



U.S. Commission on Civil Rights

Summary of Migrant Civil Rights Issues Along the Southwest Border

April 2003

As part of its mandate to investigate civil rights issues of national concern, the U.S. Commission on Civil Rights has devoted considerable attention to addressing the civil rights challenges facing new arrivals to the United States. Migrants and immigrants are particularly vulnerable to civil rights abuses because of linguistic and cultural barriers, as well as legal misconceptions. Over the years, the Commission has studied challenges affecting the provision of equal educational opportunity, the protection of civil liberties, and the sound execution of immigration laws and policies as they relate to migrant and immigrant communities. Continuing its tradition, the Commission is releasing this summary to highlight the consequences facing migrants along the U.S. Southwest border resulting from U.S. border enforcement policy.

The Commission's Historical Interest in Civil Rights Issues Affecting Migrants and Immigrants

The Commission's dedication to addressing civil rights issues affecting migrants and immigrants is longstanding. In 1980, the Commission issued *The Tarnished Golden Door: Civil Rights Issues in Immigration*, which examined the immigration law enforcement process and the civil rights problems encountered by people racially or culturally identifiable with a major migrant or immigrant group. Issues explored in the report included discrimination faced by Mexican immigrants and migrants, as well as the U.S. government's attempt to curtail migration from Mexico. The Commission ultimately recommended the elimination of the discriminatory provisions of law and revision of immigration policies and procedures. Between 1986 and 1991, the Commission issued a series of reports focusing on civil rights issues affecting Asian immigrants and Asian Americans. One such report, *Recent Activities Against Citizens and Residents of Asian Descent* (1986), discussed the nature of racially motivated violence, harassment, and intimidation directed against Asian and Pacific Islander Americans, Asian immigrants, and Indochinese refugees.

In 1995, the Commission released *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination—Vol. IV: The Miami Report*, which explored the unequal treatment Haitian asylum seekers receive under U.S. immigration policy compared with asylum seekers from more favored countries. In December 2000, the Commission continued its work on immigration issues by conducting a briefing titled "Crossing Borders: An Examination of Civil Rights Issues Raised by Current Immigration Laws, Policies, and Practices," which focused on

U.S. political asylum issues and their impact on civil rights. Less than a year later, the Commission held another briefing in October 2001 titled “Boundaries of Justice: Immigration Policies Post-September 11,” to examine the special problems facing immigrants in the aftermath of the September 11, 2001, terrorist attacks. Lastly, in June 2002, the Commission participated in a briefing held by advocacy organizations, focusing on Haitian asylum seekers and their continuing perilous plight under U.S. immigration law. After the briefing, the Commission forwarded a letter to President Bush expressing its longstanding view that “discriminatory practices and procedures must be eliminated from our national immigration policies and laws.”

The Impact of U.S. Border Patrol Policy in the Southwest

In conjunction with its November 2002 business meeting in San Diego, the Commission heard presentations from a panel of immigration advocates and experts who discussed border-related civil rights issues.^{1[1]} In addition to receiving the presentation, the Commission was briefed the following day by its California and Arizona state advisory committee (SAC) chairpersons on crossing deaths along the Southwest border.

Speakers highlighted several border-related human and civil rights issues: Immigration and Naturalization Service (INS) border control initiatives that have funneled undocumented migrants through more rural and remote passages where many have died from exposure, drowning, and dehydration; vigilantism by U.S. citizens against apparent undocumented migrants who have crossed into the country; the international legal implications of U.S. border policy resulting in migrant deaths; and the inherent contradictions generated by immigration policies that collide with America’s dependency on and demand for low-skilled labor.

At the presentation, the Commission heard allegations that INS border control initiatives have contributed to the deaths of border crossers. Panelists were highly critical of the four INS enforcement operations initiated in the 1990s to fortify the busiest, largely urban, entry points along the Southwest border: Operation Hold the Line in El Paso in 1993, Operation Gatekeeper in the San Diego area in 1994, Operation Safeguard in the Tucson area in 1995, and Operation Rio Grande in the South Rio Grande Valley of Texas in 1997. The four operations have shored up less than 10 percent of the U.S. border with Mexico; however, they cover once heavily trafficked stretches that offered relatively low-risk, easy access to the United States. Panelists said these initiatives have “funneled” illegal border crossers away from urban areas to more rural and remote—but less guarded—passages. According to one estimate, more than 2,000 migrants have died in these far-flung areas from exposure, drowning, and dehydration since the mid-1990s.

