on family or other equitable ties.³⁶⁰

The 1996 Immigration Act also increased the penalties for document fraud.³⁶¹ Attempting to work by using false social security or employment authorization cards can result in substantial fines, removal, and criminal prosecution.³⁶² The use of false employment documents is widespread in immigrant-dominated industries. An estimated 25 percent of the workforce in Iowa and Nebraska meatpacking plants, for example, lacks proper documents.³⁶³ On February 23, 2001, a class action law suit was settled that had effectively prevented enforcement of this provision for six years.³⁶⁴ Given the high percentage of newcomers who work with false documents, rigorous enforcement of this provision could devastate immigrant families and laborers.

C. Family Reunification, But Not for the Low-Income

The sponsorship provisions of the 1996 Immigration Act deny legal reunification to thousands of families each year solely on the basis of their income. Under the 1996 Immigration Act, a U.S. citizen or lawful permanent resident who wants to petition for a family-based visa must demonstrate that he or she can maintain an income of 125 percent of the federal poverty guidelines and can sustain the (sponsored) family member at that same level.³⁶⁵ This responsibility attaches to the petitioner/sponsor until the family member naturalizes or works for 40 "qualifying quarters," which normally takes ten years.³⁶⁶ In many cases, it lasts throughout the family member's life. During this time, any agency that provides a means-tested public benefit can sue the sponsor for the cost of any benefits used by the immigrant.³⁶⁷ If the petitioner cannot meet the 125 percent requirement through his or her income and cannot make up the difference with assets, he or she can still try to find a co-sponsor.³⁶⁸ However, co-sponsors must be able and willing to assume the same open-ended liability for the intending immigrant.

According to a CLINIC study, 20 percent of U.S. citizens and permanent residents who come to charitable immigration programs in the hope of petitioning for family members cannot meet the sponsorship requirements.³⁶⁹ Many families who meet the 125 percent threshold must immigrate members on a staggered basis, resulting in their long-term separation.³⁷⁰ These requirements have severely impacted border communities, which have an overall poverty rate of 25.5 percent.³⁷¹ Servicios Para Immigrantes, the

immigration program of Catholic Social Services of Laredo, Inc., estimates that 80 percent of its clients cannot meet the initial 125 percent poverty threshold.

The stated purpose of the sponsorship requirements is to prevent the admission of those who might use public benefits. Yet the law precludes the admission of immigrants who, through their own employment, could help to support their families.³⁷² It also prevents family members who already live in the United States from improving their job prospects by obtaining legal status.

The law does not consider the best interests of the family. Nor is it necessary because the 1996 Welfare Act precludes most immigrants who entered the United States after August 22, 1996 from receiving means-tested benefits for five years.³⁷³ After this time, "deeming" (counting the sponsor's income as the immigrant's) prevents most immigrants from obtaining benefits until they naturalize or earn 40 qualifying quarters.³⁷⁴ In effect, the 1996 Immigration Act denies legal status to an overly broad category of immigrants on the ground that they might need public assistance, but the 1996 Welfare Act makes this nearly impossible.

D. Backlogs and Delays

Opponents of a legalization program argue that it would reward scofflaws at the expense of persons who have satisfied all the legal requirements and procedures for lawful permanent residence.³⁷⁵ While this may be effective rhetoric, it ignores the millions of undocumented persons who have, in fact, adhered to all the proper legal procedures and been found eligible for family-based visas, but languish in multi-year visa backlogs and INS processing delays. On January 1997, more than 3.5 million persons who had been approved for family-based visas waited in backlogs, including more than one million spouses and minor children of lawful permanent residents.³⁷⁶ U.S. consular officials privately admit that these outdated figures significantly understated the size of this population even in 1997.³⁷⁷

Backlogs result from annual caps on both the number of visas available based on the family relationship and on the country of nationality. Thus, their length varies depending on the immigrant's relationship to his or her the sponsor, as well as on his or her nationality, with nationals from heavy sending countries subject to longer delays. For example, a Mexican spouse or minor child of a lawful permanent resident faces at present almost a seven-year delay, while the adult son or daughter of a lawful permanent resident can expect nearly a ten-year wait.³⁷⁸ If the family member lives abroad, backlogs can postpone reunification for years. More commonly, the intending immigrant already lives in the United States and, because of a backlog, overstays a non-immigrant visa or otherwise accrues time in unlawful status. Although eligible for a family-based visa, he or she also risks possible removal and all the difficulties of life on the legal margins.

After waiting through his or her backlog, a sponsored family member can apply to become a lawful permanent resident. This process takes place either in the United States through "adjustment of status" or, outside the country, at a U.S. consular office. At this stage, the immigrant faces another delay, this one due to INS case processing delays. Waivers to bars on admission, for example, can take more than a year to adjudicate overseas. According to INS, adjustment of status applications filed today will take an average of 15 months to process, with significantly longer delays in some INS district offices and for applications already in the INS pipeline.³⁷⁹ The process takes 28 months in Harlingen, Texas.³⁸⁰

INS statistics, however, should be taken with a grain of salt.

As the GAO recently affirmed, the INS "does not know how long it takes to process aliens' applications because its national automated systems contain unreliable data and its districts do not have automated systems for tracking many types of applications."³⁸¹ The GAO concluded that INS's total application backlog, despite increased budgets and staffing, grew from one million in FY 1994 to nearly four million in FY 1998-2000.³⁸² Of roughly three million applications pending as of September 30, 2000, an estimated 767,000 had been filed at least 21 months earlier.³⁸³

Processing problems, in turn, delay naturalization, which requires five years of permanent residence or three years if the applicant is married to a U.S. citizen. Citizenship hastens family reunification because there is no cap on the number of visas available to the spouses, minor children, and the parents of adult U.S. citizens; the "immediate relatives" of U.S. citizens do not face visa backlogs. They do face, however, a backlog of nearly 600,000 applications and an average processing time of nine months.³⁸⁴

E. The Criminalization of Immigration Law and Its Effect on Border Residents and Communities

"Mr. B-," a 36-year-old native of Mexico, came to the United States with his family at age seven. His wife, children, mother, father, and six brothers live in Arizona. His wife and children are U.S. citizens, and his parents and siblings are all either U.S. citizens or lawful permanent residents. As a juvenile, Mr. B- joined a gang. At age 20, he was sentenced to prison for attempted armed robbery. He served eight years of his ten year sentence. Upon his release in November 1993, the INS deported him as an aggravated felon. Shortly thereafter, he re-entered the country. For the next four years, he worked as a supervisor for a courier service. He fathered a baby boy with his U.S. citizen girlfriend. Although Mr. B- and his girlfriend later ended their relationship, he remained the primary caregiver for their son.

Mr. B- ultimately married "Mrs. B-," a U.S. citizen. The couple has one son, a three-year-old. In October 1997, Mr. B- was arrested. He was subsequently convicted for illegal re-entry after deportation. In June 1998, after serving an eight-month sentence, the INS deported him. The next day he tried to enter the United States at a port-of-entry and was charged with illegal re-entry after deportation for an aggravated felony. In March 1999, he received a 46-month sentence.

Mrs. B- has three children from a previous marriage, ages 14, 11 and 9. Her first husband died several years ago and she relies on social security survivor benefits of \$1,200 per month to support her family. Although she stopped working after her last son's birth, she recently returned to work to make ends meet. She works six days a week at a car dealership, processing car payments. Her hours vary. Some days she works from 9:00 a.m. to 8:00 p.m. Other days she only works in the afternoon.

She relies on her oldest son to babysit her youngest during the summer and when the oldest is not in school. She feels guilty about this arrangement because it prevents her oldest son from participating in sports and other activities, but she does not earn enough to afford a full-time baby-sitter.

Mr. B-'s mother suffers from severe diabetes. Due to her medical condition, she can no longer travel from their home outside of Phoenix to see Mr. B- at the prison in Tucson. Since his incarceration, Mr. B-'s father has been diagnosed with Alzheimer's disease.

In a letter to CLINIC dated June 29, 2001, Mr. B- wrote: "I do not have anything in Mexico, no home, no family. I am a stranger in that country. Since the first grade and all through high school we began the day with the Pledge of Allegiance to the flag. Now I sit here in a cell wondering if I will ever be able to put my life together. All I was trying to do was be a father to my children and give them the guidance that they now crave and need. I am as American as an apple pie and I dream the American dream. I bleed red, white, and blue." Upon completion of his sentence, Mr. B- will be removed to Mexico.

"Mr. V-" entered the United States illegally in January 1979. He worked, married and raised his family in the United States. In 1986, he received permission to work legally. Ultimately, he became a lawful permanent resident based on his marriage to a U.S. citizen. Following passage of the 1996 Immigration Act, the INS arrested Mr. V- at his home for prior DWI convictions. When the INS agents came to his home, Mr. V- was at work. The next day, he presented himself to INS, which detained him for two months. He signed a paper agreeing to be removed because he did not know what else he could do. After his removal, Mr. V- returned to the United States to live with his family. In May 1999, INS arrested Mr. V- for re-entry following removal. Mr. V- received a 46-month sentence. Although his wife and children are

U.S. citizens and Mr. V- has lived in the United States for more than 20 years, he will be deported once he finishes serving his sentence and he will never be able to re-enter legally.

The last few years have seen, consistent with more stringent INS enforcement, a sea change in the treatment of immigration violations. Violations previously treated as civil offenses have been transformed into crimes, punishments have increased, prosecutions have soared and, particularly in border communities, immigration crimes have overwhelmed the federal criminal justice system.³⁸⁵

The 1996 Immigration Act established as crimes a range of immigration-related offenses, including making a false claim to U.S. citizenship,³⁸⁶ voting in a federal election,³⁸⁷ failing to disclose one's role as a preparer of a false application for immigration benefits,³⁸⁸ knowingly presenting a document that fails to contain a reasonable basis in law or fact,³⁸⁹ and high speed flight (above the speed limit) from an immigration check-point.³⁹⁰ It increased the penalties for immigration-related offenses, such as certain smuggling offenses³⁹¹ and document fraud.³⁹²

In 1998, federal prosecutors secured 21,351 convictions for immigration violations, up from 10,178 in 1994.³⁹³ Of these, 15,032 were for illegal entries, 3,149 for re-entry after deportation, 1,108 for smuggling or harboring, 1,068 for use of false documents, and 83 for making a false claim to citizenship.³⁹⁴

From 1995 to 1999, federal criminal cases for immigration-related offenses rose 169 percent across the country, with increases of 918 percent in the Arizona district, 492 percent in the New Mexico district, 454 percent in the Western District of Texas, 343 percent in the Southern District of Texas, and 49 percent in the Southern District of California.³⁹⁵ Completing the circle, 20 percent of the 69,093 "criminal" removals by the INS in 2000 were for immigration violations, such as illegal re-entries.³⁹⁶ In 1999, "immigration" offenses comprised 18 percent of all federal criminal cases,³⁹⁷ and 45 percent of the cases in federal districts on the border.³⁹⁸ It costs an estimated \$86,000 a year to imprison federal inmates.³⁹⁹

As the result of immigration and drug-related crimes, the five district courts on the border handle 26 percent of the 60,000 criminal cases handled by the federal court system each year; the other 89 district courts handle the remaining 74 percent.⁴⁰⁰ The

average case load per judge in these districts exceeds the national average by 400 percent.⁴⁰¹ Between 1994 and 1998, immigration-related prosecutions increased five-fold and the number of drug cases grew 125 percent, but federal judicial officer resources rose only four percent.⁴⁰² The recent decision by the Supreme Court holding that deportation orders can be reviewed in federal habeas proceedings promises to tax the federal court system even more.⁴⁰³

The prosecution of immigration offenders has overwhelmed and created disparities throughout the criminal justice system in border communities. Unarmed U.S. marshals frequently find themselves significantly outnumbered by prisoners in court.⁴⁰⁴ Federal defenders cannot provide representation in large numbers of cases. In McAllen, the federal courts treat a first illegal re-entry as a misdemeanor and the federal defender does not provide representation. A second illegal re-entry is treated as a felony, and a defender is appointed. In October 2000, the federal public defender's office in McAllen handled 84 felony re-entries after a deportation.⁴⁰⁵ In Del Rio, however, despite the fact that immigration-related offenses comprise a relatively high percentage of the case-load compared to other districts on the border, federal defenders are not appointed for even felony illegal re-entries.⁴⁰⁶ Serious federal drug offenses are increasingly prosecuted in state courts in El Paso and elsewhere along the border due to overcrowded federal dockets.⁴⁰⁷

In 1999, the mean sentence for an immigration conviction was 26 months.⁴⁰⁸ A fourth of those sentenced for immigration crimes in 1999 had no criminal history, but still received average sentences of 11 months.⁴⁰⁹ Sentence length turns on the federal guidelines, which have attempted to standardize punishments for federal felonies and serious misdemeanors.⁴¹⁰ The guidelines have succeeded in achieving greater uniformity, but at the cost of making sentencing largely a mechanical process. The guidelines assign a base-level grade to each offense, which is raised or lowered based on characteristics of the offense and a range of "adjustment" factors like the offender's role in the crime, possible obstruction of justice, characteristics of the victim, and acceptance of criminal responsibility. The offender is also assigned to a separate category based on his or her criminal history.⁴¹¹ A sentencing chart combines the final offense level and criminal history category, providing a sentencing range. The judge may depart from the guideline range, if there is "an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration" by the guidelines, like providing substantial assistance in the investigation.⁴¹²

This system plays out for a few common immigration crimes as follows. Unlawful entry or remaining in the United States following a removal or an order of removal carries a base-level grade of eight, which increases by 16 levels (to 24) if the removal is based on an aggravated felony conviction.⁴¹³ Unlawful entry following removal for an aggravated felony could lead to a sentence beginning in the range of 51 to 63 months, up to a range of 100 to 125 months.⁴¹⁴ This explains the 77-month sentence of a 27-year-old for an illegal re-entry following his deportation for stealing beer from a convenience store.⁴¹⁵ The man had come to the United States at age two, with his parents. He had been sentenced to three-years probation for his crime. He had returned to the United States because he had no family or support system in Mexico.

