



> **FINAL** Report 2013 <

A nighttime photograph of a desert landscape. A bright light source, possibly the sun or moon, is on the horizon, creating a strong lens flare. A winding path of lights, possibly a border wall or a road, stretches across the landscape. The foreground is filled with dry, yellowish grass.

IN THE SHADOW OF THE WALL: Family Separation, Immigration Enforcement and Security

Preliminary Data from the Migrant Border Crossing Study

The Center for Latin American Studies
University of Arizona



The towns of Nogales, Arizona, left, and Nogales, Mexico, stand separated by a high concrete and steel fence. Photo courtesy Wikimedia.org.



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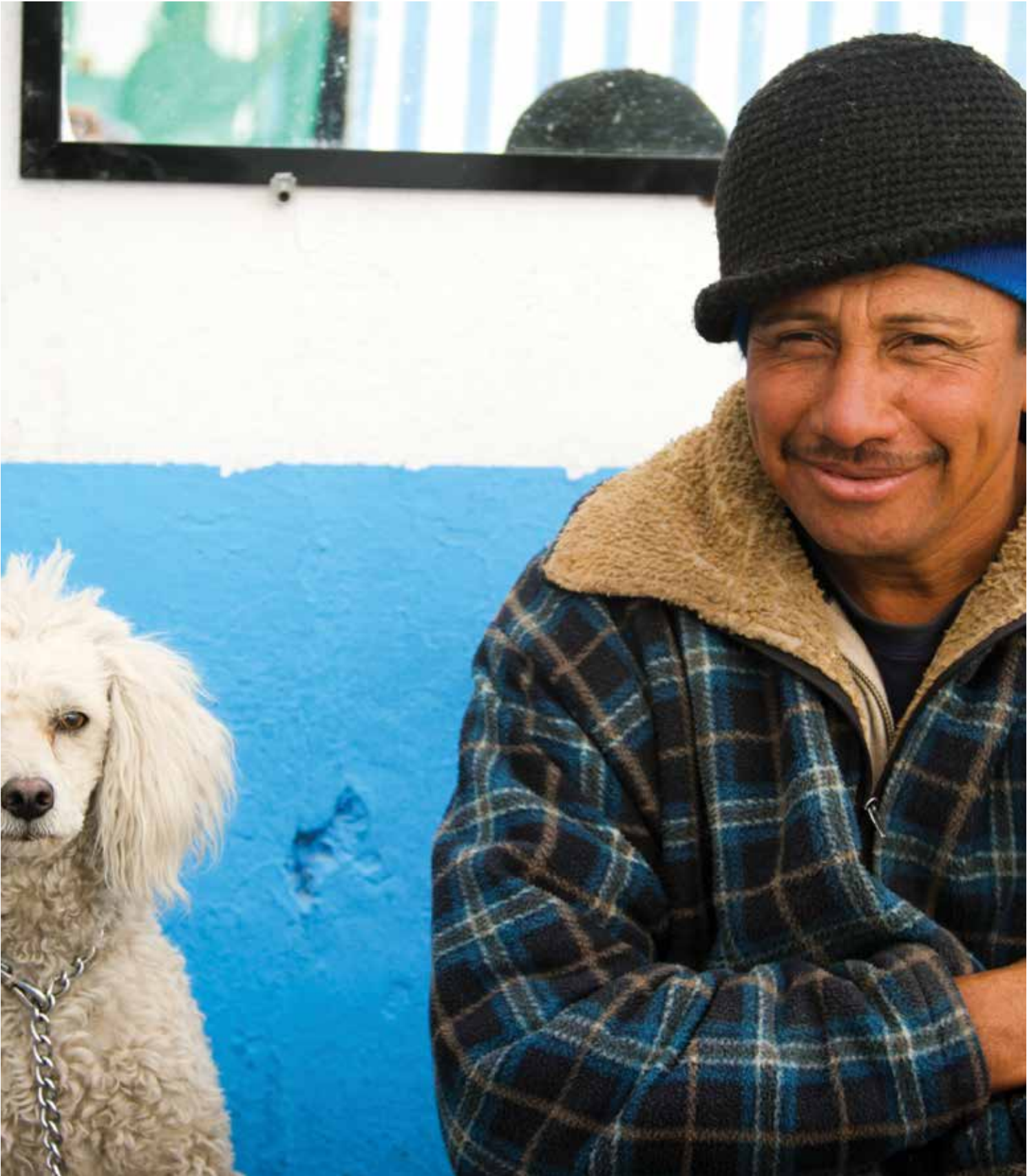
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Man and his dog wait at a bus station in Nogales, Sonora. Both were deported together. (Photo credit: Murphy Woodhouse)

In the Shadow of the Wall: Family Separation, Immigration Enforcement and Security

Table of Contents

Introduction
About immigration Reform..... 07
Research Questions 08
Research Background 09

Family Reunification.....11
Deterrence by Arrest15

Crossing Experience16
Migration and Women17
Crossing and Violence 20

Labor Exploitation and Guest Worker Programs..... 22

Due Process
Due Process Abuse in US Custody 23
US Authority Abuse 24
Consequence Delivery System and Interior Enforcement 28

Operation Streamline..... 29
Immigration Detention 32

The Alien Transfer and Exit Program
ATEP: Lateral Repatriation..... 33

Interior Enforcement
Interior Enforcement: Secure Communities and 287(g) 34

Conclusions
What is Security? 37

Acknowledgements..... 38

Contact..... 39

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"Grupos Beta" a Mexican governmental organization brings deportees to the San Juan Bosco, shelter in Nogales, Sonora. Photo by Murphy Woodhouse.



Introduction

The current debates about immigration reform have centered on increasing border and immigration enforcement, creating a guest worker program, and providing a path to citizenship for people who came to the United States as children. Our years conducting research and interviewing deportees along the border have resulted in a powerful new set of data on migration and immigration enforcement that calls into question just what people mean by a secure border. In this brief report, we outline some of the preliminary findings of our research that show the consequences of a broken immigration system, as well as a discussion of the impacts of current enforcement practices. Border enforcement practices have long operated behind a veil of silence and often behind closed doors. Our goal is to explain with precision how these programs work in order to evaluate what elements would constitute border security and an effective immigration system.

This report will help us first understand who is being deported, and in particular their family connections to the United States, then provides descriptions of the violence inherent in crossing the border. After discussing what it is like to cross the border, we follow by discussing labor conditions in the United States and the exploitation of undocumented migrants. In the next sections we analyze people's

experiences with U.S. authorities, particularly issues related to due process, abuses at the hands of U.S. authorities, and specific programs related to enforcement, namely, Operation Streamline, immigration detention, the Alien Transfer and Exit Program (ATEP) and Secure Communities.

