IN HOSTILE TERRAIN:
HUMAN RIGHTS VIOLATIONS IN IMMIGRATION ENFORCEMENT IN THE US SOUTHWEST

AMNESTY INTERNATIONAL

AMNESTY INTERNATIONAL IS A GLOBAL MOVEMENT of more than 3 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

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COVER
Border fence near Sasabe, Arizona.

Photo courtesy of Tasya van Ree

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AMNESTY INTERNATIONAL

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MAP OF THE BORDER BETWEEN THE USA AND MEXICO

Map denotes locations visited by Amnesty International researchers for this report.


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METHODOLOGY AND ACKNOWLEDGEMENT

THIS REPORT IS BASED ON RESEARCH CARRIED OUT IN 2010 AND 2011 by Amnesty International USA. The research focused primarily on two US states – Texas and Arizona – which contain the longest stretches of the southwestern border between the USA and Mexico. The research draws on Amnesty International's interviews with individual immigrants and their families, survivors of abuse, advocates, activists, service providers, academics, public officials, and medical examiner personnel. Research was conducted in Austin, Houston, San Antonio, El Paso, Del Rio, Webster, and Harlingen in Texas; and Phoenix, Tucson, and Sells (Tohono O'odham Nation) in Arizona. The names and other personal details of some of those who spoke to Amnesty International have been withheld in order to respect their requests for privacy. In some cases, Amnesty International has relied on advocates' and media accounts to highlight the plight of individual immigrants, either because the person involved had already been deported or because some individuals feared coming forward to speak about their experiences, even with the promise of anonymity.

AMNESTY INTERNATIONAL INTERVIEWED FEDERAL AND LOCAL OFFICIALS at the US Department of Homeland Security's Customs and Border Protection, Harris County Sheriff's Office, Houston Police Department, and Tucson Police Department. Amnesty International sent questionnaires to law enforcement agencies in Texas and Arizona seeking information about their enforcement of immigration law and cooperation with federal immigration agencies. Of the 275 surveys sent to law enforcement agencies, only 23 were completed and returned. Twenty-six agencies formally declined to complete the survey while 226 agencies failed to respond at all. Amnesty International filed Freedom of Information Act requests with Immigration and Customs Enforcement, Customs and Border Patrol and US Citizenship and Immigration Services. Open Records requests were filed with several state, county and local law enforcement or welfare agencies in Texas and Arizona.

AMNESTY INTERNATIONAL ALSO REVIEWED MEDIA REPORTS of incidents involving human rights violations of immigrants, and documented and tracked current and pending federal and state legislation relating to immigration enforcement and immigrants' rights.

AMNESTY INTERNATIONAL WISHES TO THANK all those who agreed to talk about their experiences. Amnesty International is grateful to the organizations, experts, and individuals who generously shared information, perspectives, and analysis.

A NOTE ON TERMINOLOGY

NO SINGLE TERM TO DESCRIBE THE SITUATION of migrants is universally accepted. The term "migrant" is used in international human rights law to refer to people who move from one country to another to live and the term "irregular migrant" is increasingly used to refer to individuals who do not have legal permission to remain in a country. However, the terms most commonly used in the USA to describe these situations are "immigrant" and "undocumented immigrant", and this is reflected in the language of this report.

AMNESTY INTERNATIONAL STRIVES TO USE LANGUAGE that respects the wishes of the individuals or communities concerned. For example, no single term is universally accepted by all individuals of Latin American descent in the USA and while this report uses the terms "Hispanic" and "Latino/a" interchangeably, this is in no way intended to minimize or ignore the complexity or the great diversity of ways in which people may identify in different contexts, nor to generalize their experiences.

CUSTOMS AND BORDER PROTECTION (CBP) is the main agency within the Department of Homeland Security responsible for immigration enforcement along the border. Border Patrol is the sub-agency of CBP. "CBP" is often used by individuals in the southwestern border region to describe Border Patrol agents. In this report, the description provided to Amnesty International during interviews has been used. However, where possible the report differentiates issue related specifically to Border Patrol and the CPB.

THE DECISIONS ON TERMINOLOGY IN THIS REPORT have been guided by a number of factors, including the need to ensure that the report is as accessible as possible to diverse audiences both within the USA and around the world.

LIST OF ABBREVIATIONS

ACLU	American Civil Liberties Union
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CBP	Customs and Border Protection
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CEDAW Committee	UN Committee on the Elimination of Discrimination against Women
CRC	Convention on the Rights of the Child
CRECEN	Centro de Recursos Centroamericanos (Central American Resource Center)
DHS	Department of Homeland Security
DREAM Act	Development, Relief and Education for Alien Minors Act
IACHR	Inter-American Commission on Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICE	Immigration and Customs Enforcement
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
INA	Immigration and Nationality Act
IIRIRA	Illegal Immigration Reform and Immigrant Responsibility Act
Migrant Workers Convention	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
NGO	Non-governmental organization
MALDEF	Mexican American Legal Defense and Educational Fund
PCOME	Pima County Office of the Medical Examiner
RAICES	Refugee and Immigrant Center for Education and Legal Services
SACASA	Southern Arizona Center Against Sexual Assault
SPLC	Southern Poverty Law Center
UDHR	Universal Declaration of Human Rights
USCIS	US Citizenship and Immigration Services
VTVPA	Victims of Trafficking and Violence Protection Act

CHAPTER 1

INTRODUCTION

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INTRODUCTION

IN APRIL 2011, ALFREDO G., a US citizen of Dominican descent, went to assist three of his father's employees who had been involved in a car accident. A Texas State Trooper responded to the accident and was already at the scene when Alfredo arrived. Alfredo described to Amnesty International how the trooper continually delayed completing the accident report: "I thought it was a typical accident but it took longer... I asked the Trooper how long we would have to stay and he said, 'just a little more' and never said why." After about three hours, four sheriff's deputies arrived and surrounded Alfredo and the rest of the group with their vehicles. Minutes later an unmarked silver pick-up truck pulled up and a man got out who was dressed in khaki – Immigration and Customs Enforcement (ICE) agents often wear khaki uniforms. According to Alfredo: "He was very disrespectful. He asked, 'How are you in the United States?' and said 'Sit down or I'll hit you' to everyone. Initially he didn't believe that I was a US citizen. When he found out that I was, he just said, 'I'm sorry' and identified himself as an ICE officer by showing me his badge... He tried to intimidate everyone. He made comments that we were all illegal. He treated us worse than animals."[1]

PREVIOUS PAGE
U.S. Customs and Border Protection, Tucson Sector Headquarters, Tucson, Arizona.

ALFREDO'S EXPERIENCE IS typical of the human rights violations targeted against communities of color living along the southwestern border of the USA, specifically in Texas and Arizona. Immigrants, US citizens of Latino descent and Indigenous people are disproportionately targeted for stops and searches due to discriminatory profiling based on race, ethnicity and indigenous status by federal, state, and local law enforcement officials. Monitoring and accountability of immigration and law enforcement officials is lacking and, as a result, those responsible for human rights abuses are rarely held to account, with the result that such practices have become both commonplace and entrenched. Immigrants also face obstacles when attempting to access justice and remedies for certain crimes such as domestic violence and human trafficking. Furthermore, the proliferation of recently enacted state laws obstructs immigrants' ability to obtain education and access to essential health care services.

While it is generally accepted that countries have the right to regulate the entry and stay of non-nationals in their territory, they can only do so within the limits of their human rights obligations. The US government has an obligation under international human rights law to ensure that its laws, policies and practices do not place immigrants at an increased risk of human rights abuses.

"LOOKS LIKE TO ME, IF SHOOTING THESE IMMIGRATING FERAL HOGS WORKS, MAYBE WE HAVE FOUND A [SOLUTION] TO OUR ILLEGAL IMMIGRATION PROBLEM."

Kansas State Representative Virgil Peck,
13 March 2011[2]

Recent years have seen a rise in anti-immigrant sentiment. This has been reflected in the proliferation of new anti-immigrant legislation across several states, including Alabama, Arizona and Georgia, and the polarized nature of the political and media discussion on the issue at both the state and federal levels.[3]

The reasons for migration are varied and complex. Some people move to improve their economic situation, reunite with families, or obtain an education. Others leave their countries to escape violence, poverty, or discrimination. While poverty is often an underlying issue contributing to people's decision to migrate, restrictions on migration often prevent those living in poverty from entering the country legally.[6] Migrants who lack official authorization are likely to find themselves marginalized and at greater risk of human rights abuses both while traveling and once they have arrived at their destination.

The journey for many migrants starts long before they reach the US-Mexico border. In Invisible victims: Migrants on the move in Mexico,[7] Amnesty International documented the shocking levels of abuse faced by tens of thousands of Central American irregular migrants every year as they make their way through Mexico on their way to the USA. For those who survive the extreme insecurity and dangers of the journey through Mexico, reaching the US border brings its own hazards. Undocumented migrants often travel through deserts on foot, or are smuggled in car trunks, cramped vans, trucks, or shipping containers, as human cargo. Increased immigration enforcement in certain border areas has pushed undocumented immigrants to use particularly dangerous routes through the US desert; hundreds of people die each year as a result.

"[I]t may be more dangerous to cross than ever before. Although it seems to be that less people are crossing the border, a higher percentage of people are dying."