Smuggling, transporting or harboring an unlawful alien generally carries a base-level grade of 12, which is decreased by three levels if the offense was not committed for profit and involved the defendant's spouse or child.⁴¹⁶ Under the Sentencing Table, transporting one's spouse or child across the border, depending on one's criminal history, could lead to a sentence from four to ten months, up to 21 to 27 months.⁴¹⁷ A false claim to citizenship carries a base-level offense of 11, and is decreased by three levels if not done for profit.⁴¹⁸ This could lead to a sentence range beginning at zero to six months, rising to 18 to 24 months.⁴¹⁹

In October of 2000, CLINIC met with dozens of men serving sentences for immigration offenses, primarily for illegal-reentries following removal, in the federal prison in Anthony, Texas. Many had families in border communities, but few had illusions about reunifying with them in the United States. Most wanted to serve their sentences in Mexico, as provided for in the "Treaty between the United States of America and United Mexican States on the Execution of Penal Sentences." The so-called "Prison Transfer" treaty was signed on November 25, 1976, and ratified by the United States on August 2, 1977. After exchange of instruments of ratification, the Treaty entered into force on November 30, 1977. It allows sentences imposed in one country to be served by nationals in their own country, provided a similar crime exists in their country and the transfer will contribute to the offender's social rehabilitation. The men languished in U.S. prison, serving their prison sentences for immigration offenses, unable to return even to prison in their own countries, for months or years. Let them know, they told CLINIC, we just want to leave.

III. LOW-WAGE LABORERS IN BORDER COMMUNITIES

Each night of the week from May to December, seasonal farm laborers congregate at the Centro de los Trabajadores Agrícolas Fronterizos in El Paso. The center, which opened in January 1995, gives farm workers a place to rest, shower, change, receive mail, get a medical check-up, and spend the night. Before the Center opened, hundreds of farm workers slept in parking lots and on sidewalks near the Paso del Norte bridge between El Paso and Ciudad Juárez, in what were known as "Islas de las Focas" or Islands of the Seals.⁴²⁰ Some farm workers still sleep outside. Others sleep in shelters. Still others remain near the fields during the week, sleeping several to a room. The latter leave for work each Sunday night and return Saturday.

In an exhausting routine, hundreds return to El Paso each day. Farm labor contractors come with buses and other vehicles each night from one to four a.m. to transport the workers to the fields. Transportation costs vary, but run between \$1 to \$5 one way. In addition, the labor contractors sell water, beer, other drinks and food on the buses. Some contractors refuse to transport workers who have water containers and even require workers to purchase beer as part of the agreement to work.⁴²¹ In a 1998 survey of 841 agricultural laborers in the El Paso area, 20 percent reported not having access to food during their work days, 30 percent could purchase alcohol at work, and 31 percent did not have water at work to wash pesticides from their hands.⁴²²

The seasonal laborers mostly pick chilis (green, jalapeno, cayenne and red) or cut onions in New Mexico. They received from 55 cents to \$1.25 per bucket of chili (depending on the type) and 55 to 65 cents per sack of onions. While these prices fluctuate, the range has not increased for the last 20 years and, during this time, the real earnings of farm workers have declined. Seasonal workers regularly, if not typically, receive the equivalent of less than the minimum wage. By law, labor contractors must provide daily receipts to farm workers and many do. However, they often undercount the number of hours worked or they put the earnings of two or more workers on the same receipt. In a typical receipt reviewed by CLINIC, a laborer who had picked 60 sacks of onions at 65 cents a sack, earning \$38, had been credited with six hours, rather than the nine hours he had actually worked.

Picking and cutting usually begins when it is light enough and the crops are dry, and it ends at two to three p.m. Labor

contractors must often travel to town to cash the check from the farmer for the day's work, as the farm workers wait. Often, the workers do not arrive back to El Paso until many hours later. Most farm workers sleep only a few hours (two to three) a night. Even the most scrupulous contractors do not pay the workers for their travel time (from the time they board the bus in the morning until they disembark at night), or for the time before dawn that they wait to begin work in the fields, or for the time that they wait to be paid. Unpaid travel and waiting time can easily run six or seven hours per day.⁴²³

Even during the season, agricultural laborers cannot depend on working every day. Some days, the farm workers earn little or nothing, because the fields are too wet or their bus breaks down or labor contractors do not offer them enough to make the trip and work worthwhile. On days like this, they do not earn the "latira," by which they mean the minimum to survive. When farm workers complain that they have not been paid the minimum, labor contractors typically reply that they have only themselves to blame. Many seasonal laborers live off-season in "colonias" on the U.S. side of the border. Others, including lawful permanent residents, return to their homes in Mexico, particularly in Chihuahua, Coahuila, Durango, Tlaxcala, and Zacatecas. Many children work during their vacations beside their parents in the fields. Some women who lost garment industry jobs have now become seasonal farm laborers.

Farm workers do not enjoy the same labor protections, under U.S. law, as workers in other industries. This means that any organizing activity, like work stoppages, cannot last long and must surprise the labor contractors and growers. After two or three days, labor contractors can usually locate replacement workers and the farm workers cannot afford to forego their wages for long anyway. Nonetheless, stoppages can be successful, given the pressures placed on labor contractors by farmers and on farmers through their contracts with packing houses and processing plants. The latter wield increasing control over the farm processes and receive the lion's share of the profit from these products. Indeed, despite their differences, seasonal field laborers, labor contractors and farmers have more in common financially, than any of them have in common with the companies that package and sell their products. According to one study, chili workers in New Mexico receive five cents for every consumer dollar spent on the chilis they pick.⁴²⁴

Enrique Campoya-Calderon, from the small town of San Diego, Chihuahua, began work as a farm laborer at age 18. From 1950 to 1960, he worked under contract as a "bracero." His father and one brother also worked as braceros. Although the bracero program ended due in part to its scandalous treatment of migrant laborers, Mr. Campoya remembers the program as preferable to his current situation. At that time, he primarily worked the sugar beet harvests in Colorado, Nebraska, Montana and Wyoming, earning \$12 to \$13 per acre harvested. He could harvest an acre of beets each 12-hour day. Harvesting cotton paid him slightly less. As a bracero, Mr. Campoya received free lodging, food and transportation to and from home. He worked under three- and six-month contracts and, given low costs, could make a decent living.

Now 70 years old and a U.S. lawful permanent resident since 1991, Mr. Campoya still works the crops, harvesting chili and onions from May to November. He earns on average \$200 a week, but must rent an apartment in Ciudad Juárez for his wife (\$120 a month), rent a room with several other men in Hatch, New Mexico (another \$120 a month or \$30 a week) where he works, and pay for food and other living expenses. He returns every Saturday from Hatch to visit his wife in Ciudad Juárez and to leave his weekly earnings. He departs for the fields every Sunday at 4 a.m. Mr. Campoya receives \$469 a month in Supplemental Security Income. Off-season, he does whatever work he can find and sometimes collects unemployment. During his life, he has worked on average eight to ten months a year in the fields. Although off-season has been a financially difficult time for him, he thinks that the time resting at his home in San Diego, Chihuahua has allowed him to remain healthy. Mr. Campoya's three children have grown. His two boys work in maquiladoras in Ciudad Juárez and his daughter lives in El Paso. He thanks God for what he sees as the miracle of his good health, but knows that he has become less productive in recent years and does not think he will last more than two or three more years working in the fields. He hopes to retire one day soon.

Immigrant advocates often read an economic purpose into U.S. immigration policies. Few dispute that the policies have an economic effect, forcing low-wage migrant laborers to live a marginal existence in the United States or to remain in Mexico.⁴²⁵ The border blockades, the plethora of legal barriers to lawful status, employer sanctions, and the criminalization of immigration violations, place low-wage laborers in a position that makes it difficult for them to secure jobs that pay livable

wages or offer acceptable working conditions. If migrants survive the journey north, they often endure shameful wages and working conditions. If they work in Mexican border cities for foreign-owned companies, they can expect to earn the equivalent of only \$1.25 an hour.

The growth in service sector jobs, which pay little and offer scant benefits, represent a salient feature of the restructured U.S. economy. Foreign-born workers occupy service sector jobs at high rates.⁴²⁶ The trend has been particularly pronounced in border communities,⁴²⁷ and will likely continue. More than 60 percent of jobs created in Texas over the next decade will be in retail, food service, personal services and health, trucking, construction and maintenance.⁴²⁸

Border communities have a per capita income of \$10,648 and a median household income of \$20,747.⁴²⁹ Excluding San Diego County, per capita income in border communities equals 61.9 percent of the national average.⁴³⁰ More than 25 percent of border residents live below the federal poverty line,⁴³¹ with poverty rates in 1997 of 35.3 percent in Cameron County (Brownsville), 37.6 percent in Hidalgo County (McAllen), 32.6 percent in Webb County (Laredo), 39.7 percent in Maverick County (Eagle Pass), 27.8 percent in El Paso County, 25.8 percent in Santa Cruz County (Nogales), 30.3 percent in Imperial County (Calexico), and 14.2 percent in San Diego County.⁴³² The six poorest Metropolitan Statistical Areas in the United States can be found on the border.⁴³³ Eleven Texas counties rank among the nation's poorest one percent, measured as per capita income below \$11,000.⁴³⁴ Of the poorest ten percent of the nation's counties, measured as per capita income below \$14,000, New Mexico has three, Arizona four and California two.⁴³⁵ In addition, indicators of poverty in border communities, like food pantry use, has increased in recent years. This is due, in part, to the 1996 Welfare Act. From July 1996 to June 1999, the El Paso Food Stamp caseload declined 64 percent, mostly the result of voluntary withdrawals due to fear by qualified persons over the immigration consequences of participation.⁴³⁶ Not surprisingly, the El Paso community has witnessed a corresponding increase, 68 percent in the last year alone, in food bank use.⁴³⁷

Part of the solution to poverty would be a better educated workforce. However, long-term state residents, who are undocumented, cannot afford to attend college since they do not qualify for federal financial aid and must pay out-of-state or international tuition rates.⁴³⁸ Most of these students have lived in the United States and in their respective communities for years, typically having been brought to the United States by

their parents as young children.

As with immigration issues, the border represents the epicenter of some of the nation's most disturbing labor trends, including subsistence-level pay and dangerous workplaces. As the locus of INS enforcement policies and corporate recruitment efforts, the border plays a central role in the process of feeding immigrants into service sector jobs. Labor contractors and recruiters have become a fixture in border communities.⁴³⁹ Some deceive workers regarding wages, working conditions and housing costs. In one case, labor contractors transported Mexican and Guatemalan nationals from the Arizona border and enslaved them in Florida and South Carolina, allegedly to pay off transportation debts.⁴⁴⁰ In some cases, recruiters and even employers work directly with smugglers.⁴⁴¹

Border communities also provide a window on the lives of low-wage laborers. Residents include workers displaced by NAFTA and agricultural laborers. Low wages, dangerous working conditions, high turnover rates, and lax government oversight have created a migrant industrial labor pool, whose lives and jobs increasingly resemble those of agricultural laborers.⁴⁴² The border may be the best place to witness the hardships caused by the new economy.

Finally, the border presents a case study in the historic interdependence between the U.S. economy and Mexican laborers. This relationship has waxed and waned based on U.S. labor needs, but has been extended and solidified in recent years. It has also led to the creation of an industry of assembly plants (maquiladoras) in Northern Mexico that has transformed life on the border.

A. The Need for Foreign-Born Laborers

Foreign-born laborers constitute 12 percent of the U.S. workforce.⁴⁴³ Despite the U.S. economy's recent downturn, the need for immigrant labor remains strong and will likely increase.⁴⁴⁴ According to the Department of Labor, by 2008 the United States will have an estimated five million more jobs than laborers.⁴⁴⁵ In Iowa, where the fastest growing segment of the population is people over 100 years old,⁴⁴⁶ a bi-partisan Strategic Planning Council, formed in 1999, determined that the state would need 310,000 new residents by 2010 to assure its economic and social viability.⁴⁴⁷ The Council identified increased immigration as one of three ways to make up the projected population loss.⁴⁴⁸ A similar study projected that Wisconsin would create 388,000 new jobs by 2008, but that the number of new workers in the state would grow by only 139,000.⁴⁴⁹ Cities like

Pittsburgh, Philadelphia and Louisville, whose populations significantly declined in the 1990s, have begun to look to ways to lure immigrants to offset dwindling populations.⁴⁵⁰ Immigrants have been widely credited with the revitalization of New York City and other major cities.

