



U.S.-Mexico Border Policy Report

*"Effective Border Policy: Security, Responsibility
And Human Rights at the U.S.-Mexico Border"
November 2008, Washington, D.C.*

Cover: A boy looks through the border fence from the Mexican side. The fence is one part of the securitization that has occurred in the U.S. It also represents a violation of migrants' human rights as outlined in the U.S. Constitution and several international conventions.

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Release and presented by the Border Network for Human Rights, the Border Action Network, and the U.S.-Mexico Border and Immigration Task Force, in collaboration with the National Immigration Forum.

Executive Summary

This U.S.-Mexico Border Policy Report is the culmination of years of effort among border leaders to provide local law enforcement, government and community expertise to the national debate over immigration policy and border security. For too many years, we have witnessed efforts to secure the border that are grounded not in the complex realities of border life but in simplistic sound bites and assumptions that building a wall can somehow keep our country safe. Our conclusions and policy recommendations start with the premise that the "border" is a dynamic concept, that border communities have important ties to both the United States and Mexico, and that these ties create a unique set of opportunities and challenges that affect both the border areas and the broader national interest. Recognizing that millions live and work in U.S. border communities, border and immigration policies must be formulated and implemented in a way that respects the rights of these community members and the needs of their hometowns and cities. When properly carried out, these policies can substantially improve security and safety in the border region and in the nation as a whole.

The Consequences of Increased Militarization of the Border

Over the last two decades, U.S. immigration policy began to focus increasingly on the need to secure the southwest border in order to block the flow of undocumented migrants. Rather than viewing border enforcement as a component of a broader immigration strategy, border enforcement became the strategy, most often expressed as the need to first secure our borders before dealing with broader questions of immigration reform. This approach, however, has failed, costing the country billions of dollars, weakening the autonomy and rights of border communities and their residents, and creating a militarized border that has left the country less secure. Our findings indicate that the consequences of these policies have led to needless suffering and an overall degradation in human rights.

Summary of Recommendations

The U.S.-Mexico Border and Immigration Task Force has developed over 70 specific recommendations for improving immigration enforcement. The vast majority of the recommendations identify specific ways to improve enforcement objectives, reduce the

possibility of civil and human rights violations, and engage border communities in creating solutions to legitimate concerns about violence and security along the border, as well as for calling for an end to misguided and fiscally irresponsible programs, such as the mandatory construction of a physical border wall. Some of these suggestions have already been recognized by Congress and incorporated into proposals such as the STRIVE Act of 2007 and the bi-partisan Senate immigration proposal of 2007, including the creations of the U.S.-Mexico Border Review Commission, the Congressional Report on Border Deaths, the Border Patrol Training Review, Local Community Consultations, and the Office of Detention Oversight. We believe these recommendations can and should be part of any new discussions on legislative reform of border safety.

Our recommendations offer the country an opportunity to revisit the discussions of border enforcement and immigration enforcement more generally. The ability of elected officials, law enforcement officials, business leaders, community advocates and faith leaders to come together around these proposals demonstrates that broad support can exist for immigration reform and border security, and that people from very different perspectives can agree when we challenge our assumptions. The Border Task Force began to learn that much of our work centers on the question of what genuinely makes our communities safer and stronger. Thus, we believe that the report offers a new paradigm for immigration enforcement. By ensuring the safety of border communities, we shift away from an enforcement-only mentality to one that recognizes that smart immigration reforms benefit everyone in our communities and in our nation. The following summary of recommendations reflects that conclusion.

- **Communities are more secure when border enforcement policies focus on the criminal element and engage immigrants in fighting the real dangers facing us.** Community security is an integral part of national and border security, but we need to stop treating the immigrant as the greatest threat, focusing instead on dangerous criminals, traffickers, and exploiters in border and immigrant communities.
- **Communities are safer when we implement policies that ensure accountability and provide local oversight of enforcement activities.** Border enforcement policies, projects, and agencies need to be accountable to the communities in which they operate. To ensure that this occurs, the U.S. Congress needs to create an independent oversight and review commission. Additional operational and policy recommendations include improved human rights training of officers, strengthened complaint procedures, and measures to end racial profiling in the borderlands.
- **Communities flourish when Ports of Entry are treated as vital gateways to America.** Ports of Entry are America's gateway. They are vital to the economy and well-being of the nation and border region, and they deserve major investments in staffing and infrastructure to expedite crossings and reduce the economic impact of long border delays. Dramatic overhaul of complaint and oversight procedures is needed to ensure that the rights of border crossers are protected.

- **Communities are stronger and lives are saved when we replace border blockade operations with more sensible enforcement.** Comprehensive immigration reform will eliminate the need for mass border enforcement “operations” that are responsible for hundreds of deaths annually. Implementation of border enforcement actions, technologies, and infrastructure need to take into account impacted communities and the environment.
- **Communities are literally divided by the devastating impact of the border wall, the construction of which should be halted.** The construction of the border wall should immediately stop due to its overwhelming social, environmental, and legal impacts. Just from a cost-effectiveness standpoint, the current border wall and fencing projects have not proven successful in stopping immigration flows, while construction costs have nearly doubled from \$4.5 million per mile to \$7.5 million per mile.
- **Communities are safer when local law enforcement is not pressed into immigration-enforcement roles.** Federal immigration laws involve complicated administrative and criminal issues, and local law-enforcement agencies should not be forced to assume the role of federal immigration enforcement. Federal and state laws and resources should not be used to pressure local agencies to undertake these activities.
- **Communities are safer when the military is not used to enforce civilian law.** The military does not belong in civilian law enforcement, even indirectly. Demonstrated risks to civilians of military operations in support of civilian law enforcement should be eliminated. Loopholes in the Posse Comitatus Act governing the National Guard should be closed.
- **Communities are destabilized by harsh detention and removal practices. It is essential to dramatically overhaul detention practices and the manner in which we conduct removals.** We propose a series of specific reforms to improve the human rights conditions of the U.S. detention and deportation system, which currently has little oversight and accountability.
- **All communities benefit by engaging the root causes of migratory pressures. Comprehensive economic development is the long-term solution.** Just and comprehensive development in the U.S. borderlands, the U.S. interior, and the Mexican interior, is the long-term solution to migratory pressures.

Going Forward

Resolving the crisis along our southwestern border is a national imperative. The expertise of border leadership is critical to the development of border security measures. For too long, border communities have been told what will “work” to fix the problem, without being actively included in the decision-making process. At the onset of a new Administration and a new Congress, the time has come to engage in a genuine dialogue about immigration and border reform. The timing could not be more

critical—our economic crisis makes it imperative that we revisit old ideas about immigration as a barrier and instead view immigration and border issues as part of the solution. Effective border policy relies on:

- Security that focuses on criminal elements such as trafficking, smuggling and other insidious actions.
- Accountability and trust between law enforcement officials and the community.
- Fiscally responsible border enforcement measures that promote cross-border trade.

Ultimately, this Border Policy Report can provide us with the opportunity to begin to address the very complicated issues of immigration reform and border security in a new framework, one that recognizes that we must all work together to remain strong and grow.

Background and Context of the U.S.- Mexico Border Policy Report

“Border Communities as Part of the Solution”

U.S. communities along the border with Mexico experience a reality that is essentially different from that of the rest of the country. U.S. immigration policy has transformed the region into a militarized zone where the U.S. Constitution and international law are selectively applied. By failing to recognize and affirm fundamental civil and human rights, U.S. immigration policies and efforts to “secure” the southern border have had dire human consequences, from the ever-increasing tally of migrant deaths on the border to the systemic violation of the civil and human rights of border crossers and those living in border communities.

In the summer of 2005, the Border Network for Human Rights (BNHR) and the Border Action Network (BAN) launched an unprecedented consultation within border communities in Texas, New Mexico, and Arizona, placing border policies and practices at the center of the discussions. As a result of those community dialogues, it became clear that border communities critically questioned the content and form of U.S. border policies and the process by which they are shaped by Congress, the Administration, and Washington-based institutions, who essentially have left out the voices, opinions, and perceptions of border communities.

This border community consultation process highlighted the fact that effective and responsible border enforcement policies should comprehensively integrate national security, community security, economic development and respect for human and constitutional rights. Border residents believe that national security and the protections of rights are not mutually exclusive, but are both essential elements for building better immigration and border policies.

By the spring of 2006, the BNHR and BAN, with the support of the Latin America Working Group, had translated the results of the community consultations into a series of nearly 40 policy recommendations. These recommendations, which dealt with issues such as border operations, fencing, military involvement at the border, law-enforcement misconduct, community security, and detention and deportation, became known as the *Guidelines for Alternative Border Enforcement Policies and Practices*.

Subsequently, in each of the border states the groups began to distribute the Guidelines to local elected officials, law enforcement, and faith, business, and other community leaders. These discussions revealed that nearly every sector of society within border communities shared similar frustration with border enforcement policies—i.e., that they undermined the essential interdependence between cross-border communities.

In the summer of 2006, the two groups brought together several individuals and institutions from Texas, New Mexico, and Arizona to create the U.S.-Mexico Border and Immigration Task Force. Members of the Task Force are local elected officials, members of

community organizations, academics, lawyers, clergy, and business and community leaders of border cities and counties.