Our data collected in a second wave of surveys as part of the Migrant Border Crossing Study (MBCS), highlight the violence and other severe human traumas created by the absence of a functional immigration system in the United States. The data also show that border enforcement is a complicated process consisting of numerous removal programs. We must ask which types of enforcement are appropriate and which programs fail to achieve their stated goals. In this report we provide information with a high level of social scientific reliability and validity, using an unbiased sampling method (random interviewees rather than assembled complaints), interviewers who were neither government officials or activists, and non-loaded questions that consider a wide range of potential experiences. The findings thus have particular value for public discussion of border and immigration issues.



Research Questions

- Who are the more than 400,000 people deported to Mexico each year?¹
- What do they experience during their journeys?
- How do immigration enforcement programs operate and are there notable differences between authorities' stated practices and people's experiences?
- What are the standard practices and potential problems with costly immigration enforcement programs?
- What is "security" and how are specific programs related to immigration enforcement helping to achieve this goal?

¹Instituto Nacional de Migración (2011), 405,457 total deportations to Mexico in 2011. We would also like to note that we are not distinguishing between the legal categories of returns/repatriations and deportations, which have different implications for migrants. Rather, we are focused on the act of forcibly removing people from the country. When we refer to formal deportations or expedited removals we are speaking specifically about the legal process.



Deportees get a free meal at a soup kitchen run by the Kino Initiative in Nogales, Sonora.
Photo: Murphy Woodhouse.

Research Background

During 2010, 2011, and 2012², a team of researchers from the United States and Mexico conducted interviews with 1,113 recent deportees about their experiences crossing the border, being apprehended by U.S. authorities, and being repatriated to Mexico. The interviews took place at ports of entry immediately following deportation and in migrant shelters in Tijuana and Mexicali, Baja California; Nogales, Sonora; Ciudad Juárez, Chihuahua; Nuevo Laredo, Tamaulipas and Mexico City³ (see map below).



² 27 interviews during 2009, 14 during 2010, 999 during 2011 and 73 during 2012
³The Mexican Interior Repatriation Program (MIRP) offers people a flight to Mexico City or a bus ticket home out of the Tucson Sector during the summer months, instead of being dropped off at the border. The program did not operate in 2012, and the future of this program is unknown.

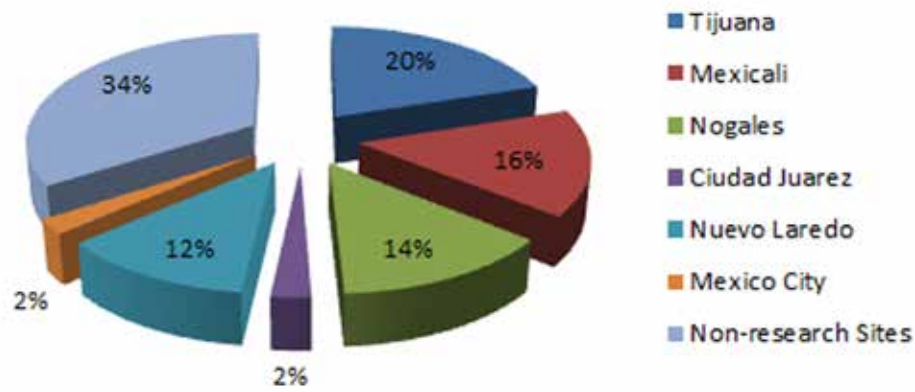


Photo: Murphy Woodhouse.

Research Background (continued)

There were 267,029 deportations to these six cities in 2011² representing 66% of all repatriations to Mexico in 2011³ (Graph 1.1, below). Each survey consisted of 250 questions and each face-to-face interview lasted approximately 45 minutes⁴. We only interviewed people eighteen years of age or older who had crossed without legal documents sometime after September 11th, 2001 and were deported during the month prior to the interview. All data presented in this summary brief are preliminary estimates and must be weighted to generalize to all people repatriated to our research sites during the time of the study. With the exception of information provided on kidnappings and violence against women, all statistics presented refer to people’s most recent crossing, apprehension, and deportation experience.

Graph 1.1 Total Repatriations (2011)



Graph 1.1 Repatriations to Mexico based on study sites

⁴We used a random spatial sample to ensure external validity, and researchers did not ask for volunteers, but solicited participants individually at shelters and ports of entry. These results are unweighted statistics and therefore can only speak directly to the people surveyed.



Photo: Murphy Woodhouse

Family Reunification

Table 1 (next page) provides descriptive statistics for our survey respondents. The average person we interviewed was 31 years old, with eight years of formal education and earning a median household income of \$280 per month before attempting to cross into the United States.

About half spoke at least some English, and one in ten spoke an indigenous language in addition to Spanish. More than half were employed before deciding to leave Mexico, and 42% were the sole income provider for their families. Three quarters of deportees had previously lived or worked in the United States. Among those who had lived or worked in the United States, the median time spent in the country was seven years.

Half have at least one family member who is a U.S. citizen, and about one in four have at least one child under the age of 18 who have U.S. citizenship. Almost half of those interviewed expressed that they intended to permanently emigrate during their last crossing, and 28% stated that their current home is located in the United States.

This is a strikingly different portrait of deportees than the common conception of seasonal laborers and young single men with no real ties to the United States.

“As a mother it is very difficult to leave your children over there—I feel really bad about that. My daughter lives there with her father. He was abusive to me, so I am afraid to leave her there with him.”

-Julieta, 24, female



Outside wall of Transportes Fronterizos, a bus station that caters to migrants, especially those heading to the southernmost states in Mexico. Photos by Murphy Woodhouse.



Family Reunification (continued)

Table 1. Demographic Characteristics and Ties to the United States	
Variable	Percent/Median
Male	82%
Female	12%
Age	31 years
Formal educational attainment	8 years
Monthly household income before crossing (in US dollars)	\$280
English-speaking (“at least some”)	47%
Indigenous language speaking	10%
Sole economic provider for household	42%
Employed before crossing	62%
Have lived or worked in the US	74%
Years in the US	7 years
US citizen family members	51%
US citizen children	22%
Current home located in the US	28%
Intended to emigrate permanently after last crossing	42%
N = 1,113 Source: Migrant Border Crossing Study, Wave II	

Under the Immigration and Naturalization Act, there are three broad categories for potential immigrants seeking lawful permanent residence.⁵ Each of these categories is subject to direct numerical limitations each fiscal year and additional limits by country.⁶ This quota system, combined with the use of a lottery “for increasing the diversity of immigrants,” makes legal immigration in any given year more likely for an individual from a country with a low historical flow of immigrants than for an individual from a country with a high historical flow of immigrants such as Mexico.