Dr Bruce Parks, Chief Medical Examiner,
Pima County Office of the Medical Examiner,
28 April 2011

Once immigrants have settled in the USA, they are at risk of discriminatory treatment from federal immigration officials, who are increasingly working in collaboration with state and local law enforcement agencies. This has also increased the risk of other communities living along the US-Mexico border being targeted for racial profiling by state and local law enforcement officials. Citizens of Indigenous nations and members of Latino communities and others who are US citizens or who are lawfully present in the USA are more likely to be repeatedly stopped and questioned about their immigration status and to be detained for minor offenses as a pretext for checking their identity through the immigration system. State and local law enforcement officials often do not have adequate training on how to enforce federal immigration laws in a non-discriminatory manner. There is also a lack of proper accountability and oversight, which has allowed racial profiling to become common practice. And finally, those who are then subject

THE IMMIGRANT POPULATION OF THE USA

Of the 300 million people living in the USA in 2010, approximately 40 million were born in another country. Around 1.8 million people continue to migrate to the USA every year.[4] Nearly three quarters of the US immigrant population are in the country legally; another 11.2 million people have entered without official authorization. Mexicans make up nearly 60 per cent of the undocumented population in the USA and individuals from other Latin American countries, particularly El Salvador and Guatemala, account for another 23 per cent.[5]

to immigration enforcement may then face further violations during arrest, detention and deportation including violations of due process and family separation.

Immigration enforcement in the USA is exclusively a federal responsibility.[8] However, recent legislation enacted or proposed in several states in the Southwest specifically targets immigrants and places them at increased risk of discrimination. For example, some laws mandate state and local law enforcement officers to inquire about a person's immigration status upon a "reasonable suspicion" that a person is undocumented. Such laws place immigrants and communities of color along the border at an increased risk of racial and ethnic profiling by local law enforcement officers.

Immigrant communities also face a range of barriers to justice. For example, US legislation makes provision for undocumented immigrants who are victims of crimes, such as people trafficking or domestic violence, to be given temporary legal immigration status and to pursue remedies against the perpetrator of the crime. However, survivors told Amnesty International that many people were reluctant to come into contact with the law enforcement authorities and apply for these remedies because they fear that they will be detained and deported or lose custody of their children. The fact that local law enforcement officials are used to implement federal immigration programs has exacerbated this problem. Those who do decide to report crimes may still be denied access to justice if law enforcement officials see them not as the victims of crime, but as criminals.

Increasingly, state laws and local policies are creating barriers to or discouraging immigrants from accessing their rights to education and health. In addition, children of undocumented migrants who are US citizens and are eligible for government-funded medical insurance and food benefits are often unable to access them because the application process requires disclosure of their parents' immigration status, placing them at risk of deportation and of separation from their families.

While the development and implementation of immigration policies are a matter for individual governments, such policies must be compatible with international human rights law and standards. All immigrants, irrespective of their legal status, have human rights. This report shows that the USA is failing in its obligations under international law to ensure these rights.[9]

Key recommendations

In order to combat discrimination and other abuses towards undocumented and documented immigrants, US citizens of Latino origin and Indigenous Peoples in the Southwest of the USA, Amnesty International calls on the authorities to take the following steps as a matter of priority.

1. **ALL IMMIGRATION ENFORCEMENT PROGRAMS** should be suspended pending a review by the Department of Homeland Security's Office of Inspector General to determine whether the programs can be implemented in a non-discriminatory manner.

2. **ALL STATE GOVERNMENTS SHOULD ENSURE** that legislation respects immigrants' rights including the rights to freedom from discrimination, to due process, and to the rights to health and education. The federal government should also take steps, to ensure that state legislation does not impinge on its responsibility for immigration enforcement.

3. **IN CONSULTATION WITH TRIBAL GOVERNMENTS,** US Customs and Border Protection should respect and facilitate the use of Indigenous/ Tribal passports, identity papers and immigration documents for travel across borders, specifically for Tribes in the southwestern border area. The Department of Homeland Security should ensure that qualifications for these documents are not so burdensome as to create a barrier for Indigenous people to qualify.

4. **THE US CONGRESS SHOULD ENSURE** equitable access to justice and protection for survivors of crime by passing legislation that makes law enforcement certification optional for all temporary visas for victims of crime. In particular, criteria must be developed to make the process of obtaining certification and any reasons for denial, transparent and consistent.

MIGRANTS' RIGHTS IN INTERNATIONAL LAW

"THE ARCHITECTURE OF INTERNATIONAL HUMAN RIGHTS LAW IS BUILT ON THE PREMISE THAT ALL PERSONS, BY VIRTUE OF THEIR ESSENTIAL HUMANITY, SHOULD ENJOY ALL HUMAN RIGHTS".

David Weissbrodt, UN Special Rapporteur on Non-Citizens[10]

The concept of human rights is based on the recognition of the inherent dignity and worth of every human being.[11] Under international law, all migrants without exception of any kind are entitled to: the right to life;[12] the right not to be tortured or ill-treated;[13] the right not to be subject to impermissible discrimination;[14] the right to recognition before the law;[15] and the right not to be subject to slavery.[16] In addition, all migrants, regardless of their status, are guaranteed the highest attainable standard of physical and mental health;[17] as well as the right to education.[18] The principle of non-discrimination is central to the protection of the human rights of all migrants. Any differences in the treatment meted out to migrants must conform to international law – they must not breach migrants' internationally recognized human rights.

The USA has ratified, and therefore has an obligation to adhere to, many of the key human rights treaties that guarantee these fundamental rights, including the International Covenant on Civil and Political Rights (ICCPR); the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The USA has signed the International Covenant on Economic, Social and Cultural Rights; the Convention on the Rights of the Child; and the Convention on the Elimination of All Forms of Discrimination Against Women.[19] As a signatory to these treaties, it has an obligation to refrain from actions that would defeat their object and purpose.[20]

International law also obliges the USA to protect and fulfill human rights and to safeguard individuals from infringement of these rights by third parties, the principle of "due diligence."[21] This includes an obligation to prevent human rights violations, investigate and punish them when they occur, and provide compensation and support services for victims.[22]

FEDERAL IMMIGRATION LAW

Two divisions within the Department of Homeland Security (DHS) are responsible for federal immigration enforcement: Customs and Border Protection (CBP) is responsible for enforcement at the US border,[23] and Immigration and Customs Enforcement (ICE) is responsible for enforcement within the USA.

The Immigration and Nationality Act[24] defines the criteria for determining whether non-citizens are eligible to enter or remain in the USA, and sets out the rules and procedures for the detention and removal of non-citizens. The Act gives immigration officers the authority to detain immigrants without a warrant if there is a "reason to believe that the alien... is in the United States in violation of any [immigration] law and is likely to escape before a warrant can be obtained."[25] Under the Act, immigrants who have committed certain types of crimes must be detained.[26] The DHS is empowered to detain immigrants without an individual hearing before an immigration judge so that the detainee does not have an opportunity to challenge the legality or conditions of their detention.[27] The US mandatory detention system, which provides for the automatic detention of individuals without adequate review, amounts to arbitrary detention and is in violation of international law.[28]

The Illegal Immigration Reform and Immigrant Responsibility Act was one of several pieces of legislation enacted in 1996 that significantly expanded the categories of people who were subject to mandatory detention. Mandatory detention is now required for those convicted of a variety of crimes, including non-violent misdemeanors that do not carry a jail sentence.[29] This breaches international law, which obliges governments to ensure that alternatives to detention are made available to immigrants and asylum-seekers, in both law and in practice. Indeed, in order to establish that detaining an individual is necessary and proportional, governments must first consider less restrictive alternative measures.[30]

In recent years, two immigration bills have been introduced into the US Congress, which, if passed, could have a significant impact on the human rights of immigrants. The most recent legislative effort to overhaul the current immigration system is the Comprehensive Immigration Reform Act of 2011. Introduced in June 2011 by New Jersey Senator Robert Menendez, the bill includes provisions to strengthen border security, develop a legalization program, mandate the use of alternatives to detention for some undocumented immigrants, and create a standing commission to evaluate the labor market and recommend quotas for visas.[31] The bill also incorporates the Development, Relief and Education for Alien Minors (DREAM) Act of 2011.[32] This would permit a group of immigrant students to legalize their status if they meet certain criteria.[33] Since 2001, the DREAM Act has been introduced into Congress repeatedly,[34] but as of January 2012, neither the DREAM Act nor the Comprehensive Immigration Reform Act had been passed.

CHAPTER 2

MIGRANT DEATHS IN THE DESERT

2

CHAPTER 2

MIGRANT DEATHS IN THE DESERT

"FAMILIES EXPERIENCE WHAT PSYCHOLOGISTS TERM 'Ambiguous Loss', which means that the status of a loved one is in question – unresolved. The grief process cannot start because the person is neither dead nor alive. Families often report debilitating fear and an inability to focus on daily tasks. At any point in their 'normal' day, their loved one could be suffering somewhere without help. The search often becomes all-consuming. And without an organized system for searching, families are left to do it alone."

Robin Reineke, Project on Missing and Unidentified Migrants at the Pima County Office of the Medical Examiner, speaking to Amnesty International about the experience of the families of missing migrants[35]

IN JUNE 2010, A 32-YEAR-OLD Guatemalan man went missing while trying to cross the Arizona desert. He had come to the USA to find work to support his wife and 11-month-old baby. His wife received an anonymous call saying that her husband had walked for three hours in the desert before giving up, but the Pima County Office of the Medical Examiner (PCOME) was unable to confirm whether any of the unidentified remains at the Office were those of her husband.[36]

This family tragedy is being repeated in homes in towns and villages across Mexico and Central America. US border control policies intentionally divert migrants attempting to enter the USA without permission into treacherous routes, increasing the risk of injury or death in the desert along the border. Thousands of migrants have died crossing the US-Mexico border in the past decade.[37]

According to the most recent and comprehensive set of available statistics from CBP, 3,557 people died while attempting to cross the border into the USA between 1998 through 2008. However, data collection by CBP is inadequate and this is likely to be an underestimate.[39] For example, CBP figures do not include deaths that occur on the Mexican side of the border, and not all deaths are reported to Border Patrol by local law enforcement officials. A review by the Government Accountability Office (GAO) found that inconsistent data collection and coordination between agencies meant that CBP statistics may understate the scale of the problem by as much as 43 per cent in a given year.[40] Data from other sources including NGOs and the Mexico Secretariat of Foreign Relations suggest that the number of deaths for that 10-year period may actually be as high as 5,287.[41] Adequate

PREVIOUS PAGE
Shoe left behind in the desert near the border fence at Sasabe, Arizona.