The primary role of this Task Force is to bring together the opinions, expertise, and insight of the various sectors of our border society to present policy recommendations and testimonies on the current immigration reform debate. Moreover, the Task Force attempts to present a new "border vision" that comprehensively integrates border security, human and civil rights, accountability, community security, and regional integration. In October 2006, the Task Force took its first step by endorsing and improving the Guidelines for Alternative Border Enforcement Policies and Practices.

In November 2006, the Task Force traveled to Washington, D.C. to present these policy recommendations to congressional offices and White House officials. During that trip, the Task Force was asked by key congressional offices to provide specific legislative language. A full document with policy ideas and legislative recommendations was developed by the Task Force and submitted to congressional offices in December 2006.

In June 2007, an important delegation of approximately 20 members of the Task Force, led by Co-chairs Jose Rodriguez (El Paso County, TX attorney) and Manny Ruiz (Santa Cruz County, AZ Supervisor), traveled again to Washington to reinforce the inclusion of their border policy guidelines in the immigration reform debate.

The Task Force members had a busy schedule. In just two days, and with the help of Congress Silvestre Reyes (El Paso, TX), the group met with Democratic Majority Leader Rep. Steny Hoyer, with the office of the Senate Majority Leader Harry Reid, with AZ Senator Kyl, with six U.S. Representatives personally (Reyes, Grijalva, Giffords, Rodriguez, Pearce, Gutierrez), with more than 10 other congressional offices, with key congressional committees and subcommittees (Judiciary, Homeland Security, Border Affairs, Immigration), with White House officials, with high-level DHS officials, with the Border Patrol Deputy Chief, with D.C.-based advocates, and with media representatives.

By mid-June the work of the U.S.-Mexico Border and Immigration Task Force had already had an impact. Several of its key recommendations made it into the final version of both the Senate compromise bill and the STRIVE Act in the House, including the creations of the U.S.-Mexico Border Review Commission, the Report on Border Deaths, the Border Patrol Training Review, Local Community Consultations, and the Office of Detention Oversight. This was a major achievement for the Border Task Force—none of those provisions would have been included in the two bills without its superb efforts and political assertiveness.

Unfortunately, the week following the Task Force trip to Washington, the Congress and the Bush Administration showed their inability to carry out a serious discussion on immigration reform. While Congress stalled on any comprehensive approach to immigration, the Administration forged ahead with the enforcement-only and enforcement-first legislation.

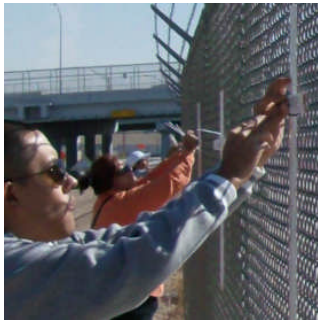
Given this trajectory, the role of the Task Force today is as important as it was during the immigration reform debate. While Washington has lately been largely focused on presidential polling, the border continues to be a battleground among candidates and is still a focal point of national interest, with or without the promise of immigration policy reform. As such, the Task Force can continue to impact the border policy debate and urge the inclusion of the Guidelines in national policy.

At the same time, the Task Force and the Border Human Rights Collaborative (Border Network and Border Action) decided to utilize the political window of opportunity to expand the vision for national security, community security, human rights, accountability, and bi-national economic integration. The groups decided to convene a "Border Policy Conference" to bring together all the members of the Task Force plus other key community leaders and sectors along the U.S.-Mexico border to elaborate the Guidelines and develop a forward-thinking vision of border communities and the types of policies that are relevant.

On November 29 and 30, 2007, more than 200 individuals representing diverse organizations and institutions came from all along the U.S.-Mexico border to participate in the Border Conference. The agenda of the two-day Conference in El Paso, Texas included plenary presentations on border and immigration policy history, immigration and the global economy, and analysis of the current national immigration debate. Participants engaged in small-group conversations to enhance the Border Guidelines and to further develop a long-term vision of border policy.

The Border Policy Conference was convened with the expectation of transforming the way people think about the border and the types of policies needed in the region. This report attempts to capture the discussion and consensus that emerged at the conference.

Impacts of Intensified Border Enforcement and Militarization on Border Communities



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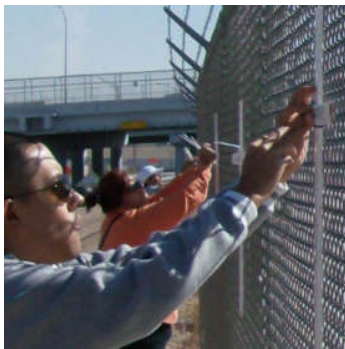


Effects of Intensified Border Enforcement and Militarization on Border Communities¹

U.S. immigration and drug interdiction policies have transformed the region into a militarized zone where the U.S. Constitution and international law are selectively applied, at best. Efforts to “secure” the southern border have had dire human consequences, from the ever-increasing tally of migrant deaths to the systemic violation of the civil and human rights of border crossers and those living in border communities. Conditions are rife with the potential for

increased violence against border residents and migrants alike.

Over six million people live in the counties located along the U.S. side of the border. Human rights violations occur against U.S. citizens, legal residents, legal visitors, and undocumented residents and migrants. In a 2007 report, the Border Network for Human Rights (BNHR) found that 40 percent of documented rights violations in the Texas and New Mexico border regions occurred against U.S. citizens or legal residents. Forty-seven percent of the violations were perpetrated against the undocumented, while the rest (13%) of the victims were of unknown status.² Border enforcement policies and practices are violating the rights of border residents and families whether they have legal status or not.



Avoidable Deaths

Border blockade operations such as Operation Blockade/Hold the Line, Operation Gatekeeper, and Operation Safeguard have forced migrants to cross dangerous and remote desert and mountain terrain, often during times when temperatures are very high or low. Border Patrol checkpoints have prompted the use of more dangerous smuggling approaches such as hiding in tractor-trailers, and smugglers have demonstrated little or no regard for the human beings that

they are transporting. Since the inception of blockade operations in 1994, more than 4,000 migrants have died crossing the U.S.-Mexico border, most often due to dehydration and

¹ Where not otherwise footnoted, this section of the conference report is adapted from: Border Network for Human Rights, “Behind every abuse is a community: U.S.-Mexico border report to the United Nations Human Rights Committee regarding the United States’ compliance with the International Covenant on Civil and Political Rights,” El Paso, TX, June 2006. Downloaded from <http://www.bnhr.org/index.php?option=com_content&view=article&id=14:report-on-us-compliance-with-the-international-covenant-on-civil-and-political-rights&catid=1:status-of-human-rights&Itemid=7>

² Border Network for Human Rights, “A testimonial report: The status of human and civil rights at the border, 2007” El Paso, TX, December 10, 2007. Downloaded from <<http://www.bnhr.org/pdf/BnhrReport2007.pdf>>

exposure in the desert. Conservative estimates of annual death rates now approximate 400 per year.³

Smugglers

As the difficulties in crossing increase, migrants increasingly rely on human smugglers or “coyotes.” According to one recent study, 90% of undocumented migrants now use coyotes, which charge more than \$1,600 per trip.⁴ This dynamic creates myriad concerns and problems, one of which is the significant financial cost to migrants—or, seen from the other side, the significant income that these illegal smugglers make from human trafficking. Furthermore, smugglers subject migrants to dangerous and even life-threatening conditions, which have resulted in crossing deaths and asphyxiation in the back of semi-tractor trailers. Smugglers have also been regularly accused of coercion, rape, and forced servitude to pay off debts. The United States has passed a series of laws to curb smuggling and reduce risk to migrants, such as the Trafficking Victims Protection Act of 2000, and these measures have to some extent offset the harsh border-control policies that lead desperate migrants to risk their lives.

Militarization

The U.S. border has been the site of a considerable expansion of the U.S. military’s role in immigration enforcement, which should really be a domestic, civil matter. The expansion is evident in both the U.S. military’s direct and indirect involvement in areas of civil law enforcement and law-enforcement agencies’ adoption of military strategies and characteristics. Joint Task Force-Six (JTF-6, later renamed JTF-North), stationed at Ft. Bliss in El Paso, has a mandate to provide military personnel for observation, reconnaissance, intelligence analysis, and training along the border. In its first eight years of existence, it conducted more than 4,000 covert ground troop operations, eighty percent of these on the southern border, the majority at the request of the U.S. Border Patrol. In May 1997, the death of Ezequiel Hernandez, a U.S. citizen shot by four Marines carrying out a covert operation, led to military patrols on the border being suspended. But the door for continued direct military involvement on the border has not been closed, and JTF-North continues to operate along the border.

In May 2006, President Bush announced the deployment of over 6,000 National Guard troops to “assist” the U.S. Border Patrol along the border in California, Arizona, New Mexico, and Texas. Though state and federal officials claim that this is not a move toward the militarization of the border and that the armed agents will be used only in a “support” fashion, past experience gives cause for community concern. There are more than 12,000 Border Patrol agents along the U.S.-Mexico border, and some communities, such as

³ Wayne A. Cornelius, “Death at the border: The efficacy and ‘unintended’ consequences of U.S. immigration control policy, 1993–2000.” Downloaded from <<http://www.ccis-ucsd.org/PUBLICATIONS/wrkg27.pdf>>

⁴ Jezmin Fuentes, Henry L’Esperance, Raúl Pérez, and Caitlin White, “Impacts of U.S. immigration policies on migration behavior,” in Wayne A. Cornelius and Jessa M. Lewis, eds., *Impacts of border enforcement on Mexican migration: The view from sending communities*, La Jolla, CA: Center for Comparative Immigration Studies, University of California, San Diego, 2007.

