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

Tragedy Along the Arizona-Mexico Border:
Undocumented Immigrants Face the Desert

Executive Summary and Transcript of Briefing
Held in Tucson, August 23, 2002

The United States Commission on Civil Rights

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Tragedy Along the Arizona-Mexico Border:
Undocumented Immigrants Face the Desert

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

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Executive Summary

A record number of Mexican immigrants trying to illegally enter the United States died along the Arizona-Mexico border in 2002, most during the sweltering, drought-ridden summer months. As the death toll mounted, U.S. immigration policies came under fire and myriad solutions to the problem were proposed. Against this backdrop, the Arizona Advisory Committee to the U.S. Commission on Civil Rights held a briefing on August 23, 2002, in Tucson to gather information on border-crossing and other immigration issues, and in the process help spur actions to stem deaths in the desert.[1] Thirteen panelists spoke before the committee, including government officials, human rights advocates, and immigration lawyers.[2] Reflecting the urgency of the situation, many panelists focused on the reasons behind crossing deaths and ways to prevent them. Others discussed civil and human rights violations committed against migrants and U.S. policies that increasingly criminalize people who have immigrated for jobs or to join family members.

By far, the heaviest crossing activity in Arizona—and nearly all the deaths—occurred in the U.S. Border Patrol's Tucson sector, which runs 261 miles along the border from New Mexico to the Yuma County line. Panelists estimated that by August as many as 128 people had perished in the Arizona desert. Most died from heat exposure and dehydration. Paradoxically, while border death counts have skyrocketed, the numbers of crossers caught by the Border Patrol have plummeted. Panelist David Aguilar, chief of the Tucson sector, said apprehensions by his division were down 29 percent from the previous year.

Arizona's spike in border deaths bucks a nationwide decline. The Border Patrol chief blamed increased smuggling combined with a relentless drought. Others said the deaths were caused by the agency's buildup along population centers, which has pushed crossers to far-flung, waterless areas. Also noted was legislation, pre- and post-September 11, that makes it more difficult for people to migrate to the United States legally.

For migrants who survive the crossing, panelists still had concerns. Border Patrol agents, they said, have harassed and assaulted migrants (and border community residents). And growing anti-immigrant sentiment has led to a proliferation of vigilante groups that round up crossers, sometimes

[1] In 1997, the Arizona Advisory Committee issued a joint report with the California, New Mexico, and Texas Advisory Committees titled *Federal Immigration Law Enforcement in the Southwest: Civil Rights Impacts on Border Communities.*

[2] The list of panelists, in the order they appeared, is as follows: Henry A. Ramon, vice chairperson, Tohono O'odham Nation; Andy Silverman, professor of law, University of Arizona College of Law; Katie Hudak, programs coordinator, Border Links; Robin Hoover, president, Humane Borders; David Aguilar, chief, U.S. Border Patrol, Tucson sector; Bruce Pascoe, staff attorney, Asylum Program of Southern Arizona; Jennifer Allen and Chris Ford, co-directors, Southwest Alliance to Resist Militarism; Andrea Black, executive director, Florence Immigrant and Refugee Rights Project; John Fife, pastor, Southside Presbyterian Church, and Samaritan Patrol; Lynn Marcus, director, Immigration Law Clinic, James E. Rogers College of Law, University of Arizona; Kathryn Rodriguez, organizer, Coalicion de Derechos Humanos/Alianza Indigena Sin Fronteras; Eugenia Cabrera, deputy counsel general, Consulate of Mexico; and Erendira Castillo, attorney, Federal Public Defender's Office.

allegedly holding them at gunpoint until the Border Patrol arrives. Those arrested for illegal entry sit in INS detention facilities to await removal proceedings, for which they usually cannot afford legal representation.

Under a 1996 immigration law, legal and undocumented immigrants, many who have been in the United States for several years, are being detained by the INS and deported for what some say are minor criminal offenses. Some allege that asylum seekers fearing persecution, even death, in their homeland are being turned away at the border without the opportunity for a hearing. And antiterrorism legislation implemented after the September 11 attacks makes immigrants even more vulnerable to civil rights abuses.

Though panelists noted numerous concerns, they also proposed solutions. Many contended that the border, despite ever-tightening security, will never be sealed. As long as there is the lure of employment, tens of thousands will risk the dangerous crossing each year. To reduce crossing deaths, humanitarian groups have stepped in to provide migrants with water and medical care. But a long-term solution, panelists said, demands a policy shift that would allow more migrants to enter the United States legally through provisions such as work programs. They also called for the repeal of legislation that criminalizes undocumented immigrants who are already in the country.

The U.S. Border Patrol: A Mandate to Secure the Nation's Borders

The Border Patrol's strategy for controlling the nation's borders is "prevention through deterrence, that is, elevating the risk of apprehension to a level so high that prospective illegal entrants would consider it futile to attempt to enter the U.S. illegally."[3] In 1994 the Immigration and Naturalization Service (INS) launched its Southwest Border Strategy, a multiphase project aimed at disrupting illegal immigration through increased enforcement at popular entry points in Arizona, California, New Mexico, and Texas.[4] Operation Safeguard, the phase targeting Arizona, began in 1995 and pumped resources into the Tucson sector. According to the INS:

> Operation Safeguard redirected illegal border crossings away from urban areas near the Nogales port-of-entry to comparatively open areas that the Border Patrol could more effectively control. By moving potential crossers away from urban areas where they were able to disappear into local communities, the Border Patrol has taken advantage of new equipment and technology and increased staffing to make apprehensions.[5]

The Tucson sector covers most of the Arizona-Mexico border and cuts through diverse terrain. It encompasses national parkland and parts of the Connecticut-sized Tohono O'odham Indian reservation, which dips into Mexico and is a top crossing destination. More than 1,700 Border Patrol agents are

[3] INS Web site, "The National Border Patrol Strategy," <http://www.ins.usdoj.gov/graphics/lawenfor/bpatrol/strategy.htm#southwest>.

[4] While in San Diego for a Commission meeting in November 2002, members of the U.S. Commission on Civil Rights were briefed on Operation Gatekeeper, the phase targeting California that began in 1994. The concerns raised at that meeting about INS procedures echoed those raised at the Arizona Advisory Committee's briefing.

[5] INS Web site, "The National Border Patrol Strategy," <http://www.ins.usdoj.gov/graphics/lawenfor/bpatrol/strategy.htm#southwest>.

deployed throughout the sector from eight stations. Agents patrol the border by truck, aircraft, and on foot; maintain traffic checkpoints along highways leading from border areas; and conduct anti-smuggling investigations. The agency uses technology such as video monitors and electronic sensors placed at strategic locations to detect people or vehicles entering the country illegally, as well as low-tech strategies like fences and high-powered lights.

Breaking up people-smuggling rings has been a focus of the Tucson sector. The "vast majority" of illegal entrants, according to Chief Aguilar, have used smugglers, or guides, to get across the border. And, he acknowledged, that although smuggling has always been a problem, it has increased since Operation Safeguard. As migrants are confronting tougher enforcement on the border, they are paying smugglers who help them circumvent the new barriers, often via remote mountain and desert regions. "Smugglers are operating in some of the most dangerous areas known to man within the United States," he said. Describing the smugglers as callous and interested only in money, he noted that they often abandon migrants at the first sign of trouble. In 2001, 14 immigrants died of heat exposure and lack of water after smugglers left them stranded east of Yuma, in the rugged terrain of the Cabeza Prieta National Wildlife Refuge. Smuggling tactics coupled with the severe drought make for "a deadly combination," he said.

As the Border Patrol tightens enforcement in one area, the smugglers move to another part of the border. The effectiveness of the first phases of the Southwest Border Strategy—Operation Gatekeeper in San Diego and Operation Hold the Line in El Paso—funneled migrants across the then more vulnerable Arizona-Mexico border. "The funnel effect has been the smugglers' avoidance of law enforcement operations," Chief Aguilar said. Because smugglers adjust to enforcement efforts, he predicted that the number of border-crossing deaths will remain constant, but that the location of the deaths may change.

Efforts to seal the border heightened after the September 11 attacks in order to prevent terrorists from slipping into the country. Chief Aguilar said smugglers can bring in "a criminal element," but the biggest threat they pose is not to U.S. security but to the migrants who hired them. The "vast majority" of crossers are coming for jobs or to join family members, he added.

In fiscal 2002, the Border Patrol arrested 376,339 border crossers in Arizona.[6] In addition to apprehending illegal immigrants, the INS is also responsible for detaining and removing them from the country. Detainees awaiting removal or other disposition of their case are housed in the state's INS Service Processing Center in Florence and its two INS-contract facilities.

Advocacy Group Representatives and Immigration Experts: Another Perspective

Rising crossing deaths in Arizona, according to many panelists, are an outgrowth of Border Patrol policies and legislation restricting legal immigration. The agency's strategy of fortifying the busiest, largely urban, entry points has ended up redirecting immigrants to less guarded but dangerous stretches of border. Migrants who survive the passage face civil rights abuses and unjust treatment as they are arrested by Border Patrol agents and detained in INS facilities, panelists said. And increas-

[6] Hernán Rozemberg and Susan Carroll, "45% of Crossing Deaths Occur Along Arizona Border," *Arizona Republic* and *Tucson Citizen* (azcentral.com), Oct. 3, 2002.

ingly restrictive immigration policies have only encouraged people to try to enter the United States illegally.

By concentrating enforcement at popular entry points, the INS expected to deter prospective immigrants from trying to cross the border. Areas left less guarded were seen as too difficult for most people to cross. At the onset of Operation Safeguard, then U.S. Immigration Commissioner Doris Meissner said, "The assumption was that there were areas of the border that were so inhospitable that they would essentially be self-policing."[7] It is a strategy that panelists said backfired as migrants funneled to these remote areas often unprepared for the searing heat and lack of water—and one for which the Border Patrol has failed to take responsibility. "Despite the human tragedy that is being played out here in our own backyard, the Border Patrol is refusing to consider the possibility that the reason so many people are dying in these harsh desert environments is that the Border Patrol is routing people into these harsh desert environments," said Chris Ford of the Southwest Alliance to Resist Militarism (SWARM).

The Border Patrol's "militarization" of the border—"solid steel walls, stadium-style lighting that dots the landscape, 30-foot tall surveillance towers, underground surveillance towers, underground surveillance equipment, armed military troops"—has turned the region into a "war zone," according to Jennifer Allen of SWARM. "The civil rights and human and environmental impacts of this militarized condition have been tremendous. The deaths of immigrants crossing in remote and dangerous areas trying to avoid the most militarized areas is clearly the most egregious," she said. And with its warlike focus, the agency has disregarded the rights of border crossers, as well as people who live in border communities—citizens, permanent legal residents, and undocumented immigrants alike, she alleged.

For years, the Border Patrol has been plagued with allegations of civil and human rights abuses. In 1995, with complaints of police brutality mounting, the INS set up a Citizens Advisory Panel, which in its final report emphasized the need to reform the INS complaint process and improve training for Border Patrol agents. In response, the INS initiated an action plan promising to implement most of the panel's recommendations. Speakers at the forum, however, recounted recent, highly publicized incidents of agent brutality, one involving alleged kidnapping and sexual assault of a migrant. They also said agents harass people along the border by, for example, pulling over vehicles without grounds for reasonable suspicion. Since September 11, agents have become even rougher, according to Erendira Castillo, an attorney with the Federal Public Defender's Office for the District of Arizona:

> The effect of 9/11 in my experience over the last four years, comparing the last four years until now, is that I have seen an increased number of complaints regarding violence. There seems to be a distinct experience of my clients telling me the Border Patrol is more readily using physical force against them. I have seen more violence, more people having injuries.

The extent of misconduct committed by agents is impossible to gauge because most victims are quickly returned to Mexico and do not file complaints. "This is not information that any human rights organization or interfaith committee here would receive," she said.

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[7] Hernán Rozemberg and Susan Carroll, "45% of Crossing Deaths Occur Along Arizona Border," *Arizona Republic* and *Tucson Citizen* (azcentral.com), Oct. 3, 2002.

The Tucson-based Office of Inspector General, a division of the Department of Justice, is charged with investigating complaints against agents. But the office is severely understaffed with only seven officers responsible for monitoring more than 1,500 Border Patrol agents in the Tucson sector alone—plus thousands of other INS agents, Customs officials, and U.S. Marshals in Arizona and Nevada, according to Ms. Allen. "Clearly, the system that exists for monitoring the Border Patrol and ensuring fair, expeditious review of cases and complaints is not working," she said. Not only is the Office of Inspector General "overwhelmed" with complaints, but agents found guilty are "rarely, if ever," reprimanded for their actions, according to Ms. Castillo.[8]

A growing part of INS' work is the detention and removal of immigrants, and in this area panelists also had concerns, noting a trend toward the criminalization of noncitizens. With the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA),[9] Congress expanded the number of crimes that made people subject to removal and required that virtually any noncitizen subject to removal because of a criminal conviction be detained without bond. As a result of IIRIRA, the INS is required to detain a much larger number of people.[10] Many first-time border crossers caught by Border Patrol agents are returned to Mexico immediately. But others are detained in INS facilities, along with refugees, asylum seekers fearing persecution in their homelands, and legal permanent residents, to await removal or other disposition of their case. In the past nine years, the number of people held in INS detention facilities has tripled; and of the nation's detainees, 10 percent—about 1,900 on any given day—are housed in Arizona, according to Andrea Black, executive director of the Florence Immigrant and Refugee Rights Project.

Detainees are held in more than 900 facilities across the country, only 17 of which are INS operated, Ms. Black said. The remaining are privately run contract facilities and local and county jails, where detainees are mixed with people serving time for criminal convictions. In Arizona's facilities, she said, "overall, conditions are fairly good"; in fact, the INS Service Processing Center in Florence has served as a model for other facilities. At the state's new contract facility, however, there have been "a lot of complaints about harsh treatment and disrespectful interactions." Staff members need education on the differences between a detained immigrant and an incarcerated criminal, she said.

The Florence Project provides free legal representation in court to indigent refugees, asylum seekers, and other legal and undocumented immigrants in INS removal proceedings. Last year, it served 9,000 people. The U.S. government, Ms. Black noted, provides no funding for the defense of indigent immigrants in removal cases and, consequently, 80 percent go unrepresented. Under the 1996 immigration law, immigrants face deportation for minor offenses, she said. Describing the organization's diverse caseload, she said:

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[8] The Arizona Advisory Committee's 1997 report, *Federal Immigration Law Enforcement in the Southwest: Civil Rights Impacts on Border Communities,* documented "widespread dissatisfaction" with the INS complaint process. Among the report's findings were that complaint mechanisms were inconsistent, confusing, and often inaccessible; that no standard complaint form existed; that potential complainants often feared reprisals; that there was a widespread lack of confidence in the thoroughness, aggressiveness, and impartiality of complaint investigations; and that a perception existed that officers were rarely disciplined for abusive behavior.

[9] Pub. L. No. 104-208, 110 Stat. 3009–546 to 3009–724 (codified as amended in scattered sections of 8 U.S.C. (Supp. 1997)).

[10] INS Web site, "INS Detention Facilities," <http://www.ins.usdoj.gov/graphics/fieldoffices/detention/insdetention.htm>.

> We work with undocumented immigrants who have been here for many years with deep family and community ties. We also work with legal permanent residents. We've had clients who've been here since they were 3 or 6 months old who are now facing deportation in their 20s, 30s, 40s, or 50s . . . because of a criminal conviction.

The organization has also represented children who have entered the United States alone fleeing neglect or abuse at home or just trying to join family members. At anytime, there are usually 80 or more children detained by the INS in Arizona, Ms. Black said.

Increasingly, legal permanent residents are being deported under immigration laws that many panelists said are at odds with the nation's values. Lynn Marcus, director of the Immigration Law Clinic at the University of Arizona, concluded:

> We're left with these laws that don't make any sense in the way the people live their lives, so long-term legal permanent residents are being deported with no regard to their family ties, with no regard to all of the things that ought to matter to us as a community, such as the children and what kind of parents these people are.

Often those deported later reenter the United States illegally, a crime that can fetch 20 years in federal prison.

One provision in IIRIRA called "expedited removal" has been particularly controversial. The provision gives immigration officers at official ports-of-entry (border checkpoints, airports, etc.) the authority to screen out and return people to their home countries who arrive without valid entry documents. At the screening stage, there is no right to counsel or right to a hearing before an immigration judge. Panelists were especially concerned that expedited removal fails to protect the rights of those fleeing persecution, who pre-IIRIRA had an automatic right to a hearing. According to the INS, any person who asserts a fear of persecution or torture or an intention to seek asylum during the expedited removal process is referred to an asylum officer for an interview to determine if the person has a "credible fear of persecution." Those found to have a credible fear are then referred for a full hearing before an immigration judge.[11] If individuals can make it past the initial inspector to the credible fear interview, Ms. Black opined that "overall the process goes very well." But "unless they can explain why they're afraid to go home within that five-minute interview with the inspector, they're going back." Language and cultural barriers can make articulation difficult. Studies have shown that those able to articulate their claims and remain in the United States have been overwhelmingly male, educated, and from economically advanced countries, she said.

Bruce Pascoe, director of the Asylum Program of Southern Arizona, a nonprofit, legal aid organization for refugees who seek political asylum, said the number of asylum seekers trying to enter the United States through the Arizona border has fallen sharply. The organization's client base has shifted from being primarily Central American to being almost exclusively composed of Africans entering through airports in New York and Los Angeles with a final destination of Tucson. "What we don't know," he said, "is has persecution suddenly diminished so substantially in Central and Latin America that there are no longer claims, or is it that somehow they're getting stopped at the border?"

[11] INS Web site, "Expedited Removal," <www.ins.usdoj.gov/graphics/lawenfor/bmgmt/inspect/exped.htm>. *See* 8 U.S.C. § 1225 (Supp. 1997); U.S.C. § 1225(b)(1)(A)(i) (Supp. 1997); U.S.C. § 1225(b)(1)(A)(ii) (Supp. 1997).

Anecdotal evidence suggests that asylum seekers at the border are being sent back to their countries of origin, but there is no concrete proof supporting this allegation, he said. He also speculated that because of the possibility of expedited removal refugees are circumventing ports-of-entry.

Although IIRIRA made sweeping changes to U.S. immigration policy, immigration reform accelerated after the September 11 attacks as people saw a link between immigration policies and vulnerability to future terrorism. While acknowledging the need to tighten certain entry paths, Andy Silverman, a law professor at the University of Arizona, said the danger exists that immigrants will become "scapegoats" in the war on terrorism. As the legislation is implemented that revamps the INS, enhances border security, and gives the government expanded power to detain noncitizens indefinitely for suspected terrorist activity, civil rights implications need to be monitored closely, he said.