Photo courtesy of Tasya van Ree

OPPOSITE:
Aridity Map of the Sonoran Desert where migrants are funneled by border control policies of the USA.

data collection is vital in order to have a full and comprehensive analysis of the factors that contribute to these deaths. The lack of such data is a serious barrier to determining the steps that need to be taken to mitigate the prevalence of migrant deaths along the border.

"ONE CANNOT IMAGINE BEING LEFT IN THE DESERT, LEFT BEHIND BY THE GROUP IN WHICH YOU ARE TRAVELING. IF YOU STOP TO REMOVE A PEBBLE FROM YOUR SHOE, OR A THORN FROM YOUR SOCK, THAT CAN BE A DEATH SENTENCE. NO ONE IS GOING TO WAIT FOR YOU. YOU ARE ALONE, WITH LITTLE OR NO FOOD AND WATER AND YOU HAVE NO IDEA WHICH WAY TO GO. THE DESERT IS PERILOUS BEYOND ONE'S IMAGINATION."

Shura Wallin, a volunteer with the Green Valley Samaritans, 9 December 2010[38]

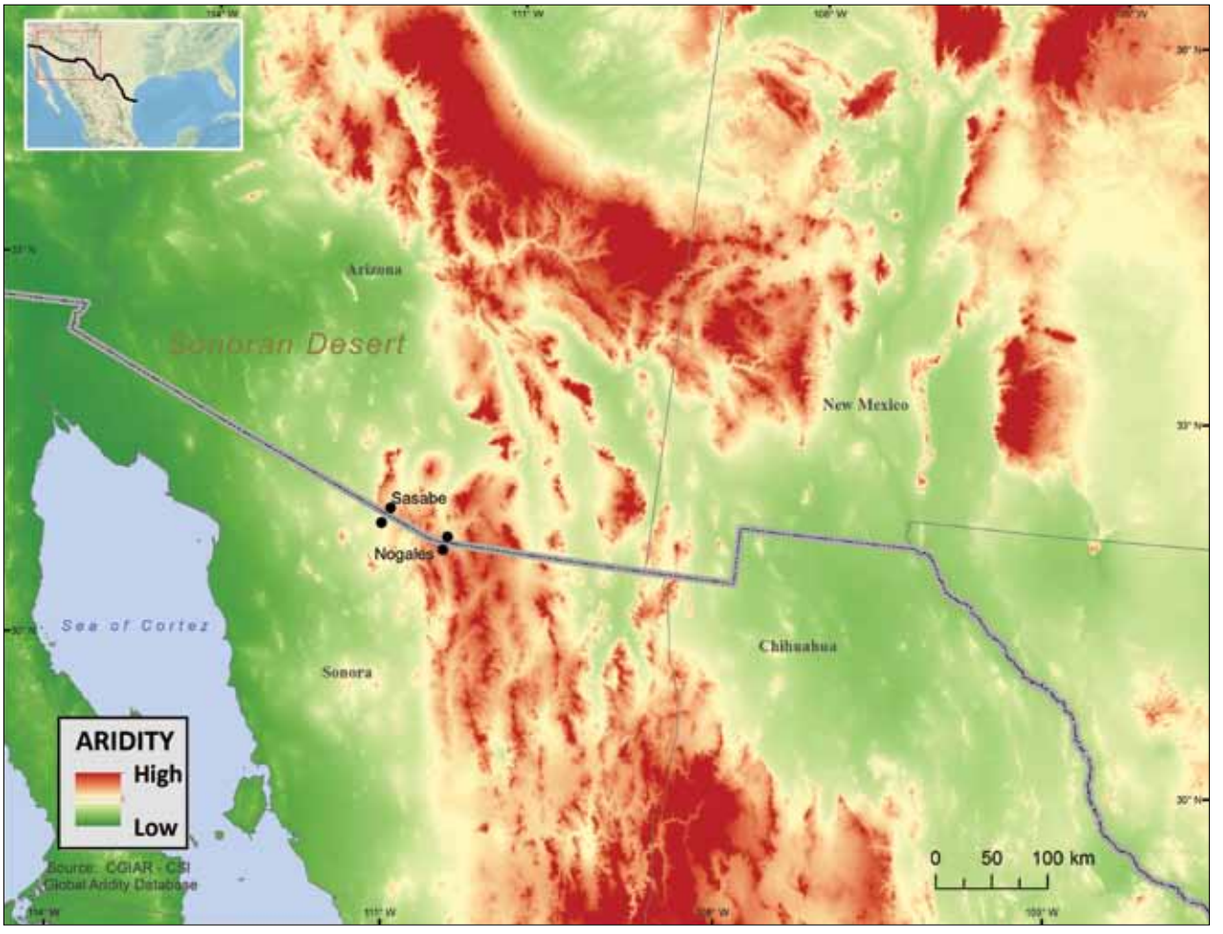
Border control policies – a 'mortal danger'

In 1994, the US immigration authorities, with assistance from the Department of Defense, developed the Border Patrol Strategic Plan for 1994 and Beyond (1994 Plan). This was based on a strategy of "prevention through deterrence" that the government acknowledged would force migrants in to more "hostile terrain" which would place them in "mortal danger."[42]

The 1994 Plan's mission was to secure and protect US borders by preventing illegal entry and facilitating the apprehension of undocumented migrants and those involved in activities such as smuggling. It predicted that "with traditional entry and smuggling routes disrupted, illegal traffic will be deterred, or forced over more hostile terrain, less suited for crossing and more suited for enforcement." The 1994 Plan specifically recognized the hazards associated with rerouting migrants to more hostile territory, acknowledging that "[m]ountains, deserts, lakes, rivers and valleys … [and] searing heat" would place undocumented migrants "crossing through remote, uninhabited expanses of land and sea along the border… in mortal danger."[43] The 1994 Plan was implemented and continues to form the basis for US policies at the southern border.[44]

"It's death by policy."

Isabel Garcia, Coalición de Derechos Humanos, 10 November 2010



The bones of a migrant woman found in the Arizona desert with her belongings at the Pima County Morgue.

"THEY HAVE PUSHED PEOPLE INTO THE MOST EXTREME AREAS OF THE DESERT TO DIE HORRIFIC DEATHS. BORDER ENFORCEMENT POLICIES HAVE FORCED MIGRANTS FURTHER AND FURTHER AWAY FROM TRADITIONAL CROSSING POINTS, OUT INTO ISOLATED AND DESOLATE AREAS OF THE DESERT WHERE IT IS LESS LIKELY THAT THEY WILL BE LOOKED FOR, CAN SEEK HELP, OR WILL BE FOUND."[50]

Kat Rodriguez, Coalición de Derechos Humanos,
10 November 2010

The national strategy outlined in the 1994 Plan was based on two local operations – Operation Hold the Line and Operation Gatekeeper – introduced in 1993 and 1994 respectively. Both operations sought to decrease the number of people apprehended at the border by deterring entry to areas on traditional migrants' routes into the country along the border through urban areas in Texas and California. Instead, they sought to funnel migrants into the southwestern border's harshest environments.

Operation Hold the Line flooded areas of El Paso, Texas, with Border Patrol agents.[45] After this was reported to be successful in decreasing the number of migrants apprehended around El Paso by forcing them further west, CBP initiated a similar operation in San Diego, California – Operation Gatekeeper. This aimed to push undocumented migrants away from the western edge of the border and drive them east towards natural barriers including vast deserts, rivers and high mountains.[46] Border Patrol increased the number of agents around San Diego and built swathes of fencing in traditional crossing points.[47] In addition, border operations have been enhanced with technological additions such as aerial predator drones (unmanned aircrafts systems) traditionally used in areas that are dangerous and hard to access. The drones are operated by human pilots from remote locations and contain radars, sensors and cameras, but are unarmed.[48] In addition, 1,200 National Guard troops now supplement CBP agents on the ground, joining them in patrolling and protecting the border.[49]

Following the implementation of the 1994 Plan, the ratio of migrant deaths compared to the number of migrants apprehended has steadily increased. In 1996, there were fewer than two deaths for every 10,000 migrants apprehended. By 2009 that figure had increased to 7.6 deaths per 10,000 arrests.[51] In an interview with Amnesty International, PCOME in Tucson, Arizona, noted that 2010 was the deadliest year so far for that sector as the Office received a record 231 bodies and another 46 bodies were recovered between January and April 2011.[52] By comparison, only 75 bodies were handled by the office in 2001.[53] For the 10 years prior to 1996, the Tucson Sector averaged 1.4 reported deaths per year.[54]

Despite the tremendous increase in resources dedicated to the southwestern border where Operations Gatekeeper and Hold the Line were implemented, the US General Accounting Office found that there was no decline in crossings along the entire border in the first five years after the 1994 Plan was implemented. Rather than reducing migration, it simply shifted it to new areas.[55] Border Patrol data shows a decrease in the number of people apprehended since 2000, from a high of 1.65 million in 2000 to nearly 541,000 in 2009, but this decrease is not clearly linked to policy changes.[56] While the build-up of resources along the border under the 1994 Plan provides a partial explanation for the decrease in migration from Mexico since 2000, other factors may also have had a significant impact. These include the increased expense of crossing, the dangers posed by drug cartels operating at the border, increased economic opportunity in Mexico and, in recent years, the prolonged economic downturn in the USA.[57]

The impact of the two operations which appear less open to dispute are that they have resulted in unprecedented immigration flows to new areas along the border;[58] larger numbers of undocumented migrants remaining in the US permanently or for longer stretches of time;[59] significant loss of human life;[60] and an expanded smuggling industry.[61] US border policies have also contributed to escalating violence against migrants along the border. The current migration corridors through northern Mexico and into the USA are not only perilous because of the dangerous terrain, but also because these corridors are used for drug smuggling. Migrants pushed off traditional routes have little option but to share corridors used by drug traffickers and criminal gangs. As a result, they are at greater risk of being coerced into acting as drug mules or to join gangs, being kidnapped or killed, or being caught in the crossfire in "drug wars".[62]

"THE HUGE PARADOX NOW IS THAT THE UNINTENDED CONSEQUENCES FAR OVERSHADOW THE POSITIVE."