Douglas, Arizona, are overwhelmed by their presence. With a population of 14,000, the town is host to almost 500 Border Patrol agents, or one agent for every 30 people in the town. The proposed increase in U.S. Border Patrol agents and the deployment of 6,000 National Guard troops have filled the more marginalized immigrant communities along the border with extreme apprehension, if not terror.

The presence of military patrols puts border residents at risk. Soldiers are trained for combat, not to assess immigration violations or to monitor compliance with human rights norms, and particularly not in unique border regions. Persons living within the boundaries of the U.S. should not be subjected to military-style stops, checkpoints, and other violations of their civil liberties.

Vigilantes

The militarization of the U.S.-Mexico border has also given rise to a number of civilian militia groups whom immigrant communities refer to as “migrant hunters.” These groups, such as the Minutemen and the American Patrol, along with armed ranchers, have harassed immigrants crossing through the desert. The American Civil Liberties Union found a disturbing number of incidents regarding vigilante activity on the U.S.-Mexico border in which migrants reported being “shot at, bitten by dogs, hit with flashlights, kicked, taunted, and unlawfully imprisoned.”⁵

In a 2005 petition to the Organization of American States’ Inter-American Commission on Human Rights, Border Action Network documented nearly 1,000 people who had been subject to civilian vigilante detention, harassment, and violence.⁶ These activities are not officially sanctioned, but they are encouraged by the climate of fear and by militarization of the border. At the very least, it is important that federal officials maintain absolute separation from vigilante groups, and that local and state law enforcement do so as well, so that they are free to investigate and intervene in cases of abuse and unlawful detention.

Federal Law-Enforcement Abuses

In a very small but extremely important set of cases, Homeland Security officers (including Border Patrol officers) have used lethal force.⁷ The wider pattern of abuses includes pointing guns at immigrants, wrongful detention, excessive use of force, and verbal and psychological abuse. A specific subset of abuse is coerced voluntary departures and other

⁵ American Civil Liberties Union, “Creating the Minutemen: A small extremist group’s campaign fueled by misinformation,” at p. 13. Downloaded from <<http://www.ilw.com/articles/2006,0619-ybarra.pdf>>

⁶ Border Action Network, “Petition to the Inter-American Commission on Human Rights. Submitted by the Border Action Network in relation to Victims of Anti-Immigrant Activities and Vigilante Violence in Southern Arizona Against the United States of America. Petition No. P-478-05 (United States).”

⁷ For example, see the cases discussed on pp. 9–10 of Border Network for Human Rights, “Behind every abuse is a community: U.S.-Mexico Border report to the United Nations Human Rights Committee regarding the United States’ compliance with the International Covenant on Civil and Political Rights” (see Fn. 1).

violations of due process by denying the person's right to appear before an immigration judge.

Border Patrol and Immigration and Customs Enforcement (ICE) Operations in Border Communities

Department of Homeland Security officers intermittently enforce immigration law in settings that disrupt and spread fear in everyday community settings. At various times in the last two decades, and continuing sporadically to the present day, these include (1) warrantless entry into homes by manipulation or coercive action; (2) immigration sweeps on public transportation in the poor neighborhoods known to have high numbers of immigrants; (3) unfocused "area control" operations in residential neighborhoods, streets, and parks, and near places of employment; and (4) actions on or near school grounds or against children traveling to school.

In the border communities of Pirtleville, Naco, Nogales, and Douglas, AZ, 19%, 27%, 32%, and 43% of residents, respectively, reported having been stopped, questioned, or harassed by the Border Patrol. The Border Action Network stated in a recent report: "From conversations with more than three hundred families, we found that many of the fundamental values that typically hold families together, like trust, safety, and accountability, have been devastatingly eroded. This report reveals that border communities feel less safe, that the Border Patrol has broken communities' trust, that residents are made to feel suspect simply because of their appearance, and that the agency has no system of 'checks and balances'." ⁸

Racial Profiling

Recent reports have shown that racial profiling, particularly with regard to immigration status in the U.S., is an all-too-frequent experience. A recent study by the Pew Hispanic Center revealed that nearly one out of ten Hispanic adults—native border U.S. citizens and immigrants alike—reported that in the past year the police or other authorities have stopped them and asked them about their immigration status.⁹

Here on the southern border, with nearly 18,000 Border Patrol agents and myriad other federal agencies, racial profiling continues to threaten border and immigrant communities. Standard license checkpoints that often result in the questioning of drivers about their immigration status, occur throughout the border region but with greatest frequency in poor immigrant communities. The "transportation checks" in which Border Patrol agents conduct public transportation sweeps also occur more frequently in communities with high numbers of Latino immigrants. These are often impoverished areas where individuals are more likely to use public transportation. In a survey conducted with over 300 families in Arizona border communities, the Border Action Network found that a startling majority of

⁸ Border Action Network, "The unequal impacts of border patrol activities in arizona border communities," Tucson, AZ 2003. Quote at p. 1. Downloaded from <http://www.borderaction.org/PDFs/justice_on_the_line.pdf>

⁹ 2008 National Survey of Latinos, September 18, 2008. Produced by the Pew Hispanic Center.

residents (41% in Pirtleville, 66% in Naco, 70% in Nogales, and 77% in Douglas) felt that Border Patrol Agents stopped people for simply having brown skin.

Immigration Enforcement Expansion vs. Internal Complaint and Training Process

The Border Patrol has dramatically expanded from around 4,000 officers in 1994 to over 9,000 officers in 2000 and over 15,000 officers in 2008. The Patrol is authorized to expand to at least 21,000 officers by 2010. This expansion has had little or no effect on the entry of undocumented migrants into the United States, and the resident undocumented U.S. population has more than tripled during this time (1994–2008). To cope with this expansion, Border Patrol training has been shortened from 19 weeks to 17 weeks.

In this period of rapid expansion, there are also serious concerns about the quality of new recruits and the removal of poorly performing recruits, given the intense political pressure to increase the workforce dramatically. In response to an April 2008 Fox Network News report questioning Border Patrol recruitment and hiring criteria, the Border Patrol confirmed that recruits do not need to be high school graduates or have passed the GED test to be hired. A qualifying score on the entrance exam need only be a 70%.¹⁰

The U.S. Government Accountability Office found that “in certain southwest border sectors the average experience level is only about 18 months. Moreover, the supervisor-to-agent ratio is higher than the agency would like in some southwest sectors. Border Patrol officials told us that a 5-to-1 agent-to-supervisor ratio is desirable to ensure proper supervision of new agents, but our analysis of Border Patrol data showed that as of October 2006, the overall agent-to-supervisor ratios for southwest sectors, where the Border Patrol assigns all new agents, ranged from about 7 to 1 up to 11 to 1.”¹¹

The DHS internal complaint process has serious flaws in being accessible, transparent, and adequately staffed to investigate complaints regarding possible civil and human rights violations. Many hesitate to lodge complaints against the law-enforcement agencies because of fear of retaliation. Officers themselves are also poorly informed. A study conducted by the BNHR found that many immigration officers (30–70% of those interviewed) were uninformed about the complaint process.¹² There is also a need for review and evaluation of supervisors to hold them responsible for repeated violations by staffers.

¹⁰ OBP Response to Fox News Report. April 10, 2008.

http://www.cbp.gov/xp/cgov/border_security/border_patrol/border_patrol_ohs/archives/fox_report.xml

¹¹ GAO letter to Con. Mike Rogers, March 30, 2007, “*Homeland security: Information on training new Border Patrol agents*,” available at <http://www.gao.gov/new.items/d07540r.pdf>

¹² Border Network for Human Rights, “Behind every abuse is a community: U.S.-Mexico border report to the United Nations Human Rights Committee regarding the United States’ compliance with the International Covenant on Civil and Political Rights,” op. cit., at p. 19.

Ports-of-Entry

The U.S.-Mexico border provides a trade and transportation corridor for the United States' second-largest trading partner, Mexico. On any given day, about 132,000 persons, 250,000 vehicles, 523,000 vehicle passengers, 12,000 commercial trucks, and 2,000 rail containers cross from Mexico into the United States. Changes in security measures in the wake of September 11th have led to increased waiting times at border crossings. In effect, long wait times have become a non-trade barrier to entry that is primarily absorbed by border residents. The inconvenience of uncertain and longer wait times has economic repercussions on cross-border employment and sales activity in industries that directly benefit from the flow of international trade and people—from manufacturing to logistics to professional services to wholesale and retail trade.¹³ By one estimate, the city of Douglas, AZ derives nearly 70% of its sales tax revenue from people crossing the Douglas-Agua Prieta border and making purchases in Douglas. On a national scale, trade through the southwest border accounted for 10.1 percent of total U.S. trade in 2004, up from 7.4 percent in 1994.¹⁴

Longer wait times on cargo also pose challenges for the just-in-time supply chain that North American manufacturers depend on. As a result, increased transaction costs are ultimately passed on to the consumer because of changes in transportation modes, greater inventory costs, or other delays in transportation, communication, or distribution.¹⁵

In a series of studies conducted by the Texas Transportation Institute, southwest border communities are recognized as having potentially serious mobility limitations. In the "2005 Urban Mobility Report," the research indicates that San Diego is 12th nationwide in annual hours of delays by travelers, at 52 hours per year, exceeding the national average for 85 urban areas by 5 hours. El Paso ranks 54th, with Laredo and Brownsville at 79th and 85th, respectively. These delays equate to 81,756,000 hours of time, resulting in 59,000,000 gallons of fuel consumed and a combined congestion cost calculated at \$1.4 billion per year.¹⁶

Tens of millions of people cross the U.S.-Mexico border every year. In 2004, for example, 48,084,235 pedestrians and 91,341,838 non-commercial vehicles crossed the border.¹⁷ In spite of efforts by the U.S. Customs and Border Protection to improve its agents' conduct and professionalism,¹⁸ complaints continue to be received by community organizations like the Border Network and Border Action, which document reports reflecting inconsistent and unclear application of identification requirements and incidents of gross misconduct.