The Homeland Security Act transfers INS immigration enforcement and service functions to the new Department of Homeland Security.[12] Some are concerned that by housing the INS in a department focused on fighting terrorism, the agency's mandate to administer immigration benefits, including citizenship, asylum, lawful permanent residency, employment authorization, and refugee status, will become less of a priority. Mr. Silverman said of the then-pending legislation: "I'm fearful of what it may mean to have the INS in a department whose primary mission is security and prevention of terrorist activities. What is that saying about immigration?"

Other legislation promises to heighten security along the border, such as the recently passed Enhanced Border Security and Visa Entry Reform Act of 2002,[13] which authorizes $150 million to the INS for technology improvements related to border security. (Among other provisions, it increases pay and training of Border Patrol agents, a move some hope will reduce agent misconduct.).

Tohono O'odham Nation: Ground Zero

The Border Patrol's increased vigilance is felt acutely by those living on the Tohono O'odham Nation, which skirts along 75 miles of the Arizona border and stretches south into Mexico. The reservation has become the top entry point in the state for illegal immigrants, and nearly two-thirds of Arizona's crossing fatalities in 2002 occurred within its boundaries.[14] Hundreds of Border Patrol agents scour the reservation in all-terrain vehicles and helicopters, searching for the 1,500 immigrants who slip across the border each day. In its quest to stem illegal immigration, the Border Patrol has turned the reservation into "an occupied war zone," alleged Henry Ramon, the tribe's vice chairman.

The tribe has 24,000 enrolled members; about 1,400 live on the Mexican side. In 1937, the United States recognized the Tohono O'odham as a sovereign nation, and throughout the years members in both countries were allowed to cross the border freely to work, attend schools and religious ceremonies, and visit relatives. All that changed in the mid-1990s, when mushrooming illegal immigration prompted the Border Patrol to tighten security. Since then, Border Patrol agents have regularly stopped and asked members for proof of U.S. citizenship, which many cannot produce. Mr. Ramon

[12] Homeland Security Act of 2002, Pub. L. No. 107-296, Title IV, Subtitle E, § 451, 116 Stat. 2195 (codified at 6 U.S.C.S. § 1712 (2003)).

[13] Pub. L. No. 107-173, Title I, § 102, 116 Stat. 546 (codified at 8 U.S.C.S. § 1712 (2003)).

[14] Hernán Rozemberg and Susan Carroll, "45% of Crossing Deaths Occur Along Arizona Border," *Arizona Republic* and *Tucson Citizen* (azcentral.com), Oct. 3, 2002.

estimated that 7,000 members who were born in the United States lack birth certificates because they were born at home and never registered with the state. "Our people are no longer free to travel. . . . We are told we must obtain immigration permits to enter our own lands," he said.

Characterizing the Border Patrol's treatment of tribal members as "harassment," Mr. Ramon said members without papers are afraid to venture out for fear of being deported to Mexico. Agents trail vehicles and shine lights in drivers' faces, causing some to run off the road, he said. In response to these allegations, Chief Aguilar said agents are "very much" aware that tribal members often lack documentation and noted that agents assigned to the reservation go through cultural sensitivity training led by tribal elders. Complaints of harassment, he said, can be reported directly to the Border Patrol, the Tucson Office of Inspector General, or to the tribe's police department. A recent meeting between the Border Patrol and tribal officials, Chief Aguilar said, established a process for "ongoing dialogue" between the two groups about complaints.

A solution to some of the tribe's problems may be on the horizon. Pending before Congress is the Tohono O'odham Citizenship Act of 2001, H.R. 2348, which would make all enrolled tribal members U.S. citizens.[15] A tribal membership card would serve as proof of citizenship.

Temporary Relief in the Desert

As reports of migrant deaths along the border have spread, government and private, nonprofit groups have mobilized to intervene. In 1998 the Tucson sector, spurred by the growing number of rescue situations and lack of emergency resources in its remote desert areas, initiated the creation of a Border Patrol Search, Trauma, and Rescue (BorStar) Team. Staffed with expert trackers, air assets, canines, and all-terrain vehicles, BorStar Teams have performed more than 1,000 rescue missions along the Southwest border as of September 2002.[16] Private groups have also sprung up to provide distressed migrants with water, food, and medical care. Representatives from two humanitarian groups, Humane Borders and Samaritan Patrol, spoke at the forum about their activities, acknowledging they were temporary fixes to a problem that demands policy and legislative changes.

Humane Borders, whose members include churches, human rights organizations, corporate sponsors, and legal advocacy groups, was formed in 2000. Its mission statement, in part, reads, "Humane Borders, motivated by faith, will work to create a just and humane border environment. Members will respond with humanitarian assistance to those who are risking their lives and safety crossing the United States border with Mexico." In what it views as an "interim moral response to death in the desert," Humane Borders has set up tanks of water marked with 30-foot flagpoles throughout the Arizona desert. By the time of the forum, it had placed nearly 30 water stations in strategic locations on federal, county, and private property. Collectively, the stations dispense between 400 and 500 gallons of water a week, according to the group's founder and president, Robin Hoover. Humane Borders receives permission from the Department of the Interior to place stations on federal parkland and notifies the Border Patrol of locations; stations are placed on private property only when requested by the landowner. "Law enforcement has been incredibly cooperative" of the group's activities, Mr. Hoover said, noting that Pima County is one of many funding sources.

[15] H.R. 2348, 107th Cong. (1st Sess. 2001).

[16] INS Web site, "Search and Rescue Operations," <http://www.ins.gov/graphics/lawenfor/bpatrol/borstar/search.htm>.

Humane Borders, however, has not been permitted to operate water stations where some argue they are most needed: on the Tohono O'odham Nation. The tribe's districts voted against the proposal. Henry Ramon, Tohono O'odham vice chairman, said the tribe has a tradition of helping people in need; in 2001, for example, it spent more than $500,000 on emergency health care for undocumented immigrants. But water stations, he contended, encourage immigration through the reservation's dangerous terrain. And, he added, "With the number of immigrants coming to our nation, 1,500 to 2,000 a day, there is no way that amount of water or personnel would prevent people from getting dehydrated."

The Samaritan Patrol has gone a step beyond the water-station approach. Established in 2001 by 11 Tucson area faith communities of various denominations, the volunteer group patrols remote desert areas in search of stranded border crossers and provides them with water, food, and, if needed, medical care. According to Rev. John Fife of the Southside Presbyterian Church, the group was founded on the principle that it is the "right and responsibility" of civil organizations to aid victims of human rights violations. The patrols, who roam the desert in all-terrain vehicles, always include a physician, nurse, or emergency medical technician, and all members have completed first-aid training by the American Red Cross, he said. When migrants in dire distress are found, the group transports them to a local hospital or calls BorStar or another Border Patrol unit for helicopter service. Migrants in non-life-threatening condition are sometimes taken to churches to recuperate for eight to 10 hours. "And at the end of that time," Rev. Fife said, "they are given the option of walking out the door of the church, if they so choose, or if they wish to return to Mexico we transport them or call the Border Patrol to return them to Mexico."

A Countermovement: Border Vigilantes

While some groups have mobilized to provide aid to border crossers, others have formed to stop what they say is an invasion that the Border Patrol has failed to quell. Clad in military-like garb and often heavily armed, these groups of private citizens patrol the Arizona border, rounding up migrants and turning them over to the Border Patrol. "In the last two years," one vigilante group has "essentially held immigrants hostage and at gunpoint waiting for Border Patrol agents to pick them up," said Jennifer Allen of SWARM.

To the dismay of some, another group called American Border Patrol is headed by the retired chief of the U.S. Border Patrol's Tucson sector, Ron Sanders. Rev. John Fife of Samaritan Patrol said:

> American Border Patrol has direct links to white supremacist organizations on their Web site. For a former chief of Border Patrol Tucson sector to be associated with that sort of thing, that sort of organization, I think is a commentary on just how difficult it was to relate to previous administrations of the Border Patrol here.

Concerns were raised at the forum that Mr. Sanders might have access to confidential Border Patrol information. The current Tucson sector chief, David Aguilar, assured that Mr. Sanders, as a private citizen, did not have access to Border Patrol files, and that the agency would take "appropriate actions" if it found signs that agents were leaking information.

Long-Term Solutions

Border-crossing deaths will continue until migrants have more opportunities to enter the United States legally, according to many panelists. And until U.S. immigration policy is revamped, longtime legal residents will be deported for petty criminal offenses, undocumented immigrants will remain vulnerable to exploitation by unscrupulous employers, and Native Americans will be treated like "illegal aliens" on their own lands.

Both Mexico and the United States could benefit from a more porous border, said Eugenia Cabrera, the deputy counsel general for the Consulate of Mexico. "There is a need," she said, "to establish a regime that ensures a safe, legal, and orderly movement of people that cross our common border. This could be a perfect opportunity and benefit for both nations, rather than the source of conflict and tension that it is today." Describing immigration reform as "a win-win" proposal for both countries, she said:

> [A]mong other things, Mexicans in the U.S.A. will be able to live, work legally, and participate more fully into their local communities. Future migrants will be able to cross borders safely through conventional ports of entry, and their labor would be offered with the certainty that their civil rights would have full protection in the United States. Mexican and U.S. authorities will be able to work together to target the criminal smugglers who exploit migrants to danger and foster lawlessness along the border. U.S. employers will be able to hire migrants without fear of breaking the law or being undercut by unscrupulous competitors. The Mexican economy will benefit from both increased remittances and the targets of investment so that in time migration pressures will gradually be reduced.

Recommendations made by panelists at the forum include the following:

Demilitarize the border. A policy that funnels people into treacherous desert regions where they face mortal danger must be reevaluated. Not only has the Border Patrol buildup contributed to rising crossing deaths, some panelists said, it has proven largely ineffective in reducing unauthorized migration. Since the 1990s, the United States has poured billions of dollars into efforts to guard the border with Mexico. A 2002 study by the nonpartisan Public Policy Institute of California found that the total number of unauthorized immigrants living in the United States increased substantially in the mid- to late-1990s.[17]

Establish a guest-worker program. U.S. immigration policies toward Mexican migration seem to contradict its economic policies that have increasingly intertwined the two nations. "If NAFTA allowed the free flow of goods and capital on the free market, then it stands to reason that labor should be allowed free flow as well," said Katie Hudak, programs coordinator for Border Links. Because so much illegal immigration is fueled by the desire for employment, establishing a guest-worker program is a logical way to "regularize" immigration—and prevent border-crossing deaths. A guest-worker program would grant temporary visas to workers that permit the bearer to enter, live, and

[17] Public Policy Institute of California (PPIC) Web site, "Costly Border Build-Up Has Not Reduced Number of Unauthorized Immigrants in United States," press release, July 17, 2002, <http://www.ppic.org/publications/PPIC162/ppic162 press.html>. PPIC is an independent, nonpartisan, nonprofit research institution.

work in the United States for a specified amount of time. Although many variations of guest-worker programs have been proposed, several panelists said any program must issue work visas directly to migrants, not to specific employers, to protect migrants from exploitative employers, and also allow the workers to join unions.

Both the Bush and Fox administrations have expressed support for guest-worker programs.

Increase the number of permanent resident visas available to Mexicans. The quota for permanent resident visas available to Mexicans (and Canadians) is no higher than those for other countries—20,000. Maintaining such low quotas for nations to which the United States is so closely bound by history, geography, and treaty (e.g., NAFTA) is illogical, yielding excessively long waiting times for many legally qualified immigrants.[18] Lynn Marcus, director of the Immigration Law Clinic at the University of Arizona, recommended increasing the number of permanent resident visas available to Mexicans to 60,000.[19]

Legalize undocumented immigrants already in the United States. Long-term, law-abiding, undocumented residents should have the opportunity to legalize their status, several panelists said. "U.S. immigration law has always recognized that people who have been here for a long time and have good character at some point need to be able to legalize their status and not be subject to exploitation and deportation," Ms. Marcus said. Panelists recommended updating the immigration law known as the "Registry" date, which currently allows only people who have been in the country since before 1972 to apply for legal status.

Modify immigration laws that deport immigrants for minor criminal offenses. The 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) expanded the number of crimes that subject people to deportation. Many contend that the 1996 changes to the deportation laws went too far, claiming thousands of individuals and families as unintended victims. Legal permanent residents are being imposed a punishment (deportation) that bears no proportion to the severity of their offense. Legislation remedying this issue stalled after the September 11 attacks and should be reconsidered, panelists said.

Encourage cooperation with Mexico. Mexico shares responsibility for trying to prevent crossing deaths. The Mexican government has taken a three-pronged approach to deter illegal emigration, according to Eugenia Cabrera of the Consulate of Mexico. First, because most residents are leaving to find work, the Fox administration has invested in economic development to bring in jobs, particularly in regions with high emigration. Second, the Consulate of Mexico broadcasts advertisements on radio and television warning of the dangers associated with hiring smugglers and crossing the border without proper documents. Third, the government has worked to break up smuggling rings. In the past year, Ms. Cabrera said, about 200 smugglers had been incarcerated and recently four big rings that operated along the Arizona border were "thoroughly dismantled."

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[18] Lynn Marcus, written submission to the Arizona Advisory Committee, "Suggestions for Immigration Law Reforms by a Southern Arizona Working Group," Aug. 25, 2002, citing Douglas S. Massey, "March of Folly: Immigration Policy After NAFTA," *American Prospect*, March/April 1998, p. 33.

[19] Lynn Marcus, written submission to the Arizona Advisory Committee, Aug. 25, 2002.

Protect the rights of asylum seekers. The expedited removal provision of IIRIRA should not apply to asylum seekers. Those who express a fear of returning to their home country or a desire to apply for asylum should be granted interviews with a political asylum officer, and if their claims are denied they should be allowed to have a hearing before an immigration judge. During the process, asylum seekers must have easier access to lawyers.[20]

Recognize U.S. citizenship of the Tohono O'odham. Members of a federally recognized American Indian sovereign should not be treated as "illegal aliens" by the Border Patrol. Panelists urged the passage of the Tohono O'odham Citizenship Act of 2001, H.R. 2348, which would make all enrolled members—those living in Arizona and south of the border—U.S. citizens.

[20] Lynn Marcus, written submission to the Arizona Advisory Committee, Aug. 25, 2002. These are a few of many recommendations regarding political asylum seekers in Ms. Marcus' written submission.

Proceedings

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

Today the Arizona State Advisory Committee will conduct a fact-finding briefing to collect information on a situation concerning Mexican nationals attempting to cross into Southern Arizona from Mexico. We have invited representatives from both public agencies and private organizations to appear before the State Advisory Committee and address the situation along the U.S.-Mexico border.

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

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

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

MR. MATUS. Jose Matus, here from Tucson.

MR. RODRIGUEZ. Jesse Rodriguez from Flagstaff representing Northern Arizona.

MS. GARCIA. Isabel Garcia from Tucson.

MR. GATTONE. Paul Gattone from Tucson.

DR. WEBB-VIGNERY. June Webb-Vignery, Tucson.

MS. KASCH. Elaine Kasch from Flagstaff.

MS. LEE. Lorraine Lee, Tucson.

DR. MEDINA. Catherine Medina from Flagstaff.

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

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

DR. WEBB-VIGNERY. And at this time we have an itinerary today, and our first person to discuss these areas with the Advisory Committee is Henry A. Ramon, vice chairperson of the Tohono O'odham Nation.

Henry A. Ramon, Vice Chairperson, Tohono O'odham Nation

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

I, as a member of the Tohono O'odham, a grassroots member, have experienced emotions, pain, and feelings of frustration, myself and my people.

I appear before you on behalf of the Tohono O'odham Nation to ask for your help. We Tohono O'odham have lived in our sacred desert since the beginning of time. When the first immigrants came to the desert, Americans, we welcomed them, gave them water and food, and taught them how to survive on our sacred desert. This is our tradition. We have always welcomed strangers as our guests.

Tohono O'odham people welcome new immigrants to our land. Immigrants are forced by unjust border policy and current immigration laws to risk their lives crossing our land in search of work to feed their families. Many—too many have died. Men, women, and children. Last year we spent in excess of one-half million dollars carrying for them in our hospitals, but still too many died. Today we spend millions on search and rescue activities.

The same policies and laws that bring deaths to our people brings great suffering to our O'odham people. Our land is an occupied war zone. Our people are no longer free to travel. Our people are stopped and asked for documents, documents they cannot produce. We are told we must obtain immigration permits to enter our own lands. Our veterans or elders, our widows, cannot receive the benefits they have earned working all their lives. This is not right. As Tohono O'odham people we were here first and today we are asked to prove our right to be here. This is wrong. Just plain wrong.

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

On behalf of the Tohono O'odham Nation, I ask that the Advisory Committee to the United States Civil Rights Commission, by formal resolution, request the United States Civil Rights Commission to pass a formal resolution calling on Congress to pass H.R. 2348 during the 107th session, and President George W. Bush to sign our bill. It is the right thing to do. It is just not fair that our people, especially our elders, continue to suffer.

As I said, there are many things that go on every day and we were not present at the site that those things are happening. It's not visible to us of what we are trying to say, but my people from time immemorial, and one of our traditions is to honor our word of mouth. We do not document things on paper. Tohono O'odham people are learning how to do that, but we are penalized because of our way of life. Traditionally we were born in our homes, so we didn't register with the state. And now we're paying the price because our elderlies cannot produce documents, birth certificate, to become United States citizens.

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

It is said that sometimes we have to experience things that shouldn't happen. It's common sense when we say that every individual has rights and deserve to have the same right as anybody, that we're all equal. We're all one family in this universe and that's the way it should be. When a problem arises we make it right, and today I'm asking you to make it right. It's so simple to us.

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

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

It's very important that you really think about the issue that I'm bringing out now because everybody is looking at the United States as a land of freedom and opportunity, one we together must make it be a reality. Thank you for listening. Are there any questions?

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

MR. OSBORN. Madam Chairman, Jones Osborn from Yuma. Vice Chairman Ramon, do the territorial boundaries of the Tohono O'odham Nation extend into Mexico or are they confined to the United States?

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

MR. OSBORN. It extends into Mexico?

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

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

MR. RAMON. And also the Tohono O'odham members on the other side, because they are enrolled members. What happened back in 1937 during the Reorganization Act, federal government came into the Tohono O'odham Nation—came to the Tohono O'odham Nation and enumerated the Tohono O'odham Nation in order to recognize them as a sovereign nation.