Doris Meissner, former Immigration and Naturalization Service Commissioner responsible for overseeing the implementation of Operation Gatekeeper and the 1994 Plan[63]

"Although it's expensive, how do you put a price on a life?"

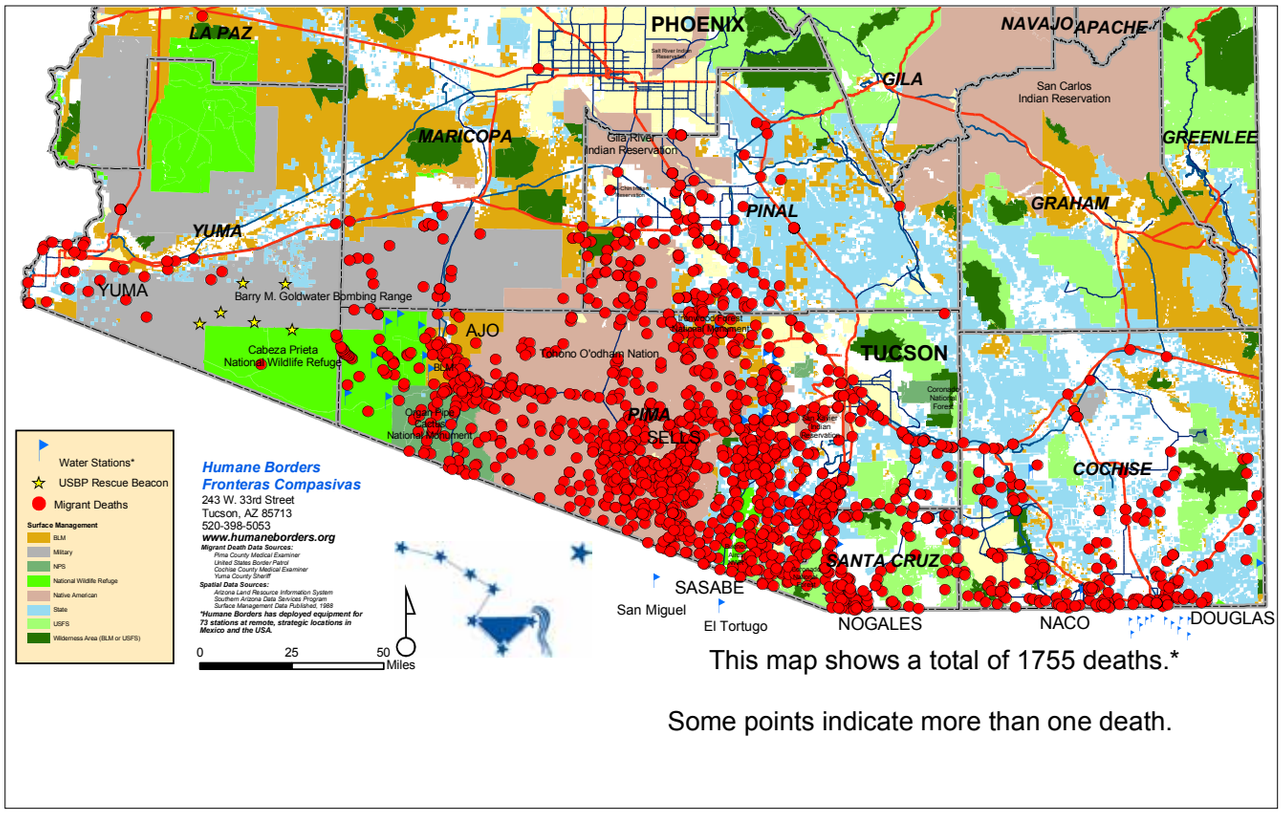
George Allen, Tucson Sector Assistant Chief of Patrol for Customs and Border Protection, discussing the high cost of operating the Mexico Interior Repatriation Program, 25 April 2011

The US government has taken some measures to address migrant deaths along the border. These include placing rescue beacons in the desert whereby migrants can call the Border Patrol directly when in distress; using the Border Patrol Search, Trauma, and Rescue Unit (BORSTAR) to provide life saving measures to migrants in the field; [64] and CBP programs that aim to proactively discourage Mexican migrants from attempting to cross the border in the first place.[65] However, some of these measures remain insufficient. For example, the CBP program which attempts to keep migrants out of the hands of smugglers along the border by deporting them to the interior instead of returning them through the border is very limited in its scope. Under the program, people are flown to Mexico City where the US Department of State provides them with a one-way bus ticket to their city of origin. It is intended primarily for first-time border crossers who are elderly or have health concerns and only operates during the summer months when deaths spike each year.[66] The continued and increasing numbers of migrant deaths along the border, indicate that such measures need to be reviewed for effectiveness if the USA is to fulfill its obligations to protect the right to life of migrants.

Frustrated that not enough is being done to prevent migrants from dying in the extreme environment of the Sonoran desert, which straddles parts of the US-Mexico border in Arizona and California, several groups provide humanitarian assistance such as placing water stations and bottles along the routes traveled by migrants. Groups such as No More Deaths, Humane Borders, and local Samaritan groups, among others, receive permission to leave water bottles and tanks on ranchers' lands where migrants are known to travel. However, these groups continually face obstacles to their efforts including finding water tanks vandalized, damaged, or emptied. For instance, according to a report by the group No More Deaths, volunteers witnessed and documented ranchers

1999-2009 Recorded Migrant Deaths, US Border Patrol Rescue Beacons and Humane Borders Water Stations. *The map reports deaths recorded by the Pima County Medical Examiner's Office, United States Border Patrol, Cochise Country Medical Examiner's Office, and Yuma County Sheriff between October 26, 1999 and October 28, 2009.

Maps of migrant deaths are provided courtesy of Humane Borders, Inc. Cartographic design and data development by John F. Chamblee, Mike Malone, and Matthew Reynolds



and Border Patrol agents confiscating and destroying life-saving supplies that had been left along migrant trails. [67]

These groups are also faced with the constant struggle of keeping up with the shifting of migrant trails as migrants are continually being pushed into new territory.[68] One Humane Borders member noted, "Until there is immigration reform, we will keep seeing people being moved out further and further west."[69]

"All of the blood on the land is affecting our spiritual well-being."

Ofelia Rivas, Tohono O'odham citizen and Indigenous rights activist, 3 March 2011

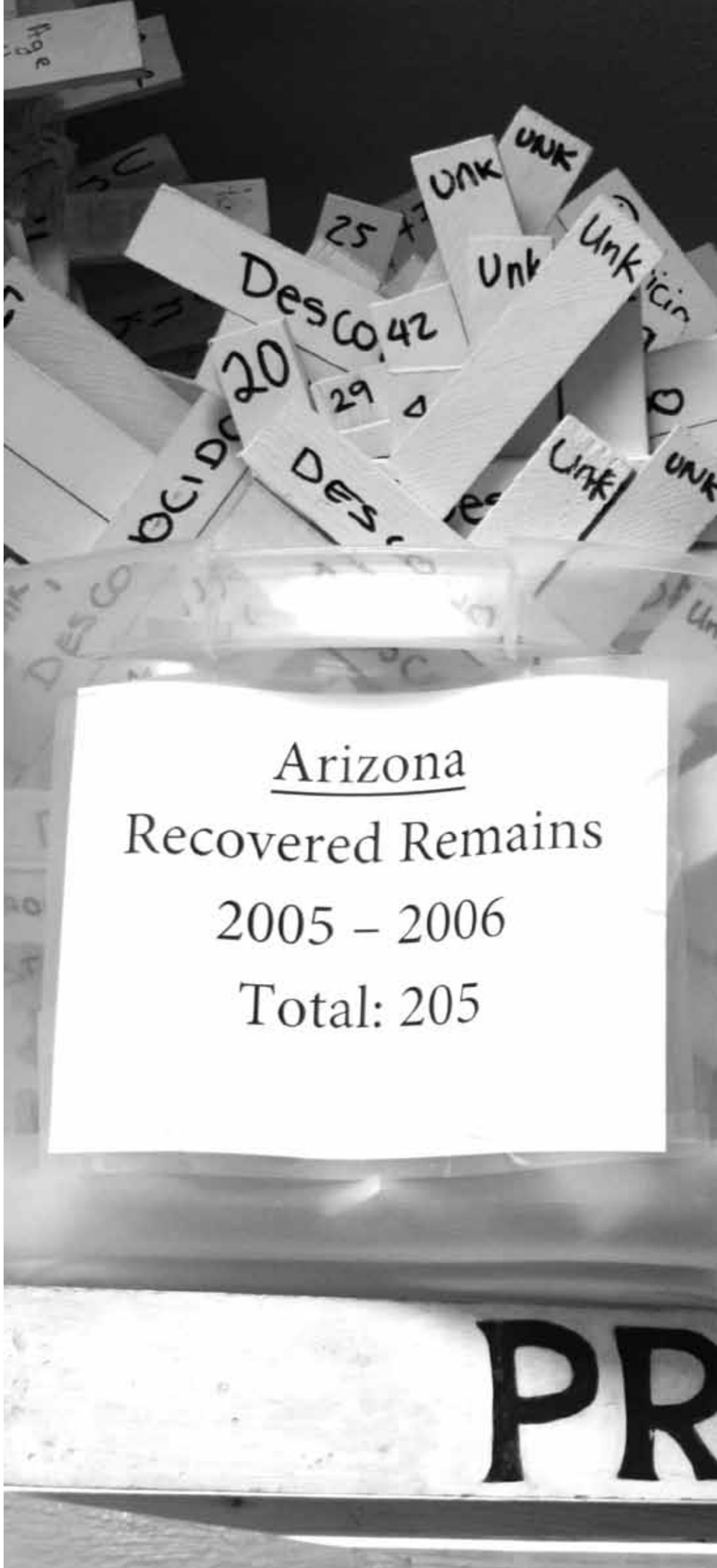
As migration is pushed further westward in the Tucson Sector, more and more deaths are occurring on the Tohono O'odham Nation where, according to Humane Borders, more than 70 per cent of the recently recovered remains have been found.[70] The Tohono O'odham Tribal government has refused to allow outside organizations or its own Tribal members to place water stations on Nation land for migrants because of its concern that the increased presence of migrants and smugglers is resulting in an increase in crime on Tribal land.[71] Nevertheless, some individual Tribal members continue to assist those crossing Tribal lands.[72]