¹³ "At the crossroads: U.S.-Mexico border counties in transition." March 2006 report prepared for the U.S.-Mexico Border Counties Coalition by the Institute for Policy and Economic Development, University of Texas at El Paso.

¹⁴ Texas Center for Border Economic and Enterprise Development, Texas A and M International, derived from U.S. Census.

¹⁵ "At the crossroads: U.S.-Mexico border counties in transition." March 2006 report prepared for the U.S.-Mexico Border Counties Coalition by the Institute for Policy and Economic Development, University of Texas at El Paso.

¹⁶ "The 2005 urban mobility report," Texas Transportation Institute, Texas A and M University, College Station, TX, May 2005. Congestion cost is the value of the time of the person traveling (\$123.45 per hour) plus excess fuel consumed at state average costs.

¹⁷ Border trade statistics, U.S. Customs.

¹⁸ "U.S. Customs and Border Protection vows a total commitment to professionalism," August 26, 2004. Press release issued by U.S. Customs and Border Protection.

In one case of wrongful detention, a woman and her two sons were returning to El Paso after spending time in Ciudad Juarez. The woman was stopped by an agent at the Port of Entry and taken to an office where she was asked to take off her clothing for an inspection. Though the woman asked for a reason and stated that she did not want to do it, eventually after a few more orders from the agents, she removed her clothing and was subjected to a body cavity search. Finding nothing, they simply said that she fit the description of a drug runner and told her to leave.

U.S. Customs and Border Protection recently announced the December 2008 release of an online complaint intake system,¹⁹ but with border residents reportedly losing trust in the agency's ability to investigate itself, and with the limited Internet access of this population, this new system is not expected to remedy the need for greater oversight, consistency, and a complaint system with integrity.

Local Law Enforcement and Federal Immigration Law

Throughout the country there is a dominating myth that links undocumented immigrants with high crime rates. If this myth were indeed statistically accurate, the border region, as the convergence point for the highest rate of immigration into the United States, would be expected to have high crime rates. However, much like the rest of the country, the border region has experienced a consistent decrease in crime rates from 1990 to the present. Furthermore, state-level data indicate that southwest border counties consistently have lower violent and property crime rates than the non-border counties in their respective states.²⁰

Local law enforcement in the region does face unique challenges due to their proximity to the international border. Data show that border counties' total arrest rates are 16% higher than the national rate per 100,000. Yet, those arrests are mostly due to local enforcement of federal offenses. For example, drug possession arrest rates are 83% higher than the national rates and at a level that would result in a 1st-place ranking as a 51st state in arrests for federal offenses.²¹

The uniqueness and importance of local law enforcement in the border region should warrant adequate funding for local agencies. However, the number of full-time equivalent officers per 100,000 residents for agencies in border counties is 62% of the national average. In all but New Mexico, border county law-enforcement agencies average less than 90% of what the non-border agencies in that state receive.²²

In spite of the need for local law enforcement to be sufficiently staffed and adequately provided with resources to uphold the public safety in border communities, local agencies

¹⁹ "CBP plans online complaint management system," October 5th, 2008. GSN: Government Security News.

²⁰ "At the crossroads: U.S.-Mexico border counties in transition." March 2006 report prepared for the U.S.-Mexico Border Counties Coalition by the Institute for Policy and Economic Development, University of Texas at El Paso.

²¹ Source: http://www.fbi.gov/ucr/cius_02/html/web/offreported/02-table05.html. Note: Crime index of offenses reported is rounded to nearest whole number.

²² "At the crossroads: U.S.-Mexico border counties in transition." March 2006 report prepared for the U.S.-Mexico Border Counties Coalition by the Institute for Policy and Economic Development, University of Texas at El Paso.

are being pressured by federal and state grants and by changes in federal law to assume the responsibility of enforcing federal immigration law. The issue is widespread, but it has had the most impact on sheriff's departments, which enforce laws in unincorporated and some small incorporated communities in the borderlands, many of which are poor, heavily Latino, and significantly immigrant.

Since 2005, the BNHR has received reports that the El Paso County Sheriff's Department has been conducting immigration raids in community stores and homes and at immigration checkpoints outside schools and in the streets. Those detained for minor traffic violations are asked for proof of immigration status. Some reports indicate that deputies have not only called immigration officials but have also personally driven victims to detention centers or to Ports of Entry to expedite their return to Mexico. Other community members report having been stopped by sheriff's deputies without cause while they are driving or walking. These community members feel that they were stopped due to their physical appearance.

A particularly egregious set of cases occurred in Chaparral, NM, where Otero County Sheriff's Deputies used pretexts (such as yard or canine violations) or coercive or manipulative, warrantless searches of homes to identify and turn over possible undocumented immigrants, resulting in (among other abuses) the separation of a number of children from their parents.²³ A clear example of the impact of local enforcement of immigration laws is that 32 cases out of a total of 55 human rights cases in 2007 reported by border residents to the BNHR involved local deputies and police officers asking for immigration status during a routine traffic violation or other interaction, representing 58% of the total reported cases.²⁴

In addition to the egregious violations of residents' civil and human rights, sheriff's departments' enforcement of immigration law has also taken a toll on agency budgets and effectiveness. Since the Maricopa County Sheriff's Department, in the state of Arizona, entered into an agreement in January 2007 with Immigration and Customs Enforcement, the county's arrest rate for serious crimes—including robberies, aggravated assaults, and sex crimes—has decreased dramatically. These crimes received little to no investigation. In 2005, Maricopa Sheriff Arpaio's office cleared 10.5 percent of its investigations. When immigration enforcement operations began, that number dropped to 6 percent. Within the first three months of the partnership, the Sheriff incurred a \$1.3 million deficit, largely due to thousands of extra hours paid to officers.²⁵

Border Walls

The border wall or fence has been a very controversial issue here in the border. After DHS Secretary Chertoff waived more than 30 environmental laws, the border communities felt disengaged from any kind of decision making. Elected officials, community members, and

²³ Border Network for Human Rights, "A testimonial report: The status of human and civil rights at the border, 2007" El Paso, TX, December 10, 2007, op. cit. Discussed at pp. 10–15.

²⁴ Ibid., at p. 5.

²⁵ "What happens when local cops become immigration agents? Arizona sheriff's immigration-enforcement activities impact budget, arrest rate and response times." Immigration Policy Center.

faith and community organizations continue to disapprove of the border wall, and many have called it another "Berlin Wall" for what it symbolizes. It will tear through communities, farms, and natural areas, as it has already, resulting in many landowners fighting and suing for their land. As a consequence, government is leaving huge gaps, avoiding building the wall on wealthy residents' properties, while other homes and even universities are being jeopardized.

Not only will the wall put a burden on our communities but the cost of its construction will haunt the taxpayers' pockets for many years to come. When it first came to light, the plans called for spending at least \$4.5 million per mile. Now we are seeing that the cost will be close to \$60 billion for construction and maintenance of the wall.

Guidelines and Recommendations for Alternative Border Enforcement Policies and Practices

Developed by Border Network for Human Rights, Border Action Network, and the U.S.-Mexico Border and Immigration Task Force

These guidelines bring the perspectives and rights of U.S. southern border communities to the national discussion of comprehensive immigration reform. The proposals support comprehensive reform, but they would also add something important to the discussion. They advocate for justice for all of the inhabitants of the borderlands, a region that is heavily impacted by immigration policy decisions but that is often ignored in national and state discussions. The goal of these guidelines, then, is to move the United States in the direction of a coherent enforcement policy consistent with comprehensive immigration reform—a new approach that will point border-region enforcement toward the fundamental goal of enhancing the public safety and security of border and interior communities while upholding constitutional and human rights. The recommendations reject ineffective, wasteful, and harmful enforcement policies that fail to achieve their stated goals and that undermine the security of communities and the nation. We propose an enforcement approach that strives to achieve the best in the American tradition of “life, liberty, and the pursuit of happiness.”

I. ACCOUNTABILITY AND OVERSIGHT FOR BORDER AND IMMIGRATION ENFORCEMENT

In considering recommendations to prevent civil and human rights violations along the border, it is critical to keep in mind that all people along the U.S.-Mexico border, regardless of their ethnicity or legal status, should have their basic rights respected. Policies that criminalize migrants can lead to human rights abuses if law-enforcement officers and agencies are not held accountable to the communities in which they operate. Accountability and oversight should be viewed as assets rather than limitations on effective law enforcement and public security because they allow law enforcement agencies to focus their attention and resources on their broad missions. A relationship of mutual trust between communities and police organizations results in cooperation, sharing of information, and many other processes that meaningfully enhance community and national security.