They were Tohono O'odham no matter if they lived on the other side, and then the constitution developed, the Tohono O'odham Nation Constitution, and it spells out who will be members of the Tohono O'odham. And in the constitution it states that they developed a base roll out of that enumeration. They call it Tohono O'odham base roll. And on the base roll are the list of the Tohono O'odham back in '37, and in the constitution it states that the offspring of the 1937 base roll automatically become members of the Tohono O'odham Nation tribe. And anybody that wasn't enumerated but is a Tohono O'odham member at the time that the enumeration was going on, they can be adopted by the Tohono O'odham, but it has to be one-half O'odham, and also it sets up a process.

We have an enrollment officer to do the research and get the documentation, the documentation between the offspring of the 1937 base roll that is presented to—we have 22 legislative members, and it goes before the council and it has to be a unanimous vote before it is accepted. And then it goes to the secretary of interior, where the secretary of interior has to verify and approve and certify the documents.

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

MR. OSBORN. Madam Chairman, Jones Osborn again. Would you happen to have with you a copy of House Resolution 2348?

MR. RAMON. Not—but I can have.

MR. OSBORN. You can furnish one?

MR. RAMON. Yes.

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

MR. GATTONE. Paul Gattone from Tucson.

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

I'm assuming that the U.S. Border Patrol operates on the tribe's land. And I wondered if maybe you could give us some idea about some of the problems or concerns you might have or some information about the interaction between tribal members and representatives of the U.S. Border Patrol.

MR. RAMON. We call it harassment. Begin to increase again a couple months because of new people coming, you know, the new transfer of assignment to our nation where they are harassing our people, intimidating them and tailgating them in the vehicles, shining bright lights in their faces and driving beside them, looking into their cars or trucks. And that's very dangerous because several—I know we had a public hearing and a lady was saying that she ran off the road because of the bright light that was shining. And it could have been a tragedy, but she didn't get hurt.

And also even though we ask that they produce documents—the birth certificate—there's no way that they can do it, so our people are afraid to go out in the open to gather native plants or fruit because they're warned if they stop you and you still don't have it, we will deport you. And the people that are born here on the reservation would be at a loss if they're deported to the other side. They wouldn't know where to go, so it's very discouraging. So most of our people that have no—it's mostly the elders that don't have birth certificates, so they hide from the Border Patrol but—

MR. GATTONE. I had a follow-up question. Obviously the Tohono O'odham Nation is a sovereign entity. Does the Border Patrol seek

ereign entity. Does the Border Patrol seek any sort of agreement or permission in order to operate on your land?

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

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

DR. WEBB-VIGNERY. Chair recognizes Isabel Garcia.

MS. GARCIA. Isabel Garcia. Welcome, Mr. Ramon, I'm happy to have you here and I've been in Washington, D.C., lobbying for H.R. 2348. Isn't it true that a 17-year-old Tohono O'odham was run down by a Border Patrol agent several months ago?

MR. RAMON. That's correct.

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

MR. RAMON. Yes.

MS. GARCIA. And when you talk about the 1937 enrollment, that was a count, basically, by the U.S. government?

MR. RAMON. Right.

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

MR. RAMON. Yeah, in order to recognize us as a sovereign nation.

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

MR. RAMON. Yes.

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

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

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

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

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

MR. RAMON. 1,400.

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

MR. RAMON. 7,000 members.

MS. GARCIA. Thank you very much.

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

MR. RAMON. Thank you everybody.

DR. WEBB-VIGNERY. Before we continue to the next person, I'd like to recognize Landis Davis and Lynda Leatherman who are here in attendance today from Congressman Pastor's office. And the next person to speak will be Andrew Silverman from the College of Law at the University of Arizona.

Andy Silverman, Professor of Law, University of Arizona College of Law

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

Today I would like to talk with you about civil rights concerns that I have since 9/11, and

these are concerns that affect noncitizens and noncitizens coming across the Arizona-Mexico border.

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

I would like to talk about other government policies which may also have a potential human and civil rights effect on people who are crossing the border. That is as I indicated what is happening in Congress since 9/11. I feel it's an issue which the Civil Rights Commission should monitor and carefully scrutinize to make sure it does not have an overly adverse impact on people's rights.

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

The first of course was the passage of the USA Patriot Act, a complicated and lengthy statute which was enacted really a mere six weeks after the 9/11 incident. For example, under one of its provisions indefinite detention of noncitizens is authorized upon the certification of the attorney general that he or she has reasonable grounds to believe the noncitizen endangers national security. I think it's important to monitor this situation and see who is being detained, what really is the basis of the conclusion that the person endangers national security. Loss of liberty is clearly a civil rights issue.

Other examples are on May 14 of this year President Bush signed into law the Enhanced Border Security and Visa Entry Reform Act. This is an act which placed further restrictions on the admission of foreign students and exchange visitors which is the only part of the act which got any real media attention. But there was more to the act than that. Some of the other provisions, for example, authorized the appropriation of $150 million to the INS for technology improvements related to border security, and even gives the attorney general authority to increase land border fees to offset technology costs. This increased technology can lead to clearly greater militarization of the border, which I know has been a concern of the Commission and I know other people today will be talking about it, but it's clearly something that should be monitored and scrutinized.

The act also requires that the secretary of state establish a Terrorist Lookout Committee at each U.S. mission abroad. What does this mean? What people are going to be captured that this committee will conclude might be terrorists? The act also tightens passenger manifest requirements by requiring all commercial vessels and aircraft from outside the U.S. to provide extensive information on each passenger and crew member.

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

The act also authorizes the secretary of state and the INS commissioner to jointly conduct a study of alternative approaches for encouraging or even requiring Canada and Mexico to develop electronic data systems to facilitate access to each country's law enforcement and intelligence information. So as a result of this kind of information that we're going to be getting from foreign countries, again what effect is it going to have for people coming to the United States for maybe even very legal legitimate reasons?

I'm sure all these measures were justified in Congress as being needed for security and terrorist reasons, including even the enhanced militarization of the border, but we need to make sure what civil rights impacts such measures have.

Currently pending is a bill to create a Department of Homeland Security, and aspects of those prepared bills is to move in whole or in part the INS to the new department. The various proposals are, one, the administration proposal which would move the entire INS to the Department of Homeland Security, and it would be

placed in the department's Border and Transportation Security Division. Again, what does this say about the INS when it's placed in such division?

On July 26 the House proposal passed the entire House. The House bill would transfer the INS' enforcement function to the new department and leave the service function within the Department of Justice. The Senate version introduced by Senator Lieberman, now before the committee in which he chairs, the Senate Governmental Affairs Committee, would place the entire INS into the Department of Homeland Security creating a separate division for immigration called the Directorate of Immigration Affairs, and two bureaus within the directorate: the Bureau of Immigration Services and Adjudications and the Bureau of Enforcement and Border Affairs.

I'm fearful of what it may mean to have the INS in a department whose primary mission is security and prevention of terrorist activities. What is that saying about immigration? What is that saying about noncitizens? That is placing all noncitizens who are coming to the United States under a department, as I said, whose main responsibility is not going to be looking really to the service and to assisting people to enter this country legally and even dealing in making a way that we would like it to be dealt, that is with people who come here who are undocumented into an agency whose main mission is to protect us from terrorism.

There are many bills in addition to the bill to create the Department of Homeland Security that are now pending in Congress. Some of them go to the restructuring of the INS, which everyone concludes is needed. But there are many bills, again, going to dealing with the security issue but seem to be using immigration and immigrants as kind of the scapegoat for that. Let me just give you a final example of a bill that has been introduced into the House in June of this year by the chair of the House Judiciary Committee Subcommittee of Immigration. The bill is called Securing America's Future Through Enforcement Reform. Congress, I think, is more interested in acronyms than they are in the substance of bills these days. The acronym here is SAFER.

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

Here are some of the provisions of the Securing America's Future Through Enforcement Reform Act. One, is "additional" means to secure the border. Again, can lead to more militarization. Again, increasing or enhancing the screening of noncitizens seeking admission. Provisions about tracking noncitizens in the United States. A provision to enhance enforcement of the Immigration Act in the interior of the United States. Additional provisions to remove noncitizen terrorist criminal and human rights violators, and I can tell you from someone who teaches this, we have provisions upon provisions upon provisions already dealing with this issue. A provision to eliminate—and here I quote—quoting from the act—excessive review and dilatory and abusive tactics by noncitizens in removal proceedings.

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

Do you know who now has preferences—family preferences—under the immigration laws? And are they what we would consider extended family? The people who now have preferences under our immigration laws are spouses, children, parents, brothers and sisters of U.S. citizens, and spouses and children of legal permanent residents. Is that extended families? Or is that what we probably would consider immediate families?

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

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

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

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

Thank you very much.

DR. WEBB-VIGNERY. Thank you. Are there questions?

MR. OSBORN. Jones Osborn from Yuma.

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

MR. SILVERMAN. You're talking about—you're not talking about the people in Guantánamo? You're talking about the people who were on the—

MR. OSBORN. On the airplanes.

MR. SILVERMAN. On the airplanes?

MR. OSBORN. Yes.

MR. SILVERMAN. I actually don't know what the status of each of these people were that were on those planes. I don't know if any of them were technically immigrants. Immigrants in a technical way are permanent residents of this country, and I don't think any of them, from what at least I've learned, are permanent residents. Clearly some of them came in for legal reasons as students. Some of them may have been here for—or entered illegally.

There's no doubt that we need to tighten up certain things, and the student category may be one of them that we need to do some tightening up. There's no doubt that we have not sufficiently monitored foreign students in this country in the sense that students have come here, have either not gone to school, not maintained full student status as required by the law. It's been a problem long before 9/11.

The Immigration Service has not really had the administrative wherewithal or probably the structure to sufficiently monitor that, and there have been bills that have been passed since 9/11 to try to deal with that, and I think that will be dealt with. Whether that will stop people from coming to this country who we may consider presenting a danger may not really. There may not be anything we ever really can do, unfortunately, to really make ourselves completely safe.

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

MR. SILVERMAN. I think that some of the things that are being discussed in Congress are probably things that are necessary—clearly reorganization of the INS, clearly maybe the tightening up of the student categories in some respects, but I think this overreaction is misdirected, yes.

DR. WEBB-VIGNERY. Chair recognizes Isabel Garcia.

MS. GARCIA. Isabel Garcia here from Tucson.

Professor Silverman, who do you believe generally is, in terms of region, in terms of racial or ethnic category will be most impacted by the majority of the legislation that you have enumerated here, particularly I guess the enforcement?

MR. SILVERMAN. Again, I think that's in some ways hard to predict at this time. I guess what first comes to mind are looking at the ethnicity of those who were involved in the 9/11 incident with those people who have the same ethnic background as those you would think, and I'm sure you would have, would be the population that this enforcement effort would be particularly directed against. But I think what we find is that we're not always good in sort of discriminating in the sense between one group and another, and when we create these things, this net, this—you know, this net goes over foreign-

ers in general. And I think that's the fear is that it's not that—

First of all, I think there's a concern and should be a concern about racial profiling and all of that and what that may mean. But secondly, what I think we find out is that anyone who is coming to this country, and particularly any foreign person, foreign-looking person who is coming to this country versus those that will blend better into the majority society of the United States, that is those from Canada, Europe, and so on, but people from really the rest of the world I'm afraid are going to find themselves in great difficulties with all of these measures that we're putting in place. And we really cannot ensure that it's going to be directed to maybe those particular folks that we may have—we may have evidence of what their intentions may be in entering the country.

So I think Mexicans are going to be affected. I think along this border—if we militarize this border, we put more technology on this border, it's not just going to affect people from certain countries. And let us say, as we know, it's not just Mexicans and Central Americans that come over the Arizona-Mexican border; it's people from all over the word that now come over that border, both legally and illegally. And once we put this enforcement in effect, once we put now the indefinite detention into effect, I just don't think we're going to be sufficiently able to discriminate necessarily on the basis of nationality, the basis sometimes of even why they may be coming here.

MS. GARCIA. Wouldn't you agree that the biggest impact is felt by the Mexicanos on the 2000-mile border?

MR. SILVERMAN. Yes.

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

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

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

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

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

The other thing I'm really fearing is are we going to develop a real fear of foreigners, and particularly foreigners who are brown-skinned foreigners, black-skinned foreigners? Are we going to start even becoming—sort of a fear of foreigners? And again the more and more that we put these immigration provisions into effect, I think it just raises that fear.

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

DR. WEBB-VIGNERY. In recent years we have seen a substantial increase in the number of people dying on the border. Has there been in recent years certain laws which have redirected the traffic pattern from Mexico to the United States which would tell us why this increase has happened?

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

I think the tightening of immigration clearly has had an effect. When we make it more difficult for people to rejoin their families, when we make it more difficult for people to leave this country and go back to Mexico and be with their family and as a result again just encouraging more and more people to come across the border to reunite families, I think that clearly has had an

effect on the numbers of people who have come over that border illegally.

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

MR. PAZ. Ramon Paz.

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

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

Now, if an agency like the Immigration Service or the Department of State puts forward a regulation which can be a policy, they are required by federal law to seek public input. Now, again what people sort of find out about that they're proposing a regulation and so on, that's always a question, but at least there is some attempt at least and there has to be to get public input.

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

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

So, many of these things really go through Congress, and really no one really knows about it until after it's happened. So, yes, there is some mechanisms for regulations, for congressional acts, but for anything else really not.

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

DR. WEBB-VIGNERY. That would be appropriate.

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

MR. ROMAN. No.

MR. PAZ. None at all whatsoever throughout the years?

MR. ROMAN. None.

MR. PAZ. No contact? Nothing?

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

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

MR. ROMAN. No. On the reservation?

MR. PAZ. On the reservation.

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

DR. WEBB-VIGNERY. Chair recognizes Paul Gattone.

MR. GATTONE. Paul Gattone from Tucson.

Professor Silverman, I know when there's been discussion recently about need to seal the border. My perception has been that most of that attention is directed to the U.S.-Mexico border. Is the same emphasis based on the U.S.-Canadian border? And if not, do you have any opinion about why they're treated differently?

MR. SILVERMAN. Traditionally the U.S.-Canadian border has been treated greatly different than the U.S.-Mexican border. Canadians have a much easier way, basically almost without documents they can come across the Canadian-United States border. There clearly, since 9/11, has been I think some tightening of the Canadian-United States border. Not anything, I

don't think, in comparison to the U.S.-Mexican border. But there has been—

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

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

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

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

DR. WEBB-VIGNERY. Thank you. Katie Hudak from Border Links.

Katie Hudak, Programs Coordinator, Border Links

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

In the last two weeks I have seen firsthand the devastating effects of someone who almost died from dehydration trying to cross the brutal desert that we have here in Arizona. Clara, not her real name, is from Mexico City. According to her story, which I pieced together, she paid someone to get to the border town of Piedras Niegras, then along with other members of her group she was led by a coyote on a grueling eight-day journey by foot ending in the desert west of Tucson, where she collapsed.

And her nephew who was traveling with her was able to get help for her. As far as I can tell, she came into Tucson by helicopter through BorStar, the search and rescue team of the Border Patrol. In the emergency room she was clinically dead twice and resuscitated. She was in the intensive care unit for six to seven days. She was in a regular bed for 12 days.

When I met Clara and her sister, who came up come Mexico City to help care for her, Clara was so swollen from dehydration it was virtually impossible to make out her features. She couldn't swallow due to brain damage. She was being fed through a tube, had pneumonia and no one was sure that she would live, let alone ever function again.

What does this story illustrate for us? It shows that what for us is an immigration problem for many people has turned into a death sentence. The exact numbers of deaths this year vary slightly depending upon what statistics you look at. It hovers currently at about 120 people who have made this the worst season in Southern Arizona.

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

If NAFTA allowed the free flow of goods and capital on the free market, then it stands to reason that labor should be allowed free flow as well. This could be accomplished by a just guest-worker program where individuals are not tied to a particular sector of the U.S. employment market, and that allows for just salary and benefits.

We need to take a look also at not only what pushes people but what pulls people to this side of the border, things such as low wages, poor living conditions, landlessness, lack of education, but also some of the pulls are that jobs are apparently waiting for people with the allure of the American dream. Sending U.S. dollars back to Mexico is one of the top three industries in Mexico.

Clara's story has a fairly happy ending. Clara has miraculously improved to the point where she can swallow, talk, and even walk. She went back to Mexico City this week. But people like Clara and those whose stories do not have happy endings compel us to do more every day.

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

DR. WEBB-VIGNERY. Chair recognizes Mr. Osborn.

MR. OSBORN. Jones Osborn, Yuma. Ms. Hudak, you've recommended a guest-worker program. Do you envision a cap of any kind upon the number of workers who would want admittance to the United States?

MS. HUDAK. I think what it might look like is that for those who would go back to Mexico would be first in line under a temporary worker program, that it could include something such as transition to permanent residency. I don't know what that cap might be, however.

DR. WEBB-VIGNERY. Chair recognizes Isabel Garcia.

MS. GARCIA. Isabel Garcia from Tucson. What about the people that have been living here for many years? Are you suggesting only those that are coming across be given some kind of work permit, or what do you believe should happen with people in families that have been here for many years living sort of second-class existence here?

MS. HUDAK. I think there's some various ideas that are floating around. One of those is a earned legalization program. Another is an amnesty program. I personally would be in favor of anything that would help to get those people into a more permanent better status.

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

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

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

MS. HUDAK. That's correct.

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

MS. HUDAK. Thank you very much.

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

[15-minute recess]

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

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

Robin Hoover, President, Humane Borders

MR. HOOVER. Humane Borders began as an organization in June of 2000 in response to the incredible rising rate of deaths in the desert. It's a faith-based organization, and in June of 2000 we set about a process where we wanted to implement the provision of lifesaving humanitarian assistance in the desert, specifically in the form of placing out water stations and to begin a program of advocacy for change of United States immigration border and law enforcement policies, each of which contributes in various ways to the rising number of deaths.

We produced a mission statement soon after we began, and I'd like to read that. It's brief. "Humane Borders, motivated by faith, will work to create a just and humane border environment. Members will respond with humanitarian assistance to those who are risking their lives and safety crossing the United States border with Mexico. We will encourage the creation of public policies toward a humane, nonmilitarized border with legalized work opportunities for migrants in the United States and legitimate economic opportunities in migrants' countries of origin."

We welcome all persons of good faith. Humane Borders is a membership organization comprised of approximately 40 different congregations, human rights organizations, immigration

service providing legal organizations, and a few corporate sponsors.