Identifying migrants' remains

Many families never receive confirmation that their loved ones have died while attempting to enter the USA. In order to avoid identification should they be apprehended by Border Patrol, many migrants crossing the border from Mexico do not carry identity documents and bodies quickly deteriorate in the extreme desert heat, making them difficult to identify.[73] Family members living abroad face numerous challenges in utilizing the US National Missing and Unidentified Persons Database (NAMUS), and CBP has reportedly sometimes been unwilling to assist in locating the remains of missing migrants, even if there is good information about where the person was last seen.[74]

"I'VE HAD AN AGENT TELL ME, 'WHY HELP WITH THE DEAD WHEN WE CAN SEARCH FOR THE LIVING AND BE APPREHENDING PEOPLE.'"

Robin Reineke, PCOME, 10 May 2011



Markers created annually by Coalición de Derechos Humanos for each of the recovered remains of migrants who died while crossing the Mexico border into Arizona.

Photo courtesy of Tasya van Ree

PCOME in Tucson, Arizona, receives a large percentage of the remains of unidentified migrants, 1,700 in the last 10 years. PCOME operates a program that attempts to identify remains of unauthorized border crossers by coordinating information from law enforcement, family members seeking missing relatives, and consular offices. When CBP finds remains, it notifies the local law enforcement agency in order to open an investigation. The remains are then brought to PCOME where an autopsy is conducted to determine the cause of death.[75] However, nearly one third of all remains recovered are unidentified. In April 2007, there were 150-200 unidentified remains stored at PCOME.[76]

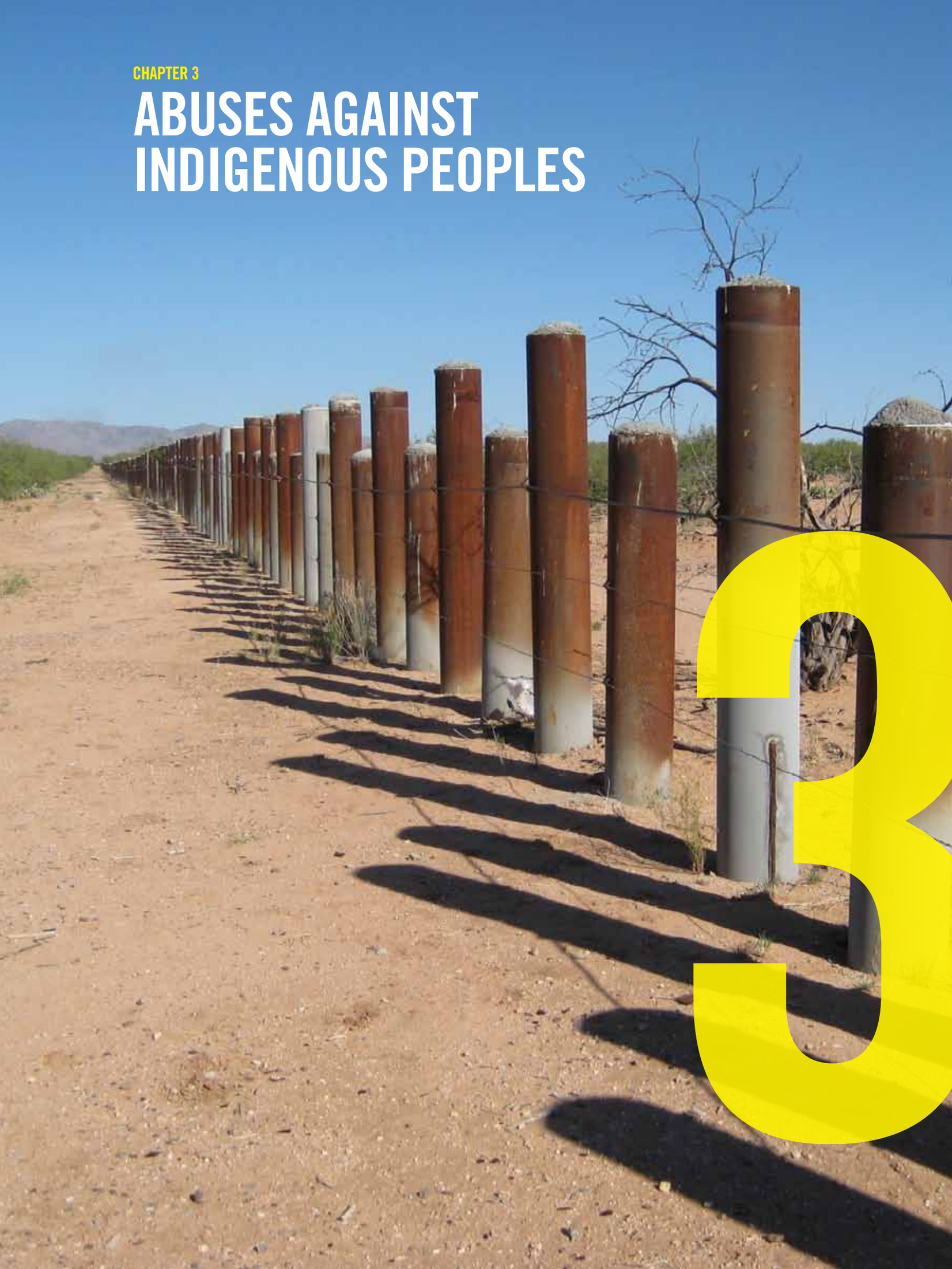
In order to access and upload identifying information to the NAMUS database, a missing persons report needs to be filed with the local police. Family members back home often do not know where along the border a relative went missing which prevents them from filing a missing persons report with local police. Without a police report, families are unable to add information about missing family members to the database, which, in turn, makes it more difficult for PCOME or other officials to identify remains. Robin Reineke, who works to help identify remains at PCOME, told Amnesty International that there is a higher percentage of Mexicans among the identified cases and a greater percentage of Central Americans among unidentified remains, because the office is not consistently receiving missing persons data from Central American countries.[77] It is clear that improvements could be made to access relevant data on database systems that would help facilitate the identification of remains of foreign nationals.

PCOME has set up a system that allows families who do not feel comfortable calling a government agency such as PCOME to contact an NGO instead. Staff members at the Coalición de Derechos Humanos, a human rights advocacy organization in Tucson, Arizona, collect information regarding missing persons, including physical and dental descriptions. The Coalición de Derechos Humanos has worked with PCOME to develop a process to record the information needed for identification purposes.[78] It also contacts the Border Patrol Search, Trauma and Rescue team (BORSTAR) to request information when enough is known to start a search for a missing migrant. According to Kat Rodriguez of the Coalición de Derechos Humanos in Arizona, "It's hard to find a person in the community who doesn't know someone who has gone missing or died while crossing the border."

All countries have the right to protect their borders. But they also have an obligation to ensure the rights of migrants, including the right to life. In other words, they have a responsibility to ensure that immigration border policies do not have the direct or indirect effect of leading to the deaths of migrants.[79] As a state party to the ICCPR, the USA must ensure that its migration policies and practices actively seek to protect, and promote the right to life, irrespective of migrants' status or mode of travel and arrival.

CHAPTER 3

ABUSES AGAINST INDIGENOUS PEOPLES



CHAPTER 3

ABUSES AGAINST INDIGENOUS PEOPLES

A.B., A CITIZEN OF THE TOHONO O'ODHAM NATION, was born on Nation land in Mexico. In 1985 he obtained a Tohono O'odham Tribal ID card and worked on a ranch in the USA near the border. In 2001, he was crossing in Sonoyta, State of Sonora, Mexico, with his Tribal ID as he had done on previous occasions, when the Border Patrol agents asked where he was from, he nervously said he was born in the USA. He told Amnesty International researchers that he didn't consider this a lie as he belonged to the Tohono O'odham Nation that stretches across the US border into Mexico. The CBP agents asked him to get out of the car, handcuffed him, and took him to the station. The CBP agents at the Border Patrol station told him he was Mexican and called him "pendejo" (a vulgar insult in Spanish). He sat handcuffed to a chair for two to three hours. CBP agents took his fingerprints and photos and removed his shoes. He was scared and felt he was being treated as a criminal, "So I signed an order of deportation and they threw me out at about 3am in Sonoyta." He told Amnesty International: "I didn't understand the deportation order and if I knew what it meant, I never would have signed it. I did it because I felt bad from the way they spoke to me. I was afraid of what they would do to me if I didn't sign. I was afraid they would leave me [in detention] for a year." A week later, A.B.