Recommendations:

1. Create a United States Border Enforcement and Immigration Review Commission (the “Commission”). The Commission should be an independent agency legislatively established to oversee the implementation of all federal border and immigration policies, projects, programs, and activities, both those of DHS—Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), and Citizenship and Immigration Services (USCIS)—and those of other relevant agencies. It should be vested with legal authority to provide recommendations regarding federal immigration and

security policy, enforcement, and complaint procedures, and it should also be able to hold federal immigration agencies accountable. Its broad purposes should be to promote best practices at the border, to enhance internal capacities in border agencies, and to strengthen relations between the community and government agencies.

The Commission should be composed of a diverse group of people who understand the complexities of the border, and most of them should be border residents.

It must have three powers: (1) investigatory power, (2) auditing power, and (3) legal power, including the power to subpoena.

The independent commission also needs to be able to formulate and fund an effective outreach strategy to border communities. The Commission should report annually to Congress.

2. Require human rights certification of local and federal agents. Department of Homeland Security officers, police officers, and other law-enforcement officers working in the border region should receive training in ethics, civil rights, human rights, and community relations.

3. Improve oversight of the complaint process. The complaint process of CBP and ICE should be reviewed by the Independent Commission to ensure that the mandate, resources, and staffing to investigate and resolve claims and to respond to public inquiries regarding the status of complaints is fulfilled.

Essential characteristics of an effective Complaint Process include:

1. Develop a uniform complaint procedure for all Border Patrol stations, from San Diego to Brownsville
2. If a person complains, she or he should not be penalized (similar to the protections provided to a plaintiff in a "whistle-blower" case, who cannot be terminated for bringing up an issue). To make this process effective, complainants should be protected from arrest and deportation proceedings for immigration violations, whether directly or indirectly detected due to the filing of the complaint.
3. Create a standardized database of complaints on a national basis.

4. Prohibit the use of racial profiling by border enforcement agencies. Internal operations of the Border Patrol and ICE must be regulated in order to prevent the profiling of entire communities. The Border Patrol ought to provide a report showing the race of persons stopped, similar to the report that police officers must provide in El Paso, Texas.

5. Develop a community education program. The program would teach members of border communities about civil and human rights and how to utilize border enforcement agency complaint processes. The program will facilitate reporting on human rights violations and preventing abuses. It will develop a curriculum and learning system for border communities. It will also distribute materials on vindicating rights and on the DHS

complaint processes. The education program must be coupled with improvements in the internal complaint and review process of the Department of Homeland Security.

6. Encourage the formation of local citizens' review committees. The committees will monitor the activities and complaint review processes of the border enforcement agents and agencies.

7. Require and carry out an independent impact study of border policies, practices, and enforcement agencies. The *United States Border Enforcement and Immigration Review Commission* should conduct an independent study that looks at whether border policies and agencies are doing what they were designed to do. Such a study would consider (1) the degree to which government officials have been engaged in illegal activity or malfeasance; (2) the net costs and benefits of border policies, practices, and enforcement agencies; and (3) other critical policy-assessment questions.

II. REVIEWS OF BORDER OPERATIONS, TECHNOLOGY, AND INFRASTRUCTURE

Border-control operations, technologies, and infrastructure are designed to prevent unlawful immigration, transnational criminal activity, and national security threats. Yet, each of these phenomena has distinct causes and characteristics and demands distinct responses. Current border operations, however, cast the net so widely that strategies to deter immigration, which is an administrative issue, are resulting in the needless and horrific deaths of men, women, and children. As noted in several reports (i.e., Center for Immigration Studies at the University of Houston, the Government Accountability Office), border operations such as "Hold the Line," "Gatekeeper," and "Safeguard" result in people crossing the border in dangerous and isolated regions where the chances of dying of hypothermia, exposure, and heat exhaustion increase dramatically.

In addition to putting thousands of migrants at risk each day, these operations have failed to stop undocumented immigrants from entering the country, have led to increased and professionalized smuggling operations, have contributed to the rising tension and violence on the border, and have fostered civil and human rights violations. As a fundamental principle, public policies that address civilian social issues should not kill people. Comprehensive immigration reform, as well as specific regulation of border operations, technology, and infrastructure, is needed to reverse this unacceptable state of affairs.

Recommendations:

1. U.S. policies should not contribute to hundreds of deaths annually. As a matter of basic principle, the United States should establish a guiding principle that no policy should contribute to the deaths of men, women, or children.

2. Pass comprehensive immigration reform legislation. To remove the pressure on the U.S.-Mexico border, Congress should pass comprehensive immigration reform legislation that provides for the orderly, legal entry of migrants and a path to permanent residency for undocumented immigrants already in the United States. With

adequate and effective mechanisms of legal migration, danger-creating border-control “operations” become unnecessary.

3. Replace operations such as “Safeguard” and “Hold the Line” with border community safety and security operations. Strategies should be developed and pursued that uphold the human and civil rights of migrants, that are accountable to border communities, that can distinguish between criminal activity and immigration violations, and that integrate technologies that respect the environmental, economic, and social quality of life on the border. These strategies should be incorporated into a comprehensive plan to reform immigration policy.

Community Safety and Security Operations would focus on dangerous criminals and traffickers in border and immigrant communities, as opposed to citizens, legal residents, and otherwise law-abiding people without legal status. Community security would strengthen the rights and liberties of all members of a community.

4. Require careful cost/benefit and effectiveness analyses of all current and proposed border operations, the border wall, technologies, and strategies before adding to them or creating new initiatives. The DHS should use its significant budget to strengthen (1) projects to reduce migratory “sending pressures” in Mexico and Central America, and (2) border community safety and security operations. DHS should officially renounce its planning of “Endgame” removal and deportation strategies.

5. Protect the border environment and quality of life. Border enforcement operations, technology, and infrastructure should be guided by criteria that actively minimize their impacts on border residents. Concerns over the quality of life and noise, air, and light pollution; over endangered species and habitats; and over the preservation of the environment should be included in all considerations of existing and expanded border operations. For example, 24-hour stadium-style lighting significantly diminishes the quality of life of border residents.

6. Develop non-lethal response techniques and practices. Guidelines and training should ensure that the responses of border agents are commensurate with the level of threat they face. The Border Patrol must implement clear and strict training and guidelines on the application of force, minimizing the use of lethal force and making it clear that even the type and level of non-lethal force should be commensurate with the type of law involved and the characteristics of the enforcement situation.

7. Prosecute border vigilante groups. The Department of Justice should conduct a study that analyzes all reported incidents of border vigilante detentions of migrants and that assesses how law enforcement agencies have responded to allegations and incidents of rights violations. A special investigator should be appointed to conduct independent investigations into any possible civil rights and human rights violations by civilian border watch groups against undocumented immigrants or border residents. The investigator should explore whether there has been formal or informal cooperation between such groups and the Border Patrol and other federal law enforcement agencies. The resulting

report should offer guidelines that preclude government cooperation with vigilante groups. Local and federal law enforcement agencies would be expected to adopt and adhere to the report's recommendations.

III. PORTS OF ENTRY

When the Department of Homeland Security took over the administration and enforcement at the nation's land ports, border crossers noted a dramatic increase in waiting times and an incremental increase in abuse-of-authority complaints against Customs and Border Protection (CBP) agents. U.S. Citizens have complained that CBP officials target U.S. citizens and others of Latino descent entering through the ports of entry. The complaints allege verbal abuse, physical abuse, sexual harassment, arbitrary detentions, destruction of documents, and denial of entry.

According to a June 2005 study developed by the San Diego Association of Governments, over sixty million crossings are made annually in both directions via the three Ports of Entry located in San Diego County, with the average border crossing taking 45 minutes. The economic impact that long border delays have on the Tijuana/San Diego border area alone is astonishing: "over 3 million potential working hours in San Diego County are spent in delays at the border, averaging about 45 minutes per work trip, which may result in \$42 million in wages lost. The overall impact at the State level, given that 5% of the trips are headed outside the San Diego region, is over \$1.32 billion in addition to the \$44.3 million in income loss for work trips." The San Diego example can likely be extended to describe all Ports of Entry spanning the border.

A 2008 study in the *Journal of Homeland Security and Emergency Management* concludes that current practices at Ports of Entry are inconsistent and thus possibly undermine the public security and law enforcement goals of port inspections. Furthermore, a significant number of crossers perceive treatment at Ports of Entry to be arbitrary and unfair. Port management issues demand significant reform.

Recommendations:

1. Expedite border crossing at Ports of Entry. DHS must invest in improving infrastructure at the Ports of Entry in order to expedite border crossings. Programs such as SENTRI lanes and carpool lanes must be increased. Ports of Entry should also provide access to basic human services (restrooms, water, shade, etc.).

2. Clarify and publicize the documents necessary to enter the U.S. Border residents report being denied entry to the U.S. and receiving inconsistent information from CBP agents regarding the documents needed to enter the United States. CBP must respect current policies regarding the documents that various legal categories of border crossers must present when entering the U.S., and they must be consistent in their application of the regulations and publicize their policies.