What we are doing at this time is placing water stations in strategic locations on federal, county, and private property. I've just come back from setting up water station number 27 at the foot of Kitt Peak. We received word yesterday from the Bureau of Land Management, Department of Interior, that we have been approved now to place three more water stations south of Ajo, and it is imminent that we will receive four more permits to place water stations in the Ironwood Forest National Monument. Collectively these stations are dispensing approximately between 400 and 500 gallons of water a week. That doesn't sound like a lot, but they're in very strategic locations where there are not other existing wells, windmills, stock tanks, and that sort of thing.

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

I wanted to speak only about two things. This is just one citizen's response to what's going on. The question that I began talking about or thinking about with Arthur Palacios when we began the inquiry is just exactly how is this a matter of civil rights? And I wanted to make a couple observations on that point.

Civil rights in the United States are a function of citizenship. Citizenship is a function typically of being born on this soil or being blood related to someone, and the point that I would make there is that we have an incredible number of variances, variations to that. If you were born to U.S. citizens on other soil, then that's fine, you're considered a citizen and civil rights pertain to you. If you marry someone, then that's the equivalency of a blood relationship and then that person is able to petition others. If you are military and someone is born to you or your family on foreign soil, then all of a sudden we make that exception.

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

So what happens is you start to find a vanishing reference for what does it mean to be a citizen. And because you have a vanishing reference to what does it mean to be a citizen, we have a vanishing reference to what it means to have civil rights. So we are increasingly according due process and civil rights to persons who are here in the United States who are undocumented by various changes in court decisions that have been passed in recent years and recent months even.

So what I'm trying to say is how we deal with persons and how we integrate them into our system is a very arbitrary, relative kind of concept. It has to do with what the spirit of Congress is in the moment. Sometimes it has to do with people reading the polls.

Right now we have a situation where the United States government does not have the political will or the financial resources to close its border. In the meantime, we have a phenomenal amount of people who are crossing the border who are without documents. Without those documents they do not have civil rights. We would like to see a number of changes take place where the people who are here who are undocumented would be given an opportunity to have a legal position in the United States, with that they would at least have minimal decency, humane kinds of access to health care or police protection when it's necessary. Those kinds of things.

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

We would like to see an update of the registry of the INS. We'd like to see Mexico exempted from the worldwide quota of visas. Mexico had a baby boom 20 years ago. Their baby boomers

are making our baby boomers rich. We need to deal with some economic realities in a responsible way.

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

Even if every policy kind of change that we want were in place by magic wand tomorrow, there would still be death in the desert because of persons who do not avail themselves of the legalized process to enter into the United States, because of employers who continue to recruit and bring these people forward.

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

Some of the land managers are now saying the United States government does not control the border. We cannot control the border; all we can do is manage the deleterious effects.

So we're trying to participate in that discourse. We're encouraging as many people as possible. While we do not extend civil rights directly to the undocumented, from the faith tradition we are obligated out of Tora to treat these people as if they're one of our own.

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

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

DR. WEBB-VIGNERY. Chair recognizes Paul Gattone.

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

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

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

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

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

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

And INS court is not a carbon copy in a diminutive form of the American judicial system,

even though it comes under their auspices. So those are not direct correlations, so I do not consider those any kind of equivalency.

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

MR. GATTONE. I agree. Thank you.

DR. WEBB-VIGNERY. Chair recognizes Isabel Garcia.

MS. GARCIA. Isabel Garcia from Tucson.

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

On the other hand, I do agree with Mr. Hoover in that immigration proceedings are called civil in nature. You're not entitled to a lawyer and therefore—and then the standards for the judges are quite different from a criminal case, for instance, so the arbitrariness is rampant and the service is also represented by a lawyer while most immigrants are not.

MR. HOOVER. Right.

DR. WEBB-VIGNERY. The chair recognizes Jones Osborn.

MR. OSBORN. Jones Osborn from Yuma. Mr. Hoover you've mentioned—and I think I'm quoting from you—legalized work opportunities as being one of the goals of your organization. Could you tell us what your group envisions under that sort of a framework of legalized work opportunities?

MR. HOOVER. Yes. I'll be glad to respond.

We use a variety of terms in public discourse right now concerning work permits or guest-worker programs. We're putting an umbrella with that term to say "legalized work opportunities" so that we do not continue to perpetuate the undocumented status of people who are gainfully employed in the United States because we have seen significant abuses in other institutionalized work opportunities in the past, beginning with the first bracero program in 1942.

Too frequently any scheme or any scenario that has been worked out, the employer had enormous power over another person. And in our society that is a question of democratic values, and we don't think that an employer should have that much power over an employee. The cases are littered with this. We've had the situation where the employer says, "Okay, I'm hiring you. You're getting this room and board and $3 an hour and we have sex every Thursday afternoon at 2 o'clock." That sort of stuff just does not set well.

If someone is changing beds or cleaning hotels in Las Vegas and they have a problem, a harassment kind of a situation, that person ought to have the power, legitimate power, to go from that hotel to go down the street and get a different kind of job or the same job at a different place. A number of work scenarios do not allow for that now, so we want to legalize it because if you're coming across the desert anyway in incredible numbers, that is very dangerous.

If you legalize that situation, give documents to these people, then they can use public transportation, the employer can work with them to transport. There's a number of scenarios. A relative could pick them up at the border. Some other way.

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

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

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

DR. WEBB-VIGNERY. Chair recognizes Lorraine Lee.

MS. LEE. Lorraine Lee. Madam Chair.

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

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

Cabeza Prieta National Wildlife Refuge, which is 861,000 acres of land and we have seven of our flags flying over existing wildlife watering locations. In the spring an event called the Sonora Desert Shindig was held where a lot of people who support that property and the programs there come and celebrate desert life together. We had a booth, and I would say 80 percent of the folks that came there were very supportive, picked up literature, talked to us, encouraged us. One person even said it's safer now to hike in this area because you can see the flags in the distance. And to us it's sort of like playing golf, you go from one pin to the next. Other people said what you're doing is illegal, it's immoral, and fattening and everything else and we shouldn't do this. So that's one characterization in very remote areas.

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

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

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

Law enforcement has been incredibly cooperative. The Pima County government and their emergency preparedness folks, response folks, are also advised of the location. Pima County government has been a funding source for the work that we do. We're an official contractor for Pima County. We have had conversations with the Border Patrol from the very beginning—open and frank conversations about their concerns, our concerns, and I would say that we have a strong working relationship each trying to seek ways to mitigate some of the effects of what we're seeing out here in the desert.

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

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

DR. WEBB-VIGNERY. Thank you.

MR. PAZ. Roman Paz.

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

MR. HOOVER. My response to that is the Tohono O'odham do not actually speak with one voice on that issue. We've had support from the executive, we've had negative response from the executive. We've had support at the district level. We've had negative response at the district level. It's an ambiguous answer.

DR. WEBB-VIGNERY. Chair recognizes Isabel Garcia.

MS. GARCIA. But you are aware that the nation has spent millions on rescuing and providing water and food and all of that—

MR. HOOVER. Sure.

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

MR. HOOVER. That's correct.

MR. PAZ. Madam Chairperson, will it be appropriate for Vice Chairman Mr. Ramon to address that topic if he wishes?

DR. WEBB-VIGNERY. I think that would be appropriate.

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

MR. RAMON. Yes. Our people, like I said at the beginning of my recitation, that our people have been assisting the immigrants from as far back as when they started coming into our land, and that's a traditional way of being part of our

tradition, to help each other, and I expressed that in my presentation.

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

And with the number of immigrants coming to our nation, 1,500 to 2,000 a day, there is no way that that amount of water or personnel would prevent people from getting dehydrated and some of the other concerns.

Why are we, you know, really making the water station an issue where the problem is the nationality law? Where the Operation Gatekeeper secured all the other areas and left our reservation open where it's probably the most dangerous part of the nation to travel through. All these come into focus.

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

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

DR. WEBB-VIGNERY. Thank you. Chair recognizes Paul Gattone.

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

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

Last year I was handed a photograph from Chief Ranger Dale Thompson at Organ Pipe Cactus National Monument, and it was of someone who had died of dehydration, we assume. And in that photograph of a person laying on their back you can see one's tennis shoes, ankle bone, Levis, and exposed rib cage. No head. And the coyotes had had a feast.

And so we have to be aware of this. To determine the cause of death in that situation is very difficult, presents a problem to law enforcement, medical people, et cetera. But had this gone undetected over a brief period of time more, then that person would have been so scattered—the remains—that we may not have ever been aware of it.

MR. GATTONE. How many people do you have on that official list of people who have—

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

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

It appears that if you count from all jurisdictions, all reporting sources, that we're in the vicinity of 128 or so deaths. Some of these are unconfirmed and you don't know the source, so no matter who gives testimony it's going to be a variable number.

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

The next person is David Aguilar, the chief of the U.S. Border Patrol.

David Aguilar, Chief, U.S. Border Patrol, Tucson Sector

MR. AGUILAR. Madam Chairman, my people are going to set up some slides behind you that I will be referring to. It will take just a second. My name is David Aguilar, the chief Border Patrol agent for the Tucson sector of the United States Border Patrol.

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

It is always my feeling that it is important to speak to the communities that we serve. The communities are diversified, and in the case of Tucson sector, very vast. And you will get a

good sense of that as I progress through any briefing this morning.

What I'd like to do is give you a very brief sense of the Tucson Border Patrol sector's and the Border Patrol organization's strategy, some of the tactics that we utilize, some of the changes, complexities and uniquenesses of the Tucson sector out here as it relates to enforcement of our nation's immigration laws.

I'd like to begin by saying that the Tucson sector covers approximately 261 miles of border with our neighboring country Mexico. That 261 miles is very diverse in the area of topography and the area of terrain, and in the area of federal lands, the Tohono O'odham Nation that we deal with and the other communities that we deal with. In that aspect we have over 1,700 officers that are deployed throughout this sector. Those are Border Patrol agents. That does not include support personnel, detention enforcement, clerical support and classifications of that type.

We operate by way of eight Border Patrol stations throughout the sector. The eight Border Patrol stations are deploying their resources in direct support of immediate border enforcement. Even though some of these stations are located in one case over 110 miles from the border, the efforts of our law enforcement officers are in the immediate border area.

As we progress I will point out some of those stations. I'd like to begin by pointing out also that the Border Patrol strategy—and this is the Border Patrol as an organization—is one of deterrence—preventing illegal entry from occurring into this country and therefore preventing some of the tragedies that are occurring along our nation's borders as a direct result of that.

When we deploy our resources, we deploy our resources against the infrastructure that the smuggler uses in order to facilitate his or her efforts on bringing people into this country. That infrastructure that I refer to exists not only on the immediate border, but it exists south of our nation's border and north of our nation's border.

The area where the Border Patrol concentrates its effort is on the border itself. This infrastructure that I refer to are things such as highways leading to the border from Mexico or from other sending locations. Staging areas such as airports. Staging areas such as cities on the south side that will facilitate the smuggler assimilating into general society in order to stage and try to bypass our enforcement efforts. And then there's the border where we deploy in a forward deployed manner in order to prevent these entries from occurring, in order to prevent the smuggler from having free access across our nation's borders.

Especially in this day and age it is absolutely important that we as a country be able to manage our borders. That is what the Border Patrol is trying to do. By deploying our resources in such a manner as to protect our nation's border, prevent illegal entries of persons, of narcotics, and anything else that might harm this nation. We do this in a variety of ways. We deploy our officers, we deploy technology, we deploy barriers in order to take away that facility that the smugglers concentrate on using to come into the country.

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

That translates to highways leading away from the border. Highway 10 just out our door here is one of those pieces of infrastructure that the smugglers utilize. Highway 19 leading from Nogales is another piece of that infrastructure. So the Border Patrol to a lesser degree operates in minimizing and mitigating the smugglers' ability to utilize the infrastructure leading away from the border.

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

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

I will point out to the back there off to my left the first slide that we have up there. Those are what we refer to as entry and decision points. It's a map of points that effect the Tucson sector, the Arizona community, and the Mexican community south of the border also. That is an important aspect of what we speak of, because these decision points, these staging areas, impact not only the communities that are along the immediate border, but they also impact south of the line, the Tohono O'odham Nation, our nation's forests, the monuments, the cities and so forth. The reason we point these out is I spoke about infrastructure earlier. In the middle of that first slide you have a major highway leading up to places such as Altar, Caborca, Cananea, Sonoyta, and those areas that are utilized by the smugglers in order to stage, in order to facilitate their entry into the country.

You will also notice almost paralleling that border is another highway that literally parallels our nation's border with Mexico. It facilitates the smugglers' ability to basically go up and down that highway in order to pick and choose where they will promote their trade of human trafficking. The reason I point this out is because it is that smuggling infrastructure which the Border Patrol addresses by way of forward deployment of resources, utilization of barriers, creating mobility and accessibility to those areas.

To the second slide on my left, those color-coded areas will point out to you areas such as Cabeza Prieta Wildlife, Organ Pipe Cactus National Monument. The Barry H. Goldwater Air Force Range is in kind of a purplish color up toward the top. The yellow color in the middle depicts the Tohono O'odham Nation, which is basically the size of the state of Connecticut if we were to compare it to one of our states. Ironwood National Monument. We have the Buenos Aires Wildlife Refuge. We have the Coronado National Forest, and those three red stars that you see up there are a depiction of the location of our Border Patrol stations. I point this out because that is one of the complexities and challenges that we face as a Border Patrol that we work around and have direct and indirect impacts on the communities that we serve.

Off to my left the first star depicts the station of Ajo, Arizona, 27 miles from the border. That is the only location where we can have a station, because as you can see it is surrounded by the monuments, by the national forests and by the nation. At the very top is the Casa Grande Station, which is 110 miles from the border. And on to the extreme right is the Tucson station. The reason I point those three stations out is because the personnel assigned to those stations are the ones that work in the immediate border area of the Tohono O'odham Nation and those national monuments and forests.

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

The nation, some of these national monuments, these national forests will see our officers transiting those communities in order to deploy on the immediate border. On the nation, for example, there are a minimum number of means for us to get to the border. So does the nation now see an elevated level of Border Patrol presence? Yes. Yes, it does. They see us transiting to the border in order to support our forward-deployed, deterrence-based strategy.

Now in that transition or that transiting to the immediate border, do we run into smuggling cases? Do we respond to the Tohono O'odham Police Department? Do we respond to the Department of Public Safety and Pima County and so forth? Absolutely. As we have always done. But because of the smugglers' shift, the smugglers' shift from other areas across our nation, across our nation's borders into the area that we call the west desert—which by the way that's what I'm referring to here—there is a need for our increase in operations out there.

The next slide, basically—and I would—I think all of us—as I understand this whole panel is made up of Arizona representatives. I think all of us have experienced the severity of drought that not only this state but this part of the country

has gone through over the past four years. This depicts the severity of drought. The lower right-hand corner box depicts the actual rainfall that we have had through I believe June or July had been minimal until our monsoons hit. The reason we put that up there is because this is one of the components, one of the deadly components that has caused some of the deaths that we have seen out there in the nation. That, along with the smugglers operating in some of the most dangerous areas known to man within the United States is a deadly combination.

On my far right-hand side basically is a graphical depiction of what it is that the Border Patrol is deployed out there. We have operations where we have shifted air access into the desert. We have moved additional detailed officers in there. We have deployed our transportation assets in order to give us more ability to remove people that have been apprehended. We have deployed additional assets specifically targeting the prosecution of smugglers that deal in human trafficking. We have deployed our anti-smuggling units. We are working close at hand with the other police departments, with the U.S. attorney's office, and so forth.

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

DR. WEBB-VIGNERY. Chair recognizes Paul Gattone.

MR. GATTONE. Paul Gattone from Tucson.

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

MR. AGUILAR. Absolutely not. But what I'm trying to communicate is that the vast majority of the illegal entrants that we deal with are under the guidance, management, protection, and facilitation of a smuggler.

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

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

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

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

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

MR. AGUILAR. As far as individuals go, I would say that the vast majority of the people we deal with are in fact people that are either economic refugees fleeing some kind of persecution or are wanting to join family members.

The one thing that is important I feel to point out is that the criminal element in this country as in any other country is one that will take advantage of any situation that is in disarray. The unfortunate thing about the criminal element is that there is an attempt at all levels, regardless of the crime that they are trying to commit, to assimilate, to assimilate either into a law-abiding society or to assimilate into a situation that is in disarray that we have—we as an enforcement community—have a hard time grabbing a hold of.

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

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

MR. AGUILAR. I would agree with that. Yes, sir.

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

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

The other potential is of them bringing people into this country by way of routes that they have established or their attempts that would bring harm to this country to members of our society. They are a criminal element. They are a unscrupulous criminal element as they have proven.

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

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

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

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

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

MR. AGUILAR. Yes. I believe I stated that earlier.

DR. WEBB-VIGNERY. The chair recognizes Isabel Garcia.

MS. GARCIA. Isabel Garcia from Tucson. Good morning Mr. Aguilar.

MR. AGUILAR. Good morning.

MS. GARCIA. I have a series of questions, and I guess I'll begin with the follow-up on the smuggler issue before I get into the question of the operations.

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

MR. AGUILAR. The manner in which I would answer that question is the following: The smuggler's always existed—smuggler of human beings. I've been in this agency for over 24 years. From literally the first week on duty I was dealing as an enforcement officer with smugglers. I commenced my job, my service, in Loredo, Texas. The smuggler then was crossing people cross the Rio Grande causing deaths at that time, causing deaths along Loredo's northernmost desert area. They have always been there. The smuggler is just like any other criminal. They adjust to our enforcement efforts out there.

Because the areas of facilitation are being taken away, we are just like any other enforcement agency. We concentrate on that area of the criminal aspect that we have more control over and that is taking away the locations to facilitate the crime. The smuggler is in fact now operating in these more dangerous areas. People will seek them out.

The one thing that we always point out is the following: that the conscious decision that is made by a person to enter this country illegally is in fact a conscious decision. The conscious decision that proves mortal is the conscious decision made by the smuggler to manage these people, to guide these people through some of the most dangerous areas known to man.

MS. GARCIA. So the answer is, yes, since the beginning of Operation Safeguard more people

are utilizing in this particular area the services of a smuggler? I understand there are opportunists and whatever, but the answer is yes? Is that what I gather?

MR. AGUILAR. The answer is because we have seen an elevation of illegal entrapment that draws new smugglers to this area, so yes, there are more smugglers operating out here, in comparison to when Operation Safeguard began, the impacts of our operation have in fact diminished the smuggler's ability to operate as put forward, for example, by the fact that as we speak today in this sector apprehensions are down by 29 percent as compared to last year. Last year they were down at the end of the fiscal year by over 28 percent compared to the year before that, so our operations are impacting upon the smuggler's ability to utilize our communities as a smuggling hub.