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Border fence across the Tohono O'odham Nation, Arizona.

crossed back into the USA and returned to the ranch where he worked, crossing the border about two hours away from the port of entry. He remained on the US side and later married another Tohono O'odham citizen. He has now lived in hiding for 10 years with his wife, who is O'odham and a US citizen. A.B. is restricted to staying on O'odham land as he cannot cross through any of the checkpoints on the roads leading off of the Nation towards Tucson and into the rest of Arizona. He described to Amnesty International what this means for him and his wife: "The last 10 years I have been worried about getting caught because prior to the deportation order, I only crossed at the traditional crossings. I always got questioned when I crossed. I want to go to other areas, like Tucson, but I'm not able. I tell my wife to go to places alone because… of the checkpoints." A.B. tried to rectify his immigration status after he married by getting the deportation order removed from his immigration record, but has been unable to make any progress with this. "I'm always here but I always have some fear. There are always CBP agents over there [in the town where we live]. I'm O'odham. I didn't do anything bad. I do feel different, like I shouldn't be here, but at the same time, I'm not fully Mexican either. I'm part of the Tribe and I belong here."[80]

INDIGENOUS PEOPLES WHOSE traditional territories and cultural communities span the US-Mexico border, may need to cross the border frequently in order to maintain contact with members of the community or visit cultural and religious sites on either side of the border. Failure to adequately recognize and protect the border crossing rights of these communities has left them at risk of discrimination and abuse during border crossings and in dealings with Border Patrol agents on Tribal lands.

"When I cross the border they ask me, 'Are you American?' I tell them, 'I'm O'odham.' They will then say, 'I didn't ask you that. Where were you born?', 'I was born here [in the USA].' We are all O'odham. That's why I tell them, I'm not Mexican or American, I'm O'odham."

Raymond Valenzuela, Tohono O'odham Citizen, 27 April 2011

The Treaty of Guadalupe-Hidalgo that established the border between Mexico and the USA in 1853 affirmed the rights of the Indigenous Peoples living along the border to maintain their land, culture, and religion. However, it did not include any explicit reference to Indigenous border crossing rights.[81] There are 26 federally recognized[82] Tribes – that is, Tribes that are sovereign under US law and maintain a government-to-government relationship with each other and with the US federal government – as well as many Tribes without federal recognition that inhabit the lands along the US-Mexico border.[83] These "Border Tribes" have found it increasingly difficult to preserve their border communities and their border crossing rights.

Identification documentation

"They usually ask to see my ID and where I am going. It's almost the same questions every time. 'Where are you from? What are you going to do?' Sometimes they speak Spanish to me; sometimes they speak English. They will sometimes ask, 'Are you Papago[84] or O'odham? Are you Mexican?' They never speak O'odham to me, but when I speak O'odham, they don't know what to do. On some of the other ports of entry, they don't recognize O'odham people. I recognize the work that they have to do, but they don't respect the people and continually ask where we're from. I'm tired of it. They have been here all of this time, they should understand us better. Some of the agents who are here regularly began to recognize me and treated me better, but others, those are the ones who don't recognize my Tribal ID card and don't let me in."

Sylvester Valenzuela, a citizen of the Tohono O'odham Nation, who was born in the USA but lives in Mexico. He has a Tribal ID card, which he uses to cross the border several times a week.[85]

Federally recognized Tribes such as the Tohono O'odham Nation in Arizona can issue their citizens with Tribal Identification Cards which are recognized as legitimate forms of identification that can be used for border crossing. The US government began working with Tribes to provide new, enhanced Tribal ID cards that contain microchips and can be used for crossing international land borders.[86] However, there are concerns that some Tribal members may not qualify because, for example, they cannot provide a birth certificate.[87] Even those individuals with Tribal ID cards may encounter problems as Border Patrol agents sometimes question the validity or do not accept Tribal ID as a valid form of documentation for crossing the border[88]

Map showing the lands of the Pasqua Yaqui Tribe in Arizona and the approximate region of the Yaqui people of Mexico.

Tribes that do not hold federally recognized Tribal status can face particular difficulties in acquiring ID documents. The Texas Band of the Kickapoo Nation successfully campaigned for federal legislation guaranteeing their right to freely cross the border by permitting them to cross to access traditional lands in Mexico with ID cards issued by Tribal leaders.[89] However, another Tribe along the border, the Coahuiltecan Tribe in Texas, has been unable to obtain similar rights because it does not have federal recognition.[90]

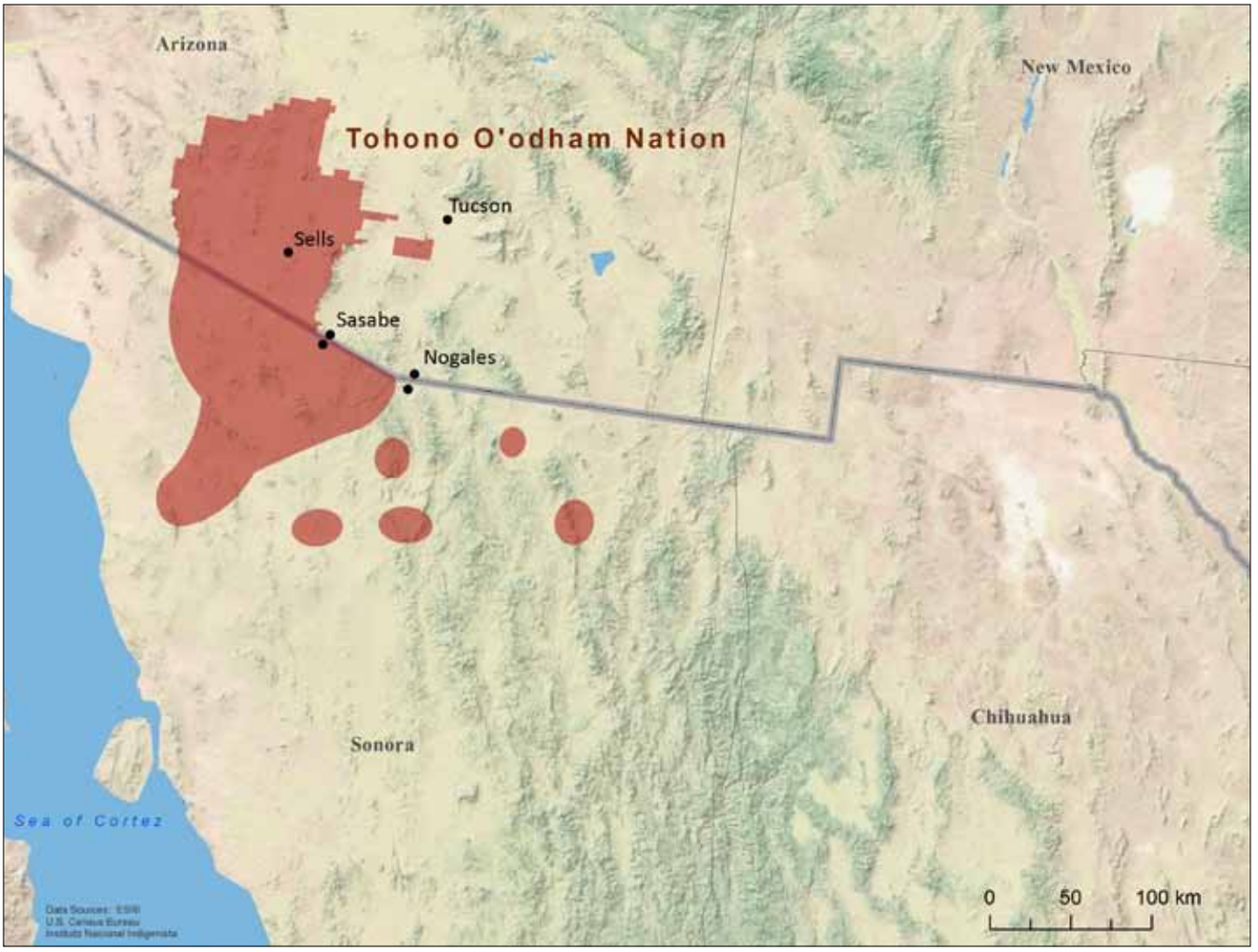
"IF WE WANT TO VISIT MEXICO FOR OUR SACRED LANDS, YOU NEED A PASSPORT, BUT THERE ARE BARS TO GETTING ONE. WE ARE STILL CONNECTED TO THE LANDS… I HAVE TO ASK FOR PERMITS, WHICH MEANS THEY HAVE TAKEN THAT RIGHT [TO TRAVEL TO SACRED LANDS] AWAY."

Antonio Díaz of the Texas Indigenous Council, 14 April 2011

The Yaqui Nation

The Yaquis are a Tribe of 30,000 people living in State of Sonora, Mexico, and the State of Arizona, USA, as well as parts of southern California and southwestern Texas.[91] Yaquis living on Tribal lands in Mexico and the USA regularly cross the border to go shopping in nearby towns, see family, and attend and conduct Tribal ceremonies.

According to a Yaqui activist, problems in crossing the border have intensified since 11 September 2001: "The attitude changed from being respectful and cooperative to that of 'everyone is a suspect.' People are questioned when entering the US. When they question someone, if it is not answered right, they would confiscate their border crossing cards and deny admittance."[92] Local advocates told Amnesty International that Yaqui Tribal members are repeatedly harassed by Border Patrol agents when crossing the border into Arizona. Isabel Garcia of the Coalición de Derechos Humanos, ("Human



Map showing the lands of the Tohono O'odham Nation in Arizona and the approximate region of the Tohono O'odham people in Mexico.