3. Promote an accessible and transparent CBP complaint process. CBP should post at Primary and Secondary Inspection booths their mission statement, their

regulations regarding required documents to enter the U.S., and information about submitting a complaint.

4. Improve staffing levels and training for port personnel. Ports of Entry are understaffed, and DHS staff is overworked. Congress should appropriate sufficient funding for their operation. In addition, DHS should ensure that all port personnel are trained in legal and human rights aspects of inspections procedures, including questioning, searches, and handling of documents. It should also develop and implement training procedures and job evaluations that emphasize evidence-based inspections rather than impermissible profiling. Its training procedures and job evaluations should emphasize respectful and effective interpersonal interaction and should be consistently applied to all personnel at all ports.

5. CBP should recognize traditional, rural crossing points. CBP should adopt policies and procedures that reflect the class of the port and that allow for the exercise of discretion at traditional, rural crossing points.

6. EPA must conduct and environmental assessments at ports of entry. The government should conduct environmental assessments that determine the impacts of waiting traffic on air pollution and other potential environmental threats. The assessment should include recommendations on infrastructure, staffing, and inspections policies that could mitigate negative impacts.

7. The zero-tolerance policy for SENTRI card removal should be waived for minor violations.

IV. BORDER WALLS AND FENCING

The walls that have been erected along the U.S.-Mexico border, most of them near urban corridors, are unlike any others on earth. The two nations that share this border region are not at war with each other. In fact, Mexico and the U.S. enjoy an unprecedented economic partnership despite the two nations' turbulent relationship. Yet, the U.S.-Mexico border region is the most militarized international border between two countries that are not engaged in violent conflict. History has proven that walls are not a solution to economic disparities or other challenges between nations, and the U.S.-Mexico border is no exception. The Secure Border Initiative has produced (1) impunity in law enforcement on the part of DHS in the surveying and placement of physical and virtual walls, ignoring the voices and rights of border communities; and (2) failed projects at enormous costs, as documented in 2008 by the Government Accountability Office.

Recommendations:

1. Discontinue current and future wall and fence projects. Fencing projects have not proven successful in stopping immigration flows, while costs have nearly doubled from \$4.5 million per mile to \$7.5 million per mile. Current fencing and wall projects should be cancelled.

2. Analyze impacts of existing border walls. The current fencing projects must be analyzed by an independent governmental entity in order to assess their effectiveness and their impacts on the environment, on the lives of border residents, and on trade and cultural ties with Mexico.

3. Conduct a border community consultation and respect environmental protections and indigenous rights. Any new fencing projects must respect the environment and the rights of indigenous peoples, and they must not be undertaken without a legitimate consultative process with border communities. DHS must engage in meaningful consultation with border landowners and communities over the location and operations of the border wall and the “virtual” wall (SBIInet).

4. Review the impacts of any future border wall projects. The Independent Commission should review future decisions made by DHS regarding the construction of fencing projects. The commission should review their cost-effectiveness, environmental impact, and impact on border communities. It must also ensure that fencing projects do not infringe upon the human rights of undocumented workers. The Secure Border Initiative needs to be held accountable for project failures and cost overruns. (See “Operations” item 3 for related recommendations.)

5. Review border wall exemptions from environmental protection laws. The REAL ID Act exempted border wall construction and other border projects from compliance with environmental protection laws. The constitutionality of these exemptions should be revisited.

V. DILUTING LAW ENFORCEMENT RESOURCES

As the chiefs of major city police departments have explicitly stated, it is a mistake to use state and local law enforcement to enforce immigration laws, directly or indirectly. This practice closes channels of communication between police and communities, makes immigrants reluctant to call police in crime situations (such as domestic violence), and damages the demonstrably effective public safety strategy of “community policing.” Officers are not trained to enforce immigration law. Furthermore, this practice is a costly strain on limited police department resources and one that detracts from their ability to carry out their core functions. Finally, it is also bad public policy. The education, health care, and business professions have all condemned the insecurity and ineffectiveness of the blurring of immigration and criminal enforcement at a community level.

Recommendations:

1. The U.S. Congress must take serious steps to reaffirm that immigration is properly a civil matter, not a criminal issue. Historically, immigration has been considered and treated as a matter of civil law and an administrative issue. However, in recent years the trend has shifted toward treating immigration and immigrants as a criminal issue.

2. Local law enforcement agencies should not be asked to participate in federal immigration enforcement. Many law-enforcement officials argue forcefully against involving local police in immigration enforcement because it undermines community relationships and makes it harder to carry out law-enforcement activities that safeguard communities. *Section 287(g) of the Immigration and Nationality Act (INA)—which authorizes local law enforcement in some cases to enforce federal immigration laws—should be repealed.*

3. Federal and state resources should not be used to pressure local agencies to enforce immigration laws. Federal and state legislation should not pressure local law enforcement to assume the responsibilities of immigration enforcement. Many jurisdictions across the country have passed ordinances limiting police involvement in immigration affairs, and these ordinances should be respected and encouraged. In addition, federal and state grant money should not be linked to the enforcement of immigration laws.

4. Focus on public safety. Law-enforcement resources should concentrate on high-priority public-safety issues. Local enforcement of immigration laws diverts police attention from more pressing public-safety concerns.

5. Establish clear guidelines and procedures to guide criminal investigations. Federal, state, and local officials should establish and publicize clear guidelines—consistent with constitutional and human rights norms—that clarify how long a police or immigration law official can detain a person, the timing and form of notification required regarding the basis of detention, and the circumstances in which the immigration status of those detained can be investigated.

VI. MILITARY AT THE BORDER

In May of 2006, President Bush announced the deployment of over 6,000 National Guard troops to “assist” the U.S. Border Patrol along the border in California, Arizona, New Mexico, and Texas. Though state and federal officials have argued that this is not a move toward the militarization of the border and that the armed agents will be used only in a “support” fashion, past experience provides cause for community concern, particularly given the large number of Border Patrol agents who are already stationed along the U.S.-Mexico border.

Border communities such as Douglas, AZ are overwhelmed with the Border Patrol’s large presence. With a population of only 14,000, Douglas is nonetheless host to almost 500 Border Patrol agents, or one agent for every 30 people in the town. The proposed increase in U.S. Border Patrol agents and the deployment of 6,000 National Guard troops have filled the more marginalized immigrant communities along the border with terror. With over 6 million people living on the U.S. side of the Mexico border, putting military patrols in their communities would place many people at risk. These soldiers are trained to kill, and are not properly trained in civilian affairs, particularly those related to the unique border region. Families and individuals living within the boundaries of the U.S. should not be subjected to military-style stops, checkpoints, or other violations of their civil liberties.

Recommendations:

1. Reaffirm and strengthen the Posse Comitatus Act. Approved during the Civil War reconstruction era, the Posse Comitatus Act prohibits the use of military forces on domestic soil. This act should be reaffirmed and strengthened, including cases in which the military, under the pretext of fighting the war on drugs and enforcing immigration, has been functioning in close coordination with civilian law enforcement along the border. Additionally, Posse Comitatus should apply to the National Guard if it is involved, directly or indirectly, in enforcing or supporting the enforcement of federal laws at the border and elsewhere. National Guard forces should not be exempt from Posse Comitatus, whether or not they are summoned for duty by state governors or the federal government.

Recent amendments to the federal Insurrection Act, which sets forth exceptions under the Posse Comitatus Act, stipulate that the President can summon the military for domestic intervention in order "to restore public order and enforce the laws of the United States when, as a result of a natural disaster, epidemic, or other serious public health emergency, terrorist attack or incident, or other condition ... where the President determines that ... domestic violence has occurred to such an extent that the constituted authorities of the State or possession are incapable of maintaining public order; suppress, in a State, any insurrection, domestic violence, unlawful combination, or conspiracy...." The Administration, Congress, and the courts should clarify that this "public order" exception does not cover and should not be invoked for normal border law-enforcement activities (immigration, narcotics), as it might be for an "emergency" equivalent to a natural disaster or major public disorder.

2. Prevent the misuse of military resources. The U.S. military and National Guard have specific duties and limited resources. These duties do not include enforcement of immigration law. Immigration and its enforcement on the southern border should not involve military troops.

3. Require that only trained immigration and customs agents take part in border enforcement efforts. Only agents who have been thoroughly trained in immigration law, ethics, and civil and human rights should enforce U.S. immigration and customs laws.

4. DOJ must conduct a review of border military operations. Review the constitutionality of direct military operations at the U.S.-Mexico border, including, in particular, the purpose, role, and activities of the Joint Task Force North and other military operations.

5. Immediately withdraw U.S. military and National Guard personnel from all armed operations in support of civilian law enforcement within 25 miles of the border. The U.S. military and National Guard should be withdrawn from all border enforcement activities, including listening post and observation post operations and other reconnaissance and front-line operations. In general, the U.S. military should withdraw promptly from all operations and settings that place military and Guard personnel at risk of violating human rights or that might cause civilian injuries or deaths inadvertently.