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

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

MS. GARCIA. Isn't it correct that the flow to Arizona was impacted by Operation Gatekeeper, Operation Hold the Line in El Paso and, in other words, people have been funneled into this particular area?

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

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

MR. AGUILAR. I don't understand.

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

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

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

MR. AGUILAR. The people that we are after is going to be, as you put it, the true smugglers. The ones that we have more contact with on a daily basis are going to be the ones that are carrying out the crime that impacts upon the people that are being smuggled.

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

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

That arrest, that disruption, that taking out, if you will, of that top part of the organization does not happen overnight. Those are investigations that are ongoing. This sector, for example, last November Operation Great Basin for an entire organization was dismantled, millions of dollars worth of assets seized. So are we doing that? Absolutely. Is it overnight? No.

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

MS. GARCIA. Now, when Operation—

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

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

In terms of Operation Gatekeeper, Safeguard, Hold the Line, Rio Grande, have the number of deaths increased because—since the inception of those operations?

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

MS. GARCIA. From last year?

MR. AGUILAR. Yes.

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

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

The INS and Border Patrol took on the responsibility of trying to capture information relative to deaths that were occurring on the border. Prior to that there was nobody tracking deaths along our border. There were deaths being reported. We were observing those. We were doing what needed to be done, but the United States stepped forward and took on that responsibility.

MS. GARCIA. Would you agree that since the beginning of the operations, the deaths have increased? I'm not talking about—

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

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

MR. AGUILAR. Yes.

MS. GARCIA. Do you agree with—pretty much with those findings or those numbers?

MR. AGUILAR. Yes. And I also agree with that very same study that basically says the deaths are going to remain constant regardless, they're just changing throughout the border. I believe that's what the study says. If I could clarify, prior to Operation Gatekeeper the deaths that were occurring were occurring on people running across I-5 in San Diego, people falling off into some of the ravines, people preyed upon by the bandits, people being killed and raped out there because of the disarray. That has gone away in that part of the country.

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

MR. AGUILAR. I am not familiar with that study.

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

MR. AGUILAR. I would appreciate that.

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

MR. AGUILAR. That's a several-fold question.

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

Second, the person that you referred to is a private citizen, has been for over three, three and a half years and as a private citizen he has no access to any of our current information.

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

MR. AGUILAR. The assurances I can give you is that the United States Border Patrol will continue forth as we always have, and that is to take care of what it is we are mandated to do. If there are any allegations of any wrongdoing, of sharing information as you say that is not sharable, that is confidential, that is not available to the public, we will take the appropriate actions.

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

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

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

MS. GARCIA. And what about those rash of cases where—

MR. AGUILAR. Everyone of those cases—

MS. GARCIA.—there's vehicles that are shot up?

MR. AGUILAR. Every one of those cases is investigated by the local law enforcement community, by the FBI, by the Office of Inspector General, and by our own internal investigative team. Every one of them.

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

MR. PAZ. Can I have a couple questions?

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

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

DR. WEBB-VIGNERY. The chair recognizes Ramon Paz.

MR. PAZ. Ramon Paz from Nogales, Tucson.

Can you just address a little bit the operations as regards training of your staff, your Border Patrol staff, and familiarity with the region, with the people? What is your training?

MR. AGUILAR. Let me begin with the academic training. The academic training is very intense, one of the longest enforcement academies that the U.S. government has. In addition to that, once our agents get on the ground and are assigned permanently to a location, there is an ongoing in-service training.

In addition to that there is a very assertive effort for assimilation in the communities that we serve and work in. As an example, we have outreach to the communities. When our officers come into the community we ask—as we speak now, for example, in Douglas the Chamber of Commerce is coming in and working with the new employees to assimilate them in there. Our people work with—for example, we have explorer posts. We have citizens advisory board membership. We have community relations officers that spend all of their time reaching out to the community. We are members of all the organizations out there. A tremendous amount—

As we speak now, for example, in the Tohono O'odham Nation we are in the process of trying to open up an explorer post for the young people on the nation. I have personally met with the tribal council on more than one occasion. My agents in charge meet on a ongoing basis with the districts out there.

I work hand in hand and face to face with Mr. Rick Clifton, who is the director of Public Safety and Mr. Richard Sanders. Mayor Belrain [phonetic], Mayor Lopez. The relationship is, I think, absolutely great. We are constantly working to enhance that. That is the job that will never be finished.

MR. PAZ. A member of the council of the reservation earlier spoke to that issue and said that there's always been a harassment, intimidation by the Border Patrol but that harassment and intimidation has increased since 9/11; can you respond to that?

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

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

I spoke earlier about those hundreds of agents traveling to and from the border out there. Doing

those travels, for example, our officers will see things, reasonable suspicion, rise to the area of reasonable suspicion which under our statutory authority we will then approach, interview, ask questions. Has that increased since 9/11? Probably so. The reason for that is because of heightened security concerns throughout our nation's borders.

Something that is very unique on the nation is the border out there. Tribal members coming across that border. Our officers know a lot of these people, know a lot of the vehicles. There are also crossings on that border out there where our officers have a need to stop and interview to make that determination whether that person is in fact a part of that nation. The interaction between the tribal members and us, the need for the interaction has in fact increased since 9/11 and as a direct result of the smugglers shifting their operations in there. It is that interaction that we work on. It is that relationship development that is absolutely essential as we speak. It is an interaction between us at our levels to try and mitigate that need for interaction.

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

MR. AGUILAR. Very much so. We have gone to the degree, and Mr. Ramon has spoken to several of our musters, several of our people. When we get people coming into our stations, brand new people that have been permanently assigned, we actually ask the Department of Public Safety, some of their elders, to come and talk to our people to sensitize them to some of the cultural importance that exists out there. Some of their elders have helped us by generating videotapes, training videotapes, to increase that level of sensitivity and cultural awareness as a part of our training that we do with our people. This was not done before. This is something that the relationship building has not only promoted but has also facilitated.

DR. WEBB-VIGNERY. Chair recognizes Lorraine Lee.

MS. LEE. Lorraine Lee, Tucson.

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

MR. AGUILAR. Let me begin with your last question first.

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

So there are several means of getting that information to us. In fact as we speak, Ms. Alexandra, who is the special assistant I believe to the chairman, and my community relations officer have ongoing dialogue about the actual complaints that are out there so we can receive them and follow through on them. This is a direct result of a meeting we had with tribal members about three or four weeks ago.

Reasonable suspicion basically is an articulation of the ability of an officer to articulate things that he or she sees that rouses suspicion to believe that there are illegal aliens being transported in a vehicle, for example, or that a person is illegally in a country.

I spoke earlier about a forward deployment. Our forward deployments are on the immediate border. There is no designated port of entry anywhere on the nation. No designated port of entry. So anybody crossing that line is amenable to

to inspection without reasonable suspicion because they are now entering our country. Those are our laws. So a vehicle crossing from Mexico into the United States, yes, I want my officer stopping that vehicle to see what's coming in. That's our mandate. Those are our laws. Without reasonable suspicion we can do that.

Once a vehicle is inside the United States then, 15, 20, 30 miles from the border, then at that point based on reasonable suspicion and if it's present, the officer will stop the vehicle, do the interviews. Once he or she is satisfied, then that person can go on. And of course if there's illegal aliens in the car or narcotics, then we follow through with that.

Factors: proximity to the border, route of travel, type of vehicle, time of night. Things such as—Tohono O'odham Nation, if we have a vehicle from Flagstaff down there a mile from the border, that's going to rouse our suspicion. What's it doing down there? Or if we run a tag and it's stolen out of Phoenix, absolutely we're going to stop them. Or if it comes back as unregistered.

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

DR. WEBB-VIGNERY. Chair recognizes Catherine Medina.

MS. MEDINA. My question was addressed.

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

Mr. Aguilar, no doubt you're familiar with the March 1997 report, *Federal Immigration Law Enforcement in the Southwest*. I'm not going to try to trip you up, but I want to refer to it. In the introduction it refers to a 1980 report. That's two years after you went into the service I guess.

MR. AGUILAR. Yes.

MR. OSBORN. Called the *Tarnished Golden Door, Civil Rights Issues in Immigration*. And it addresses the problem of the complaints about the treatment of people by the Border Patrol, and it recommends six specific steps. I won't get into all of them, but it recommends a process that is swift, thorough, and fair for handling complaints.

MR. AGUILAR. Yes.

MR. OSBORN. The sixth recommendation is for public disclosure, including publication of statistical summaries of complaint records, complete records of complaint reception, investigation and adjudication must be maintained. Is that being done to your knowledge?

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

MR. OSBORN. Are copies available to this committee?

MR. AGUILAR. Yes, I believe so.

MR. OSBORN. We'd like—I'd like at least to see that.

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

MR. AGUILAR. I believe that your contact here in Tucson—unless you'd like for me to get it for you. Either way.

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

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

DR. WEBB-VIGNERY. In Los Angeles.

MR. GATTONE. It would be swifter if it could be provided to this committee instead of us having to—

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

MR. AGUILAR. Mr. Palacios?

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

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

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

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

Bruce Pascoe, Staff Attorney,
Asylum Program of Southern Arizona

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

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

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

What we don't know is has persecution suddenly diminished so substantially in Central and Latin America that there are no longer claims, or is it that somehow they're getting stopped at the border? And quite frankly I leave that question open to the committee because we don't know the answer to that.

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

DR. WEBB-VIGNERY. Chair recognizes Lorraine Lee.

MS. LEE. Lorraine Lee, Tucson.

Madam Chairman, Mr. Pascoe. In terms of asylum, you mentioned people from Africa. Are you seeing people from Asian countries also, or others besides the African countries?

MR. PASCOE. Primarily they're coming out of Africa. We're getting some Middle Eastern, we're not seeing many from Asia. As I say, the only people from Latin America that we are seeing at this point are Columbians.

We're concerned because the community which is coming across the border, rumors are rampant and it spreads like wildfire. They hear that if they're going to cross the border without documentation, which many former clientele of TECLA came in without documentation, that they're subject to expedited removal. And so the tendency is to prefer, I believe, to try to avoid border crossings and that's where our concerns dovetail with the concerns that this committee has.

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

DR. WEBB-VIGNERY. Chair recognizes Paul Gattone.

MR. GATTONE. Paul Gattone.

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

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

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

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

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

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

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

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

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

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

Jennifer Allen and Chris Ford, Co-Directors, Southwest Alliance to Resist Militarism

MS. ALLEN. I'm Jennifer Allen with the Southwest Alliance to Resist Militarism, and this is Chris Ford, and if it's all right we're both presenting and responding to questions.

I wasn't very familiar with the format, so I had prepared a bit of documentation of some of the issues and examples of some of the civil rights abuses that we hear about and work on. I'm not sure if you'd like to hear that or sort of have more of a question and answer.

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

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

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

We're challenging the criminalization of immigrants and also protecting the Sonoran desert as well as human and civil rights for all people in the area. The recent deaths totaling over a hundred people now of men, women, and children in the desert who are looking for work, joining their families, or coming to better their lives in this country is the clearest and most devastating consequence of current U.S. border consequence of current U.S. border policies and immigration policies.

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

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

We strongly believe that a legalization program of current immigrants in the U.S. coupled with an expedited and expanded work visa program that provides immigrants with full worker protection and full rights would greatly reduce the horrible tragedies such as the deaths on the border.

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

From our work and discussions that we had with immigrants in border communities we want to draw your attention to impacts of Border Patrol buildup in border communities, the lack of oversight or investigation into the Border Patrol, the growing anti-immigrant movement in Southern Arizona, and lastly the increasing criminalization of immigrants and its devastating consequences on their families and their lives.

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

The Border Patrol has an astounding employee turnover rate, but despite David Aguilar's

promises that Border Patrol agents are integrated into the community, with such a high turnover rate they constantly move people into the community that do not know the community and are not familiar with the people nor the cultural practices or norms of those communities. The result is that the over 1,200 agents that are operating in the Tucson sector, which is a huge expanse—and I think the INS provided you a map. Those agents and the agency as a whole have shown great disregard for the rights and the dignity of the people that live on the border: citizens, legal permanent residents, and undocumented immigrants alike.

Examples of this include: In May 1999, Arizona Border Patrol agent Matthew Hemmer separated a 21-year-old Salvadoran woman from her friend and drove her to a remote location and tied her hands together, forced her to kneel naked on the ground, and [allegedly] raped her. Agent Hemmer was arrested in August of 2000 charged with kidnapping, sexual assault, and sexual abuse. He pled guilty for aggravated assault and for transporting the woman without telling her where she was going. If he completes his 36-month probation his record will only show a misdemeanor. That's it.

The Romero family is a family in Pirtleville, a small town outside of Douglas. They tell of Border Patrol agents driving over dirt neighborhood streets chasing suspected immigrants at 80 miles an hour. The dust plumes from the speeding vehicles aggravates their children's asthma and the parents fear to let their children outside.

Another mother in Pirtleville told about agents stopping her and following her daily because she drives a Suburban with tinted windows as she's going to and from the store, or to pick her children up from school. Another woman from Sasabe talked about Border Patrol agents stopping and harassing her child, and she was riding her bicycle to the store to buy milk.

A Border Patrol agent [. . .] based in Nogales was on paid administrative leave in February 2002. That's when this story came out. He was the lead suspect in the murder of his uncle. He was hired in spite of a long history of run-ins with law enforcement agencies, including a 1997 memo from a police sergeant in Nogales already pointing to and wanting the agent's supervisor to red flag the agent's behavior because of the repeated run-ins with law enforcement.

Also in 1998 [the agent] was also arrested for aggravated assault, intimidation, stalking, and domestic violence for which two children were sent to the hospital for care.

In February of 2002, [another] Border Patrol agent [. . .] was a prime suspect in the murder of his girlfriend and fellow Border Patrol agent in 2000. As of February 2002, he was still working at a Border Patrol checkpoint outside the town of Douglas.

These are just a few stories. These weren't even necessarily the most egregious. These were the ones closest at hand as I prepared for today. Other stories including incidences of agents shooting at people and in some cases killing people, running them over with vehicles, sexually assaulting women, harassing people in their communities.

And our sources are coming from people themselves who are living in border communities, immigrants who have been deported, people who are afraid to go through the complaint process, reports from the Office of the Inspector General, and investigative reports from local newspapers. Adding insult to injury, most people within the border communities report that they do not know how to file a complaint against an agent if something was to happen, and moreover they feel if they know how to file a complaint that people express doubt that anything would result other than retaliation against them.

The Office of the Inspector General is responsible for investigating complaints; however, the office has seven investigators that are responsible for monitoring 1,500 Border Patrol agents in this area, plus other INS agents, plus U.S. Customs, plus U.S. Marshals in the Arizona-Nevada area. So clearly, the system that exists for monitoring the Border Patrol and ensuring fair, expeditious review of cases and complaints is not working.

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

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

Another area of concern is the growth of anti-immigrant white supremacist groups along the border. American Patrol and Ranch Rescue have organized militias to patrol private boundaries. These groups have advertised for people to come, have fun in the sun, bring their watchdogs and their night vision goggles, their motor homes, and only those that have received military training are requested to come. The groups wear a uniform complete with patches with their own insignia. Border residents have sighted these groups of militias caravanning through their communities and have sighted groups in their military—unofficial military militia garb doing operations, walking through ravines, and watching out in the remote areas of the desert.

In the last month it was announced that another new group, the American Border Patrol, would begin driving through the desert looking for immigrants who they would then turn over to the Border Patrol. In the last two years the much publicized Barnett Brothers and their friends have [allegedly] essentially held immigrants hostage and at gunpoint waiting for Border Patrol agents to pick them up.

These acts are not individual acts. They are organized and are receiving significant media attention and continue to follow the same premeditated course of rounding up immigrants, detaining immigrants, harassing immigrants. Nonetheless, they continue.

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

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

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

With passage in '96 of the Illegal Immigrant Reform and Immigrant Responsibility Act, the Antiterrorism and Effective Death Penalty Act, and the recent USA Patriot Act and the many changes and overrides of immigration and border policies that Attorney General Ashcroft has pushed through, we're seeing immigrants increasingly being pulled into the criminal justice system and targeted by the criminal justice system.

In fact, in the Southwest we had been the subject of a proposal from the Bureau of Prisons to build up to four privately run for-profit prisons that are just for immigrants who have committed crimes. That proposal was canceled in March 2002; however, we've heard that the same private prison companies who wanted to build the prison have been told to hold their sites in that there's a strong chance that the INS is going to propose new privatized detention centers for the same companies at the same sites.

It appears to us that immigrants are being doled out to then boost the profits of these private prison companies and being pushed into a sort of profit-making arena, as opposed to the federal government honoring and fulfilling its obligations for protection of rights and for upholding laws that are all being relegated to private companies that are profiting off of people. These same private prison companies are also known—they're renown for heavy brutality, lack of oversight, poor management, high rates of escapes and terrible working conditions inside those facilities.

Furthermore, the current sentencing structure in regards to immigrants, whether they're undocumented, asylum seekers, or legal residents, are spending—people are spending incredible amounts of time in detention centers

amounts of time in detention centers and as well as prisons for petty nonviolence crimes.

Someone that we have talked to in Nogales, Sonora, recently had been deported. He moved to North Dakota when he was 4 years old. He is a legal permanent resident. He had an unpaid traffic violation. He was picked up about a year and a half ago now for another traffic violation. He was sentenced to three years in prison and then he was deported to a country where he no longer identifies with. He had grown up in the U.S. and was deported. During that process his wife gave birth to their baby, who he has only seen for 15 minutes behind Plexiglas, and now he's sent to Nogales, Sonora, with his green card having been revoked, trying to figure out a way to get back to his family and to the only country he's known to grow up in.

These are just snapshots of the many, many lives who have been lost, who have been destroyed and threatened by current U.S. border policies and immigration policies.

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

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

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

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

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

In the mid-1990s, the Border Patrol began a new policy in Texas called Operation Hold the Line. The gist behind this operation is to keep migrants from crossing the border in or near urban areas, and route them into harsh and more remote environments where there is little shelter from the elements. The idea was, as then INS director Doris Meissner stated in 1995, that if people were routed into these harsh environments and started dying, it would deter other migrants from crossing into the desert, and this idea is the cornerstone of that policy.

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

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

We are now seeing the culmination of this policy here in Southern Arizona. Migrants are now being forced into one of the driest and harshest desert environments in the world, and this year's record of deaths is a result of that. Yet despite the sharp rise in the number of people that have died crossing the border since the implementation of these policies, and despite the human tragedy that is being played out here in our own backyard, the Border Patrol is refusing to consider the possibility that the reason so many people are dying in these harsh desert environments is that the Border Patrol is routing people into these harsh desert environments.

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

DR. WEBB-VIGNERY. Chair recognizes Paul Gattone.