Certain industries, like the meatpacking industry, depend heavily on immigrant laborers. In 1999, the INS began an initiative in Nebraska meat-packing plants, called "Operation Vanguard," which aimed to stem undocumented employment through document checks rather than more intrusive work-place raids. Under this program, INS collected employment eligibility information, including social security numbers, at targeted meat-packing plants, and ran this information through INS, Social Security Administration and Department of Labor databases, to determine work eligibility. Management in some meatpacking plants came to refer to the resulting displacement of their workers as a form of "ethnic cleansing." A state task force concluded that the initiative caused a laundry list of problems, from work slowdowns and reduced prices for livestock producers, to increased use of public assistance, food pantries, and homeless shelters, and even a rise in civil rights violations.⁴⁵¹ The Task Force recommended making "more visas available to the non-citizen workforce" and urged Congress to "consider an amnesty program for all workers and families currently in the United States."⁴⁵²

Restrictionists argue against legalization partially on the grounds that it will operate as a magnet to additional undocumented workers. It may be more appropriate to worry about the long-term availability of sufficient numbers of immigrant laborers, particularly Mexican nationals who account for between three and four and a half million of the undocumented in the United States.⁴⁵³ Demographic factors indicate that emigration pressures in Mexico will decrease significantly over the next decade. Since 1970, the birthrate of Mexican women has decreased from an average of nearly seven to roughly three children.⁴⁵⁴ This means that the net growth of the Mexican labor force from ages 15 to 44 will drop 500,000 to 550,000 per year by 2010, significantly reducing the pressure to emigrate.⁴⁵⁵

B. Wages and Benefits

Nationally, the great wealth created by the U.S. economy in recent decades has not translated into an increase in earnings for the working poor. Between 1977 and 1999, the average after-tax income of the bottom fifth of households fell nine percent, while the top fifth increased 43 percent.⁴⁵⁶ In 1999, the top 20 percent of wage earners received 50.4 percent of the national

income, with the top one percent receiving 12.9 percent, as much after-tax income as the bottom 38 percent combined.⁴⁵⁷ The minimum wage has languished at \$5.15 an hour since September 1, 1997. While its real value has nosedived over the last 30 years, it represents the norm in many industries.⁴⁵⁸

A disproportionate number of foreign-born persons reside in border communities, and the foreign-born work disproportionately in the lowest-paying, least desirable jobs in the United States - garment, hotel, fast food restaurant, meat-packing, poultry processing, and agricultural labor.⁴⁵⁹ The median income in these jobs ranges from \$6.42 to \$9.18 an hour,⁴⁶⁰ hardly a livable wage and not even poverty-level for a modestly-sized family.⁴⁶¹ In 1999, the median foreign-born worker earned \$9.62 an hour, with Hispanic men earning \$8.33 and Hispanic women earning \$7.05.⁴⁶²

The outlook dims considerably for lower-end earners. In 1997-1998, the average U.S. farm worker earned \$5.94 an hour.⁴⁶³ This represented a decline of 95 cents an hour in real dollars from 1989.⁴⁶⁴ In addition, migrant laborers earn income for only 24 weeks a year on average.⁴⁶⁵ Since 1990, the median income of individual farm workers has remained below \$7,500 per year, while the median farm worker family earns less than \$10,000.⁴⁶⁶ Certain migrant laborers earn "as little as \$185 per week, and more than one-half of their families have incomes below the poverty line."⁴⁶⁷ In Los Angeles, the average garment worker makes below \$8,000 a year.⁴⁶⁸ Day laborers in southern California earn a mean salary of \$568 a month.⁴⁶⁹ Sub-minimum and non-payment of wages has become endemic, particularly for day laborers.⁴⁷⁰

Beyond subsistence-level wages, a significant percentage of low-wage laborers in border communities do not receive health or other basic benefits through work. Nationally, only 47 percent of foreign-born workers received health insurance in their jobs in 1999, 37 percent of Hispanic men and 34 percent of Hispanic women.⁴⁷¹ In a 1999 study, not a single one of 481 day laborers in southern California had health insurance.⁴⁷² Similarly, there has been a decline in the working conditions and benefits offered to agricultural laborers in recent years, including health care, housing, transportation and meals.⁴⁷³ Many service-sector workers do not even receive overtime or vacation pay on national holidays.⁴⁷⁴

The Fair Labor Standards Act of 1938 (FLSA) sets minimum wage, overtime pay, and child labor standards.⁴⁷⁵ However, its minimum wage level does not suffice, it exempts various types of workers from certain requirements, and it does not speak to other terms and conditions of employment (such as employee benefits) that

continue to be governed by whatever agreement exists between the employer and employee.⁴⁷⁶ The FLSA exempts agricultural laborers, the least protected of U.S. workers, from its overtime requirements,⁴⁷⁷ and allows certain children working in agricultural jobs to work at younger ages and at more hazardous jobs than other children.⁴⁷⁸ States could fill some of these gaps, but have not. Eighteen of 46 states surveyed in 1997 reported that they had set no minimum age for migrant or seasonal farmwork, and 16 states had established minimum ages between ages nine and twelve.⁴⁷⁹ Given these paltry protections, it comes as no surprise that DOL investigations regularly find young children illegally working in agricultural labor, in border communities and elsewhere.⁴⁸⁰

In its modest aim to make abused workers whole, the FLSA does not allow for the kind of penalties that would assure compliance.⁴⁸¹ Remedies for minimum or overtime wage violations include back pay and liquidated damages equal to the amount owed.⁴⁸² Repeated or willful violations of these provisions carry fines no greater than \$1,000 per violation.⁴⁸³ The penalties for firing or discriminating against employees who bring complaints or institute actions under the law include reinstatement, promotion, payment of lost wages, and liquidated damages equal to lost wages.⁴⁸⁴ Willful violations of these provisions carry potential criminal liability.⁴⁸⁵ State laws do not significantly bolster protections against employer misconduct.⁴⁸⁶

Even if existing worker protection laws were strong enough, federal and state governments would still lack the capacity to enforce them in a meaningful way.⁴⁸⁷ The 942 U.S. Department of Labor investigators who enforce the FLSA's minimum wage, overtime pay, and child labor standards, must cover more than seven million work sites and roughly 100 million workers.⁴⁸⁸ States employ, in total, perhaps 500 investigators,⁴⁸⁹ with more than half of the states with 10 or fewer officers.⁴⁹⁰

DOL investigations of problem industries have revealed significant violations of the FLSA. A 1997 survey by DOL and Occupational Safety and Health Act (OSHA) inspectors of poultry processing plants found an FLSA compliance rate of less than 40 percent, with most violations due to the failure to pay overtime and to keep accurate records.⁴⁹¹ By the DOL's next industry-wide review, four years later, compliance had "declined significantly." In fact, 100 percent of the plants surveyed violated the law.⁴⁹² Employers had failed to pay employees for all the hours they had worked, including overtime.⁴⁹³ They had undercounted hours, made impermissible deductions, misclassified employees as exempt from overtime, and failed to pay for the time

workers spent putting on, sanitizing, removing and cleaning gear.⁴⁹⁴

DOL investigators have regularly found substantial non-compliance by growers and labor contractors with the FLSA and the Migrant and Seasonal Agricultural Worker Protection Act.⁴⁹⁵ An investigation of the grape pruning and tying work, for example, found that 21 percent of the growers and 52 percent of the farm labor contractors in California violated the FLSA's minimum wage provisions.⁴⁹⁶ Not only do farm workers receive the least protection under U.S. law, but other industries increasingly resemble and even model themselves on the agricultural industry.

C. Dangerous Workplaces

The Occupational Safety and Health Act of 1970 ("OSH-Act")⁴⁹⁷ requires employers to provide workplaces that are "free from recognized hazards," to comply with safety and health standards, to warn workers of potential hazards and to provide safety equipment.⁴⁹⁸ Employees, in turn, can request an inspection of potentially hazardous safety and health conditions, and cannot be discriminated against for filing a complaint or instituting a proceeding.⁴⁹⁹ Employers must abate OSH-Act violations within a reasonable time, and can be assessed financial penalties and criminal sanctions.⁵⁰⁰

OSH-Act has failed to alleviate working conditions that have led to scandalous rates of death and injury among foreign-born workers in certain industries. Pesticide poisoning,⁵⁰¹ construction injuries,⁵⁰² sweatshop fires,⁵⁰³ exposure to dangerous chemicals,⁵⁰⁴ homicides in retail jobs,⁵⁰⁵ repetitive stress injuries and cuttings⁵⁰⁶ have particularly afflicted immigrant laborers. Overall, Hispanics work at higher rates in dangerous jobs (like agriculture and construction),⁵⁰⁷ receive less training, and take on the most perilous tasks.⁵⁰⁸ In 1999, Hispanic workers suffered a fatality rate 5.2 per 100,000 workers, 20 percent higher than whites or blacks.⁵⁰⁹ In 2000, 815 Hispanic workers suffered fatal work-place injuries, with a 24 percent increase in fatalities among Hispanic construction workers.⁵¹⁰

A recent investigation by *Newsday* found that foreign-born workers accounted for three of every ten workplace deaths in New York between 1994 and 1999.⁵¹¹ In total, 500 foreign-born workers died during this period, 61 percent of them homicide victims.⁵¹² Foreign-born workers die at significantly higher rates than the native-born in New York and other immigrant-populous states. In California and Florida, the percentage of foreign-born

agricultural worker deaths is twice that of native-born workers.⁵¹³ Because immigrant deaths occur largely in retail and service-sector jobs, OSHA routinely fails to investigate them.⁵¹⁴ From 1994 to 1999, it did not investigate 874 immigrant deaths, including 202 deaths in New York.⁵¹⁵

Foreign-born workers in certain industries also suffer high rates of injury. Workers in meat-packing plants rank first in rates of repetitive stress injuries and in overall injuries and illness.⁵¹⁶ Poultry processing workers fare only slightly better.⁵¹⁷ An estimated 10,000 to 20,000 agricultural workers, including children, suffer from pesticide poisoning each year.⁵¹⁸ In a recent survey of Latino immigrant "residential construction" workers in North Carolina, fewer than one-half received "fall arrest" equipment and not a single one identified OSHA or its state counterpart as the place to file a complaint regarding a dangerous working condition.⁵¹⁹ Once injured, many immigrants do not receive worker's compensation for years (if at all) because they cannot negotiate complex state bureaucracies.⁵²⁰

D. Union Organizing

Though uniquely vulnerable to exploitation, immigrants work largely outside the protections of organized labor. Membership in labor unions declined from 39 percent of the U.S. workforce in 1954 to less than 14 percent today.⁵²¹ Only recently, after decades of hostility and neglect, has organized labor begun to recruit immigrants.⁵²² Record numbers of undocumented workers, particularly in the service sector jobs that characterize the new economy, have made this a necessity.⁵²³ Immigrants comprise an estimated 75 percent of the members of the Hotel Employees and Restaurant Employees International Union,⁵²⁴ and 60 percent of the Service Employees International Union.⁵²⁵

The National Labor Relations Act (NLRA)⁵²⁶ prohibits employers from interfering with the rights to organize, bargain collectively, strike, pressure employees to support a particular union, or discourage them from joining a union. The NLRA does not cover millions of workers in immigrant-dominated industries, including an estimated three million agricultural laborers, one million domestic employees, and seven million independent contractors.⁵²⁷

Human Rights Watch summarized the plight of laborers excluded from NLRA's protections as follows: "Their employees can fire them with impunity for engaging in concerted activity, including trying to form a union, to bargain collectively, or to strike. They have no labor board or unfair labor practice mechanism they can turn to for redress."⁵²⁸ Labor organizers on the border

report that agricultural workers can engage in work stoppages and other actions, but that these must take labor contractors and growers by surprise and can last no more than two or three days.

The exploitation of immigrant domestic workers by border residents represents a pervasive problem and, in certain cases, amounts to slavery. "Mrs. F-" migrated to the United States with her baby girl from Uruachi, Chihuahua as a teen-ager.⁵²⁹ She came on the advice of her brother who had heard of a family in Ciudad Juárez who needed a live-in maid. When Mrs. F- reached Ciudad Juárez, she learned that the family lived in El Paso. She ultimately worked for three families in the area. "Mr. O-," a son in the third family, convinced Mrs. F- to move (with her infant daughter) into his squalid trailer home, with his mother and three brothers, near Hueco Tanks outside El Paso. As it turned out, Mr. O-'s family had a history of domestic violence. One of the children in the family had died as an infant, and another child, who the family had taken in, had been removed by Child Protective Services. In short order, the family took possession of Mrs. F-'s daughter, separated her from her mother, and sadistically abused her. Mrs. F- lived like a slave, tending the family's land. Two times, she tried to escape. After the second time, Mr. O's mother threatened to kill the child if Mrs. F- tried to leave again. In December 1999, the child disappeared and, although family members have admitted she has died, her body has not been found. Mrs. F- remains in the United States, as a witness in the prosecution of various members of the family who enslaved her and apparently killed her child.