VII. DETENTION AND DEPORTATION

Current detention and deportation laws and procedures are unduly harsh and counterproductive. Immigrants arrested for relatively minor criminal and/or immigration violations are often detained indefinitely under mandatory detention policies that fail to protect the public and increase taxpayer costs. The housing and care of approximately 31,000 immigrants each day has become a business for private corporations and a source of federal income for other private facilities, most notably county jails. Immigrants are now being held in over 350 sites across the U.S. Seemingly arbitrary movement from one facility to another without explanation occurs frequently throughout the system.

Delays and prolonged detentions are the result of harsh, rigid, unrealistic, and narrow categorizations of immigrants. These do not reflect who truly represents a threat to the broader community or who should be entitled to relief from removal. After an arrest, it often takes two to three weeks for an individual to be taken before an immigration judge and apprised of the charges against him or her. He or she might be moved and held for several days or weeks in two or more facilities before arriving at a Federal Processing Center. Conditions vary in these facilities, and each move adds to the emotional stress for the person, most of whom are unprepared for the harsh treatment and criminalization of their presence in this country. Holding detainees in an area where they have family members is not taken into consideration. Moreover, the current lack of waivers of inadmissibility is also unduly harsh and disruptive of family unity efforts of individuals attempting to regularize their status in a lawful manner.

Recommendations:

- 1. Respect and guarantee due process** for migrants involved in processing centers, detention, deportation, or removal proceedings. Migrants should be informed of their rights in their native language.
- 2. Access to basic needs while in detention.** When migrants are detained by border agents or held in short-term processing centers, they should have unlimited access to water, be provided nutritious meals to aid with recuperation, and be provided full medical attention. A licensed medical professional should be on duty 24 hours a day, 7 days a week to conduct medical assessments and provide medical services.
- 3. Border Patrol Processing Centers should provide migrants access to contact legal counsel and their consular office.** Clean blankets and sanitary conditions inside the holding cells should be a priority. A female agent should always be present when women or children are in custody.
- 4. Restore discretion to immigration judges.** Judges should always be able to consider the circumstances of individual cases, including such things as family and community ties to the U.S., rehabilitation, history of employment, medical conditions, military history, and the public interest.

- 5. Limit the scope and oppose the expansion of the mandatory detention provisions** contained in IRAIRA Section 236, codified as Immigration and Nationality Act (INA) Section 236. Currently, the mandatory detention provisions of the INA allow for the detention of immigrants convicted of minor crimes, certain asylum seekers, and refugees without allowing DHS the discretion to parole vulnerable populations, such as the elderly and the mentally or physically disabled.
- 6. Limit the scope of and oppose the expansion of the criminal grounds of deportability,** which can often result in mandatory deportation for even long-time, lawful permanent residents. The aggravated felony designation should be limited to felony offenses and should not include violations for minor crimes.
- 7. Expand the availability of waivers** to immigrants seeking to legally re-enter the U.S. Currently, many immigrants with U.S. citizenship and LPR family members are precluded from ever lawfully returning to the U.S.
- 8. Enforce 90- and 180-day custody review processes.** Oppose any expansion of the government's ability to indefinitely detain immigrants.
- 9. Reduce the use of private facilities and county jails for the detention** of migrants with the goal of eliminating contracted private and county facilities altogether.
- 10. Create an Immigration Hotline** where defense attorneys and public defenders can provide advice on immigration consequences in criminal proceedings.
- 11. Ensure that all immigrants are given access to the immigration courts.** Currently, certain immigrants are denied the opportunity to appear before a judge, such as with expedited removal, and are instead ordered removed by border agents.
- 12. Limit the transfer of detainees to remote locations,** and ensure that detainees remain close to the place of arrest or the place of residence. Adopt policies to keep detainees close to their families, communities, and support systems. If detainees are transferred, they and their families have a right to accurate and prompt information on reasons for transfers to other facilities.
- 13. All removals from the United States should take place during daylight hours.** Family members should be removed together and not separated. Upon removal, detained migrants should receive their personal belongings. Migrants who do not have clothing when they are apprehended, should be provided clothing prior to removal.
- 14. Enforce detention facility standards and uphold basic legal rights,** such as medical and mental health care and attorney access, especially at private facilities.
- 15. Abolish the use of residential detention** that results in locking up children; at a minimum ensure that detention facilities keep parents and children together.

16. Establish an oversight committee that would monitor, periodically report on, and suggest improvements in (1) the adequacy of facilities currently holding undocumented people, (2) the system of tracking detainees and the ability of families and attorneys to obtain information on their status, and (3) the basic legal rights of persons in detention and the deportation process.

VIII. COMMUNITY SECURITY

Local, state, and federal officials must ensure that the intensifying debate on immigration does not degenerate into xenophobia and nativism. At the same time, community security must also be considered an integral part of both national and border security. Community safety and security operations should focus on dangerous criminals and traffickers, as opposed to law-abiding persons without legal status. Community security should build on and strengthen the rights and liberties of all peaceful members of a community.

Recommendations:

1. Consult with border communities. A sensible and inclusive debate must include the voices of border and immigrant communities.

2. Hold Congressional hearings and discussions within border communities. Congressional committees need to invest time and effort in engaging with border and migrant communities in order to discuss the impacts that immigration laws and the enforcement of those laws have on daily life for border and migrant communities.

3. Keep federal law within federal agencies. The Administration and Congress should ensure that the enforcement of immigration law remains within the jurisdiction of federal law enforcement.

4. Prohibit racial profiling and the misuse of “national security” authority. Local governments must ensure that the human and civil rights of their residents are respected by prohibiting local police from engaging in racial profiling under the guise of homeland security.

5. Discontinue neighborhood sweeps and workplace raids. The Border Patrol should renounce and discontinue the broad sweeps it has conducted in the border region in the recent past.

6. Prioritize community security and safety in enforcement practices. Border Patrol and ICE enforcement operations should prioritize the safety of communities in which they operate in order to prevent human rights violations. Special attention must be given to high-speed chases of vehicles that are potentially loaded with migrants, the use of public spaces to train new Border Patrol agents, and the use of random interior check points by Border Patrol and ICE agents.

7. Use human rights and civil rights as a policy standard. The cycle of violence at the border can only be stopped if the government recognizes the civil and human rights of

border communities. Any legislation or policy that fails to recognize fundamental rights is destined to fail and undermines the basic premise of security for the country.

8. Promote community education. City and county governments need resources to sponsor campaigns to inform border communities on their rights when dealing with law-enforcement officials from various agencies and human rights in general. In addition, municipalities need to sponsor a border-wide consciousness-raising campaign to develop solidarity among the various border communities. Entire border communities need to see the linkages between immigration enforcement and their own security. It is not just an immigration/immigrant issue. In addition, the campaign objectives should include building bridges between immigrant communities and Mexican Americans, Whites, African Americans, and other border residents.

9. Perform community-impact studies. Community-impact studies should be required prior to all significant local, state, and federal initiatives affecting the border. Such studies are frequently conducted to determine the effects of constructing various structures, such as hospitals and supermarkets, on the community where they are being built. A similar strategy should be in place for border security structures, policies, and practices. Community-impact studies should consider the social, cultural, and economic impacts of implementing policies, particularly security policies. The studies should also include significant consultation with the local community.

IX. JUST AND COMPREHENSIVE BORDER ECONOMIC DEVELOPMENT

The U.S. side of the border is the poorest region in the United States, yet it is a place of great importance to the U.S. economy. Mexico is the second largest U.S. trading partner, and the vast majority of that trade passes across the land border. The border region, for all its challenges, is a place of impressive growth and dynamism, and it is one of the laboratories of the American future. Key human-development measures and needs on both sides of the border include (1) continuing the robust growth of the border economy; (2) increasing employment, incomes, and other economic capabilities; (3) directing the large border economy and governmental expenditures toward human quality of life (health, education, community security); and (4) distributing resources in an equitable fashion.²⁶ Both prosperity and justice are needed in this region, and the vast government expenditures on border control should be turned toward these goals as much as possible.

Recommendations:

1. Cooperative economic and legal agreements between Mexico and the United States need to address the fair movement of people (as workers, family members, etc.) as well as the free movement of trade and capital. In addition, cooperative law-enforcement agreements between the two countries need to aim for community security, including open and legal residence and human rights within a context of peace and safety.

²⁶ See Joan B. Anderson and James Gerber, *Fifty years of change on the U.S.-Mexico Border* (University of Texas Press, 2008).

2. Investments of federal government resources in the United States should be directed toward long-term social and economic development objectives. Most notably, these would include education, health care, and infrastructure, rather than wasteful and ineffective walls and endlessly escalating enforcement operations. Intelligent choices need to be made about the use of precious taxpayer money in developing effective approaches over the long term.

3. The federal government should recognize the mutual dependence of communities on both sides of the international boundary. Impact studies of border enforcement policies need to take into account effects on legitimate border crossing and commerce. Facilitation of trade and crossing by visitors should be the first priority of CBP and other federal agencies, along with a significant commitment to community security and safety as described above. Emergency management planning should be bi-national and should prioritize public health and safety in emergencies, rather than insisting on inappropriate adherence to immigration law-enforcement priorities. In no circumstances should the immigration status of those seeking safety and help during an emergency be questioned.

4. Ports of Entry should operate in an efficient, fair, and rapid fashion. Land border Ports of Entry are crucial to the vast bi-national trade relationship between the United States and Mexico and are the lifeline of border communities. Investments need to be made in expanding and upgrading Port-of-Entry infrastructures, as well as creating Port-of-Entry policies that are consistent, transparent, and responsive to the legitimate needs of border crossers.