Rights Coalition"), described one incident in which a Yaqui couple, both US citizens trying to cross the border with their young child, were told by a CBP agent at the border that their child did not look like the parents; he refused to let him cross. The family was stranded at the border for several hours until the shift change replaced the agent, and the new agent on duty had no problem with their documentation and allowed the family to cross. CBP agents are also reported to have cut open ceremonial drums looking for drugs and other contraband,[93] and confiscated ceremonial items and border crossing documents.[94] Jose Matus, of Indigenous Alliance Without Borders, explains, "Without being able to cross, it impinges on our religious freedom. This is not freedom."[95]

Another factor making border crossing difficult for Yaquis living on Tribal lands in Mexico is that, according to reports, none of the Border Patrol agents stationed at the ports of entry speak Yaqui, while most Yaquis who live in Mexico speak little to no Spanish or English. Local police officers who interact with Yaquis travelling near the border have also frequently failed to recognize their Indigenous status. According to José Matus, a Yaqui activist from the Tucson area working with Indigenous Alliance Without Borders, if Yaquis are stopped by Tucson Police Department officers and either only speak Yaqui or broken English, the officer will call CBP. "We've been here since time immemorial in crossing the border. Right now Indigenous people are treated like Mexicans. We're not Mexicans, we're Indigenous. They should come up with a system to recognize Indigenous people from Mexico with relatives on this side of the border so that they can be given a visa without any problems."[96]

The Tohono O'odham Nation

"When the wind blows, will they ask it for documents? When the water flows, will they ask it for documents? What about the animals? What about the plants? It is not in harmony with how we live our lives."

Ofelia Rivas, Tohono O'odham Citizen,
3 March 2011

The Tohono O'odham Nation is a federally recognized Tribe of approximately 28,000

citizens in southwestern Arizona. The Nation is the second largest reservation in Arizona both in population and geographical size[97] and shares 76 miles of border with Mexico.[98] Nation lands stretch into Mexico where nearly 1,500 Tohono O'odham citizens live.[99]

According to Margo Cowan, who served as general counsel to the Nation, there were no Border Patrol agents on the Nation's lands as recently as 1993.[100] In the 1990s, border security to the east and west began to tighten and, as a result, migrant routes and drug trafficking were funneled through the Tohono O'odham Nation. Since 11 September 2001, US immigration and national security policies have increased border control resources at the Nation's border. A border fence has been erected; a CBP forward operating base has been established that contains an external temporary hold room for detained migrants; and hundreds more Border Patrol agents, along with agents of other federal agencies, have been deployed in the area.[101]

Tohono O'odham citizens who live in Mexico with O'odham Tribal ID cards[102] report that they routinely have the validity of their cards questioned by CBP when crossing through one of the three gates in the fence that divides the Nation along the US-Mexico border.[103] One O'odham citizen who lives in Arizona noted, "If someone has a Tribal ID card, the Tribe gives them the benefit of the doubt [to receive services], but with CBP, it depends on the individual agent on any particular day [whether you will be allowed to cross the border]."[104] In some instances, individuals have been detained and deported by immigration authorities or run into other issues, including separation from family members, when crossing the border.

A Tohono O'odham citizen, C.B., was stopped at the border by CBP agents as she was crossing into the USA with other family members and their children. The agents asked for identification and their driver's licenses. C.B. showed the agents her Mexican driver's license. Two of the family members accompanying her had their Tribal IDs, but one did not. The CBP agents took away the person without a Tribal ID and one of the other women because of a previous immigration violation. The CBP agents checked the vehicle for drugs and then arrested C.B. for attempting to smuggle the family member without Tribal ID into the USA. C.B's children, aged two and three, were taken to Child Protective Services. CBP agents fingerprinted C.B. and took her to Tucson. While in detention, she had to arrange for someone to come and pick up the children from Child Protective Services. Later when it was discovered that C.B. had in fact not violated any laws, she was released in Tucson, more than 70 miles from Nation land.[105] Amnesty International researchers were scheduled to speak with C.B. and other family members. However, on the day the researchers were on the Tohono O'odham Nation to speak with them, C.B. and her family were stopped at the border and denied entry to the USA. They were eventually able to cross the border and arrived two days later.[106]

US Border Patrol at one border fence crossing near Sells, Arizona on Tohono O'odham lands.

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Tohono O'odham citizens point to a history of abuses by CBP agents, including cases of verbal and physical abuses against Tribal citizens. Amnesty International has received reports that many O'odham who are exposed to abuse by CBP agents are fearful of documenting incidents and filing complaints and incidents, therefore, go unreported. According to one activist, "I've heard stories [of CBP abuses] and asked people to document them with a statement, but people are afraid of retaliation."[107] Furthermore, Tribal members expressed concern about the lack of accountability even when reports are filed. Amnesty International requested documentation from CBP regarding complaints filed against CBP agents related to incidents on the Tohono O'odham Nation under the Freedom of Information Act. CBP identified 26 pages of documents that were relevant to Amnesty International's request, but indicated that they were exempted from releasing them on several grounds including personal privacy and interference with law enforcement investigations.[108]

Raymond Valenzuela, an O'odham Tribal citizen and former member of the US military, lives with his family on the Mexican side of the Nation. In September 2009, Raymond was on his way back from a relative's funeral with members of his family when a CBP agent passed their car and forced them to pull over. The CBP agent asked them, "Where are you going?" Raymond responded, "I'm going home [on the Mexican side of the Tohono O'odham Nation]." According to Raymond the CBP agent told him, "Well, I'm going to arrest you and pepper spray you. If you go across the border without an ID card, I'll arrest you." Raymond jumped across the border and jumped back. The CBP agent tackled him and proceeded to pepper spray him. The CBP agent then allegedly put his knee in Raymond's back and pulled his shoulder until it popped. Raymond told Amnesty International: "I don't mind him doing his job, but he needs to know who we are. They get information on how not to mess with the fences or cactus, but nothing on the people. You need to learn about the people. If not, people are going to get mad... Just because my skin is brown doesn't make me a bad person."

Tohono O'odham advocates also report that O'odham Tribal citizens are subjected to profiling and discrimination by local police officers during traffic stops and by CBP agents when they pass through checkpoints along the border. Ofelia Rivas, an advocate and member of the Tohono O'odham Nation often travels between the Tohono O'odham Nation and Tucson, Arizona, or other cities in Arizona. She told Amnesty International: "There are CBP checkpoints at all three exits from the [Tohono O'odham] Nation and we are inspected to see if we have migrants or drugs. I live 130 miles from Tucson and I go through these checkpoints to get groceries and supplies regularly. I speak O'odham to them and I'm always pulled over for a secondary check and they use a drug dog. Every time."

Ofelia Rivas, Tohono O'odham citizen and activist, discussing the impact of the border fence on the Tohono O'odham people in both the US and Mexico.

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Tohono O'odham citizens told Amnesty International of the negative effects of the border fence on their customs, religion and way of life.

"When the fence was built [along the border and across O'odham land] during my parents' time, they were just told it's a fence, not a border. It affects everything, our people, our animals, and our land… When we cross over to get our animals, we are questioned. It makes us feel small. They have the guns and the badges."

Raymond Valenzuela, Tohono O'odham citizen, 27 April 2011

When the border fence was erected, there were three traditional crossings. One of these crossings is a sacred pass and was to remain open for O'odham use. However, it has since been gated and O'odham citizens must travel to the other two crossings, which are very remote and take longer to reach.[109]

The UN Special Rapporteur on the human rights of Indigenous people has urged states to "respect indigenous spirituality by ensuring indigenous people's access to all sacred sites…"[110] and has emphasized that: "Indigenous communities maintain historical and spiritual links with their homelands"[111]

"Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains."

Article 12(1), United Nations Declaration on the Rights of Indigenous Peoples

While the Declaration on the Rights of Indigenous Peoples applies to all Indigenous communities, the text of the Declaration and the UN Permanent Forum on Indigenous Issues, an advisory body which discusses Indigenous issues related to human rights, have noted the specific rights of Indigenous communities whose territory and cultural community are divided by an international border. For instance, the UN Permanent Forum on Indigenous Issues has repeatedly urged states to fulfill their commitments under Article 36 of the Declaration and ensure that Indigenous Peoples divided by state borders are able to maintain their life as a community without interference.[112]

The actions of the US authorities in the context of immigration enforcement are effectively denying these rights to Indigenous Peoples living along the southwestern border.

"INDIGENOUS PEOPLES, IN PARTICULAR THOSE DIVIDED BY INTERNATIONAL BORDERS, HAVE THE RIGHT TO MAINTAIN AND DEVELOP CONTACTS, RELATIONS AND COOPERATION, INCLUDING ACTIVITIES FOR SPIRITUAL, CULTURAL, POLITICAL, ECONOMIC AND SOCIAL PURPOSES, WITH THEIR OWN MEMBERS AS WELL AS OTHER PEOPLES ACROSS BORDERS."

Article 36(1), United Nations Declaration on the Rights of Indigenous Peoples

CHAPTER 4

PROFILING AND OTHER FORMS OF DISCRIMINATION

4

CHAPTER 4

PROFILING AND OTHER FORMS OF DISCRIMINATION

JOHNNY (NOT HIS REAL NAME) WAS DRIVING along Highway 86 in Arizona on 16 December 2009, when he was followed and stopped by members of CBP at the edge of the Tohono O'odham Nation Tribal land. The Border Patrol agent pulled Johnny over and shouted: "What are you doing here, picking up illegals, picking up some drugs?" Johnny repeatedly told the agent that he was a US citizen and asked why he was being pulled over. The agents ignored him, searched his car, handcuffed him and assaulted him when he refused to sit on the ground. Minutes later, a Tohono O'odham Tribal Police car arrived. Johnny started yelling, "Help, officer! I'm a U.S. citizen! They are arresting me for no reason!" Johnny told Amnesty International delegates that he thought the agents were going to beat him and leave him in the desert. The Tohono O'odham police officer heard Johnny's yelling and asked to speak to him. The Border Patrol agents then left. Johnny said that in the month after the incident he was pulled over by the Border Patrol at least five times while driving on the same highway. He said: "Whenever a police officer gets behind me, I get nervous."