While 51% of people surveyed had a U.S. citizen family member, many do not fit into categories that allow for legalization, and if they do, the line can take 20 years or more. The U.S. State Department’s Visa Bulletin for March 2013⁷ reveals that if a Mexican citizen had filed an immigrant visa application in July of 1993 as the adult son or daughter of a U.S. citizen, they would have become eligible for further processing in March of 2013. Moreover, immigration enforcement has changed the penalties for undocumented migration meaning that many people

have become inadmissible. A potential immigrant is inadmissible for such things as having entered the United States without being admitted or paroled, having claimed citizenship for any purpose or benefit under any Federal or State law and having encouraged anyone to enter the United States without following the law.⁸ Another issue for admissibility involves accrual of unlawful presence, which would not allow an individual to immigrate lawfully if he or she entered the United States unlawfully and spent a period of time greater than 180 days there and then left the United States again.⁹

For an individual with the average demographic characteristics we found, legal immigration under the current statutory scheme would be extremely difficult or impossible. A thirty-one year old Mexican man with eight years of formal education, some work experience in Mexico and the United States, at least one U.S. citizen family member and perhaps a U.S. citizen child under the age of 21, will probably never find an appropriate legal remedy to immigrate under current U.S. law.

⁵See INA § 201 Describing family sponsored immigrants, employment-based immigrants and diversity immigrants.
⁶See INA § 201 and § 202 Detailing numerical limits by category of immigrant and on individual foreign states.
⁷See Visa Bulletin for March 2013 at Travel.State.Gov http://www.travel.state.gov/visa/bulletin/bulletin_5885.html.
⁸See INA § 212(a) Full explanation of grounds of inadmissibility; INA § 212(a)(6)(A)(i) Entering Without Inspection; INA § 212(a)(6)(C)(ii) Falsely claiming citizenship; INA § 212(a)(6)(E) Smugglers.
⁹See INA § 212(a)(9)(B) Aliens unlawfully present.



Family Reunification (continued)

“I have been in the United States since I was five. I got in a fight right after I turned 18 and the judge deported me. I don’t know anyone in Mexico. I don’t exist here or in the United States.”

~ Julian, 18 (08/03/2012)

Family reunification is the first tenet of immigration law¹⁰.

Any discussion to regularize the millions of children and young adults that arrive with their parents must include provisions to keep families together.

- Provide paths to citizenship for family members of U.S. citizens already living and working in the United States.
- People with minor infractions who would otherwise be eligible for deferred action or the DREAM Act should be included in reforms.
- Reduce or eliminate penalties for false claims of citizenship, as a substantial portion of people who attempt to cross the border this way are young people with significant time in the United States.¹¹

¹⁰See generally Immigration and Nationality Act § 201(a)(1) Discussing family-sponsored immigrants; INA § 201(a)(2)(A)(i) Exempting immediate relatives from direct numerical limitations; INA § 240A Describing cancellation of removal based on hardship to U.S. citizen of Lawful Permanent Residence family members; INS v. Errico 385 U.S. 214, 87 S.Ct. 473 (1966) Evaluating the legislative history of the INA to find that family unity is a primary goal, which Congress recognized to often be more important than either enforcement of quota provisions or keeping potentially harmful people out of the U.S.; Fiallo v. Bell 430 U.S. 787, 97 S.Ct. 1473 (1977) Recognizing the underlying intention and goal of immigration law to be family unity as demonstrated by preference in law for the immigration of certain family members; Holder v. Martinez Gutierrez 132 S.Ct. 2011 (2012) Affirming the fact that goals of family unity underlie or inform immigration law while declining to interpret every provision in the statute in the most family-friendly light.
¹¹See INA § 212(a)(6)(C)(ii) Describing a false claim to U.S. citizenship for any purpose or benefit under any federal or state law as a ground of inadmissibility; INA § 237(a)(1)(H) Allowing for a waiver of certain misrepresentations at the discretion of the Attorney General but not allowing waiver of a false claim; Sandoval v. Holder 641 F.3d 982 (2011) Reviewing specifically whether an unaccompanied minor falsely claiming citizenship should be subject to the non-waivable permanent bar but deferring to the Board of Immigration Appeals to explain the statutory provisions; Lewis v. Holder Petition for a Writ of Certiorari 2012 WL 6042345 Describing the false claim provisions and lack of wavier and the Circuit Courts’ divergence as to whether signing an I-9 form claiming citizenship or nationality of the U.S. constitutes a false claim under the law; Jaen-Chavez v. U.S. Atty. Gen. 415 Fed.Appx. 964 Finding no reversible error in the BIA determination of inadmissibility for a false claim on Form I-9 and no available waiver for this misrepresentation.

Family Reunification (continued)

Deterrence by arrest and removal is largely ineffective.

Although a majority of interviewees did not intend on returning within the next week, the majority reported that they would return to the United States sometime in the future with the rate being substantially higher for people who consider their current home to be located in the United States. Deterrence is a linchpin of U.S. border enforcement policy, but it has substantial limitations. Its effect is difficult to measure and it has a limited impact compared to the multitude of factors that influence the decision to migrate such as family and economic need.¹²

Do you plan on crossing again within the next week?	
Yes	25%
No	61%
Don’t know	13%

Do you plan on crossing again in the future?	
Yes	56%
No	26%
Don’t know	18%

- **37% of people who perceive their current home to be in the United States** indicated they would attempt another crossing within the next week, compared 20% of those who say their home is somewhere else.
- **70% of people who perceive their current home to be in the United States** indicate they plan on crossing again in the future, compared to just 49% of those who say their home is not in the United States.
- **Creating more opportunities** to keep families together is fundamental for a functional immigration system.

¹²Andreas, Peter. 2000. Border games: policing the U.S.-Mexico divide. Ithaca: Cornell University Press.
Dunn, Timothy J. 1996. The militarization of the U.S.-Mexico border, 1978-1992: low-intensity conflict doctrine comes home. Austin: CMAS Books, University of Texas at Austin.

“There is nothing in Mexico. There are no jobs, the money isn’t enough. I know it’s not right [to cross again] but it’s just very difficult [economically] in Mexico.”
~ Carlos, 18, Male

“I have no choice, my family is there. I need to go back to my children who want me back.”
~ Antonio, 42, male

Crossing Experience

Typically, our respondents have had three lifetime crossing attempts and one previous apprehension. About two thirds had been apprehended by the Border Patrol while attempting to cross and the remaining 30% had managed to make it to their destination, but were picked up later by police or other authorities. Three-quarters relied on a “coyote” or human smuggler to get into the United States, agreeing to pay a median of \$2,500 USD for their services. They walked for more than two days through the harsh conditions along the border. Thirty-nine percent ran out of water during their trip and 31% ran out of food. The extreme heat and harsh terrain where people cross has killed thousands of people. Four hundred and sixty three migrants were found dead along the border in 2012 alone.¹³ In southern Arizona alone the remains of over 2,100 migrants have been recovered since FY 2000.¹⁴ Even more disturbing, many bodies are never recovered due to the extreme isolation of areas along the border. Many more will never be identified.