^{1[1]} Panelists included William Aceves, professor of law and director of the International Legal Studies Program, California Western School of Law, and member of the American Civil Liberties Union board; Mario Obledo, president of the National Coalition of Hispanic Organizations; Claudia Smith, California Rural Legal Assistance Foundation; Wayne Cornelius, director of the Center for Comparative Immigration Studies and director of the Center for U.S.-Mexican Studies, University of California, San Diego; and Roberto Martinez, recently retired director, American Friends Service Committee Border Project.

Panelists reported that apprehensions in the Border Patrol's San Diego sector, the site of Operation Gatekeeper, were at a 25-year low. "What we have succeeded in doing most dramatically with this strategy is to redistribute illegal-entry attempts away from the San Diego corridor and urbanized areas like El Paso into the mountains and the desert, particularly the Arizona desert," said Wayne Cornelius, director of the Center for Comparative Immigration Studies and director of the Center for U.S.-Mexican Studies at the University of California, San Diego.^{2[2]}

According to Professor William Aceves, who teaches international and human rights law at the California Western School of Law, since 1994 more than 2,200 migrants have died trying to cross the U.S.-Mexico border through these remote passages. Professor Aceves also stated that organizations as diverse as the General Accounting Office and the Public Policy Institute of California have questioned the success of the border control strategy in reducing illegal immigration and have pointed to the human costs involved.

Corroborating Professor Aceves' assertions about the U.S. border control strategy, Wayne Cornelius reported that due to the construction of high-technology, concrete, bollard-type fences; 24-hour video surveillance; and infrared nightscopes, illegal entry attempts have been redistributed away from urban areas such as the San Diego corridor and El Paso into inhospitable regions like the Arizona desert, where little to no fencing exists. The most dramatic consequence of the current INS strategy, including Operation Gatekeeper, according to Dr. Cornelius, is the rising mortality rate among undocumented migrants attempting to enter illegally along the Southwest U.S. border. In 2002, more than 300 migrants died trying to cross the border, he said. Panelists also asserted that the peril of attempting the passage through desert and mountainous regions makes the services of smugglers, or "coyotes"—individuals paid to guide migrants across the border and elude detection—indispensable.

The Commission's Arizona SAC chair, June Webb-Vignery, discussed information obtained during a briefing held by the SAC on August 23, 2002, on crossing deaths along the Arizona-Mexico border. At least 130 undocumented migrants perished in 2002 in the broad expanse of the southern Arizona desert. Most died from heat exposure and dehydration, unable to carry enough water for the multiday trek across the desert, where temperatures often soar above 115 degrees in the summer. She noted that Operation Safeguard funneled migrants into some of the driest and harshest environments on earth, and that if something was not done quickly to address INS policy, more people would die next year.

In addition to border-crossing deaths, the Commission is alarmed by the reported surge in border vigilantism. Some migrants who have tried crossing through these remote, rural areas have been detained—and in a few cases allegedly injured or killed—by American landowners, ranchers, and self-styled militia groups. Panelist Mario Obledo, a co-founder of the Mexican American

^{2[2]} In addition to the "funneling effect," panelists also attributed the decline in apprehensions to the weakened state of the U.S. economy, which makes the trek across the border less desirable for economic migrants from Mexico; and concentrated border enforcement that makes it more difficult to migrate back and forth across the U.S.-Mexico border, causing many migrants to decide to remain in the United States instead of returning to their homelands.

Legal Defense and Educational Fund (MALDEF) and the National Hispanic Bar Association, as well as a former California secretary of health and welfare and current president of National Coalition of Hispanic Organizations (NCHO), discussed vigilantism along the border and NCHO's attempts to bring the problem to the attention of state and federal officials. Claudia Smith, an attorney for the California Rural Legal Assistance Foundation and an advocate working on behalf of immigrants and farm workers, also highlighted the problem of vigilante groups in some areas of Arizona. She reported that residents, sometimes using extreme physical force, have detained persons they suspect to be undocumented migrants until the Border Patrol arrives. This type of vigilantism, she said, "has all sorts of ominous civil rights implications which the authorities . . . have chosen to ignore." Roberto Martinez, recently retired director of the American Friends Service Committee Border Project, expressed concern about the suspicious deaths of two migrants who were shot and killed by men in camouflage. Panelists believed that the border vigilantes were facetiously linking national security concerns to border issues as a guise to express anti-Mexican sentiments and hatred.

The briefing before the Commission's Arizona SAC also corroborated the existence of border vigilantism. As documented in the executive summary of the briefing, speakers at the SAC event noted the existence of armed vigilantes clad in military-like garb who patrol the Arizona-Mexico border, allegedly rounding up migrants and holding them at gunpoint. Speakers expressed concern that some border vigilante groups may have links to an ex-Border Patrol chief and white supremacist organizations.