As with the FLSA, the NLRA suffers from weak enforcement remedies and resources. The NLRB can order an employer to pay back wages and benefits, to reinstate an employee, to obey the law, and to undo the illegal steps taken.⁵³⁰ These penalties do not dissuade anti-organizing efforts, including the firing of labor organizers.⁵³¹ In addition, the number of staff at the National Labor Relations Board has fallen to 2,000, slightly above 1950 levels, while the number of unfair labor practice cases has tripled since 1950.⁵³²

The employer sanctions provision of the Immigration Reform and Control Act of 1986 (IRCA), our nation's last large-scale legalization program, has also impeded union organizing. IRCA made it illegal for employers to hire persons they knew to be undocumented. Its supporters argued that the law would benefit U.S. workers by providing legal status to a particularly exploitable group and that sanctions would prevent the hiring and (thus) entry of new undocumented workers. In fact, a wide

consensus has emerged that employer sanctions have not only failed to meet these goals, but have backfired.⁵³³ Since IRCA, employers have hired the undocumented in record numbers, as evidenced by an undocumented population that significantly exceeds pre-IRCA levels, and exploitation of these workers has increased. Employers now know which of their employees are undocumented, either because they accepted documents they knew to be false or they hired persons without documents. Unscrupulous employers use this information to drive down wages and working conditions for their workers and, by extension, for other low-wage laborers.⁵³⁴ They also threaten to report workers to the INS if they attempt to organize.⁵³⁵ The fact that undocumented immigrants, particularly women, work in poorly regulated industries, compounds their vulnerability.

The INS's role in undermining unions has been well-publicized. An INS internal instruction requires agents to determine whether information leading to a possible raid or other enforcement activity has been provided "to interfere with or to retaliate against" employees attempting to exercise their labor rights.⁵³⁶ If so, the proposed enforcement activity must be reviewed internally and can be cancelled. However, the instruction does not have the force of law and explicitly recognizes that a raid can take place during a labor dispute. In fact, INS continues to conduct raids during organizing drives.⁵³⁷

Even the threat of less intrusive enforcement activities can chill union organizing. Operation Vanguard, an INS initiative to check the employment eligibility documents of workers in Nebraska meat-packing plants, did not reduce undocumented labor. It caused undocumented workers to switch jobs or to return to their old jobs under new identities.⁵³⁸ In an unanticipated side effect, lawful workers also left their jobs, often for lower paying work, in the fear that INS would pursue their undocumented family members.⁵³⁹

Finally, the service sector economy has produced a migrant workforce, composed of both agricultural and industrial workers. High turnover rates among workers in these industries make it extremely difficult to organize them.⁵⁴⁰

E. Corporate Subsidies

Ray Borane, the mayor of Douglas, Arizona since June 1996, sees the border blockade as less an immigration policy than as a short-term strategy that ends at the border. The growth of the Border Patrol in Douglas - from 60 agents when he became mayor to 560 now in a town of 14,000 - has been remarkable. At the same

time, the Border Patrol has brought economic benefits to the community and its agents have generally comported themselves well.

Prior to the blockade strategy, the undocumented represented at most an annoyance in Douglas. Supporters of the strategy claim that it reduces crime in border communities. This has not been the case in Douglas. Criminals cross into the Douglas from Mexico to burglarize homes. However, migrants do not normally commit these crimes, and the crimes have continued since the blockade.

Once the Border Patrol concentrated its resources in certain areas, the community experienced significant change and disturbance. Essentially, the new enforcement strategy pushed migrants so far into the desert that the Border Patrol could not reach them. This has led to large numbers of crossing deaths and injuries, but has done little to close the border. Migrants still cross in large numbers, at great risk. Mayor Borane disputes the Border Patrol's conclusion that because apprehensions have decreased in the area, the numbers of migrants crossing must be diminishing. He remembers when the Border Patrol claimed that increased apprehensions meant that fewer migrants were crossing.

Mayor Borane frequently visits Agua Prieta, Sonora, Douglas' sister city, to talk to migrants. While not choked with migrants as in the early days of the border blockades, he has found Agua Prieta's guest houses and shelters filled to near capacity. Most migrants he meets come from the southern Mexican states of Michoacán, Oaxaca, Veracruz, Chiapas, Guanajuato, and Mexico. They invariably come to work and are headed to destinations all over the United States. Occasionally, he meets migrants who have been caught trying to cross and who now want to return home because they have exhausted their resources. They live in a temporary limbo, unable to afford either the trip home or to the United States.

Mayor Borane believes that U.S. corporations and employers have unjustly escaped blame for the crossing deaths and problems experienced by border communities like Douglas. In his view, these corporations lure and hire undocumented migrants, but do nothing to change the policies that force their prospective employees to risk their lives in the desert.

Last year, several anti-immigrant groups, some of them certified

hate groups, came to the Douglas area to support local ranchers who had begun to arrest migrants on their property. One of these groups set up a permanent base in the area. Tensions have subsided this year, but the mayor's public stance on U.S. immigration policy and the irresponsibility of U.S. corporations has made him a lightning rod for hate mail.

U.S. labor laws and policies have justifiably been blamed for their failure to protect low-wage immigrant laborers. Less explicit attention, however, has been paid to exploitative employers who profit from their workers' labor, but push the costs of their workers on local communities. These costs can be readily seen in border communities where subsistence-level wages have led to housing, health, and environmental problems that degrade the entire region.⁵⁴¹ They can also be seen in economically depressed, rural areas throughout the country that struggle to bear the health, education, housing, law enforcement and other costs of poultry processing and meat-packing plant workers.⁵⁴² Exacerbating this injustice, problem industries have been among the major recipients of tax breaks, financial incentives, grants and other government benefits.⁵⁴³ The profits earned on the backs of exploited work forces have been privatized, but the costs of these workers have been socialized.

Fast food restaurants, for example, pay a higher percentage of their 3.5 million employees the minimum wage than any other industry, and have an annual turnover rate of 300 to 400 percent.⁵⁴⁴ Although de-skilled fast food jobs require little training, this has not kept the industry from collecting significant federal subsidies for this purpose.⁵⁴⁵ A 1996 investigation by the U.S. Department of Labor concluded that 92 percent of the workers "trained" with federal dollars would have been hired by the same companies anyway and that their new jobs were part-time, provided little training, and came with no benefits.⁵⁴⁶

The state of Missouri offers another case in point. In 1999, the state's legislature formed a Joint Committee on Immigration to address what was perceived to be an "immigration" problem caused by the influx of foreign-born poultry processing and meat-packing workers. The resolution creating the committee focused on the health, social service, educational, and law enforcement burdens created by immigrants.⁵⁴⁷ In hearings, advocates described grueling jobs that had an annual turnover rate of 75 percent, workers who could not afford housing and health care, and others who suffered permanently disabling injuries. The committee's recommendations focused on the employers' responsibility for

their workers. In particular, it encouraged corporations to offer English-language classes for workers and their families, and concluded that "before a business can qualify for state tax credits, grants, or other related benefits, it should assist its employees in finding adequate health care."⁵⁴⁸

Similarly, on May 1, 2000, a district court in Lancaster County, Nebraska nullified a grant of \$6 million in tax credits to the Nebraska Beef meat-packing plant under the state's Quality Jobs Act.⁵⁴⁹ The court held that the Nebraska Department of Revenue had violated the Administrative Procedure Act by awarding the credits without previously enacting valid rules and regulations.⁵⁵⁰ Plaintiff's lawyers had argued that government should not subsidize the creation of low-quality jobs that did not build a better the quality of life for the workers and their communities. Nebraska Beef had previously received \$22 to \$29 million in job, tax and investment credits, grants, and subsidies, and \$2.5 million to train workers, half of whom left their jobs within 10 months.⁵⁵¹

F. Living Conditions of Low-Wage Laborers in Border Communities

"Mrs. S-" lives with her husband, "Mr. S-," and their four sons, ages three to 14, in the "colonia" College Park, which lies northeast of Clint, Texas. Mrs. S- comes from Parral, Chihuahua, and her husband from Mexico City. Mrs. S- obtained lawful permanent residence 15 years ago, based on her mother's U.S. citizenship. Mr. S- has been a lawful permanent resident for ten years. Their children are U.S. citizens. In May 1990, the family entered an installment land contract with a land developer. They paid \$39.95 down for their property, and financed \$3,900 at 8½ percent interest, over 30 years. Each month, they must pay \$29.99. Their total payments under the contract will equal \$10,796. At the time they moved in, the community lacked all basic services. Since then, the family's situation has improved. They are building an extension on their home, which now has electricity. However, they still do not have running water and must pay \$32 twice a month to have their water tank filled. In addition, the community still lacks a sewage system and trash pick-up.

Early in the life of the community, the INS raided several homes, forcing ten families to leave. Since then, there has been less disruption. The community consists of 46 families, including Mrs. S-'s parents, who live across the street.

The family's financial viability depends on Mr. S-, who works in a factory that makes brooms and mops. Local factories generally pay the minimum wage, perhaps adding a few cents per hour for more senior workers. After ten years of work, Mr. S- still does not receive health or other benefits. Still, the work has been steady. Recently, his plant has been laying off workers, and plans to move at least part of its operation. Since jobs are scarce, this concerns the family and could threaten the progress they have made.

In 1993, the colonia "East Clint" consisted of roughly 25 families. Located to the northeast of Clint, Texas, roughly three miles over crude dirt roads in the desert, the community was difficult to find, even for natives. At its inception, East Clint lacked telephone lines, electricity, a sewage system, trash collection, medical services, a grocery store, and a water supply. As it turned out, it had also been built on a flood plane. Each school day, its children would leave their homes at

6 a.m. and walk three miles down the dirt road to catch the 7:30 a.m. school bus.

Sr. Maureen Jerkowski taught Bible study classes to the children of East Clint and other nearby colonias. She also worked to organize the residents of colonias to demand basic services, receiving numerous death threats as a result. One afternoon in July 1994, Sr. Maureen was returning with a van load of roughly 20 children when she found the road to the community blocked. She saw helicopters, Border Patrol vans, and local sheriff cars. The Border Patrol had raided the community. Agents went from home to home, interviewing residents. In total, they apprehended six people, including the parents (in one case, both a mother and father) of several children in the van. Sr. Maureen took the children to a Catholic Church and ultimately brought them to neighbors who agreed to care for them. The arrests terrified the community and, in particular, its children. It also decimated several families.

Subsequently, the residents of the community sued the community's developer based on its failure to provide utilities. As part of the settlement in the case, residents were given modest amounts to buy land and rebuild homes elsewhere. Only two families now remain in East Clint.

The U.S.-Mexico border region couples the nation's fastest growing communities⁵⁵² with its poorest.⁵⁵³ In 1980, an estimated seven million persons lived in U.S. and Mexico border communities.⁵⁵⁴ By 1995, the population had increased to 10.6 million, with 5.8 million on the U.S. side and 4.8 million in Mexico.⁵⁵⁵ From 1990 to 1996, the U.S. population grew by 6.6 percent, but the population in border communities swelled by 15 percent.⁵⁵⁶ Border cities like Laredo, McAllen and Brownsville-Harlingen have been among the top ten fastest growing cities in the nation.⁵⁵⁷

(1) Health Care

U.S.-Mexico border communities experience high rates of environmental-related disease and illness,⁵⁵⁸ partially due to their difficulty in building public infrastructure, like water and sewage systems, at a pace comparable to their rapid population growth.⁵⁵⁹ In particular, they suffer from high rates of hepatitis A, measles, shigellosis, and tuberculosis.⁵⁶⁰ Diabetes rates also exceed the national average.⁵⁶¹

High numbers of border residents lack private health insurance - an estimated 40 percent of Texans in border cities - removing a crucial base of funding that would supplement public and indigent care.⁵⁶² Border communities also lack sufficient numbers of doctors, nurses, and other medical professionals. The federal government has designated 41 of 43 Texas border counties "medically underserved areas."⁵⁶³

Contributing to the crisis in border health care, local and regional hospitals provide significant uncompensated care to migrants and other foreign nationals.⁵⁶⁴ Public hospitals (supported by local taxpayers) disproportionately bear the cost of treatment in these cases. In 1998, Thomason Hospital in El Paso received \$33 million from local taxpayers, provided \$43 million in charity care and absorbed \$43.6 million in bad debt.⁵⁶⁵ In 2000, the hospital provided \$50 million in charity care and wrote off \$48 million in bad debt.⁵⁶⁶

The Southeast Arizona Medical Center in Douglas has descended into bankruptcy due, in large part, to the more than \$1 million in emergency medical care it annually provides to Mexican nationals.⁵⁶⁷ According to its Chief Executive Officer, last year the hospital treated 450 people - typically those suffering from gunshot wounds, head and chest injuries from car accidents, and heart attack victims - who were brought to the medical center by the Mexican Red Cross.⁵⁶⁸ It also treated 225 undocumented persons brought to it by the Border Patrol, at a cost of \$385,000.⁵⁶⁹ Many cases involved young men who suffered crippling orthopedic injuries from falling into the concrete ditch that runs along the fence on the U.S. side of the border. Doctors in other border communities have also documented the severe injuries suffered by fence jumpers.⁵⁷⁰ To avoid incurring the medical expenses for migrants, the Border Patrol does not take them into custody, but drops them off at local hospitals.