5. Immigration is a global economic and social phenomenon. Immigration into the United States is motivated by the impacts of economic trade agreements and structural adjustment programs and by the basic needs to seek opportunity and maintain family ties. Yet immigration policy is increasingly treated as a matter of criminal policy, which has led to criminal prosecution of those who are hardest hit by social and economic policy challenges. Criminalization is an inappropriate and unjust policy response to these wider issues.

6. The United States, Mexico, and Central American countries need to re-evaluate policies that create immigration pressures, or that at least fail to relieve them. Vast resources that are spent on ineffective walls, failed surveillance technology, and massive build-up of border immigration law enforcement should be redirected as investments in long-term solutions to migration pressures.

APPENDIX 1

U.S.-Mexico Border and Immigration Task Force Members

Elected Officials

Supervisor Sharon Bronson, Pima Board of County Supervisors, District 3, Arizona
Council Member Karin Uhlich, Council Woman, Ward 3, City of Tucson, Arizona
Marty Moreno, Sahaurita City Council, Arizona
* **Manny Ruiz**, Santa Cruz Board of Supervisors, Arizona
Paul Newman, Cochise County Supervisor, Arizona
R. Carlos Romero, Council Aid, Ward 1, Arizona
Ruben Segura, Former Mayor of Sunland Park, New Mexico
Eddie Espinoza, Mayor Village of Columbus, New Mexico
* **Jose Rodriguez**, El Paso County Attorney, Texas
Susie Byrd, El Paso City Representative, Texas
Veronica Escobar, El Paso County Commissioner, Precinct 2, Texas
Trinidad Lopez, City of Socorro Mayor, Texas
Eddie Espinoza, Mayor Village of Columbus, New Mexico

Faith

Randy Mayer, Good Shepard-Sahuarita, Arizona
Rick Ufford-Chase, Presbyterian Peace Fellowship: President, National Moderator, Arizona
Mark Adams, Frontera de Cristo – Douglas/Agua Prieta, Arizona
Seth Polley, Episcopalean Vicar Arizona Diocese, Arizona
Sister Kathleen Erickson, Sister of Mercy, New Mexico
Father Arturo Banelas, St. Pius Catholic Community Church, El Paso, Texas

Law Enforcement

Chief Alberto Melis, Douglas Police Chief, Arizona
Sheriff Richard Wiles, Sheriff Elected, El Paso County, Texas
Greg Allen, Police Chief, El Paso, Texas
Kevin Lanahan, Administrative Assistant to the Chief of Police, El Paso, Texas

Community Organizations

Jennifer Allen, Border Action Network
Fernando Garcia, Border Network for Human Rights
Delle McCormick, Borderlinks, Arizona
Ken Kennon, Borderlinks, Arizona
Sarah Roberts, Samaritans, Arizona
Mark Townley, Humane Borders, Arizona
Cecile Lumer, Citizens for Border Solutions, Arizona
Mo Goldman, AILA-Goldman & Goldman, Arizona
Lindsay N. Marshall, Esq., Florence Immigrant and Refugee Rights Project, Arizona
Michal Elsner, ACLU, Arizona
Andy Silverman, No More Deaths, Arizona
Frank Lopez, NonProfit Enterprise Center, El Paso, Texas
Marco Raposo, Peace and Justice Ministry, El Paso, Texas

Iliana Holguin, DMRS Executive Director, El Paso Texas
Jay Johnson, Border Ambassadors, Del Rio, Texas

Business

Fernando Gonzales, JanCo, Arizona
Maru Moreno, Chamber of Hispanic Professionals and Entrepreneurs of Arizona
Jason LeVecke, CEO Arizona Employers for Immigration Reform

Attorney at Law

Luis Fernando Parra, Private Practice, Arizona
Peter Raptis, U.S. Federal Public Defender, Arizona
Briana Stone, Paso del Norte Civil Rights Project, El Paso, Texas

Academics

Javier Duran, UA Spanish Department, Arizona
Zoe Hammer-Tomizuka, Prescott College, Arizona
Ray Michalowski, Northern Arizona University: Regent's Professor of Criminal Justice, Graduate Program
Rebecca Orozco, Cochise Community College, Arizona
Neil Harvey, NMSU Professor, Las Cruces, New Mexico
Jason Ackleson, NMSU Professor, Las Cruces, New Mexico
Professor Josiah Heyman, UTEP Anthropology Department, El Paso, Texas
Gina Nuñez, UTEP Sociology Professor, El Paso, Texas
Cristina Morales, UTEP Sociology Professor, El Paso, Texas
Irasema Coronado, UTEP Professor, El Paso, Texas
Kathy Staudt, UTEP Professor, El Paso, Texas

* Co-chairs of the US-Mexico Border and Immigration Task Force

Organizational and Individual Endorsements

Arizona

Border Action Network

California

John Carlos Frey, Gatekeeper Productions
Julia Mendoza, Student of the School of Law—University of California, Davis
Jessica Zweng, Student of the School of Law—University of California, Davis; Immigration Clinic
Diane Clyne, Sisters of Mercy
Bill Hing, Professor of the School of Law—University of California, Davis
David Flores, Casa Familiar Inc.

Illinois

Pat Murphy, Sisters of Mercy
JoAnn Persch, Sisters of Mercy

Oscar Chacon, Director of the National Alliance of Latin American and Caribbean Communities
Gilberto Rosas, Professor of the University of Illinois

Washington DC

National Immigration Forum

Jennifer Johnson, Latin America Working Group

Josh Bernstein, National Immigration Law Center (NILC)

Donald Kerwin, formerly with Catholic Legal Immigration Network (CLINIC)

Kerri Sherlock, formerly with Rights Working Group

Angela Smith-Dieng, formerly with Detention Watch Network

Maryland

Tim Dunn, Professor Department of Sociology—Salisbury University

Catherine Darcy, Sisters of Mercy

Michigan

Karen Donahue, Sisters of Mercy

New Mexico

Martina Filerio, Women's Intercultural Center

Rita Specht, Women's Intercultural Center

Nat Stone, Independent Researcher

Carlos Posadas, New Mexico State University

Robert Duran, New Mexico State University

Maria Isabel Galde, Sisters de Anuncion

Sally Meisenhelder, No More Deaths

Carole Nagengast, Professor, Department of Anthropology, University of New Mexico

Gabriella Valle, Professor, New Mexico State University

Erin Ward, Professor, New Mexico State University

Texas

Border Network for Human Rights

Patricio Patricio M. Ahumada, Jr Mayor, City of Brownsville

Philip Del Rio, El Paso Hispanic Chamber of Commerce, El Paso, Texas

Sarah Boone, Assistant to Jay Johnson-Castro, Border Ambassadors, Del Rio, Texas

Rebecca Bernhardt, American Civil Liberties Union Foundation, Texas

Yolanda Hernandez, Proyecto Azteca, Texas Valley

Gloria Melendez, AYUDA, San Elizario, Texas

Horacio Rincones, AVANCE RGV

Adrian Rivera, Cultural Artists United for Social Action

Jesus Quinonez, La Fe Clinic, El Paso, Texas

Pat Townsend, Jr., Texas Border Coalition

Verónica Villarreal, La Union del Pueblo Entero, San Juan, Texas

Monica Weisberg-Stewart, Texas Border Coalition

Ethan Sharp, UT-Pan American

Rosemary Welsh, Sisters of Mercy

Donald Bahlinger, S.J., Jesuit Parish, Our Lady of Guadalupe, San Antonio, Texas

Tony Botello, Community Action Council of South Texas

Paul Moreno, Former El Paso State Representative, Texas Legislature
Eva Moya, USMBHA
Aurolyn Luykx, Departments of Sociology and Anthropology, The University of Texas Professor
Richard Dayoub, The Greater El Paso Chamber of Commerce
Elhiu Dominguez, El Paso County Attorney's Office
Alex Flores, Brownsville Community Health Center
Chad Foster, Mayor, City of Eagle Pass
Carlos L. Garcia, Brownsville Police Department
Peter Hinde, Carmelite Fathers Justice and Peace Commission
Maureen Jerkowski, OSF, Centro Mujeres de la Esperanza
Mark Lusk, Professor, University of Texas at El Paso
Saúl Villareal, Proyecto Azteca
Stephanie Welch
Michael Wyatt, Community Advocate, El Paso, Texas
Andres Muro, Professor, El Paso Community College
Jimmy Palacio, Rural Development and Finance Corporation
Ricardo Perez, Texas Rio Grande Legal Aid, Inc.
Diana Ramirez, Office of City of El Paso Representatives Ann Morgan Lilly and Beto O'Rourke
L. Edward Rios, Kemp Smith LLP
Carmen Rodríguez, Director of Texas Río Grande Legal Aid
Raymundo Eli Rojas, Director of Las Américas Immigrant Advocacy Center
Patricia Salazar, Latinos Unidos
Martha Sanchez, La Unión del Pueblo Entero
Jo Ann Bernal, El Paso County Attorney's Office
Michael Seifert, Proyecto Digna, Inc., San Felipe Catholic Church

Virginia

Tom Brenneman, Sonoran Borderlands Peacebuilding Initiative
Lisa Schirch, 3D Security Initiative