MR. GATTONE. Paul Gattone from Tucson.

Thanks for your comments. I appreciate it. Ms. Allen, do you have documentation, maybe statements, et cetera, from some of these people regarding these civil rights violations? And if you do, would you feel comfortable providing these to this body's staff so that—we are here to collect information and I think that would be important information for us to have.

MS. ALLEN. We're in the process of surveying about seven border communities asking people about their opinions and interactions with the Border Patrol and then documenting some of the stories to complement the survey results. I can provide what we have thus far, and other anecdotal stories that we have. I think other organizations as well in the community could also provide a lot of documentation.

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

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

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

And there's massive environmental destruction caused by the Border Patrol themselves driving through the desert, not actually trying to pick up people but just driving the desert chasing each other. We've heard numerous reports from people who live in the area who've seen the Border Patrol both in off-road vehicles and in Border Patrol vehicles playing games of cat and mouse with each other, driving through the desert environments without any regard for the desert environment. A lot of people have been seeing the Border Patrol—they're required by law to put out environmental impact statements and environmental assessments.

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

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

A lot of the impacts that we've seen specifically affects species such as the lesser long nose bat, the jaguar, and plant species such the Cochise pincushion cactus. But the Border Patrol seems to really not address these environmental concerns whatsoever.

DR. WEBB-VIGNERY. Chair recognizes Jones Osborn.

MR. OSBORN. Thank you, Madam Chairman. Ms. Allen, you spoke of the high turnover rates amongst Border Patrol officers.

MS. ALLEN. Yes.

MR. OSBORN. Could you quantify that for the committee?

MS. ALLEN. No. I was trying to look before I left for the number. It's been one in four agents are turned over this year.

MR. OSBORN. Thank you.

DR. WEBB-VIGNERY. Chair recognizes Jesse Rodriguez.

MR. RODRIGUEZ. Jesse Rodriguez.

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

MS. ALLEN. Not very receptive. I've had interactions with agents who have been pretty much unprofessional and tying to engage me in arguments over national-level policies which neither of us have control.

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

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

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

So because of that they wanted to set up a meeting and brought out a couple agents and the resident of Arivaca asked if I would go along. The agents that we met with were just insulting, paternalistic, and were arguing with us about policies, immigration policies, which wasn't our point of discussion. Our point of discussion was how to resolve this particular issue.

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

DR. WEBB-VIGNERY. Chair recognizes Ramon Paz.

MR. PAZ. Ramon Paz from the Tucson area.

Earlier chief of the Border Patrol Aguilar testified that they have a very comprehensive, intense training program for Border Patrol unequal to any other agency for law enforcement agents, and you seem to know a little bit of their training, or at least based on the turnover. What are your observations with regard to training for Border Patrol as it relates to cultural awareness, sensitivity courses, language, and of course law enforcement?

MS. ALLEN. We have attended an INS public meeting that was held in September of 2000 with the INS presenting information about their expanded operations. They showed a film or piece of a film that they use within their training for agents. It's a 15- or 20-minute film that combines both environmental concerns and the importance of protecting the environment and cultural issues or sort of culture of the Southwest. And they were questioned afterwards if that is sort of the extent of the cultural competency and environmental training that they receive, and the answer was yes.

DR. WEBB-VIGNERY. I believe that brings us to the end of this discussion, and I want to thank you for coming and sharing with us this morning the information that you conveyed. And if you could give touch base with Art Palacios at the back of the room and we'll get that information.

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

DR. WEBB-VIGNERY. That brings us to the end of the morning session. We'll be back here at one o'clock for the afternoon session. [Lunch recess]

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

Andrea Black, Executive Director, Florence Immigrant and Refugee Rights Project

MS. BLACK. Good afternoon. I was not able to make it this morning. I just strolled in from Florence, so I don't know what kind of format this is, but I understand I'm to give you a presentation and have questions. I have materials to give you, background about the project and also about immigration and detention.

Thank you for the invitation to come speak. I know several of you already, but it's a great opportunity to come tell you a little bit more about one aspect of immigration that often isn't discussed, which is immigration detention. And people often talk about detention as the back end. We keep hearing this back end phrase, but we really see it as a continuum, because it's very much a part of the process and the experience, not only for people who are coming into the country, recent arrivals, but unfortunately people on their way out of the country facing deportation.

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

I don't know how many of you are familiar with the detention system in the United States, but there are currently 1,900 people detained on any given day here in Arizona. That is about 10 percent of the detained population in the United States, so it's a big business here in Arizona.

And just in general, detention/deportation is a major component of the INS' functions, along with their adjudication processes. People are housed in both INS facilities and also private contract facilities because there are not enough INS facilities to house people. The number of people who are being detained has tripled in the

last nine years, so it's an incredible growing industry.

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

When you're talking about people crossing the border, people who are apprehended by the INS, some people are returned immediately. There's a voluntary repatriation process at the border. But if people are apprehended inside the United States or if they have had previous crossings, they're going to go into immigration detention. And anyone who wants to pursue their case is going to go into immigration detention, so that's part of the process of what people are facing once they cross the border.

The Florence project has been in existence since 1989, and we're there to provide free legal services to people who are detained. We give everybody an orientation and screening interview. Anyone who wants to talk to us can, and beyond that we provide targeted legal services, representation, referral to pro bono attorneys, as well as assistance to help people represent themselves. Last year we provided service to over 9,000 people, and we are actually a nationally recognized model that we've developed here. And there's a growing movement to try to replicate. There are a handful of groups working across the country as well providing the types of services we are, but there is a growing movement to try to replicate this model and push to federal funding. We talk about the savings to the taxpayer as well as the justice component of providing services.

People that we're seeing in detention are a whole mix: people who are recent arrivals, both individuals who are seeking a better life for their families as well as people who are seeking asylum, fleeing persecution in their home countries. We also work with undocumented immigrants who have been here for many years with deep family and community ties. We also work with legal permanent residents who have been here—we've had clients who've been here since they were 3 or 6 months old who are now facing deportation in their 20s, 30s, 40s, or 50s—we had a grandfather recently—because of a criminal conviction. And with the new laws in place since '96, it's increasingly minor criminal convictions that can put someone into the deportation process.

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

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

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

What we're seeing, particularly since '96 when two different laws came into effect back to back, is increasing criminalization of immigration issues and immigration violations and the increasing use of detention.

With regard to border issues, a large percent of the individuals we see in INS detention are in proceedings because they're—the charge is present without admission. They have entered without inspection. These are the legal terms. This is a violation of the law—the federal law—and for that they are subject to deportation from the United States. They are also often subject to detention while they're going through the immigration process.

For those of you who haven't visited our immigration detention center or immigration court it is a factory. You see 80 people going through court every single day. They're in very remote

facilities for two to four weeks before they see anybody. Very limited access to the outside world. Once they finally get into the process it's quick, it's very speedy, it's in English with interpreters and people are getting deported within five minutes. So if anyone wants to see it, you're welcome to come out. It's really quite astonishing to see bureaucracy at work, and the difficulty with which people are trying to uphold their rights in the process.

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

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

And the stories we hear of the complicated journeys people are making—visas through 12 different landings in 12 different countries before they made that arduous treck up from Central America or Mexico up through the border. A number of different countries. We just had two gentlemen from North Korea, for example. We see people from all over the world every year. This is really a hot spot, as I'm sure you all know.

In trying to think and analyze what we're seeing and why we're seeing more and more people coming through the border in addition to the issues of the crackdowns on the other border sectors, really we can look to the restriction that have been put in place since 1996. One big component of the '96 laws was a new process called expedited removal, so anyone who goes to a border crossing or international airport is subject to deportation and removal, return to their country by an INS inspector at the border without having a chance to see an immigration judge. So in the past, a person who did not have proper documents or had invalid documents would have this opportunity to go see a judge and be able to explain why they wanted to go to the United States and what relief they might have.

Right now an immigration inspector can turn that person around, keep him in detention and ship him out in less than five hours. This is a concern for a lot of people, but particularly for asylum seekers who are coming to this country and who are often afraid of officials from their home country are now trying to face and seek protection in this country, and they have a much higher burden of proof at the very entry. Unless they can explain why they're afraid to go home within that five-minute interview with the inspector, they're going back on the plane.

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

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

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

We also see a lot with legal residents who have been deported, and this is an increasing issue. They're reentering illegally after an order of deportation. It's a federal crime to reenter after an order of deportation, and individuals are subject to one to 20 years in federal prison. This is hard to explain to the young man or the young woman who's trying to reunite with the family in a country where he or she's lived for years. The border is keeping you from your family and if you cross it's a federal crime. We're also seeing people come through the land borders for those reasons.

In terms of looking at what the—I have no answers. There's a lot of discussion about this, but looking at what are the problems and where are the pressure points, I think most definitely

we need to have some kind of amnesty program or a realistic work program so that people can come and that we can, despite the changes that we've had since September 11 and understanding the need for greater security, we also have to recognize the realities of migration, intercountry migration and globalization which our country and our economy is encouraging and really recognizing the realities of the communities that we live in. So some kind of amnesty program or work program so people have the ability to unite with family members, to come visit, to make the daily crossings that are an important part of their lives is really crucial.

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

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

People are now housed in over 900 facilities across the country, only 17 of which are INS facilities. The rest are contract facilities or even local or county jails. So there's no uniform standard by which people are treated, so we really think that's a very serious issue.

One aspect that I would point out in particular is the whole issue of detained immigrant children. This has become real serious, a growing problem here. In Arizona alone we have 80 or more children detained on any given day, both in a shelter care facility in Phoenix and at a juvenile detention center in Globe.

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

DR. WEBB-VIGNERY. Chair recognizes Jones Osborn.

MR. OSBORN. Thank you, Madam Chairman.

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

MS. BLACK. Yes, and I believe it was—I don't know if it was with—There are two laws back to back. I could find out which one specifically, but yes.

MR. OSBORN. Legally speaking, the INS inspector is within his authority to do that at the present time?

MS. BLACK. Correct.

MR. OSBORN. Thank you.

DR. WEBB-VIGNERY. Chair recognizes Paul Gattone.

MR. GATTONE. We've had people earlier talk about stories that they hear from their clients about their interactions with the Border Patrol. Obviously people are in detention because they've been stopped or detained or whatever. Do you, from some of your clients, do you hear stories about how they're treated by not only immigration personnel but by the Border Patrol?

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

DR. WEBB-VIGNERY. Chair recognizes Catherine Medina.

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

MS. BLACK. Thank you for that question.

This is part of this expedited removal process. One of the few exceptions to an individual who has invalid documents or lack of documentation to come into the United States is if he or she is able to show a credible fear of been returned to his or her own country. They would have to express initially in front of the inspector some form of—they would have to make a statement, ar-

ticulate their fear in a clear enough way that the inspector can cite it.

If they make that statement and the inspector accepts it, they would be detained and they would have the opportunity to talk to an asylum officer. And at that point they would have an interview. Usually have a wait about 24 hours, usually to help them recover. And they would have more of an in-depth nonconfrontational interview.

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

My understanding is there's been a study that's been going in the last few years and a lot of the problems are at that initial interview with the inspector, and a lot of it has to do with issues of language, cultural issues. There's been in terms of the studies of people who have been allowed to remain in the country, overwhelmingly male, overwhelmingly educated, and overwhelmingly from higher economic countries who are able to articulate their claim.

Unfortunately, there's not been much access to that secondary inspection moment. I know that the UN Commission for Refugees has fought a long time to be able to view that process. You have to see from who was able to come in. You're not able to see who actually got deported to know what their experience is like, but there is an issue of how much they do have to state their case, even in front of that inspector.

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

MS. BLACK. Yes.

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

MS. BLACK. Yes. And also for—just the idiosyncrasies of the different personnel involved as well, which you could see even in a different kind of setting—a court or administrative setting. However, there's usually more of a process in place to safeguard against that; whereas, if you have one individual talking to the applicant, it's a much more even process.

DR. WEBB-VIGNERY. Chair recognizes Jose Matus.

MR. MATUS. Jose Matus from Tucson.

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

MS. BLACK. Are you talking about the conditions when apprehended or—

MR. MATUS. In the prison.

MS. BLACK. In the prison? I have to say over all, conditions are fairly good here in this sector. The Florence INS facility is held up actually as a model across the country would that people who are detained in other areas of the country have these kinds of conditions. So detention is never a pleasant experience, but relatively speaking the INS facility is very well run. And we've been there for 13 years. We've seen changes in administration that overall goes well.

I think some of the problems go into place when there's use of contract facilities. And right now INS currently uses two contract facilities: Correction's Corporation of America runs a facility in Eloy, Arizona, and they also run one in Florence, Arizona. And overall the conditions at the Eloy facility have been good. In Florence they have had some problems. It's a new contract and there have been a number of problems. A lot of problems in educating the staff as to what it means. Who is a detained immigrant? What does detention mean versus criminal incarceration?

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

As a summary, I would say there have been some problems, but more with the contract facility. I would have to say the INS has been handling it very responsibly, and I know they have

been pulling people out because they're not meeting the standards.

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

MS. BLACK. Thank you very much for the opportunity.

DR. WEBB-VIGNERY. Next person is Georgia Vancza.

John Fife, Pastor, Southside Presbyterian Church, and Samaritan Patrol

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

Southside Church was the first church in the United States to declare itself a sanctuary for Central American refugees in 1982. Since then our congregation and I have been directly concerned with the border and border issues during that 20-year period of time.

Our practice of sanctuary was funded on a principle called civil initiative—the right of civilians and civilian or civil organizations to protect and aid victims of violations of human rights and civil rights and to advocate through that action a change in policy that results in gross violations of human or civil rights. You'll be glad to know, since it's probably been a long day, that Georgia told me I have five minutes, and I also have a friend who says if you see a Presbyterian minister take his watch off and look at it like this, it means absolutely nothing.

I would like to talk to you about an organization that came into being this summer called Samaritan Patrol. Two years ago the faith communities that had been involved in advocating for those persons—refugees and migrants—whose human rights were being systematically violated by government agencies and policy during the 1980s came together because of the reason we're having this discussion this afternoon, the record increasing number of deaths of the poorest and most helpless persons in the Sonoran desert borderlands region.

At that time we determined that one action that was feasible at that time was to put water stations in the desert, and I believe Reverend Robin Hoover has described to you the work of Humane Borders, which has now continued for two years. It was clear that more needed to be done.

It was clear to all of us as this hot summer began that the policies and practices of immigration and Border Patrol officials were continuing to funnel the traditional migration pattern in Southern Arizona into the most hazardous and deadly areas of the desert. And it did not take a fuzzy-headed Presbyterian minister to figure out we were headed for once again a record number of migrant deaths in the desert. To tell you the truth, this summer has exceeded all of our anticipated numbers and I am devastated by the prospects for the rest of this summer and the year to come.

So in response to that human rights and civil rights crisis, 11 faith communities in Tucson, Protestant, Catholic, Jewish, the dioceses of Tucson, various Protestant and Jewish congregations formed an organization called Samaritan Patrol. It was founded on the same principle of the right and the responsibility—let me add particularly "the responsibility" of civilians and civil organizations and institutions to protect and aid victims of violations of human and civil rights.

In this case, Samaritan Patrol decided to place volunteers from those faith communities and other persons of good will in the Sonoran desert borderlands region, to place them in four-wheel drives in those areas of the desert—west desert—where the most deaths had occurred, with medical personnel, food, and water to rescue migrants in distress that we located during those patrols. We provide for persons we encounter in distress in the desert medical assistance immediately. We have physicians, nurses, and EMTs who accompany each Samaritan Patrol. Everyone who goes has had training by the American Red Cross in emergency first aid, and those

medical personnel determine in the context of those persons we encounter what is appropriate medical treatment and what is needed in that situation.

We have a protocol that includes transporting those persons to hospitals or clinics if necessary, if they are in that dire distress, or in some instances we have encountered people where the physicians have indicated to us that they did not need IV treatment or hospitalizations and we have taken them then to churches where they can receive hydration and food and to get out of the desert for a period of eight to 10 hours is usually what physicians recommend. And at the end of that time they are given the option of walking out the door of the church, if they so choose, or if they wish to return to Mexico we transport them or call the Border Patrol to return them to Mexico.

Each Samaritan Patrol vehicle is equipped with a satellite phone. We even acquired an air force this summer. Pilots have volunteered with air-to-ground communication to patrol the west desert for us and to direct the four-wheel drive vehicles and volunteers to places where they find migrants in distress. When we do, we have the ability to request helicopter assistance to call BorStar or the Border Patrol if there is emergency assistance of that nature necessary, or to transport them ourselves to a hospital or clinic or to a church.

I am pleased to report that our largest problem since July 1 has been we have been overwhelmed with volunteers. The reason for that should be obvious. People throughout the Sonoran desert and borderlands region have been morally distressed, troubled, by what you have heard today, by the record increasing number of deaths and the human tragedy that is occurring in our borderlands region, and they find that writing a letter to their congressperson or senator is not an adequate moral response to the public health and human tragedy that we are seeing.

So given the opportunity to provide direct aid to migrants in the desert has meant that we have had to scramble to meet the requests of all the volunteers to be a part of Samaritan Patrol.

Samaritan Patrol has had three basic purposes. One, of course, you already understand and that is directly to save as many lives as possible with volunteers in the desert. That's obvious. But it is also obvious that that's a Band-Aid, that we may save a few lives but the 120 just in the Tucson sector alone of bodies that had been found and documented—there are many more of course that have not been found—people who have died in the desert—is a systemic problem that has to be dealt with systematically, not with as many volunteers as we've been able to put out there.

The second purpose has been to reopen a space in the borderlands region that has been closed down since 1994 by the increasing militarization of the border.

When I first arrived in the borderlands in 1963, people here taught me as an immigrant from the East, about the values of the Sonoran desert and the people of the borderland, particularly the indigenous people of the borderland, and that value was to provide hospitality to migrants in the desert. Everywhere I went, people said, "Of course we always provide water and food and we let them sleep out in the ramada, or we let them sleep in the bunk house, or of course we'll do whatever is necessary to provide just plain humanitarian aid to folks in this desert climate."

What my experience since 1994 in this area is that the militarization, the checkpoints, the fear that has been engendered, the oppressive presence of patrols and National Guard, and all of the things that you have probably had great deal of testimony about has closed down that space. There is an increasing climate of fear among people to just provide basic humanitarian aid to migrants.

And one of the purposes of the Samaritan Patrol was to reopen that space so that systematically through recovery of a very highest ethical value among the indigenous and other people of the Sonoran desert region more lives might be saved. It's not only a tradition of the Sonoran desert but of every desert people that I've encountered globally.