Private hospitals also assume the significant costs of treating migrants and local undocumented populations, particularly for emergency services.⁵⁷¹ Under federal law, hospitals must evaluate, treat, and stabilize those with emergency conditions, or face significant monetary penalties.⁵⁷² However, the federal government pays only for emergency medical care for the undocumented provided by a "public" or "contracted" facility.⁵⁷³ Likewise, the Attorney General must reimburse States and political subdivisions, excluding private hospitals, for emergency ambulance service provided to undocumented persons who are injured crossing.⁵⁷⁴ Total federal reimbursements, however, have amounted to only \$25 million a year between 1998 and 2001.⁵⁷⁵

Tucson Medical Center, the largest hospital in southern Arizona, cares for Mexican nationals paroled into the United States for treatment and for migrants injured while attempting to enter. In 2001, the hospital has served 137 foreign nationals at a cost of \$2,539,362, receiving only \$226,660 in payment. As of mid-June, the hospital had provided \$1,387,621 in uncompensated humanitarian parole cases in 2001, and \$925,681 in illegal entry cases. The Border Patrol refuses to arrest and assume custody of migrants who need medical care, taking the position that this relieves it of responsibility to pay for medical services.⁵⁷⁶ In a typical case handled by the hospital, a 20-year old woman, on her way to Pennsylvania to work, suffered serious injuries in a van accident involving 19 people.⁵⁷⁷ The woman suffered multiple abrasions and contusions and a fractured ankle that required surgery. It cost the hospital \$15,193.57 to treat her. In another case, a Mexican national fractured his shoulder and tibia and suffered pulmonary contusions in a car accident in which 12 migrants were injured or killed. It cost the hospital \$43,361.05 to treat him. The hospital received no compensation in either case.

A recent study attempted to measure the cost to border counties of indigent health care to the undocumented. Total costs to Texas border counties for law enforcement, criminal justice and emergency medical care for the undocumented exceeded \$23 million. It concluded that Texas counties spent \$1.8 million for emergency medical care; New Mexico counties \$933,268; Arizona counties \$5.025 million; and California's two counties \$12 million.⁵⁷⁸

(2) Housing

Low wages, underemployment, health care problems, and the ongoing housing crisis in border communities all converge in the phenomenon of "colonias," the unincorporated communities that line the border. As of 1990, 43 percent of the households in border counties participating in the Texas Economically Distressed Areas Programs (EDAP) earned less than the poverty level.⁵⁷⁹ In Texas, an estimated one in three border workers do not earn enough to afford a house or apartment.⁵⁸⁰ Not only do border communities face an acute shortage of affordable housing for low-income persons, but an estimated two-thirds of the housing units deemed affordable by the low-income (defined as earning 30 percent of the HUD adjusted median family income) are occupied by families who earn more than 80 percent of the median family income.⁵⁸¹

Some of the nation's lowest-wage laborers -- including high percentages of agricultural, manufacturing, construction, retail,

and other service sector workers -- live in colonias.⁵⁸² In Yuma, Arizona, 16 colonias house primarily seasonal farm worker families, who harvest lettuce, broccoli, cauliflower, cotton and wheat.⁵⁸³ The residents of Texas colonias work heavily in farm labor.⁵⁸⁴ A 1988 assessment of colonias in the Lower Rio Grande and in El Paso County found that 29.5 percent of the workers did field work, 24.4 percent construction, 14.9 percent factory work, and 10.1 percent were janitors/maids.⁵⁸⁵ A 1999 assessment of five colonias in Hidalgo County found that 42 percent of working residents were self-employed as welders, mechanics, electricians, truck drivers, trailer and bus drivers, machine operators, cooks, and construction workers.⁵⁸⁶ Seventeen percent worked in the fields. The same assessment found that 81 percent of the households had annual incomes of less than \$12,000, and 47 percent earned less than \$6,000. Median household income for Texas colonias (which average five to six residents) ranges from \$7,000 to \$11,000 per year.⁵⁸⁷ Other surveys have confirmed the very low incomes of colonia households.⁵⁸⁸ According to a Texas study, up to 85 percent of colonia residents are U.S. citizens.⁵⁸⁹

As early as the 1950s, land developers devised a way to profit from immigrants who earned subsistence-level wages, lacked credit, and needed housing.⁵⁹⁰ They divided remote, desert land, generally using "metes and bounds" descriptions (i.e. by compass directions and distances from boundaries), and sold it "as-is" under installment land contracts or "contracts-for-deed." Some even "purchased" land under oral agreements. Unlike mortgages, the purchaser does not receive the deed to the land in a contract-for-deed until he or she has paid off the property completely. Payments, in turn, are due over many years, often at interest rates of 12 to 14 percent.⁵⁹¹ If the purchaser defaults on a payment or two, he or she can be evicted, forfeiting any equity earned and improvements made. Without equity, colonia residents cannot get loans to build on or improve their property.⁵⁹²

Some colonia residents did not receive title to the property even after making all the payments. Beyond purchasing the land, residents also had to buy trailers or mobile homes under separate contracts for deed.⁵⁹³ Typically, colonia homes did not meet the appropriate codes or standards, which constituted another barrier to home improvement loans.⁵⁹⁴

Commentators have proposed that installment land contracts be treated as mortgages, allowing a default buyer to recoup part of his or her investment through foreclosure proceedings.⁵⁹⁵ In 1995, in fact, the Texas Legislature passed a bill (S.B. 336) that gave those buying land under contracts for sale the right to

earn equity in the property after 40 percent of the total amount had been paid or 48 payments had been made.⁵⁹⁶

Colonia residents have identified not having the deed or title to their land as their primary legal concern.⁵⁹⁷ Legal aid attorneys in border communities work to clear property titles and convert deeds for hundreds of colonia residents, a task made difficult by oral contracts and the sale of lots to more than one person.⁵⁹⁸

The word "colonias" carries a positive connotation (of community) in Spanish. In fact, colonias have met the need for low-income housing, and have instilled a sense of ownership and even pride, but at great cost to the residents and the broader community. Generally, they have lacked water, sewage, electricity, garbage pick-up, public transportation, phone lines, drainage systems, community center, libraries, stores, police sub-stations, animal control, or basic services of any kind. According to the federal definition, colonias are designated as such (in border communities) by the state or local county based on objective criteria like lack of potable water, adequate sewage or decent, safe, sanitary housing.⁵⁹⁹ The Texas Department of Human Services has defined them as "rural and unincorporated subdivisions characterized by substandard housing, inadequate plumbing and sewage disposal systems, and inadequate access to clean water. They are highly concentrated poverty pockets that are physically and legally isolated from neighboring cities."⁶⁰⁰ Their isolation, as the East Clint case study suggests, makes them uniquely vulnerable to INS enforcement activities.⁶⁰¹

Many of these conditions persist today. In Texas, for example, most colonia residents use septic tanks, cesspools, or outhouses.⁶⁰² An estimated 65 percent of colonia households in Texas lack public sewage and 19 percent lack public water.⁶⁰³ A 1988 assessment of colonias in the Lower Rio Grande and in El Paso County by the Texas Department of Human Services found that 65 percent of residents had no health insurance, 26 percent reported inadequate heating, 44 percent reported flooding as a problem, and 15 percent of households did not have enough to eat.⁶⁰⁴ Given these conditions, it comes as no surprise that colonia residents suffer from high-rates of hepatitis, tuberculosis, dysentery and gastroenteritis.⁶⁰⁵

Colonias pervade border communities, with the overwhelming majority of them in Texas. In 1995, the Texas Water Development Board identified 1,436 colonias, housing an estimated 339,041 residents in 23 Texas border counties.⁶⁰⁶ The Board recognized that it had not counted all of the state's colonias. An estimated nine percent of Texas border residents live in

colonias.⁶⁰⁷ In Arizona, local governments have counted 79
colonias.⁶⁰⁸ In New Mexico, 137 communities have been designated
colonias.⁶⁰⁹

Colonias arose because localities lacked the authority and the will to regulate them.⁶¹⁰ Initially, in Texas, for example, local governments could not regulate rural subdivisions at all.⁶¹¹ However, even when counties obtained this authority, developers could use a "metes and bounds" description (instead of a plat) for deeds of conveyance or contracts for sale, avoiding subdivision regulations entirely.⁶¹² In 1983, Texas passed a law giving larger counties authority over subdivision development.⁶¹³ In 1987, the state required subdivision owners to prepare, file and record plats regardless of county size.⁶¹⁴ This, however, still left counties with sole responsibility for addressing the overwhelming problem of colonia infrastructure.⁶¹⁵ In 1993, the state created its Economically Distressed Areas Program (EDAP), which funds water and sewer systems in border and other poor counties, to remedy this deficiency.⁶¹⁶

In 1995, the state finally enacted comprehensive laws to address platting and infrastructure in colonias.⁶¹⁷ These laws require subdividers to comply with detailed platting requirements prior to sale,⁶¹⁸ even on sales pursuant to oral contracts.⁶¹⁹ Developers must assure the availability of water and wastewater, provide for roads and road drainage, make reasonable efforts to have gas and electric utilities available, not build on flood planes, and assure access to waste disposal and roads.⁶²⁰ Problems with existing or "grandfathered" colonias remain.⁶²¹ However, the law has in effect made it illegal to develop new colonias,⁶²² by mandating that the necessary infrastructure be built into communities at their inception.⁶²³ This has worried some commentators who recognize the important, though imperfect, purpose that colonias have served and who do not see realistic alternatives for low-income border families.⁶²⁴

Community-based organizing efforts have led to dramatic improvements in the laws that govern colonias and in the quality of life for border residents.⁶²⁵ However, the cost of fixing these problems remains high. An April 1997 assessment of Texas' environmental infrastructure needs calculated that the Texas border region would need \$2.5 billion for improvements to water and wastewater systems, seven new landfills, ten landfill expansions, 69 new recycling centers, and other improvements to solid waste infrastructure.⁶²⁶ In 1995, the Texas Water Development Board (TWDB) estimated that it would cost \$426.6 million, beyond the \$432.7 million already committed, to provide water and wastewater services to Texas colonia residents.⁶²⁷

More recently, the Mexican American Legislative Caucus in Texas developed an eight-year, multi-billion dollar "Marshall Plan" for the Texas border, which included \$176 million to hook up remaining qualified colonia residents to water and wastewater by 2006.⁶²⁸ Water and wastewater systems represent an urgent need, but hardly the only needs of colonia residents.

For years, colonias have been seen as a fringe phenomenon and an aberration. This report views them as a central feature not just of border communities, but of a country that pays subsistence-level wages to too many of its residents.

G. Displaced Workers, NAFTA and Globalization

Mr. "I-," "Mrs. T," and Mr. "H-" lost their jobs when the plants that employed them relocated outside the United States, following passage of the NAFTA. All three live in El Paso and are long-term U.S. lawful permanent residents. None speaks English. They refer to themselves as NAFTA "desplazados" or displaced.

Mr. I- worked for six years for Southwest Fashion, a garment plant that made shirts and pants. He packed pants into boxes and worked in the cutting room. After NAFTA, his plant left El Paso. At age 44 with two children to support, he lost his job and benefits. He began a retraining program for those displaced by NAFTA. The program supported two years of school, but Mr. "I" could draw down unemployment benefits for only 18 months. Given administrative problems, it took five months before he could get into training, leaving him 13 months to learn English, secure his GED, and obtain a skill that would allow him to get a new job. He worked for temporary agencies for many months, doing janitorial work or whatever other work he could get.

Mrs. T- worked for 14 years pressing pants in a garment plant for Farah USA, Inc. In 1995, the plant moved to Ciudad Juárez, Chihuahua. At age 55 with five children, she lost her job and health insurance. Like Mr. I-, she found the adult basic education classes available to the NAFTA-displaced workers both useless and insulting. At one point, teachers paraded school children into an adult class to show them how they would end up if they did not study. After her classes ended, Mrs. T- could not find work. She subsequently earned her GED through a program at the community center where she works.

Mr. H- worked for Alcoa Fujikura LTD for ten years, making wire harnesses for cars. After NAFTA, Alcoa moved this work to Ciudad

Juárez and Torreon. At age 53 with two children, Mr. H- lost his job. Like Mr. I- and Mrs. T-, he learned little at adult basic education school, although he ultimately received a diploma in business. Mr. H- did unpaid maintenance work after losing his job.