The Commission, deeply concerned about these reported acts of civil rights violations and violence against migrants, directed the Staff Director, Les Jin, to issue a letter to the Department of Justice requesting that its Civil Rights Division "investigate and ascertain the veracity of reports of migrant deaths and civil rights violations resulting from vigilante actions along the U.S.-Mexico border." The letter was issued November 26, 2002, and the Justice Department has reported that it is looking into the matter.

According to the San Diego panelists, INS border control policies, such as Operation Gatekeeper, have international legal implications with respect to the U.S. duty to protect the civil and political rights of all those within its boundaries. Professor Aceves asserted that when determining the legitimacy of INS border control policies, it is important to consider international law. He reminded the Commission that in addition to the United States recognizing and adhering to customary international law principles, article VI of the supremacy clause of the U.S. Constitution recognizes treaties as part of the supreme law of the land. Professor Aceves reported that the United States is a signatory to the United Nation's Charter and the International Covenant on Civil and Political Rights, both of which require countries to respect the right to life and protect human dignity and integrity. He, as well as other panelists, suggested that the United States may be in violation of international norms and law because the United States is aware that Operation Gatekeeper will lead to threats to life and threats to the human dignity of individuals, but has failed to develop effective responses to the mounting death toll.

Also noted by the panelists is the inherent contradiction generated by immigration control policies that are at odds with America's dependency on, and demand for, low-skilled labor.

While there has been an increase in concentrated border enforcement (a strategy panelists believe has contributed to the escalating mortality of Mexican migrants seeking work in the United States), there has been tepid enforcement of workplace laws by the federal government. All the panelists noted the demand for low-wage, undocumented migrant labor by U.S. employers. And, they said, the vast majority of undocumented border jumpers are economic migrants fleeing the poverty and unemployment of their homeland, and not terrorists or criminals.^{3[3]} Many others are crossing to join family members.

To fully understand the civil rights implications of U.S. border control policy discussed by the panelists, after the briefing some of the Commissioners participated in a border tour given by the U.S. Border Patrol in San Ysidro, California. During the tour, an INS representative stated that U.S. immigration and enforcement policy is creating a push/pull dynamic that makes it that much harder for border patrol officers to do their job of policing the border. According to the INS representative, Border Patrol officers are expected to stop illegal migration, while at the same time economic demands entice migrants to elude detection and jump the border. Border Patrol agents reiterated to the Commissioners some of the points made by the panelists, stating that 90 to 95 percent of the border crossers are economic migrants.

The Commission is concerned about the apparent inconsistencies between U.S. border control initiatives that have attempted to push immigrants away at the border, often with deadly consequences, and this nation's recognized dependency on cheap labor, which continues to attract economic migrants. The border control initiatives fail to reflect the present-day reality of this nation's economic dependency on migrant labor. Consequently, reports that contradictory immigration policies may be leading to unnecessary migrant deaths in rural and remote desert passages have captured the Commission's attention. To reiterate a point driven home by the San Diego panelists: This nation can no longer continue to place "help wanted" signs for menial work that many Americans are unwilling to pursue for little pay, while at the same time imperiling the lives of the human capital (economic migrants) by funneling them through remote desert passages.

Conclusion

The Commission is deeply concerned by the reports of civilian deaths and violence along the U.S.-Mexico border. From requesting the Justice Department to investigate alleged vigilantism along the border, to highlighting the mortal effects of INS border initiatives and inherently contradictory government policy, the Commission continues in its tradition of examining issues

^{3[3]} At the briefing, some panelists offered suggestions as to how issues concerning economic migrants could be dealt with practically. The executive summary from the San Diego presentation states, "Dr. Cornelius stated that an appropriate and effective temporary worker program should contain the following three elements: (1) worker contracts must be renewable, (2) the program cannot be tailored specifically to the agricultural sector, because the demand is overwhelmingly in nonagricultural areas, and (3) the immigrant worker must be a free agent and cannot be bound to a specific employer. The long-term solution, according to Dr. Cornelius, however, lay in 'a greater and more creative commitment to micro enterprise development' in those countries where migrant workers originate. The U.S. and Mexico must engage in a serious commitment to such projects as micro enterprise development in order to create attractive alternatives to immigration."

affecting the civil well-being of migrants and immigrants with the hope of spurring appropriate investigative and legislative action to address the current tragedy at the nation's border.