Table 2. Most Recent Crossing Experience	
Variable	Percent/Median
Total lifetime crossing attempts	3 attempts
Total lifetime apprehensions	1 apprehension
First-time crossers	17%
Had previously crossed or attempted to cross the border	83%
Used a coyote or guide to cross the border	72%
Cost of coyote (in US dollars)	\$2500
Number of days walking through the desert	2 days
Ran out of water	39%
Ran out of food	31%
Known migrant deaths border-wide, FY 2012	463
Known migrant deaths in southern Arizona, FY 2012	170
<i>N = 1,113</i> <i>Source: Migrant Border Crossing Study, Wave II</i>	

¹³http://www.cbp.gov/linkhandler/cgov/border_security/border_patrol/usbp_statistics/usbp_fy12_stats/usbp_sector_profile.ctt/usbp_sector_profile.pdf; Data for southern Arizona come from the Pima County Office of the Medical Examiner.
¹⁴ Martinez, Daniel E., Robin C. Reineke, Raquel Rubio-Goldsmith, Bruce E. Anderson, Gregory Hess, and Bruce Parks. (forthcoming). “A Continued Humanitarian Crisis at the Border: Undocumented Border Crosser Deaths Recorded by the Pima County Office of the Medical Examiner,” 1990-2012.

Migration and Women

Scholars and policy makers must recognize the impacts of undocumented migration on women. While migration is still largely a male phenomenon, women represent about 14% of Border Patrol apprehensions in the U.S. southwest¹⁵ and 10% of repatriations to Mexico¹⁶. Women face considerable challenges while crossing the border. About 12% of all respondents have witnessed some form of violence against women during the crossing experience¹⁷. This includes rape, beatings and even disappearances. The most frequent perpetrators of sexual violence are coyotes and bandits known as *bajadores*.

“I was crossing in Sonoita (Sonora) about a month ago and two bajadores assaulted us. They had really large guns and took money from the men. There were three women in our group. They made two of us strip and one man was on top of me. He almost raped me, but the guide who was a friend started yelling. He said I was his wife and threatened to kill the man. He’s not my husband, but they let us go.”

~ Sandra, female, 29

¹⁵ Border Patrol Fiscal Year 2012 Statistics. http://www.cbp.gov/linkhandler/cgov/border_security/border_patrol/usbp_statistics/usbp_fy12_stats/apprehensions_by_gender.ctt/apprehensions_by_gender.pdf. We oversampled women at 17% in order to have enough cases to generalize.

¹⁶ Instituto Nacional de Migración. http://www.politicamigratoria.gob.mx/es_mx/SEGOB/Repatriacion_de_mexicanos_2012

¹⁷ Includes all previous crossing experiences, not just the most recent.

Migration and Women (continued)

“[The coyote] beat a woman because she couldn’t walk anymore after three days in the desert. He said, “camina hija de tu perro” “walk you son of a bitch.” Then he assaulted her because she wouldn’t sleep with him.”

~ Juan Carlos, male, 23

“The migra (border patrol) pulled my cousin’s hair. We were in the desert. They were trying to handcuff us and an officer pulled her down by her hair.”

~ Lupita, female, 27

Women also face other challenges. While women make up an increasing proportion of migrants, they tend to have less previous migration experience than men, having crossed around three times as opposed to five times. In our research about 26% of women had just attempted their first crossing compared with only 15% of men. Women often use different strategies than men, such as crossing through the ports of entry with fake documents, which is less dangerous than the desert but carries more serious legal implications.

Women are also less likely to succeed in their attempts to migrate; only 15% arrived at their desired destinations compared to 35% of men. Fifteen percent of women report having been abandoned in the desert during their crossing attempt.¹⁸ While fewer women have lived in the United States they seem to spend more time there. This also raises important issues about the end of cyclical migration and the move toward more permanent settlement. Scholars have long asserted that border controls lead to more permanent settlement, keeping people in the United States much more effectively than keeping them out.¹⁹ Cyclical migration which was typical for men up until the 1990s has dwindled.

- **Border enforcement has led to permanent migration,** particularly by bringing more women and families into the United States as permanent residents.

¹⁸This finding is not statistically significant but it is approaching significance (p=.20)

¹⁹Massey, D. S., J. Durand, et al. (2002). Beyond smoke and mirrors : Mexican immigration in an era of economic integration. New York, Russell Sage Foundation.

Guadalupe Guerrero shares her condolences through the border wall with Araceli Rodriguez, the mother of a 16 year old boy shot and killed by Border Patrol agents in October 2012 . Photo by Murphy Woodhouse.



Migration and Women (continued)

Table 3. Gender Differences in Migration

Variable	Male (n = 913)	Female (n = 194)	Difference
Number of lifetime crossings	5.3 crossings	2.9 crossings	2.4**
Number of lifetime apprehensions	3.2 apprehensions	1.7 apprehensions	1.5*
First crossing	15%	26%	11%***
Crossed through a port of entry	9%	15%	6%*
Abandoned while crossing	12%	15%	3%
Success on last crossing attempt	35%	15%	20%***
Ever lived in the US	77%	59%	18%**
Total Years in US	8.9 years	9.2 years	0.3

N = 1,113
Note: * p < 0.05, ** p < 0.01, *** p < 0.001 indicate the difference is statistically significant
Source: Migrant Border Crossing Study, Wave II



Kidnapped Migrants.
Photo credit: Oaxaca Al Dia.



Crossing and Violence

(Crossing and Violence continued)

“We were talking on the bus during deportation to Mexico. I followed him to a house near the line. When I got there a bunch of guys hit me in the face and started kicking me. They took my money and threatened to kill me.”

~ Fabio, 24²⁰



Statue of Jesus in the San Juan Bosco Migrant Shelter in Nogales, Sonora. Deportees place identification bracelets given to them in U.S. detention facilities on the statue’s arms. Photo by Murphy Woodhouse.

The danger and violence experienced by undocumented migrants attempting to cross the border has increased drastically in recent years largely due to segmented border enforcement efforts that have pushed migration flows into the same areas used by drug trafficking organizations. Previously these areas belonged solely to drug mules and *bajadores*.²¹ In addition, violence stemming from the drug war in Mexico has increased the risks migrants face upon deportation to border towns. We were interested in understanding what specifically has happened to people as they attempt to cross into the United States as well as upon deportation.

- 12% were robbed by bandits during last crossing
- 7% were kidnapped (n=83)
 - 29 were kidnapped in the U.S.
 - 44 by their coyote or guide
 - 24 by gangs
 - 5 by explicitly by Los Zetas
 - 2 by Mexican Authorities
 - 6 people witnessed rape
 - 2 witnessed murders
- 17% were victims of “cyber kidnappings,” where people call with false claims about having kidnapped a family member to extort a ransom

²⁰The quote on this page and on the opposite page are taken from in-depth interviews conducted by Jeremy Slack, which began in 2009, as well as verbatim responses from the surveys themselves.

²¹Slack, J. and S. Whiteford (2011). “Violence and migration on the Arizona-Sonora border.” Human organization 70(1): 11-21.

Increasing paths to citizenship and legal opportunities to migrate would begin to disentangle migration flows from the informal economy, making unauthorized migration less profitable for smuggling networks. This makes border communities in both Mexico and the United States safer.