Mr. I-, Mrs. T-, and Mr. H- now work at a multi-service community center for displaced workers. They view themselves as fortunate to have this work. Many displaced workers lost their homes in El Paso. Others became indigent due to health care costs. Some left El Paso in search of work, leaving their families. A few entered the agricultural labor stream. Most of those who remained could secure only part-time or temporary work. The factories that remain in El Paso now require English-language proficiency, which disqualifies Mr. I-, Mrs. T-, and Mr. H-. Nor can they work in the "call-center" or telemarketing industry, one of the boom industries in El Paso and the Southwest.

To speculate on the ultimate impact of NAFTA and globalization exceeds the scope of this report. However, the report would be incomplete if it ignored the immediate consequences of globalization on laborers in border communities. The NAFTA Trade Adjustment Assistance (NAFTA-TAA) program was created to train and help relocate workers displaced by NAFTA. As of August 2001, NAFTA-TAA had certified 381,735 workers nationwide as affected by NAFTA.⁶²⁹ As of July 1999, 45 percent of workers had been displaced due to shifts in production to Mexico.⁶³⁰ As NAFTA-TAA concedes, these figures miss many displaced workers.⁶³¹ Only 61.5 percent of displaced workers nationally found new jobs that paid at least 80 percent of what they had previously earned.⁶³²

Of the displaced manufacturing workers, 43.7 percent came from the apparel and electronics/electrical sectors.⁶³³ Apparel producers like Farah USA Inc. and Levi Strauss have moved to Mexico and elsewhere. Overall, border apparel jobs are projected to fall by 11,000 from 1995 through 2020, and food processing jobs by 5,000.⁶³⁴

In El Paso, as an example, 17,069 TAA-certified workers, mostly in the apparel and textile industries, lost their jobs between January 1994 and February 2001.⁶³⁵ Most dislocated workers were "Hispanic, female, single heads of household, over the age of 40, with less than a high school education and limited English proficiency."⁶³⁶ They did not qualify for new jobs, which required a high school or post-secondary degree and the ability to speak and write English.⁶³⁷ The impact of job losses on these

workers and their families has been immense.

NAFTA-TAA supported English-language, literacy, remedial and occupational classes, but these did not leave displaced workers with the requisite skills to obtain new jobs, if indeed an adequate base of jobs remained.⁶³⁸ Since NAFTA-TAA income assistance lasted only 18 months, many of those who qualified could not avail themselves of the full 24 months of training benefits.⁶³⁹ In addition, like Mr. I-, Mrs. T- and Mr. H-, most dislocated workers languished in GED and English-language classes before they could begin occupational training.⁶⁴⁰

NAFTA's role in worker displacement has been widely recognized, but the inability of displaced workers to obtain similar jobs has been less acknowledged. NAFTA has provided a significant push to the integration of the operational standards, by industry, of the United States, Mexico, and Canada. Adoption of international standards and certification by the International Organization of Standardization has become a requirement for doing business in the post-NAFTA border economy.⁶⁴¹ Companies that do not adopt standards cannot effectively compete for contracts. U.S.-based plants that meet ISO standards now typically require employees to be proficient in English, although this requirement does not seem necessary to assure adherence to operational and quality standards. Lack of proficiency in English precludes many displaced workers in border communities from finding jobs as good as those that they lost.

While NAFTA may have removed barriers to the free flow of goods, services and capital, it did not liberalize the movement of laborers. This anomaly could be resolved in a variety of ways, including a lifting of the per-country limits on family and employment visas from Canada and Mexico.⁶⁴² Regardless, it has been keenly felt in border communities.⁶⁴³

Finally, NAFTA has greatly increased trade between the United States and Mexico - from \$81.57 billion in 1993 to \$247.28 billion in 2000.⁶⁴⁴ Yet it has failed to reduce poverty in Mexico. According to the Inter-American Development Bank, the number of Mexicans living in extreme poverty grew from 15.8 to 24.7 percent and in moderate poverty from 49.2 to 56.8 percent between 1994 and 1998.⁶⁴⁵

In 2000, mean manufacturing wages in Mexico equaled only 86.5 percent of those in 1994.⁶⁴⁶ Similarly, NAFTA has not reduced the twelve to one wage differential between the United States and Mexico.⁶⁴⁷ Wage disparities remain a significant migration push-pull factor. They also lead to the displacement of U.S. workers and to downward pressure on U.S. wages. Seven years after NAFTA,

workers in U.S. border communities must compete with Mexican workers who would otherwise be paid the equivalent of \$1.25 an hour.

H. Mexican Laborers

Any solution to the nation's deep-seated labor and immigration problems must recognize the traditional inter-dependence between the U.S. economy and immigrant laborers. The United States has historically encouraged immigration to meet its labor needs, but has enacted restrictionist laws and policies when its need for low-wage labor has subsided.⁶⁴⁸ The United States' historical ambivalence to Mexican laborers provides a case in point.

The Mexican War ended officially on February 2, 1848 with the Treaty of Guadalupe Hidalgo. Under it, Mexico ceded roughly half of its territory to the United States, a vast swath of land that now encompasses parts of Texas, New Mexico, Utah, Nevada, Arizona, California, and Colorado.⁶⁴⁹ In return, the United States paid Mexico \$15 million, recognized the legal rights of Mexican nationals to their land in the ceded areas, and granted them the option to become U.S. citizens.⁶⁵⁰ Many Mexicans, despite the Treaty's promise to respect land titles, lost their land through "force, fraud and disparate treatment by U.S. judicial system."⁶⁵¹ Courts often insisted on written proof of land claims, although U.S. officials had destroyed such documents during the war.⁶⁵² Stripped of their lands and denied their rights, most of the 80,000 Spanish-speaking people who remained in Texas and the Southwest after the war became "foreigners in their own land."⁶⁵³

U.S. labor contractors heavily recruited Mexican nationals from 1870 to 1890 for agricultural labor and for work on the Southern Pacific and Santa Fe railroad lines.⁶⁵⁴ By 1910, railroad agents had recruited more than 20,000 Mexican laborers, who they viewed as "closer and more convenient than Chinese labor because, unlike the latter Mexicans could easily be sent home when they were no longer needed."⁶⁵⁵ From 1910 and 1929, Mexican agricultural workers "began an annual migration that started in the farms of South Texas and headed north to Northwest Texas ... and beyond."⁶⁵⁶ Mexican laborers also played a vital role in the copper mines in the Southwest, although white miners excluded them from many camps and mine owners instituted a dual system of wages.⁶⁵⁷ Mexican and other immigrants were heavily represented in one of the most notorious labor incidents in U.S. history, the "deportation" on July 12, 1917 from Bisbee, Arizona to New Mexico of 1,200 striking miners and members of the International Workers of the World.⁶⁵⁸

During the Great Depression, the United States expelled hundreds of thousands of people of Mexican descent, more than half of them U.S. citizens,⁶⁵⁹ as well as the U.S.-born children of Mexican laborers.⁶⁶⁰ The U.S. entry into World War II again created a need for Mexican laborers and, in August 1942, the U.S. and Mexican government initiated the "bracero" ("arm") program.⁶⁶¹ Under it, Mexican nationals performed agricultural labor, pursuant to sub-contracts between U.S. officials and U.S. farmers.⁶⁶² Between 1942 and 1945, the number of farm workers in the program grew from 4,203 to 120,000.⁶⁶³ By the late 1950s, more than 400,000 migrant laborers from Mexico worked in the United States.⁶⁶⁴

By 1954, the pendulum had swung back again and the United States initiated "Operation Wetback" to stem illegal immigration. More than one million persons, including U.S. citizens of Mexican descent, were deported in 1954.⁶⁶⁵ In 1960, Edward R. Murrow's television documentary, Harvest of Shame, introduced the American public to the scandalous living and working conditions of bracero laborers and, by 1964, the program officially came to an end.

This history should inform U.S. policy on immigrant families and laborers. While its lessons seemed to have been lost with passage of the 1996 Immigration Act, the recent discussions between Mexico and the United States have highlighted the crucial role played by Mexican labor in the United States. At the same time, the history should give pause to policymakers considering an expanded "guest worker" program as a way to "regularize" the status of various service-sector workers in the United States. To avoid the worst abuses of the past, such a program must include job portability (the right to switch jobs), labor protections, livable wages, meaningful enforcement mechanisms, and the possibility of lawful permanent residency.

Of course, the termination of the bracero program did not end U.S. dependency on Mexican laborers.⁶⁶⁶ Today, Mexican nationals constitute roughly one-half of the U.S. undocumented population,⁶⁶⁷ and have become so thoroughly enmeshed in the U.S. economy that to remove them would eviscerate many industries.⁶⁶⁸ According to one study, the removal of all undocumented Mexican nationals from the United States would decrease U.S. economic output by \$155 billion.⁶⁶⁹ As discussed below, U.S. corporations also depend heavily on the maquiladora industry which arose in northern Mexico with the demise of the bracero program.

I. Maquiladoras

"Mrs. C-" lives in ANAPRA, a 12-year-old colonia in Ciudad Juárez, Chihuahua, on a desert hill with a view of El Paso. Most houses in ANAPRA have been constructed with wooden pallets and weatherized with plaster and black tar paper. Some of the more established homes, like Mrs. C-s', have been built with cinder blocks and have concrete floors. For the last few months, Mrs. C-s' house has had electricity, but it still lacks potable water or a sewage system.

Mrs. C-'s family moved to the border region 32 years ago, living originally in Valle de Juarez. Mrs. C- moved to Ciudad Juárez 14 years ago and has lived in ANAPRA for ten years. Her brothers and mother have since moved to the United States. Mrs. C- worked for 14 years in a plant in Ciudad Juárez that made small components for running electrical systems in tractor trailers. She would leave for work each day at 4:40 a.m., and arrive at the plant by 6 a.m. Her shifte ended at 3:30 p.m. and she would return home by 4:40 p.m. Her husband worked a different shift at the same factory for 11 years. Mrs. C- frequently worked Saturdays as well, especially as she was trying to build her house. During the day, she received a 15-minute breakfast break, 30 minutes for lunch, and two short bathroom breaks. Mrs. C- earned an average of 470.50 pesos (\$50) each week. However, this did not include deduction for state health care or "seguro" (20 pesos per child per week) and lunch (10 pesos.) She also needed to pay for transportation to and from work, which cost roughly 72 pesos per week.

The assembly lines moved rapidly, which resulted in repetitive stress injuries for many workers. One day, after working eight hours, solder exploded on Mrs. C-'s hands, stomach and neck. She did not wear protective gloves or an apron, just glasses. The manager would not let her go to the hospital, although she suffered second-degree burns and a doctor would ultimately need to cut between her thumb and index finger to separate them. As a result of her injuries, Mrs. C- received 50 percent of her salary for four months.

Subsequently, she began to offer classes out of her home for children in ANAPRA. By the summer of 2000, she had 76 students, from ages five to thirteen. Many families in ANAPRA cannot afford the 150 pesos it costs to register their children for school, or the incidental cost of shoes, clothes, and supplies. Families often rely on their children's earnings from bagging groceries and carrying bags in the market. For many of her students, Mrs. C- offers the only educational alternative. She

also offers one of the few breaks that their parents receive.⁶⁷⁰

Mrs. C- worries about the families in ANAPRA. She sees many older children caring for their younger siblings while their parents work, and other children with no supervision. Many single women work in maquiladoras. Men often hope to work in the United States. Mrs. C-'s husband left to work in Oklahoma in a factory that made motors for blenders, but after four months he returned. He now works in a store that pays 850 pesos a month. The couple feels that, for all their sacrifices, their family has better chance of staying together in Mexico than in the United States. Mr. and Mrs. C- have begun to pay off their lot - at 650 pesos a month for 15 months. Money is tight, but they plan to stay in ANAPRA.

The historic interplay between Mexican workers and the U.S. economy finds its clearest, modern-day expression in the "maquiladora" industry in northern Mexican border communities. At the end of the bracero program, the Mexican government struggled to find a way to accommodate returning workers, eventually creating its Border Industrialization Program to employ them.⁶⁷¹ This industry was designed to take advantage of U.S. law that allowed corporations to pay taxes on only the "value added" of products assembled abroad.⁶⁷² This program has led to the creation of thousands of foreign-owned assembly plants on Mexico's northern border. Unlike past Mexican labor streams, this one has benefitted U.S. industry without leaving Mexico.

The maquiladora industry grew tentatively in the 1960s and early 1970s, and rapidly from the mid-1970s through the 1990s. Total employment in maquiladoras rose from 67,214 in 1975 to 896,334 by the end of 1997.⁶⁷³ Over the same period, maquiladora jobs increased from 19,775 to 190,874 in Ciudad Juárez; from 1,285 to 20,098 in Nuevo Laredo; from 1,255 to 45,774 in Reynosa; and from 9,778 to 54,547 in Matamoros.⁶⁷⁴ The industry's growth has turned, in large part, on the low cost of Mexican labor due to successive Mexican economic crises (in 1976, 1982 and 1986) and a peso devaluation in 1994 that dropped its value in half compared to the dollar.⁶⁷⁵ The passage of NAFTA has further spurred border development.