It is essential that that ethic be practiced, whether we're talking about the Middle East, the Bedouin people there, or people of North Africa, or the people of the Sonoran desert or of other desert regions across the globe, every one of those people practice hospitality as the highest ethic and the reason for that is apparent. It's required to save lives.

Current immigration law provides for humanitarian assistance to migrants, and that space that had been closed down needs to be reopened.

And the third purpose of Samaritan Patrol is by our action and by our witness to change the current policy and strategy of Border Patrol and immigration officials on the border. It is the only way that the record number of deaths are going to be stopped.

From a civil rights perspective on this human tragedy in the Sonoran desert, I think each of those purposes of Samaritan Patrol has a civil rights imperative to it. First, of course, is the simple right to life itself. I hear a lot of conversation and a lot of commentary about how these people coming across the desert without documents are criminals, and it's a violation of the law. Well, we need some perspective on how serious a violation that is.

I often talk to Presbyterians and say, "How many of you have ever been given an traffic ticket?" And everybody's hand goes up. Well, this is not as serious a violation of the law as a traffic ticket. At least they fine you for that. The only penalty for this is you're subject to deportation back across the border with a sack lunch, hopefully.

We need to talk about how we need to get out of the rhetoric of violations of the law and crimes. These are people who are desperate to provide the basic life itself and food to their families and who this nation desperately needs to supply the necessary labor for our economy and our economic activity.

The second civil right that I have already mentioned, but I hope that you will emphasize in your report is the right to provide humanitarian aid to migrants in distress. The law recognizes that, but the law is terribly and inadequately ambiguous about what is and what is not permissible in terms of humanitarian aid and assistance to migrants in distress. For example, a colleague of mine, Father Tony Clark, one of the priests at Sacred Heart Church in Nogales, Arizona, was convicted of harboring illegal aliens in 1986 when his crime was to provide a sandwich and couple of hours rest on the couch in the rectory at Sacred Heart Church when migrants showed up there at the door of the rectory. For that he was convicted of a federal felony.

What we have negotiated carefully with Border Patrol officials here in Southern Arizona this year is the protocol of Samaritan Patrol, and that is the right to provide food, the right to provide water, and the right to transport migrants in distress to either a hospital or a clinic or a place where they can receive appropriate medical assistance. That's a negotiated understanding that we have. There's no guarantee of even that space available right now, but it is our policy and protocol and practice within Samaritan Patrol, and that space needs to be opened even wider if lives are going to be saved and we return to a humane policy.

And of course the third matter is to change the policy and strategy of the Border Patrol and immigration officials so that we do not have another summer of record deaths next year. The proposals are already on the table. Doesn't take any inventiveness or imagination to know what is necessary to be done. From the governor of Arizona to the mayor of Douglas to members of Congress to the president of the nation of Mexico, the proposals are on the table and need to be implemented as soon as possible.

We need to document—temporarily document—the migration back and forth between the United States and Mexico. It is a historic fact in this borderlands region and it is a migration that has benefited both nations historically. It needs to continue. It must continue and it must continue in a humane and just way. That migration could be negotiated each year by the political and economic leaders of both Mexico and the United States. And if you look at this question from a national security perspective, which

seems to be the primary agenda since 9/11, it is apparent that this border cannot—let me say it one more time—cannot, will not ever be sealed or controlled. It is impossible.

There's 2,500 miles of desert and mountain out there, and what it takes to control a border we learned from the example of the migration between East and West Berlin during the cold war. That wasn't a remote desert wilderness area. It was an urban area of about 37 miles. And border officials tried to control and seal that border with everything that you've heard about going on down at this border now—and more. They increased the number of border agents. That didn't do it. They built a wall. That didn't do it. They militarized the border with military units. That didn't do it. They tried helicopters and dogs. That didn't do it. They built two walls. That didn't do it.

What did it was to mine the area with land mines between those two walls, put a machine gun nest every 50 yards, and issue shoot-to-kill orders. And that's what it took in an urban area of just 37 miles to seal off that border. You can image the cost to do that over 2,500 miles, let alone the human and moral cost of putting machine gun nests and land mines along that border and issuing shoot-to-kill orders. And that's what it will take. It's absolutely nonsense.

So from a national security perspective, the only choice we have is to document the migration back and forth so we know who is here, where they're going, and where they are. And the only way to do that is document that migration. There's no other way. And to document the people who are here now without documents. There is no other way. And especially from a national security standpoint, if that's the agenda it's imperative.

I guess the closing comment is from too much, too many of our immigration and Border Patrol officials and from members of Congress what we hear is the way to solve this problem is to do more of the same thing: more agents, more electronics, more helicopters, more vehicles. All the stuff that is currently a part of the militarization of the border.

As I've always understood it, the definition of insanity is to do more and more of the same thing and expect a different result, and that's exactly what we have. We have irrational and immoral and devastating violations of human rights on this border. We cannot do more of the same. We must have substantial systemic change. Thank you.

DR. WEBB-VIGNERY. I recognize Jones Osborn.

MR. OSBORN. Thank you, Madam Chairman.

Pastor Fife, you mentioned that your group has negotiated with the INS and the Border Patrol over the protocols and so forth that you operate under. Do you deal directly with Chief David Aguilar of the Border Patrol?

MR. FIFE. Yes, sir.

MR. OSBORN. Person to person?

MR. FIFE. Yes.

MR. OSBORN. How would you describe his degree of cooperation?

MR. FIFE. It's been cordial. Chief Aguilar, when he came to Tucson the director of the Immigration and Naturalization Service, Doris Meissner, and I had known each other for some time through some adversarial relationships during the sanctuary movement, and Doris introduced me to David Aguilar and said, "He's the very best at public relations that we have. That's why we're sending him to Tucson." And he certainly has fulfilled that reputation. He's worked hard at providing channels of communication with various organizations in the Tucson sector, and I've been grateful for his willingness to sit down and talk.

We have not always agreed about a number of matters, particularly the policies and practices of the Border Patrol, but where we have been able to reach some agreement and some understandings, I found that very helpful. It's certainly a change from previous administration around here.

Might know that the former chief of the Border Patrol, Ron Sanders, is publicly promoting an organization called American Border Patrol around here. American Border Patrol has direct links to white supremacist organizations on their

Web site. For a former chief of Border Patrol Tucson sector to be associated with that sort of thing, that sort of organization, I think is a commentary on just how difficult it was to relate to previous administrations of the Border Patrol here, and I think Chief Aguilar has been a welcome change.

MR. OSBORN. Thank you.

DR. WEBB-VIGNERY. Catherine Medina.

MS. MEDINA. Madam Chairman.

Mr. Fife, could you please elaborate on how many people are served under the Samaritan Patrol now that individuals are taking greater risk in crossing over?

MR. FIFE. Since July 1 when we put our first patrol out, we've had at least one four-wheel drive unit and most days two out every day. And the number of people—I'm sorry, I don't have the statistics on the number of people we've encountered or served, but it's an increasing number. We're getting better at where we should be and where the migrants are most in need. We've also had good relationships with—sometimes we come across groups of migrants who have been picked up by Border Patrol and are awaiting transportation in the desert by bus or larger vans. We've been able to provide them with food and water and even Border Patrol has jumpstarted a bad battery we had one time.

MS. MEDINA. Thank you.

DR. WEBB-VIGNERY. I want to thank you for coming and sharing with us what you've been up to and at the end of this meeting today the panel will decide what the next step will be with the information that we've gathered.

MR. FIFE. Thank you for your service here today.

DR. WEBB-VIGNERY. The next person on the agenda is Lynn Marcus from the College of Law.

The process has been that you give a brief overview and then answer questions from the committee. If you could introduce yourself.

Lynn Marcus, Director, Immigration Law Clinic, James E. Rogers College of Law, University of Arizona

MS. MARCUS. My name is Lynn Marcus and I'm the director of the Immigration Law Clinic at the James E. Rogers College of Law at the University of Arizona, and have been an immigration lawyer for about 12 years specializing in deportation defense work. I'm also the co-chair of the Asylum Program of Southern Arizona.

First I wanted to thank you for your time and effort that you're putting into this ongoing nightmare and for taking up the challenge. It's a problem that's been going on for a long time, as you know. Operation Gatekeeper's been going on for a long time.

A couple of years ago some of us got together, a woman from the American Friends Service Committee urged us to talk about problems along the border and immigration issues and see if we could come up with some proposed solutions. And it was a working group and I've listed the names here of the people who were involved, and we came up with some ideas and so I wanted to talk to you about some of those today. They may not all seem directly relevant to the issue of people dying along the border, but in some ways I believe that they are.

One of the first issues is so many people in the United States who have been here for a long time and taken up and have deep roots here; family ties, employment ties, community ties.

Since I believe—U.S. immigration law has always recognized that people who have been here for a long time and have good character at some point need to be able to legalize their status and not be subject to exploitation and deportation. That's always been the case, but it's been a long time since that provision of law, the registry, has been updated. And as a result you just do not see people who qualify for registry any more. You have to have entered since January 1 of 1972. There have been people who have been here since 1982 and people who have been for a long time, and the registry needs to be updated.

The link, I think, between people with strong roots here and deaths on the border—and I have no statistical knowledge or no way of knowing how much of how many of the people crossing are people who call the United States home. I would be surprised if there weren't some, because essentially some of these people, if you're sending them back, it's kind of like cutting off their legs and say "walk." People don't have a choice in the sense of this is where their life is, and you or I or anyone else would come back any way we could and probably even risking our lives to do it. I'm sure that some of the people who are crossing have been put in that situation, so the registry needs to be updated.

If you skip to one of the other areas that I'm most familiar with from my work, if you look at number six. Congress went too far in 1996 and most Congress people—many Congress people at least would agree with that. They didn't know what all the provisions of the 205 pages of the Anti-terrorism Act was that they were passing. It happened too fast and then with when the Illegal Immigration Reform—I'm mixing up two statutes here—Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 came shortly thereafter.

We're left with these laws that don't make any sense in the way the people live their lives, so long-term legal permanent residents are being deported with no regard to their family ties, with no regard to all of the things that ought to matter to us as a community, such as the children and what kind of parents are these people?

And so, based on old criminal convictions, based on the relatively minor criminal convictions, the deportation has gotten out of hand and we need to restore discretion of judges in these cases. When I think about that so many people grew up here since they were less than 1, they were 2, they came here, they were little, they have to come back here. And now they're serving time for it and now they're having to risk their lives to come back here. So there are a number of specific provisions.

As far as specific civil rights laws and what that violates, I can't tell you, but the International Human Rights Law does look at things like keeping families together, and there's been a judge at least in, I think it was the Eastern District of New York, Judge Weinstein, who looked at these provisions of the International Human Rights Law and said, "We need to consider children too." And these laws go against our treaty applications to keep families together and weigh the best interest of the child.

I won't go through all of the recommendations here because I've given them to you and what interests you I'm sure you'll focus on.

Obviously one of the biggest problems is people coming here to work, or people who are already working here who don't have the manner of doing so legally. And there are some proposed solutions here that would look at the fact that you can't tie a person—if you are going to allow a worker to come and work legally, you can't tie that person to a particular employer because of the exploitation that invites. But rather there are ideas to allow a designated number of workers per industry so that people could move within a field, and after putting in a certain number of days working in that field would be eligible to become legal permanent residents.

And then not everyone wants to become a permanent resident. There are also people who really want to live in Mexico but aren't able to make a living there.

Number three addresses the idea of temporary workers and the ability of people in industries where the United States needs the work to be able to cross and then be able to return to their families without having to risk their lives to do so.

There are many other specifics provisions as I said. The one that I come into contact most are the deportation grounds, and this includes not only legal permanent residents, but people who are married to U.S. citizens, have U.S. citizen children and just no bending and no give in the law as there used to be much more so before '96.

The final point I'll address along those lines is the expiration of Section 245(i) which allows a person to immigrate, to join, for example, a U.S. citizen spouse if even if they had one time

crossed the border illegally. That expired in '98. It was renewed and it expired again April 30 of 2001, so now people have to leave the United States and are subject to 10-year bars before they can enter. What do they do? They enter. How do they cross? We know.

And families—there's a pull, there's an attraction among families. We love our families and we have to have some legal means of being able to stay with our families and not having to risk people having to risk their lives to be with their families, so the registry needs to be updated. 5(i) needs to be restored.

Harsh positions such as a false claim to U.S. citizenship never being waiveable, not even for a spouse or child of a U.S. citizen, these things the Congress needs to look at again. And they're not going to risk United States security by doing so. It's just that when I think we were on the verge of some change and recognition among Congress that it had gone too far, that's when September 11 happened and has really derailed a lot of these efforts.

So I hope the United States can get back on track, and I hope that this committee will be able to make some recommendations along those policy lines. And thank you so much for putting all your time into this project.

DR. WEBB-VIGNERY. Chair recognizes Paul Gattone.

MR. GATTONE. Paul Gattone from Tucson.

Madam Chair, considering the time and effort that obviously went into compiling this document and thoroughness of the suggestions, I'm just hoping this can be part of the official record of our deliberations.

And since we are on a fact-finding mission today, it seems there are significant facts and information here and ask that this be part of our official record.

DR. WEBB-VIGNERY. I agree and we will make sure that this is part of the official record that's entered in.

I want to thank you for coming and visiting with us and sharing your very valuable information.

MS. MARCUS. Thank you for inviting me.

DR. WEBB-VIGNERY. We have an additional person, Kathryn Rodriguez.

Kathryn Rodriguez, Organizer, Coalicion de Derechos Humanos/Alianza Indigena Sin Fronteras

MS. RODRIGUEZ. I'm Kathryn Rodriguez from Coalicion de Derechos Humanos/Alianza Indigena Sin Fronteras. I have a few statements to make and copies of some abuse reports that we have. They're fairly typical of the situations we're seeing with the Border Patrol in the desert, the treatment of immigrants.

As a grassroots human rights organization, we are constantly being presented with the human aspect of these tragedies. As the numbers climb and statistics change, we end up talking daily to brothers, sisters, and children who are faces of these horrible deaths.

For over 10 years we've worked to document abuses of individuals by law enforcement agencies and are witnesses to the exploitation that begins as immigrants desperately seek to come to this country, responding to the advertisements promising work and pay, and continues all the way to the lucky ones who survive the gauntlet of death our government has installed and seek underpaid, thankless jobs that result in mistreatment, exploitation, exposure to pesticides and many other dangers.

The fact that U.S. border policies have predicted and planned for these deaths is an atrocity. That policies would be designed to discourage people with the deaths of others is a coldhearted calculation that results in human suffering, pure and simple.

Our border policies have failed and I do not think that there exists anyone who truly believes that they are working.

Migrants have been routed to remote desert regions with the prediction that a few would die, thereby discouraging others from following. That these deaths were and are acceptable to policymakers is an indication of the regard our government has for our fellow human beings.

But these policies have failed. They have not deterred border crossers from attempting to come to this country, and they have not stopped the deaths that are a direct result of such policies

Border policies have also caused division and disruption of indigenous communities. The Alianza Indigena works to document the abuses against indigenous communities. There are approximately six tribes directly affected by the border. Problems of harassment of members who do no have the correct documentation to attend ceremonies on their own land is rampant, and the desecration of ceremonial regalia and land has taken its toll on the spirit of those that live in the border region. Many of these deaths occur on indigenous land, and it is a great sadness to find bodies of individuals that are considered guests, fellow spirits of the earth, individuals whose deaths have come about by policies the indigenous community had no say in.

Derechos Humanos has worked to document and bring to public light these situations. In this, we have coordinated marches, vigils, and protests. Our efforts have even gained the notice of the American Patrol, who have gone to the extent of pasting one of our co-chairs', Isabel Garcia's, face on their Web site, presenting misinformation. Last year Garcia was notified by the FBI that they had gone so far as to paste a map of a vigil we would have, with a little cross depicting where she would stand. Such actions and sentiments are intended to intimidate us in our work, but only show us that the real enemies of human rights are right here in our communities.

We, as a country, society, and community united under the common bonds of human decency must band together to demand a stop to the border deaths, an end to the militarization of the U.S.-Mexico border, and the implementation of policies that work to create a border of friendship between our two nations.

Should I read the other statement?

DR. WEBB-VIGNERY. We'll confine it to the statement you just made. Are there questions from the panel?

I recognize Paul Gattone.

MR. GATTONE. I'm Paul Gattone.

Ms. Rodriguez, one of the things we've been doing today is collecting information and obviously these are helpful abuse documentation forms. I wonder if you could compile some that you would feel comfortable sharing with us and potentially direct them to the advisory board staff to be attached to the information we're collecting today?

MS. RODRIGUEZ. Okay.

MR. GATTONE. Madam Chair, is that acceptable?

DR. WEBB-VIGNERY. Yes. You would send the information to our Los Angeles regional office and you can receive that address from Art Palacios who is at the rear of the room.

MS. RODRIGUEZ. As you're looking at these reports, one of the stories that I think illuminates the treatment that we are not always aware of is of Benito Moreno. I believe it's the last name of the attachment.

This is a man who is documented here in this country. The situation basically ended up where he was a passenger in a vehicle that was stopped for a traffic violation and forgot his wallet, of all days. They refused to allow him to call his wife to bring his wallet to him. The bottom line is Border Patrol was called, he was taken, and by the end of the day a 15-passenger van was crammed with 23 individuals. They were given no water. Picked up at approximately 1 o'clock in the afternoon, finally dropped off at 10 p.m. No water this entire time.

And basically the way that Derechos Humanos feels about it is we know this is happening a lot. The only reason we know about this particular case is because this particular individual is documented, and once he was allowed to make his call, his wallet was brought to him, he was allowed to prove he was allowed to be here, so it's by pure chance that we know about this incident, but we know that it's happening several other times.

The Border Patrol is constantly condemning coyotes and smugglers in the desert for the way they cram people into vehicles and mistreat them. And this I believe illustrates that they themselves are doing the exact same thing.

These are human rights violations carried out by the Border Patrol and nobody is monitoring them. Nobody is following up. And it's by pure dumb luck, if you will, that we know it happened. So look at some of those.

DR. WEBB-VIGNERY. This is the information you would send to the regional office that's been requested. Thank you very much for your presentation.

We have Eugenia Cabrera, deputy counsel general for the Consulate of Mexico.

MS. CABRERA. Good afternoon. Ladies and gentlemen, shall I begin?

DR. WEBB-VIGNERY. Please state your name for us.

Eugenia Cabrera, Deputy Counsel General, Consulate of Mexico

MS. CABRERA. My name is Eugenia Cabrera. I am deputy counsel from Mexico in Tucson.