- Enforcement measures increase the costs of unauthorized migration, making migration a more profitable industry for organized crime
- Decreasing the unauthorized flow of migrants by increasing the legal flow lessens the profit associated with extorting, kidnapping and smuggling migrants.

“They (Los Zetas) cut out a young Nicaraguan guy’s eye and two of his fingers because he didn’t pay. He bled to death in two days.”

~ Ricardo, 38, male (Held in Matamoros, Tamaulipas)¹⁸



Altar to the Saint of Death, la Santa Muerte in Nogales, Sonora. She plays an important role for drug traffickers and kidnappers. Photo by Jeremy Slack.

Labor Exploitation and the Guest Worker Programs

Guest worker programs and the expansion of H-2B and H-2A visas are a popular policy solution to lessen the clandestine flow of temporary economic migrants across the border without disrupting the economic benefits they provide, especially in select industries (agriculture, construction, meat packing etc.). However, these programs raise concerns about labor exploitation, since people depend on their employers to stay in the country. Other critics worry about guest worker programs undercutting organized labor. We found widespread labor exploitation among the undocumented population in the United States and any guest worker program must be careful to avoid replicating these circumstances.

- 15% of deportees have been denied payment for work
 - \$1,500 USD median value of payment withheld
- 24% have worked for less than minimum wage
- 17% have been blackmailed or threatened with deportation
 - “Bosses” and “Neighbors” being the most common perpetrators

Other factors exacerbate the need to accept exploitative working conditions and repeat migration:

- 40% have debt from crossing
 - 45% among coyote users compared to 24% of non-coyote users
 - \$1,000 median debt at time of deportation

Address worker’s rights, and monitor employers:

- Educate guest workers about their rights as employees (OSHA and other regulations)
- Allow for portability, a grace period if employment ends abruptly
 - Giving people time to find a new job will limit some of the power employers have over guest workers
- Monitor complaints against participating businesses and create severe penalties for exploitation and unethical practice



Due Process Abuse in U.S. Custody

With so many changes to the process of immigration enforcement during the last decade, many express concerns that these proceedings do not meet basic constitutional requirements of due process. We wanted to know how people understood their experiences in U.S. custody and the potential implications of a lack of understanding. There is little transparency about what happens to migrants in the U.S. justice system despite the fact that this process has serious legal implications. Signing documents while in U.S. custody can have long term and far reaching consequences for people’s future ability to legally immigrate.²² The recent increased use of expedited removals, a formal deportation that carries a criminal record without the benefit of a trial before a judge, has raised concerns about people’s knowledge of and access to legal counsel.²³

- 30% of people who signed official documents indicated no one had explained the form to them
- 29% indicated that they did not know what document they had signed
- 28% felt forced or pressured to sign

²²See INA § 101(a)(43)(O) Defining “aggravated felony” to include immigration offenses such as entering without inspection if combined with a previous deportation for another offense; INA § 212(a)(9)(A) Rendering aliens previously removed to be inadmissible, bars to immigration for periods of time; *Walters v. Reno* 145 F.3d 1032 Describing complex forms bearing drastic immigration consequences and deciding that they do not fulfill notice requirements of due process

²³See INA § 238 Expedited Removals and due process requirements including reasonable notice, representation by counsel, provision of a list of counsel available to represent pro bono, opportunities to inspect evidence and rebut charges and a record for judicial review; *U.S. v. Valdinos-Torres* 704 F.3d 697 (2012) Describing a right to counsel in immigration hearings stemming from the Fifth Amendment due process guarantees and protected by statute; *Tawadrus v. Ashcroft* 364 F.3d 1099 (2004) Emphasizing the right to counsel in immigration proceedings in general and the requirement of a knowing and voluntary waiver of this right.

U.S. Authority Abuse



“The agents found me while I was sleeping. They kicked me and asked where the rest of the group was. They didn’t believe that I was alone. They kicked and punched me and when I still had nothing to tell them they tied my hands to the ATV and dragged me behind it. That’s where I got these cuts on my face [pointing to numerous bloody, open cuts across nose and cheeks]”

~ Manuel (05/19/2009)

Lack of transparency and accountability is a widespread problem within Customs and Border Protection (CBP) and other authorities involved with enforcing immigration (ICE, USBP and many police departments).

One of the challenges is determining which abuses stem from day-to-day practices by individual officers, and which may stem from organizational policies that prevent reporting or reprimanding infractions. The United States Border Patrol has tripled in size since 2004 to 21,444 agents²⁴. It is now the largest police force in the United States. This rapid expansion has caused concerns about training, especially in light of abuses. About one in ten migrants report some form of physical abuse during their last apprehension and one in four report verbal abuse.²⁵ While this may not seem like a lot, we want to emphasize that the border patrol apprehends almost 400,000 people every year.

Also of concern are the 39% of people who report having possessions taken and never returned. This includes food, clothing, cell phones, money and of most concern, identifying documents that are extremely difficult to replace.²⁶ Once deported to Mexico without identification, migrants report frequent harassment by authorities accusing them of being Central Americans. They also cannot get some types of jobs, nor can they receive a money transfer to buy bus tickets back to their homes in Mexico.

²⁴http://www.cbp.gov/linkhandler/cgov/border_security/border_patrol/usbp_statistics/usbp_fy12_stats/usbp_sector_profile.ctt/usbp_sector_profile.pdf

²⁵ This level of abuse is consistent with the No More Deaths report 10% (<http://www.nomoredeaths.org/cultureofcruelty.html>) and: Phillips, Scott, Jacqueline Maria Hagan, and Nestor Rodriguez. 2006. “Brutal Borders? Examining the Treatment of Deportees

²⁶ See Wassouf v. U.S. Dept. of Homeland Sec. WL 3654393 (D. Mass. 2011) Finding no right to retain one’s passport when incarcerated, when in removal proceedings and in general as a deportable alien.

Araceli Rodriguez, mother of slain 16 year old Jose Antonio, as well as several of his sisters and cousin’s protest Border Patrol’s use of force policies during a protest on November 2nd, 2012, the “Day of the Dead.”
Photo by Murphy Woodhouse.



U.S. Authority Abuse (continued)

These types of abuses appear to be systemic regardless of whether or not it is due to bureaucratic forces or individual attitudes. Of even more concern is the 20 documented cases of lethal force by USBP since 2010,²⁷ as well as other cases of severe beatings that have enraged border communities and devastated families. Policies on use of force have only recently received attention and there has never been a criminal conviction for lethal force by USBP.

Photo by Murphy Woodhouse. Image taken from between the bars in the border fence at the spot where an unknown officer shot and killed 16 year old José Antonio Elena Rodriguez on October 10, 2012 in Nogales , Sonora.