At its outset, women constituted virtually the entire maquiladora workforce.⁶⁷⁶ Maquiladoras have also traditionally preferred younger women; some still advertise for women younger than 30-years-old. In the 1970s and 1980s, women began to migrate to border cities on their own.⁶⁷⁷ They now represent an estimated 60

percent of maquila workers overall, but in border cities like Ciudad Acuña, Coahuila and Nogales, Sonora, men now represent the majority.⁶⁷⁸

Maquiladoras and the migration patterns that feed them have posed challenges for Mexican families.⁶⁷⁹ Many families have split, with the mother staying in Mexico, the father migrating to the United States, and the children left to fare for each other or themselves.⁶⁸⁰ Single parent families are commonplace. These dynamics contribute to the growing problem of homeless children (sometimes in gangs) or children who effectively grow up without adult supervision.

Like Mexican migration to the United States, migration to northern Mexico border communities follows discernable patterns. The early maquiladora workers in Tijuana and Mexicali came from the Mexican states of Sinaloa, Jalisco, Nayarit, Michoacan, and parts of Sonora.⁶⁸¹ Migrants to Nogales tended to come from Durango.⁶⁸² Workers to Ciudad Juárez came from Chihuahua, Coahuila, Durango, and Zacatecas.⁶⁸³ Migrants to Nuevo Laredo came from Tamaulipas, San Luis Potosí, Nuevo León and north of Veracruz.⁶⁸⁴ Migration still plays a major role in filling the maquiladora workforces in Tijuana and Ciudad Juárez, while in Coahuila and Tamaulipas, turnover tends to be lower and most workers come from the same or neighboring communities.⁶⁸⁵ Labor union membership also varies by region with high rates of workers unionized in communities like Piedras Negras, Coahuila and Matamoros, Tamaulipas,⁶⁸⁶ and few unionized in Nogales, Sonora.⁶⁸⁷

Overall, 3,667 maquiladoras employ 1,331,719 workers, with the highest number of workers (25 percent) in Chihuahua, followed by Baja California (21.7 percent), Tamaulipas (13.9 percent), Coahuila (8.7 percent), Sonora (8.2 percent), and Nuevo León (5.3 percent).⁶⁸⁸ The reach of this industry can also be suggested by the range of goods it produces, including: textiles, apparel (1,114 plants, 287,415 workers); shoes and leather goods (64 plants, 8,835 workers); furniture and parts (398 plants, 62,813 workers); automotive equipment and accessories (257 plants, 248,209 workers); non-electric equipment and tools (51 plants, 13,739 workers); electrical, electronic machinery and equipment (163 plants and 108,713 workers); electrical, electronic materials and accessories (569 plants, 355,004 workers); toys and sporting goods (60 plants, 13,673 workers); chemical products (153 plants, 26,262 workers); food processing (81 plants, 10,324 workers); other manufacturing sectors (516 plants, 146,924); and services (241 plants, 49,808 workers).⁶⁸⁹

Maquiladora workers earn low wages - on average 45 pesos per day - and face comparatively high costs of living in the integrated and "dollarized" economies of border communities.⁶⁹⁰ By one estimate, it costs more than 130 pesos per week to support a subsistence-level diet consisting (for a family) of two kilograms of pinto beans, one kilogram of rice, two-dozen eggs, one kilogram of cheese, and one gallon of milk. Of course, this does not count salary deductions, transportation fares, the cost of water and electricity (where available), school expenses and other basic living expenses.

The troubled Mexican economy, which has given rise to maquiladoras, has also made it difficult to create the necessary infrastructure to accommodate this surge in workers.⁶⁹¹ This explains the abysmal living conditions in Mexican colonias (like ANAPRA).⁶⁹² Lack of infrastructure, in turn, causes some of the worst environmental and health problems in integrated border communities.⁶⁹³ It remains an open question whether the types of low-wage, service-sector jobs will ultimately build the Mexican economy.

Wages also present a conundrum for the maquiladora industry and for others who favor a stable workforce. If the industry continues to attract Mexican migrants to border communities, it must expand or the United States may well face an influx and glut of Mexican laborers who could depress wages and working conditions for U.S. laborers.⁶⁹⁴ Many men in Mexican border colonias already migrate to the United States in search of higher paying jobs.⁶⁹⁵ Given the size and youth of residents in Mexican border cities compared to those in U.S. twin cities, a significant downturn in the maquiladora industry could spur heavy migration to the United States.⁶⁹⁶ The U.S. economic slow-down, combined with a strengthened peso, has led to the loss of roughly 100,000 maquiladora jobs this year alone.⁶⁹⁷

At the same time, modest increases in Mexican wages would create a far more stable work force. Maquila workers typically insist that they want higher wages in Mexico, rather than to move to the United States. Indeed, despite an immense wage differential between the United States and Mexico, the maquiladora workforce has largely remained in Mexico.⁶⁹⁸

Wage increases for maquiladora workers could conceivably lead to a loss of jobs and plants, although proximity to the United States would continue to make it convenient for U.S. corporations to locate plants in Mexico. In addition, some of the special financial advantages (to U.S. and other companies) of locating maquilas in Mexico have eroded. For example, NAFTA eliminated

the import duty waiver historically given to maquiladoras. This has created some anxiety that investment by non-NAFTA countries will fade, although Mexico has subsequently announced the development of sectoral programs, covering most of maquiladora products, to protect the tariff-free (or reduced-tariff) entry of maquiladora imports from non-NAFTA countries.⁶⁹⁹ NAFTA also eliminated the exemption of maquiladora imports from antidumping duties (ADDs), i.e., those tariffs on imports that are normally levied when an import sells below "fair market value" and thus hurts a domestic producer.⁷⁰⁰ Finally, in 1998, Mexico announced that as of January 2000, U.S. parent companies of Mexican maquiladoras would be treated as though they had permanent establishments in Mexico, requiring them to pay Mexican income taxes on the share of their income derived in Mexico, and a 1.8 percent asset tax on machinery, equipment and inventories.⁷⁰¹ Factors like these may affect the long-term prospects of the industry and, by extension, Mexican migration to the United States.

IV. RECOMMENDATIONS

Earlier this year, the administrations of George Bush and Vicente Fox engaged in unprecedented discussions on U.S.-Mexico relations, particularly as they relate to migration and economic development. Both sides recognized the need to regularize migration flows, reduce crossing deaths, and promote policies that reflect the inter-dependence of the U.S. and Mexican economies. The meetings covered joint border safety initiatives, temporary work programs, regularization of the undocumented, worker rights, anti-smuggling efforts, interdiction, enforcement issues, and economic development.⁷⁰² They culminated in President Fox's state visit to the United States, where both presidents agreed on the need for a legalization program.⁷⁰³ The talks focused on a hybrid program that would provide temporary visas for workers in designated, service-sector jobs, with the possibility of lawful permanent resident status for those who stay in their jobs for sufficient periods.⁷⁰⁴ The terrorist attacks of September 11, 2001 have put these discussions on hold, although President Bush has vowed to return to them.

This bi-national dialogue represents the best hope in years for the kind of deep-seated reforms necessary to address the severe problems documented in this report. As discussed, these problems have deep roots in U.S. laws, policies, and economic arrangements. They also have a strong international dimension. They require broad solutions. A non-exclusive list of recommendations follows.

- The INS border blockade strategy has proven flawed and should be revisited. It has failed to reduce undocumented migration, redirected migrants to their peril, created a dangerously inexperienced Border Patrol force, led to an increase in civil rights violations, and inundated local communities with Border Patrol agents. Even if fully implemented, the strategy would not succeed in keeping desperate migrants from attempting to cross. If the INS revises its current enforcement policy (which it should), this will result in different kinds of crossing dangers and even deaths based on pre-blockade patterns. The INS should take steps to reduce potential deaths and injuries if it adopts a different enforcement strategy.
- The United States should enact a legalization program. Such a program would significantly reduce the number of migrants who risk their lives attempting to cross. It would allow needed workers to contribute even more to the U.S. economy. It would put thousands of immigrants and their families beyond the reach of the harsher provisions of the 1996 Immigration Act. It would strengthen the ability of low-wage laborers to organize for higher wages and better working conditions. It would bring large numbers of now "invisible" immigrants to the government's attention, and put them on a path to full membership in our nation.
- The INS complaint system needs to be strengthened and made transparent. The system remains substantially unchanged more than four years after an INS advisory panel detailed its lack of responsiveness to the community it purports to serve, its overlapping bureaucracies, the time it takes to resolve cases, and its failure to track problems and reveal trends that could be addressed pro-actively. The rapid growth of the Border Patrol makes a strong complaint system a necessity. Immigrant advocates have collected stories of beatings and other abuses by Border Patrol agents, only to have them summarily dismissed, without even an interview with the alleged victims.
- The Border Patrol should not use "hollow point" or expansive bullets because of the massive internal injuries that they cause.
- The Border Patrol should not accompany local police in their work. The mere possibility that INS agents will accompany local law enforcement can dissuade undocumented persons or those with undocumented persons in their homes from calling

the police. For similar reasons, the Border Patrol should be prevented, by federal regulation, from enforcement or investigative activities on the property of churches, schools, hospitals, charitable agencies, homeless shelters and other places of sanctuary. Public policy argues against targeting the undocumented at the places where their religious convictions, health or well-being compels them to be.

- All migrants intercepted on their way to the United States should be afforded an interview to determine whether their life or freedom would be threatened (on an enumerated ground) or they would likely be tortured if repatriated. If so, they should be afforded the ability to seek refugee status (outside the United States) or political asylum (within the United States). Furthermore, the United States should assure the humane treatment of detained migrants who have been interdicted, as part of bi-national or regional agreements, on their way to the United States.
- The United States should support the economic development of Mexico and other migrant source countries, with a particular focus on the communities that send the most migrants to the United States.⁷⁰⁵ The success of any immigration enforcement system will turn, in large part, on a reduction in migration "push" factors, like the poverty in Mexico and the significant wage differential between the countries. As it stands, Mexican migrants come overwhelmingly from 109 of Mexico's more than 2,400 municipalities and from nine of its western and northern states.⁷⁰⁶ Although Mexico may receive as much as \$10 billion in remittances this year from its nationals in the United States,⁷⁰⁷ many Mexican sending communities have been emptied by migration.⁷⁰⁸ Targeted economic development will decrease emigration from these communities.⁷⁰⁹
- The United States should support efforts by Mexico to root out corruption and the extortion of migrants by government officials. The United States should also make it a diplomatic priority to encourage Mexico to develop an effective system to investigate, prosecute, and prevent human rights violations against migrants. Finally, it should expand its bi-national efforts with Mexico to disband human smuggling enterprises that prey on migrants and that might lead to the entry of terrorists or criminals into the United States.
- Current levels of Border Patrol search and rescue staffing

and resources do not suffice. The INS should expand the human and financial resources it devotes to saving migrants. At the same time, however laudatory border rescue efforts are, crossing deaths cannot be adequately reduced without more fundamental changes in U.S. immigration and labor policies, as well as a decrease in migration push factors. Given potential conflicts between its enforcement and rescue missions, the Border Patrol should consider creating a search and rescue unit outside its normal enforcement structure. The Border Patrol should also pay close attention to the heavy toll that crossing deaths take on its agents, particularly those involved in search and rescue.

- The United States should work with Mexico to establish a fund to support the travel and other expenses of migrants trapped in Mexican border communities who want to return to their homes in Mexico, and for the family members of migrants who have perished while trying to cross the border.
- The Tohono O'odham and other Native American tribes, whose lands straddle the U.S.-Mexico border, should be allowed to move freely across their nations. For the Tohono O'odham, tribal membership cards should constitute proof of U.S. citizenship.
- Public and private hospitals in border communities should not have to bear the costs of the emergency medical care that they must provide for migrants, particularly those brought to them by the Border Patrol. The federal government should reimburse border communities and hospitals for the cost of the emergency services and other medical costs that they provide to migrants.
- Border states should try to meet the substantial water, waste water, electricity, and other infrastructure needs of colonias. The cost of infrastructure, bringing properties to code, and nuisance abatement cannot be borne solely by colonia residents. In addition, legislation that makes the construction of colonias impossible must be accompanied by efforts to increase the housing stock for low-income border residents.
- The anti-family provisions of the 1996 Immigration Act should be repealed. These include the 125 percent sponsorship and affidavit of support requirements, the multi-year and permanent bars on admission, the expanded grounds of removal for those convicted of crimes (without

reference to their family ties or other equities in the United States), and mandatory detention. In addition, the United States should work to eliminate the caps, by preference category and by country, that cause visa backlogs. It should also increase the resources it devotes to reducing the delays in INS application processing. Simple immigration violations, like illegal entries, should be de-criminalized. Treaty Transfer cases should be expedited.