I am going to speak to you briefly about Mexican migration into the United States, about the specific situation that the Consulate of Mexico in Tucson attends, and about some of the actions our government is taking to mitigate this problem.

Which are the main causes of Mexican migration to the United States? There are two main causes: one originates in Mexico and the other one originates in the United States.

In the whole of Mexico there are certain states which are the main providers for migration due to unemployment. Also there are some states in which land can be cultivated only once a year. This is the reason why farmers want to immigrate temporarily out of Mexico.

The second very important cause of the migration of Mexicans into the U.S. originates in this country. It is, as we all know, the ample and great offer of jobs in sectors which have been traditionally occupied by Mexican migrants workers and which are not covered by U.S. nationals. You may not be aware of this, but many U.S. employers in this sector prefer to hire Mexican migrants because it is cheap labor. Also because they are not granted all the benefits generally provided to other employees, although Mexicans do pay taxes on everything they earn and buy.

Mexican migrant workers try to come to this country as they are sure a job is waiting for them. Those who make it into this country are virtually guaranteed a job, but their lack of legal status makes them vulnerable to those employers who undercut the competition by exploiting undocumented workers.

Due to the above causes or the just-mentioned causes as well as to the fact that there are only limited work visas available, Mexican nationals cross to the U.S. without work permits and to the part of the border which appears less controlled but is by far more dangerous.

In Arizona this area is Pinal County, Pima County, mainly in the territory of the Tohono O'odham Nation. This is the area where most of the deaths have been taking place this year.

The present migratory situation in this area could not be more disastrous and ominous. One of the most important responsibilities of the Consulate of Mexico is involved with Mexican nationals who have died or are crossing through counties of Pima and Pinal.

In this country at the Mexican Consulate we have been living an unprecedented tragic situation since the summer began, specifically since the beginning of June. From the 6th of June to this date there have been 75 deaths of Mexican nationals seeking jobs in the United States, 75 people who died mainly of dehydration in the desert. Counting from the beginning of the year from January to this date, the death count of Mexican nationals is 100. One hundred deaths in comparison to 56 deaths last year. The number of deaths has been increasing in giant steps since 1999 where there were 28 deaths in total.

Of these deaths of Mexican nationals, we have to consider also those in vehicle rollovers, people suffering from dehydration and various types of road accidents, including car, truck, and railroad.

The use of the Consulate of Mexico is to give consular protection to Mexicans in distress. Our office looks after hospitalized people, provides

them with food, clothing, and shelter until they can be safely back in Mexico.

In order to preserve family unity, consular officers have returned lost children to their parents and are always trying to keep together the same members of the family on their way back to Mexico.

In the case of death, the consulate notifies the family and provides the means of identification and repatriation of the body to Mexico. In the case of arrested people, the consulate offers counseling provided we are notified of the detention by the proper law enforcement authorities, which is generally the case.

What actions does the government of Mexico taking to diminish the tragedies at the border? First of all, one of the priorities of economic policy of President Fox is to invest in economic growth in Mexico, and particularly in the region of Mexico where migration originates in order to create more jobs. In this way over the next years fewer Mexicans will be compelled to leave their homes. The objective of this policy is to make migration a conscious and realistic choice.

Another important action being taking by foreign affairs in Mexico and all the consulates of Mexico in the United States is the campaign of preventive consular protection, which consists of drug testing, announcements on radio and television which warn about dangers of hiring services of smugglers, as well as about the risks of crossing the border without proper documents. These announcements are broadcast all through Mexico, especially in the regions where migration originates. Also, the consulates of Mexico along the border are implementing such a preventive campaign, which includes the distribution of pamphlets informing Mexican nationals about the rights they have in case they are detained by U.S. authorities, as well as the right to communicate to the Consulate of Mexico.

The third important section the government of Mexico is undertaking is the dismantling of smuggling rings. In this respect, last year to this date there had been approximately 200 trials and incarcerations of smugglers, and recently just last weekend four important smuggler rings which operated in the frontier here in Arizona were thoroughly dismantled.

Ladies and gentlemen, from what I have said before, I think it is evident that there is a need for Mexico in the United States to address the issue of migration on the basis of shared responsibility recognizing that the issue of migration is crucial, not just for Mexico but also for the United States because of the increasing economic and trading partnership that NAFTA has made possible. Mexico is today the second trading partner to the United States. More than $500 million of goods and services cross the U.S.-Mexico border every day.

There is a need to establish a regime that ensures a safe, legal and orderly movement of people that cross our common border. This could be a perfect opportunity and benefit for both nations, rather than the source of conflict and tension that it is today. An immigration agreement could represent a win-win situation for both countries because among other things Mexicans in the U.S.A. will be able to live, work legally and participate more fully into their local communities. Future migrants will be able to cross borders safely through conventional ports of entry and their labor would be offered with the certainty that their civil rights would have full protection in the United States. Mexican and U.S. authorities will be able to work together to target the criminal smugglers who exploit migrants to danger and foster lawlessness along the border. U.S. employers will be able to hire migrants without fear of breaking the law or being undercut by unscrupulous competitors. The Mexican economy will benefit from both increased remittances and the targets of investment so that in time migration pressures will gradually be reduced.

All these reasons make up an unquestionable win-win situation to the interest of both Mexico and the United States. Thank you very much.

DR. WEBB-VIGNERY. Thank you. Are there questions from the committee?

Chair recognizes Lorraine Lee.

MS. LEE. Madam Chair. Ms. Cabrera, you had mentioned that the consulate provides, or

that you provide counsel to detainees; did I understand that correctly—to all detainees?

MS. CABRERA. Yes. When we are advised that they are detained or arrested, mainly we give them advice how to behave with the authorities, what they can say. And if we cannot give them the proper advice, then we provide assistance of a lawyer.

MS. LEE. Madam Chair, I'm not sure if maybe I can ask a question of Ms. Black who had presented earlier because if I understood what Ms. Black had mentioned earlier in Florence that there were 80 percent of the detainees that were there that were not given counsel. Am I mixing apples and oranges there?

MR. GATTONE. You're misinterpreting the word "counsel."

MS. GARCIA. Eighty percent of immigration deportation proceedings, and Ms. Cabrera is talking about consulate call.

MS. LEE. So the consulate provides advice but not legal representation?

MS. CABRERA. No. We can recommend some lawyers, but we do not provide legal representation.

DR. WEBB-VIGNERY. Chair recognizes Ramon Paz.

MR. PAZ. We're heard all day people bringing out situations regarding abuses, harassment, intimidation by the Border Patrol, and I'm sure your office has heard a lot of them too. Am I correct in assuming that you've heard a lot of complaints about particularly the Border Patrol throughout the years in terms of how they handle migrants that cross the border?

MS. CABRERA. Well, in this area we have some complaints. We have some cases of grave violations to human rights, specifically three cases of Mexican nationals who were killed by or while in—they were in the care of the United States or Border Patrol. And we also have had some complaints about violations, maltreatment at the time of the detainment, but these are not very frequent and really these violations are relatively minor. They have not caused great consequences.

So in relation to the main problem we have here, which are the deaths and the accidents, these complaints of violations of human rights are really not many. As I told you before, only three grave cases of Mexican nationals.

MR. PAZ. Do you have a reason why? Why would you think that would be the case knowing that we have already heard of so many complaints?

MS. CABRERA. Sometimes they are afraid. They are afraid to make a complaint because they think—they're afraid to tell us because they think that the authorities will punish them more.

MR. PAZ. The Mexican authorities?

MS. CABRERA. No. The U.S. authorities. And they do not tell us the truth. Sometimes they have a confusion. They confuse us with U.S. authorities.

MR. PAZ. So you're giving me the impression that the Mexican Consulate perhaps is not a user-friendly agency to a lot of—

MS. CABRERA. No. What happens is when people—Mexican migrants—come here, they know they are not crossing in a legal way. They are afraid of authority. We try very hard to tell them we are going to help them, but many times they don't say really what's happening. Or they tell us, but they don't want to testify. They don't want to involve other people. They don't want to get into more trouble in the United States.

MR. PAZ. With the treatment of migrants, is your agency or office concerned of how it's being caught in the middle with antiterrorism activity on a global sense as it affects the Mexican migrants coming in differently than it used to since September 11?

MS. CABRERA. Well, the migration was reduced a little bit after September 11 last year, but it has returned to the old numbers of crossings.

MR. PAZ. I'm talking specifically about the perception that we don't look at Mexican people crossing over as just simply undocumented workers or migrants, but now part of a terrorist threat to the United States; does that concern your office?

MS. CABRERA. I don't understand what you mean. Do you mean Mexicans may be terrorists?

MR. PAZ. There is a completely different attitude towards migration both from militarizing the border to preventing access to this country, and the migrant that is coming over for the reasons you described, for economic reasons, that has gotten lost a little bit so the approach towards Mexican migrants is different. Is your office concerned about that attitude, about that perception?

MS. CABRERA. What we are concerned about is the reinforcement at the border because there has certainly been more accidents in the frontier and more and more complaints about mistreatment of the detainees crossing the border.

DR. WEBB-VIGNERY. I want to thank you for coming and speaking this afternoon and providing information for the state advisory council. And at the end of this session we will make a decision how we're going to move forward with the information that we've received today, so thank you very much.

We have another presenter now.

Erendira Castillo, Attorney, Federal Public Defender's Office

MS. CASTILLO. My name is spelled E-r-e-n-d-i-r-a C-a-s-t-i-l-l-o. I'm an attorney at the Federal Public Defender's Office. I represent people who have been accused of federal crimes. I represent people who have been charged with illegal entry. I also represent people who are charged with illegal entry after deportation, and people who have been accused of transportation, harboring, assisting individuals avoid inspection as well as material witnesses in those cases.

I think one of the most important distinctions I have to make and inform you about is while Ms. Black and Ms. Marcus have spoken about the civil immigration laws, I'm here to inform you about the criminal statutes which the act makes no distinction of; however, they have been increasingly prosecuted since 1996. These laws have been in existence since 1952; however, not until '96 have there been actual real prosecutions in this area.

Tucson is a very unique jurisdiction in that we are only second to San Diego in prosecutions. We represent over—myself alone last year represented over 500 individuals charged with illegal entry, reentry, and other immigration-related crimes.

Our office in 1996 started an Immigration Unit, where we specifically represent people who are charged with immigration-related crimes. Our biggest concerns as defense attorneys is that we are very limited in defending individuals. We are principally mitigation specialists. We are here to try to obtain the least sentence possible for individuals charged with these offenses, because they are individuals who under the law basically have no rights, especially when we talk about immigration-related offenses because a person's identity is not protected by the law, and unfortunately this is the only offense when a person commits an immigration offense. Their identity is all you need basically to prove they've committed offenses. We are looking at individuals who are looking at anywhere from a few days if you're charged with illegal entry and you have no prior criminal history, to individuals who are looking at a maximum of 20 years just crossing the border.

Now what is important to note is that when a person is arrested by Border Patrol, that person is enrolled into their, what they call an IDENT system, which is basically a system that was set up by the United Nations to enroll refugee by their fingerprints. Their fingerprints are taken into the system. They are basically in their database, and then after they reach a certain number of what they call IDENT hits, they are then prosecuted criminally for illegal entry.

Once they have been prosecuted for illegal entry they go to INS. There they are processed through the civil immigration system and they are deported or removed from the United States. People there, as you're well aware, are not entitled to right to counsel; however, in the criminal setting when they are facing illegal entry charges, they do have attorneys.

We see them for approximately 15 minutes, depending if we have an opportunity to go see

them ahead of time at the prison facility in Florence, Arizona. However, the right to counsel is severely inhibited by the fact that it's an hour and 15, 20 minutes away, and to go see somebody for a consultation that takes about 20 minutes when you have so many other cases, it's very difficult.

However, I would like to tell you that they do have a right to advise their consulate and that is through the Geneva Convention; however that right is basically a nullity. It doesn't provide them with anything more than somebody telling them to invoke their rights if they do that.

Unfortunately what we see is people not having faith in any system, whether it's the consulate, whether it's their criminal defense lawyer, or whether it's the INS, we see people who have been so abused and have so little faith in the system that they'd just rather grin and bare it.

The effect of 9/11 in my experience over the last four years, comparing the last four years until now, is that I have seen an increased number of complaints regarding violence. There seems to be a distinct experience of my clients telling me the Border Patrol is more readily using physical force against them.

I have seen more violence, more people having injuries. And unfortunately what is normally the case and what has been my experience has been when people are abused by Border Patrol they are usually returned, so this is not information that we get. This is not information that any human rights organization or interfaith committee here would receive.

Once in a while they decide to bring them anyway because they are able to probably charge them with assault on a federal officer, which only requires them interfering with a federal officer's duty, which could be as much as running away, which would be considered interfering. So therefore it's a win-win situation on their behalf.

Often they bring them here and they complain of having been abused by Border Patrol, and then our only recourse is to bring it to the court's attention. At that point we often file complaints with the Office of the Inspector General; however, our experience with that office is it's incredibly overwhelmed and has no resources really to follow things up. Not only are there not any resources, but there aren't any consequences to their actions. So once Border Patrol is found to have been at fault, they are rarely, if ever, reprimanded for their actions.

So this is something of great concern to me because as a person who wishes to be proactive it's really just a drop in the bucket.

I have seen an increased risk placed on people crossing the border, not necessarily by those who are just walking, but what I'm talking about is the severity of alien smuggling cases has gotten worse. We're looking at people put in much graver dangers. Case law is pretty clear, for example, in the New York area where people are being put in grave danger because they're put in shipping containers and such. We're seeing more people being brought, for example, in tractor-trailer trucks, in the back without any kind of breathing devices, any kind of facilities for bathroom use. We've seen more people left in safe houses along the border area without food and water. These are all things that are occurring because of the policies, and rather than Border Patrol—

People who are there often try to negotiate terms for moving on. Border Patrol has now become a plainclothes law enforcement facility as well; therefore, they often go into safe houses and negotiate terms with individuals who have been left there in a safe house and therefore that individual is now culpable of an offense and is prosecuted for negotiating terms for their entry into the country.

Material witness detention is a concern, especially here, especially with what's happened in the last year. We've had individuals who are having to be held in prison facilities while they are held as material witnesses for alien transportation charges. These are all things that are of grave concern for us.

Another concern of violations of civil rights that are egregious is the increased number of people who are of Native American descent, living in the Tohono O'odham Nation, who are being prosecuted criminally for transporting un-

documented people because of the fact that it's such a large economic engine growing in these areas where the Native Americans are being criminalized as well as the Mexican immigrants crossing the border.

These are all things that are I think only getting worse. They've only gotten worse since September 11, and there are many more that I could go into, for example, the civil rights violations that occur in the prisons.

CVA is a facility, a contract facility. They contract also for immigration and also the marshal service there called pre-trial detainees. Allegedly they have more rights than a person convicted of a crime, yet they are held in a facility that has very little activity for individuals.

Because of the large number of people that they decided have become gangs, the Border Brothers, there is an increased number of people who are being held for illegal entry and reentries who if identified as a Border Brother are held in a lockdown situation where they're only released one hour every other day.

And there is no due process. A person who is determined to be part of a gang, they go ahead and are required to put that in. There's reason to believe it's related to the government's interest in being safe. There's no due process. And these are the type of facilities that people are being held in.

There are no employment opportunities for undocumented people in the Bureau of Prisons because of the fact they're undocumented.

DR. WEBB-VIGNERY. We need to call time because I promised you 10 minutes, and see if there are questions. Isabel.

MS. GARCIA. Can you give us approximately the perjury of people that are prosecuted in this U.S. district court, how many of those are immigration-related offenses generally speaking?

MS. CASTILLO. I would approximate a guess at about 90 percent.

MS. GARCIA. And your Immigration Unit at the Federal PD consists of how many attorneys?

MS. CASTILLO. Currently we have 12 attorneys and one supervisor, and that will be increasing to 15. In the next five years they creasing to 15. In the next five years they project an increase to 24 lawyers in that unit.

MS. GARCIA. And I gather that the prosecuting office has a similar counterpart of 15 to 25 attorneys doing nothing but immigration violations?

MS. CASTILLO. No. The U.S. attorney's office has what they call a Border Crimes Unit; however, they have a more diverse caseload. However, their office compared to most U.S. attorneys' offices in the United States, each U.S. attorney carries approximately 150 cases, which is very high compared to most districts.

DR. WEBB-VIGNERY. Other questions? Jose Matus.

MR. MATUS. Jose Matus from Tucson.

Two questions: One is, can you clarify—you made the statement that no rights under the law, and the second question is some of the abuses that you have mentioned, do you have documentation so we can get a copy of those?

MS. CASTILLO. Yes. First what I mean by no right is while a person is being charged with illegal entry or reentry we have a right to file a motion, for example, for an illegal stop; however, there is nothing to be able be suppressed by the law. The law provides that if constitutional rights have been broken, there is the exclusionary rule. The exclusionary rule applies to whatever the law enforcement officers have found as a result of the violation of the constitutional right. So if a person is stopped in their vehicle and they search the vehicle without having consent or having probable cause to search—let's say they find a gun, in a regular criminal proceeding that gun could be suppressed.

You could file a motion to suppress and that gun could be suppressed; however, in a situation where you have a person driving a vehicle, let's say the Border Patrol officer looks at you. He says you're holding on to the wheel tightly, you're looking—you didn't look at him or you looked at him and you waved and he didn't recognize you.

Or your car is registered in Phoenix and that's uncommon to see in that area of the border, and he goes ahead and stops you, goes ahead and

looks and sees in your car that you have three other individuals in your car and he asks them if they have any papers and they say no.

As a lawyer, if I were to file a motion to suppress based on lack of reasonable suspicion or lack of probable cause to prosecute this case, there is nothing that could be suppressed under the law. There is no legal remedy for a person's identity being suppressed; therefore, that's why I say we've become mitigation specialists, or we have to have a few guinea pigs, a few people who are willing to go ahead and look at a sentence of anywhere from 76 to 96 months, which are the guidelines for illegal reentry.

DR. WEBB-VIGNERY. Other questions? I want to thank you.

MS. CASTILLO. He asked me a question about abuse, regarding things that have been abused.

One thing I did bring and can provide are—currently the Border Patrol is using these motion inflation devices. They use them where they see an individual driving a car and they believe that somebody has been stopped, should be stopped. They roll these things out and people, sometimes 15, 20 people in a vehicle, and as a result there's often accidents. I've brought some reports and I'll submit those to the committee.

DR. WEBB-VIGNERY. If you could give that to Art Palacios who is in the back of the room. Thank you very much. We have a decision to make here as a committee.

The hearing has come to an end and the committee is going to meet and decide what is next.

[Hearing adjourned at 3 p.m.]