Autopsy reports show that he was shot between eight and eleven times in the back, while he was lying on the ground. Surveillance video of the incident has not been released.²⁸



²⁷<http://soboco.org/updated-border-patrol-abuse-since-2010>

²⁸<https://nacla.org/blog/2013/2/22/update-autopsy-paints-troubling-picture-border-patrol-shooting>

U.S. Authority Abuse (continued)

Due to the hazards of the desert migrants frequently need medical attention after apprehension. Authorities concerned with the costs of this care frequently neglect requests for medical services. During our research we constantly saw people in desperate need of medical attention, including one man with his collar bone protruding from his skin, and another deportee whose back was broken during apprehension and had only recovered from surgery for a matter of hours before being sent back to Mexico.

- 23% indicated they needed medical attention
 - 37% of those that requested medical attention from authorities did not receive it

It is important to note that not everyone reports negative experiences with USBP. Many of those who get lost in the desert, for example, express gratitude at

being saved by USBP

- People responded in the following ways when asked “In general, how were you treated by USBP agents during your last experience with them?”
 - 31% “Everyone treated me with respect”
 - 26% “The majority treated me with respect”
 - 29% “About half of them treated me with respect”
 - 8% “The majority DID NOT treat me with respect”
 - 5% “NO ONE treated me with respect”

Hopefully in the future everyone will be able to claim they were treated with respect by all agents, but we are aware that there is a vast range in people’s experiences with Border Patrol.

Table 4. Mistreatment While in U.S. Custody	
Variable	Percent/Median
Reported <i>physical abuse</i> by US authorities	11%
Reported <i>verbal abuse</i> by US authorities	23%
DID NOT receive sufficient food while in US custody	45%
Had possessions taken and not returned by US authorities	39%
Were carrying Mexican identifying documents and had at least one document taken and not returned	26%
<i>N</i> = 1,113 Source: Migrant Border Crossing Study, Wave II	

U.S. Authority Abuse (continued)

Review use of force and create mechanisms for transparency and complaint procedures.

- Reexamine internal affairs and allow independent and external audits of personnel; make Border Patrol supervisors accountable for the behavior of officers under their supervision
- Develop training programs that focus on conflict management and conflict reduction, human and constitutional rights, and control of stress and boredom that include internal and external monitoring mechanisms
- Reevaluate legal procedures for undocumented migrants. The expedited removal poses a serious issue for people when they do not receive a full explanation of what they are signing. It is a criminal charge but no judge is required for sentencing. There is a great deal of confusion among migrants about this charge as it is often translated as “deportación voluntaria” (voluntary deportation) or “deportación rápida” (rapid deportation), both of which are far too similar to the “salida voluntaria” or voluntary repatriation/ departure which carries no criminal penalty.
- During the in-take process, agents from USCIS or other agencies should verify if individuals qualify for legal status, including U visas or T visas as victims of crimes and human trafficking
- Establish a chain of custody for possessions, especially identifying documents, which are necessary for people once they return to their home country (e.g., to receive a wire transfer or get a job)
- Provide a way to effectively file complaints about human rights abuses
- Mexican authorities need to simplify the process for recuperating lost documents (Birth Certificates, Voter ID – Credencial Electoral) at the border.²⁹ Although there are a few exceptions, most people must return to their home states to get these documents replaced.

²⁹This is being done state by state rather than in a comprehensive manner. For example, Oaxaca state has opened an office in Tijuana to help people get their documents back.

Consequences Delivery System and Interior Enforcement



The border wall a mile west from downtown Nogales.
Photo by Murphy Woodhouse.

Customs and Border Protection, the umbrella organization for the Border Patrol, has taken a new approach to immigration enforcement. The goal of the Consequences Delivery System (CDS) is to provide people with additional repercussions for unauthorized entry in hopes that they will decide not to attempt another crossing.

Claims that these programs significantly decrease the likelihood people will return have never been externally evaluated or proven using reliable data. The Government Accounting Office has recommended that Immigration and Customs Enforcement (ICE) provide metrics for evaluating their removal programs. CBP spent a total of \$14.5 billion in FY2011²⁹.

Considering the amount of taxpayer dollars being spent, we feel that a serious evaluation of these programs is necessary to justify continued operation. Our study focuses on four specific deterrence programs: Operation Streamline, immigration detention, the Alien Transfer and Exit Program (ATEP) and Secure Communities/287(g).

²⁹CBP. Summary of Performance and Financial Evaluation Fiscal Year 2011. http://cbp.gov/linkhandler/cgov/newsroom/publications/Summary%20of%20Performance%20and%20Financial%20Information/fy2011_finance.ctt/fy2011_finance.pdf



Artist's rendering of Operation Streamline. No images or recordings are allowed in these court proceedings. Illustrations by Lawrence Gipe.

Operation Streamline

Operation Streamline is a mass trial for immigration offenders that convicts between 40 and 80 people per hearing for “illegal entry,” a misdemeanor offense.³¹ A group lawyer is provided for defendants, sometimes in groups and sometimes one-on-one, but the limited time and complicated arrangement has raised concerns about the quality of legal council.

When asked “what did your lawyer inform you about your rights?” only 40% mentioned some sort of basic legal right such as the right to silence or a fair trial. Forty percent stated that their lawyer simply informed them they needed to sign their deportation and plead guilty. Seven percent reported that their lawyers did not tell them anything. Only 2% reported being informed that they could denounce abuses and 1% (3 people) stated that the lawyer checked for legal migration options due to family connections, which is generally the first and most important duty of any immigration attorney. Moreover, the impetus to simply force people not to fight their case is the only way to maintain our current immigration system. If people were to fight the charges, the enormity of the case-load would quickly overwhelm the capacity of the court system.

While the first immigration offense carries a maximum six months sentence, those who are convicted now have a criminal record based solely on an immigration offense that will exclude them from legal residence or entry.³² If they are apprehended again, they will be charged with a felony for illegal re-entry and sentenced to a maximum two-year sentence³³ although sentencing varies widely by district and judicial discretion. However, upon asking people what they understood about their sentence only 71% of respondents mentioned that they would face some amount of jail time if they return to the United States after being deported.

³¹In December 2009, the 9th Circuit Court of Appeals determined that people must individually state whether they are pleading guilty or innocent rather than the previous arrangement where people were told to stand up if they were pleading not guilty. However, this has little substantive difference to the form and problems with Streamline.

³²See INA § 275 Improper entry by alien.

³³Lydgate, Joanna. 2010 Assembly-Line Justice: A Review of Operation Streamline. University of California, Berkeley Law School. www.law.berkeley.edu/files/Operation_Streamline_Policy_Brief.pdf

“We all went in a big group in front of the judge...they put chains on us really tight...the whole time in there they made me feel like I killed someone.”

~ Javier, 22, Chiapas

“ ...there is a lot of violence, drugs and weapons inside [in CCA]....people smoke weed there openly...someone even got stabbed in Eloy [Arizona] right before I left.”

~ Mercedes, 34, female

“...I couldn’t believe it, I felt like I was being kept in there [in CCA] with murderers.”