- The plight of low-wage immigrant laborers requires a range of solutions. Because workers should earn a livable wage, the subsistence-level federal minimum wage should be increased. Government tax breaks, financial incentives and grants should not be provided to corporations, unless they provide livable wages, health insurance and safe working conditions. The penalties for non-compliance with federal employment laws - like the FLSA, the NLRA, and OSH-Act - need to be strengthened, and enforcement resources must be increased.
- The Wagner Act of 1935 (the original NLRA) excluded agricultural laborers and domestic workers from its protections, reasoning that the close relationships these employees enjoyed with their employers ill-suited them for protections designed to curb "industrial strife and unrest."⁷¹⁰ If it ever did, this rationale no longer applies to agricultural laborers who, along with domestic workers, suffer from some of the worst abuses in the U.S. labor force, including indentured servitude and slavery.⁷¹¹ Agricultural laborers and domestic workers should not be exempted from the protections of the NLRA. Nor should farm workers be excluded from the overtime and child labor protections of the FLSA. The INS should be precluded, by federal regulation, from conducting raids or other work-site enforcement activities during union organizing drives.
- More than four decades after Edward R. Murrow's *Harvest of Shame* report on bracero workers, the situation of agricultural migrant and seasonal laborers has deteriorated. In light of this history, the United States and Mexico should proceed with caution in considering an expanded "guest worker" program. Any temporary worker program should assure that actual labor shortages exist. It should also provide for job portability, adequate wages and benefits, worker protections, strong enforcement mechanisms, and the opportunity for workers to become lawful permanent residents.

- The federal program for workers dislocated by NAFTA has failed to help thousands of border residents to learn English, develop marketable skills, or obtain new jobs. Indeed, lack of English-language skills prevents many from securing jobs as good as those that they lost. The federal government should create a new initiative to assist these workers.

U.S.-Mexico border communities serve as an analogy for the United States in its growing diversity, multi-culturalism, and globalism.⁷¹² The mixed families, cultures and economies that have long characterized border communities will increasingly define our national reality as well.

Immigrant advocates tend to view the border in symbolic terms, albeit more critically. For them, the border reflects many of the nation's injustices and offers a window on its soul. If you want to know how the United States treats low-wage laborers, watch them risk their lives as they pass through the migration gauntlet or as they try to establish a foot-hold in colonias. If you want to know how U.S. immigration laws and policies treat families, meet the families divided and impoverished in border communities. If you want to know why U.S. consumers pay so little for fruits, vegetables, and consumer goods, visit the colonias in the United States and in Mexico where low-wage workers live.⁷¹³ If you want to see how the United States balances its national security concerns with its historic openness to newcomers, watch what happens on the border in the upcoming months. By this view, to learn the lessons and solve the challenges of the border will be to address our nation's most deep-seated problems. Rather than existing on the margins, the border increasingly represents the epicenter of our national experience and the symbol of our greatest challenges.

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2.The Binational Study on Migration, “Migration Between Mexico and the United States,” at 8, available at <http://www.utexas.edu/lbj/uscir/binational.html> [hereinafter “The Binational Study on Migration”]; *see also*, A. Bock, “Welcome Guests? A Proposal to Ease Immigration Restrictions of Temporary Workers Is Sure to Cause Controversy. But Should It?,” *Orange County Register* (March 4, 2001) (According to 1997 study, one-half of immigrants from states in Western Mexico return home within two years of arriving.)

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5.The Urban Institute, “All Under One Roof: Mixed Status Families in an Era of Reform” (June 1999) at 2.

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elements characterize the region. The first is that *internationality* is a commonplace, day-to-day routine; the other, that the economies and societies on either side are inextricably and constantly interactive.”)

12. The Southwest Center for Environmental Research and Policy, “The U.S.-Mexican Border Environment: A Road Map to a Sustainable 2020,” SCERP Monograph Series, No. 1 (San Diego State University Press, 2000) at 77 [hereinafter “The U.S.-Mexican Border Environment”].

13. In U.S. border cities, like Douglas, Arizona, Wal-Mart and other national retail chains can be found within walking distance of the border. Laredo, Texas “boasts the highest-grossing Wal-Mart per square foot in the U.S. because this town of 200,000 is really a market for more than 1 million people.” T. Roche, “Just Another Day in a Bridge Town,” *Time Magazine* (June 11, 2001) at 50 and 53.

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16. *Id.* at 43 (“[El Paso parents take their children] to Juarez doctors, who are cheaper and stay open into the night. If the children die, they are buried across the border; there it costs about \$150 instead of the \$2,000 for an American grave.”)

17. *Id.* at 50 (In Laredo, the “two local school districts (one larger than the state of Delaware) don’t know how many students are from the other side.”)

18. C. Hayostek, “Bill May Replace \$1 Million SAMC Lost in Treating Illegals,” *Daily Dispatch* (June 23-24, 2001).

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438. D. Golden, "Undocumented Students Are Guaranteed K-12 by Law, But College Isn't So Easy," *Wall Street Journal* (June 22, 2000); T. Puentes, "Students Can't Access Financial Benefits," *Chicago Tribune* (June 15, 2001); T. Mitchell, "Busted from College Because of Where They Were Born," *Los Angeles Times* (April 15, 2001)..

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647. P. Bennett, "Fox's Cutting Edge: For Mexico's New President, the Future Begins at the Border," *Washington Post* (January 14, 2001); J. Talton, "The New Economy, Giant Sucking Sound' Revisited: Time to Fulfill NAFTA's Promise," *Arizona Republic* (March 26, 2001).

648. The federal government, for example, encouraged the immigration of Chinese laborers from 1864 to 1869. However, as the need for their labor diminished, California passed discriminatory legislation that, although largely struck down as unconstitutional, paved the way to the federal Chinese Exclusion Acts beginning in 1882.

649. "Bordering the Future" at 2.

650. *Id.*

651. R. Tsosie, "Sacred Obligations: Intercultural Justice and the Discourse of Treaty Rights," 47 *U.C.L.A. L.Rev.* 1615, 1624-30 (2000).

652. *Id.*

653. "Bordering the Future" at 158.

654. *Id.*

655.*Id.*

656.*Id.* at 15.

657.R. Acuña, ‘Murder in Arizona: It’s Only the Third World,’ *La Prensa San Diego* (June 16, 2000).

658.R. Byrd, ‘The Bisbee Deportation: Bisbee’s Blackest Day Recalled 69 Years Later,’ *Bisbee Observer* (June 16, 1986); M. Hanhila, ‘I Had a Ringside Seat,’ *Mohave Magazine* (July 1976).

659. ‘Human Rights Concerns in the Border Region’ at 5; *see also*, R. Garcia, ‘Critical Race Theory and Proposition 187: The Racial Politics of Immigration Law,’ 17 *Chicano-Latino L. Rev.* 118, 126 (1995) (‘Over 300,000 Mexicans were deported from 1931-1934; many of these persons were citizens or legal residents but simply could not prove their status.’).

660. ‘Bordering the Future’ at 15.

661.*Id.* at 16.

662.*Id.* at 159.

663.*Id.* at 16.

664.*Id.* at 159.

665.*Id.* at 159; ‘Human Rights Concerns in the Border Region’ at 5.

666. ‘The Binational Study on Migration’ at 26 (‘Today cross-border networks of relatives, friends, and labor brokers and recruiters link an expanding list of U.S. industries, occupations, and areas to a lengthening list of Mexican communities that send migrants to the U.S.’).

667.J. Malone, ‘Hispanics Warn Republicans Not to Backpedal on Amnesty,’ *Palm Beach Post* (August 17, 2001).

668. The hotel, restaurant, and nursing home industries project a significantly increased need for immigrant laborers in the future. M. Stern, ‘Does U.S. Need Army of Foreign Workers?,’ *San Diego Union-Tribune* (August 25, 2001).

669. ‘Comprehensive Migration Policy Reform’ at 25.

670. T. Padgett and C. Thomas, ‘Two Countries, One City,’ *Time Magazine* (June 11, 2001) at 64-65 (‘Unfortunately life has not changed for everyone in Juárez: hourly pay is still about \$1.25. Many workers have to travel hours each way by bus from colonias like Anapra, subdivisions that have sprung up without paved roads, water or sewer service more than 200 women, many of them maquila workers, have been murdered since 1993 – often raped, strangled and mutilated during their long, dark treks home to remote colonias ...’).

671. “Bordering the Future” at 16.

672. “The U.S.-Mexican Border Environment” at 44.

673. “Bordering the Future” at 16.

674. *Id.*

675. “The U.S.-Mexican Border Environment” at 79-80; Lives on the Line at 10-11; C. Eastman, “Farm Labor Dynamics in Southern New Mexico: A Transborder Phenomenon” (undated) at 16.

676. C. Ramirez, “Migration and Maquiladoras On Mexico’s Northern Border,” *Migration World*, Vol. XXVII, No. 3 (2000) at 16.

677. *Id.* at 16-17.

678. *Id.* at 16.

679. Lives on the Line at 10-11.

680. *Id.* at 133.

681. C. Ramirez, “Migration and Maquiladoras On Mexico’s Northern Border,” *Migration World*, Vol. XXVII, No. 3 (2000) at 16-17.

682. *Id.*

683. *Id.*

684. *Id.*

685. *Id.*

686. *Id.*

687. Lives on the Line at 33 (“Nogales, for example, historically had one of the least-organized work forces on the border, which was one reason it was attractive to maquilas. Even workers [in Nogales] who did belong to one of Mexico’s official unions—which were essentially an arm of the state—often didn’t know it. ‘White’ or ‘phantom’ unions, as they were called, existed more to keep workers under control than to fight for their rights. This arrangement was made clear in 1981, when Mexico’s union, the Confederacion de Trabajadores de Mexico (CTM), signed a contract with the fourteen largest maquiladoras in Nogales without even bothering to consult the workers. The contract allowed companies not only to hire and fire employees at will, but to change their hours, job assignments, and days off without notice, and to determine the speed of machinery and number of workers needed.”).

688. *Twin Plant News*, Vol. 16, No. 11 (June 2001) at 54-55.
689. *Id.* at 54-55.
690. “The U.S.-Mexican Border Environment” at 10-11; Lives on the Line at 41-42.
691. “The U.S.-Mexican Border Environment” at 78.
692. Lives on the Line at 10-11.
693. “The U.S.-Mexican Border Environment” at 9.
694. “Bordering The Future” at 10; “The U.S.-Mexican Border Environment” at 6.
695. J. McGarvey, “NAFTA-Driven Hardships: Dismal Mexican Wages Generate Immigration,” *Arizona Daily Star* (April 18, 1999).
696. “The U.S.-Mexican Border Environment” at 6.
697. J. Watson, “Foreign-owned Plants on Mexican Border Hit by U.S. Economic Slowdown,” *Associated Press* (August 21, 2001).
698. “The U.S.-Mexican Border Environment” at 10.
699. J. Gerber, “Uncertainty and Growth in Mexico’s Maquiladora Sector,” *borderlines*, Vol. 9, No. 3 (March 2001).
700. *Id.*
701. *Id.*
702. “Joint Communique on U.S./Mexico Migration Talks” (June 21, 2001).
703. B. Sammon, “Bush Urges Legalizing Aliens, Ending Employer Sanctions,” *Washington Times* (September 7, 2001); G. Hillman and M. Mittelstadt, “Fox Speaks, Congress Responds,” *Dallas Morning News* (September 7, 2001).
704. M. Stern, “‘Phased-in Access’ Is Not Like An Amnesty or Guest-worker Program,” *San Diego Union Tribune* (August 12, 2001); L. Goering, “Bush Considering Green Card ‘Points’” (August 22, 2001); J. Peterson, “Immigration Emphasis on Guest Visas,” *Los Angeles Times* (August 18, 2001).
705. *See generally*, K. Sullivan and M. Jordan, “Mexican Emigres Heed Call To Offer Hand to Homeland,” *Washington Post* (June 10, 2001).
706. “The Binational Study on Migration” at 35.

707.K. Sullivan and M. Jordan, "Mexican Emigres Heed Call To Offer Hand to Homeland," *Washington Post* (June 10, 2001).

708.G. Thompson, "Migrant Exodus Bleeds Mexico's Heartland," *New York Times* (June 17, 2001); T. McCarthy, "The Coyote's Game," *Time Magazine* (June 11, 2001) at 60.

709. "Comprehensive Migration Policy Reform" at 34-35.

710. "Unfair Advantage" at 173-175; 49 Stat. 449, §§ 1 and 2(3).

711.D. France, "Slavery's New Face," *Newsweek* (December 18, 2000) ("Slavery is alive in America today ... The victims are mostly women who have been tricked into bondage, ironically often by people who immigrated here from their own homelands. Most female Asian slaves are forced into prostitution rings Most Latin American slaves are required to work in the fields, while those from the Middle East or Africa are ... trapped as domestic workers in affluent homes."); "Work Without Justice" at 7-8, 16-21; "Unfair Advantage" at 176-178.

712. *See generally*, "Welcome to Amexica," *Time Magazine* (June 11, 2001).

713.D. Papademetriou and Heppel, "Balancing Acts: Toward a Fair Bargain on Seasonal Agricultural Workers," Carnegie Endowment for International Peace (1999) at 8 (Since 1970, the percentage of income that Americans spend on food and alcohol (8.4 percent) has decreased by 25 percent, while the wages and working conditions of agricultural laborers have deteriorated. The United States' "cheap food" policy rests, in part, on the backs of these workers.)