~ Miguel, 24, male

Operation Streamline (continued)

In Operation Streamline defendants are generally shackled before, during, and after their court appearances. Defendants are typically shackled at the feet, waist and wrists for a median six hours each. Criminal prosecutions for illegal entry increased from 3,900 cases to 43,700 between FY 2000 and FY 2010, and during the same period prosecutions for illegal re-entry increased from 7,900 to 35,800³⁴ (See Graph 2.1, opposite page). The changes in prosecution brought about by Operation Streamline account for much of the increase in deportation of “criminal aliens,” simply because of the rise in immigration offenders, whose activities were previously considered administrative offenses. Forty-eight percent of all immigration prosecutions come from illegal entry and 44% from illegal re-entry. Among all immigrants deported for criminal offenses in FY 2012, 20% were removed for immigration infractions.³⁵ The other largest categories are traffic violations (23%) and drugs (23%). Operation Streamline has been criticized for a lack of due process, the inability to provide fair trials en masse and effectively communicate sentences.³⁶ These court proceedings also remove prosecutorial discretion, devoting an inordinate amount of resources to prosecuting immigration offenders rather than violent offenders.

- 32% were sent to Operation Streamline³⁷
 - 92% reported being shackled during Operation Streamline
 - Median time of six hours spent in shackles, cuffed at the wrists, waist and ankles
- “What did your lawyer tell you about your rights?”
 - 40% Sign the form and do not fight the charges
 - 40% Some mention of basic legal rights
 - 7% Nothing or could not understand
 - 2% asked to report abuses
 - 1% Check for legal status of defendant
 - No one mentioned the prospect of being paroled while waiting for resolution of an immigration case.

³⁴Meissner, D et al. Immigration Enforcement in the United States: The Rise of a Formidable Machinery. <http://www.migrationpolicy.org/pubs/enforcementpillars.pdf>

³⁵Ibid.

³⁶See U.S. v. Roblero-Solis 588 F.3d 692 Determining that guilty pleas heard en masse did not comport with Rule 11 of the Federal Rules of Civil Procedure but that this was not plain error; U.S. v. Escamilla-Rojas 640 F.3d 1055 Finding Operation Streamline procedures for hearing guilty pleas not to violate due process considerations and errors to be harmless; U.S. v. Aguilar-Vera 698 F.3d 1196 Discussing a judge’s harmless error in accepting defendant’s guilty plea in an Operation Streamline proceeding, defendant maintaining argument as to lack of due process under the Constitution in case precedent was overruled and/or Operation Streamline was examined by the Supreme Court.

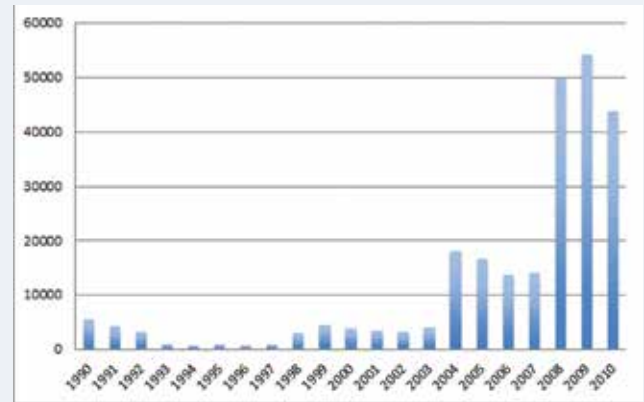
³⁷Variable based on people apprehended or deported in a border zone that has Operation Streamline (all except the Marfa, San Diego and El Centro Sector), tried as a group and given free legal counsel.

Operation Streamline (continued)

End Operation Streamline

- Court records show that Operation Streamline has not resulted in more prosecution of human smugglers and drug traffickers, only undocumented migrants³⁸
- It overburdens case loads in federal courts and fails to provide due process to many who may have legal right to residency
- Represents a violation of the U.S. Constitution by trying people in masse rather than as individuals
- People convicted through Operation Streamline have a criminal record that will carry jail time if they are apprehended again for unauthorized entry

Graph 2.1. Prosecutions for Unlawful Entry per Fiscal Year



Source: http://trac.syr.edu/immigration/reports/251/include/imm_charges.html

³⁸Lydgate, Joanna. 2010 Assembly-Line Justice: A Review of Operation Streamline. University of California, Berkeley Law School. www.law.berkeley.edu/files/Operation_Streamline_Policy_Brief.pdf

Long Term Immigration Detention

Long Term Immigration Detention

- 38% were sent to a detention center after apprehension³⁹
 - 8% were threatened by other inmates

Reform Immigration Detention

- Review sentencing guidelines
 - Comprehensive reform needs to address the backlog of cases in immigration courts. Many wait years for resolution of their cases
- Detention costs about \$164 per person per day, at a total cost of \$1.96 billion for the upcoming fiscal year 2013⁴⁰.
 - This funds private prisons such as the Corrections Corporation of America
- It is necessary to coordinate between local and federal courts
 - People frequently report having court dates that conflict with their detention schedules
 - People get placed on probation and simultaneously deported, causing an arrest warrant
- Outside independent auditors need better access to detention centers to monitor conditions and abuses
 - This requires making information about where people are being held more widely available, as families and even lawyers constantly struggle to locate and speak with detainees that are constantly transferred across the country

³⁹ Does not include short-term detention by the border patrol which usually does not last more than 3 days.

⁴⁰ National Immigration Forum. The Math of Immigration Detention: Runaway Costs for +Immigration Detention Do Not Add Up to Sensible Policies. <http://www.immigrationforum.org/images/uploads/MathofImmigrationDetention.pdf>

Photo: Murphy Woodhouse



The Alien Transfer and Exit Program (ATEP): Lateral Repatriation

- 18% were laterally repatriated⁴¹
- 18% of all respondents were deported between the hours of 10pm and 5am

ATEP is another enforcement program with the explicit directive of breaking smuggling networks⁴². Border Patrol transfers migrants to a different sector along the border, sending them to unknown and unfamiliar territory. Our research shows that ATEP sends people away from the Arizona-Sonora border, which is the busiest point of undocumented crossing, to other areas where fewer people cross. While, officially, only men go through ATEP, this leaves women travelling with male relatives or significant others deported alone to unfamiliar border towns. Seventeen percent of the people deported to Sonora are women versus 10% border wide⁴³. The other issue with ATEP is the increase in deportation to Mexico's northeastern border, home to the criminal organization, Los Zetas. Los Zetas have been known to kidnap, extort and even kill migrants on a large scale.

The infamous massacre of 72 migrants in August 2010 and the mass graves containing hundreds of migrants raise concerns about the ethics of continuing deportations to this area. About 30,000 more deportations than apprehensions occurred in this region.⁴⁴ Moreover, border wide, one in five people are deported between the hours of 10 pm and 5 am to these same dangerous cities. We ask for a reevaluation of what consequences this system is designed to deliver. Is it justifiable to put people's lives in danger to punish them for unauthorized entry?

End ATEP

- ATEP separates groups travelling together who rely on one another for safety
- There are coyotes all along the border; migrants are able to secure the services of human smugglers anywhere they are deported, and sending people to unknown areas only makes the experience more dangerous.
- Lateral repatriation appears to have no impact on whether or not people will cross again.⁴⁵

⁴¹For our survey we defined ATEP as individuals who were apprehended by border patrol while crossing and returned to Mexico in a different sector. We excluded individuals who went to long-term detention and/or successfully arrived at their desired destination. We also excluded people that were deported to adjacent sectors to eliminate people that might have walked into another sector before being apprehended.

⁴²GAO. 2010. Alien Smuggling: DHS needs to better leverage Investigative Resources

⁴³Instituto Nacional de Migración, 2011

⁴⁴Isacson, Adam; Meyer, Maureen. 2013. Border Security and Migration: A Report from South Texas. Report by the Working Group on Latin America. <http://www.wola.org/sites/default/files/downloadable/Mexico/2013/Border%20Security%20and%20Migration%20South%20Texas.pdf>

⁴⁵Based on regression analysis.

Interior Enforcement: Secure Communities

“I was leaving the park with my kids when a man crashed into me. The cops came and saw that I didn’t have a driver’s license so they fingerprinted me. He said I was going to be deported. I asked if I could call someone to take my children. He said I could, but when my brother in-law [only legal family member besides children] did not show up, the police officer said he could not wait any longer so I asked the woman that was helping translate for me to watch them. I had no option other than to trust her.”

~ Santiago (04/29/2011)

■ 20% were apprehended through Secure Communities or 287(g)⁴⁶

Interior enforcement targets people that are already settled in the United States and have established a life there, making it a particularly traumatic experience. While people that go through Secure Communities (S-Comm) are no more likely than those who are deported through other removal programs to have U.S. citizen family members, they are more likely to have U.S. citizen children (31% vs 20%).

Almost half of the people deported through S-Comm stated that their home is in the United States versus a quarter of other deportees. They have also spent an average of 8.6 years in the United States versus 6.1, showing yet again that interior enforcement programs target people that have established ties and roots in the United States. This creates consequences for their children who witness their families torn apart.

Besides having little impact on people’s plans to return, this program turns law enforcement officers into immigration officials. Instead of looking to the police when undocumented immigrants are victims of crimes they now must be prepared for deportation whenever they come in contact with an official. This hinders the ability of a police force to investigate crimes, which generally requires cooperative and receptive communities. People are so afraid of any interaction with law enforcement, be it a simple traffic stop or even reporting serious crimes, because they will likely end up being deported, that they will avoid the authorities at all costs.

⁴⁶People must have been apprehended by police outside of the border zone and subsequently deported. We are not able to distinguish between people deported through Secure Communities or the smaller, less common 287(g) and therefore will refer to everything as Secure Communities. For people inside the border zone it is even more difficult to tell whether people were part of this program or one of the many informal arrangements between police and border patrol. For instance in Tucson, the police frequently call border patrol agents when they suspect someone might be undocumented rather than going through formal channels, charging them with a crime or processing them. However, according to ICE statistics, 20% of their removals in 2011 come from secure communities. <http://www.gao.gov/assets/600/592415.pdf>

Interior Enforcement: Secure Communities (continued)

Table 5. Comparison between People Apprehended through Secure Communities and those Apprehended through Other Means.

Variable	Secure Communities (20%)	Other Removal Program (80%)	Difference
Have US Citizen Family Members	51%	51%	0%
Have US Citizen Minor Children	31%	20%	11%***
Their Current Home is in the US	46%	24%	22%***
Total Years in US	8.6 years	6.1 years	2.5 years***

N = 1,113
*Note: * p < 0.05, ** p < 0.01, *** p < 0.001 indicate the difference is statistically significant*
Source: Migrant Border Crossing Study, Wave II

End Secure Communities

- It places law enforcement in an awkward position making it hard for them to build trust within communities, which is essential for their primary mandate of investigating crimes and keeping the peace
- Secure Communities tears apart families, separating those that are legally allowed in the United States from those that are not.
 - These U.S. citizens should be afforded the basic human right of an intact family



Conclusions: What is security?

Increased border enforcement has dominated recent discussions about immigration reform. The idea that reform can only happen once the border is secure raises troubling issues, not least of which is a lack of understanding of what a secure border means. While developing security metrics is a start, whatever is decided will only encompass a small portion of what security might mean for different groups. Is a secure border one where nothing and no one that is unauthorized can pass through it?

An impermeable border is impossible if the United States and Mexico expect to maintain or expand trade and economic development. Are there other options, such as promoting economic development in Mexico and Central America that provide people with the option not to migrate, commonly referred to as, “*el derecho de no migrar?*” Rather than assert that more border enforcement is necessary to proceed with immigration reform, we would like to re-visit what border enforcement aims to accomplish.

While the official mission of the Customs and Border Protection (CBP) is to prevent terrorism⁴⁷, this is hardly its day-to-day task. The moment the Immigration and Naturalization Services (INS) was replaced by the Department of Homeland Security as the umbrella organization for the USBP, they became part of a security oriented organization rather than an organization that provides a service. We need to re-examine what this means for our goals in regard to border security, immigration procedures and for border communities that live with the consequences of national strategies⁴⁸.

The Migrant Border Crossing Study (MBCS) sheds light on what is actually happening in the name of security along the border. Does Operation Streamline of ATEP increase security? Does family separation and migrant detention increase security? To conflate all immigration enforcement with security distorts the true nature of these

programs. Any discussion of reforms needs to address the explicit and implicit goals of specific enforcement programs, as well as the unintended consequences that we have discussed throughout this report. The impacts of the current approach to immigration enforcement will be felt for generations. We are currently at a juncture where we can change course and reconceive of a humane immigration system and inclusive security that addresses our needs as one society connected by family, economics and the desire to make a life for ourselves and our loved ones.

Keep family unification at the forefront of immigration reform

- Giving young adults legal status is a good start, but without their families included in a reform it is not enough to substantially change the dynamics of undocumented migration
 - Border security cannot be achieved by programs that punish non-violent immigration offenders
- We must re-examine why we allocate so many resources to assigning criminal sentences and punishments to people with no previous criminal history
- It is also important to dissect criminal categories and provide relief for people that have criminal histories purely because of immigration violations

Look for forthcoming publications using weighted data and inferential analyses, as well as a public forum at the Woodrow Wilson Center in Washington, D.C. on May 30th, 2013.

⁴⁷“We protect the American public against terrorists and the implements of terror.” There is no mention of unauthorized migrants. <http://www.cbp.gov/xp/cgov/about/mission/guardians.xml>

⁴⁸Heyman, Josiah. 2012. Guns, Drugs and Money: Tackling the Real Threats at the Border. Immigration Policy Institute. <http://www.immigrationpolicy.org/perspectives/guns-drugs-and-money-tackling-real-threats-border-security>

Deportees waiting to eat at the Kino Initiative's soup kitchen in Nogales, Sonora. Photo by Murphy Woodhouse.



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