In February 2010, Johnny submitted a complaint with the Office of Civil Rights and Civil Liberties, the agency responsible for investigating and resolving civil rights and civil liberties complaints against Department

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Migrants apprehended by Border Patrol agents near the Arizona border.

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of Homeland Security personnel. Several months later his case was transferred to the Office of Professional Responsibility (OPR) at ICE. In November 2010 Johnny met with OPR agents at the Tucson office. Johnny told Amnesty International that the agents repeatedly interrupted him and became confrontational and accusatory. As he got up to leave, one of the agents got up, grabbed him, and punched him in the chest. When Johnny finally got outside and tried to tell an officer from the Tucson Police Department what had happened, the officer told him he couldn't make a police report because the facility was private property and no one was injured.[113]

RACIAL AND ETHNIC PROFILING targeting Latinos and other communities of color living along the southwestern border, including Indigenous communities and US citizens, may have risen in recent years. The increased risk of racial profiling follows the expansion of federal immigration enforcement measures and the blurring in practice of responsibilities between local/state and federal officials in the enforcement of immigration laws, especially in the context of increasing anti-immigrant legislation enacted by states. Despite the increased risk of racial profiling along the border, the authorities have failed to put in place an effective oversight mechanism to assess its prevalence and to identify, prevent, and address impermissible discriminatory practices during stops, searches, arrests and immigration detention.

THE RIGHT TO NON-DISCRIMINATION

"EACH STATE . . . UNDERTAKES TO RESPECT AND TO ENSURE TO ALL INDIVIDUALS WITHIN ITS TERRITORY AND SUBJECT TO ITS JURISDICTION THE RIGHTS RECOGNIZED IN THE PRESENT COVENANT, WITHOUT DISTINCTION OF ANY KIND, SUCH AS RACE, COLOUR, SEX, LANGUAGE, RELIGION, POLITICAL OR OTHER OPINION, NATIONAL OR SOCIAL ORIGIN, PROPERTY, BIRTH OR OTHER STATUS."

Article 2(1) International Covenant on Civil and Political Rights

International law prohibits discrimination on a broad range of factors. While the ICCPR explicitly allows for some exceptions for non-citizens, "the general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and [non-citizens]."[114] The vast majority of rights protected in the ICCPR, therefore, apply to citizens and non-citizens, including the rights to non-discrimination and to be free from arbitrary arrest and detention.
Similarly, while certain distinctions between citizens and non-citizens are permitted under the ICERD, distinctions based on citizenship will still amount to discrimination under the ICERD where they are not proportionate to a legitimate aim under ICERD.[115]

The Inter-American human rights system also guarantees the right to non-discrimination and equality before the law and imposes an obligation on states to ensure that "their immigration law enforcement policies and practices do not unfairly target certain persons based solely on ethnic or racial characteristics, such as skin color, accent, ethnicity, or a residential area known to be populated by a particular ethnic group."[116]

The US Constitution does not explicitly ban discrimination based on national or ethnic origin, or race. However, it guarantees the right to equal protection of the law.[117] Congress has enacted a number of federal laws prohibiting discrimination, most significantly the Civil Rights Act of 1964,

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which outlawed discrimination based on "race, color, religion, or national origin."[118] State constitutions, statutes and municipal ordinances provide further protection from discrimination.[119]

Under the ICCPR and the ICERD, the prohibition of discrimination encompasses not only policies and practices that are discriminatory in purpose, but also those that are discriminatory in effect, irrespective of the intention.[120] However, in most cases federal courts in the USA only protect against discrimination that can be shown to arise from discriminatory intent. The USA's approach has been rejected by the UN Committee on the Elimination of Racial Discrimination, which called on the USA to review the legal definition of racial discrimination to ensure it prohibits discrimination in all its forms (including practices and legislation that may be discriminatory in its effect). It has also urged the US Congress to pass the End Racial Profiling Act (see page 46).[121]

Stops, searches, arrests, and detention based on racial or ethnic profiling for the purpose of immigration enforcement have been specifically criticized by international human rights bodies. The UN Human Rights Committee has stated: "when the authorities carry out [identity checks to control illegal immigration], the physical or ethnic characteristics of the persons subjected thereto should not by themselves be deemed indicative of their possible illegal presence in the country. Nor should they be carried out in such a way as to target only persons with specific physical or ethnic characteristics. To act otherwise would not only negatively affect the dignity of the persons concerned, but would also contribute to the spread of xenophobic attitudes in the public at large and would run counter to an effective policy aimed at combating racial discrimination".[122]

Similarly, the UN Committee on the Elimination of Racial Discrimination calls on states parties to ICERD, including the USA, to "take the necessary steps to prevent questioning, arrests and searches which are in reality based solely on the physical appearance of a person, that person's features or membership of a racial or ethnic group, or any profiling which exposes him or her to a greater suspicion."[123]

The Inter-American Commission on Human Rights has urged the USA to ensure that "their immigration law enforcement policies and practices do not unfairly target certain persons based solely on ethnic or racial characteristics, such as skin color, accent, ethnicity, or a residential area known to be populated by a particular ethnic group."[124] The Commission has also cautioned against the potential overlap at local law enforcement agencies between criminal and immigration law enforcement, which could lead to further racial profiling and discriminatory treatment of immigrant communities and communities of color. It has criticized practices such as the use of the supposed investigation of crimes as a pretext to prosecute and detain undocumented immigrants,[125] and recommended that "state and local partners only be permitted to participate in enforcement of civil immigration laws once an individual has been criminally convicted or the criminal proceeding has been fully adjudicated."[126]

WHAT IS DISCRIMINATORY PROFILING?

Ethnic or racial profiling occurs when the police include criteria such as skin color, language, religion, nationality or ethnic origin in identifying individuals who they intend to question or arrest. While the use of such criteria in law enforcement activity does not always amount to discrimination, it is discriminatory if it has no reasonable or objective justification.

Stop and search

On 9 November 2007 a CBP agent pulled up to two vehicles and observed what he thought was "questionable eye contact" from the passengers in one of the cars who appeared to be Latino. When that vehicle was about 500 yards from the border the agent conducted a stop, and then an immigration check. All three passengers in the car were found to be in the USA without permission. The driver of the vehicle, Cipriano Rangel-Portillo, was charged with "unlawfully transporting undocumented aliens" and conspiracy "to unlawfully transport undocumented aliens."[127] After examining the various factors surrounding the stop, the US Court of Appeals for the Fifth Circuit ruled that the CBP agent had no reasonable suspicion to stop the vehicle. While the court recognized that the proximity of the stop to the border should be afforded great weight, it stated that "this factor alone does not constitute reasonable suspicion to stop and search an individual's vehicle." The court found that the remaining "incriminating" evidence was that the passengers appeared "sweaty", nervous and were wearing seatbelts in the backseat. When the court compared the observed behavior to the behavior of law-abiding citizens, there was no distinction: "[T]here is no rational reason to conclude that law-abiding citizens are less likely to wear their seatbelts".[128] Moreover, the court refused to conclude that an agent has reasonable suspicion to conduct a stop anytime an individual is sweating while riding in a vehicle in close proximity to this nation's southern border."[129]

There is evidence to suggest that Latinos and members of other communities of color along the border are disproportionately targeted for stops, identity checks, and searches for the purpose of immigration enforcement. For example, research conducted by local NGOs has found that Latinos in Texas and Arizona are more likely to be stopped and searched than whites and that they are more likely to be stopped repeatedly for minor traffic and other violations.[130] In a number of instances, the only factors that law enforcement officials seem to have taken into account when deciding to target people for stop and search is their apparent race or ethnicity, or the language spoken. Interviews and research conducted by Amnesty International have also found that federal, state and local law enforcement officials near the border often select individuals for traffic stops and identity checks based solely on their ethnic or racial characteristics.

"CBP REGULARLY HARASSES PEOPLE ON THE ROADS IN THIS AREA [ALONG THE BORDER OF ARIZONA]. THEY PULL PEOPLE OVER BECAUSE THEY SAY THAT NO ONE ON THOSE ROADS IS DOING LEGAL ACTIVITY, SO THEY SEARCH ALL OF THE CARS. SOMETIMES IT TAKES HOURS TO GET THROUGH THE CHECKPOINTS."

Juanita Molina, Humane Borders,
26 April 2011

When law enforcement officials base their decisions on whether to stop and search solely on perceived race, ethnicity, or national origin, this constitutes discriminatory profiling.[131] Stops

Permanent Border Patrol checkpoint on the highway between the cities of Tucson and Nogales, Arizona.

© Amnesty International

that are based on minor traffic or other violations but which specifically target Latinos and other individuals of color as a pretext to inquire about their immigration status are also discriminatory.

The use of ethnic criteria in police profiles may sometimes be justified. For example, descriptive profiles based on specific and reliable information indicating that the perpetrators of a particular offense belonged to a particular ethnic group will obviously assist the police in identifying and apprehending them. However, not all uses of such profiles will be justified and, in assessing whether a particular instance of ethnic profiling is discriminatory, the legitimacy of the aim and the reasonableness or proportionality of the means employed are key factors. Targeting people for arrest or questioning on the basis of criteria such as skin color, language, religion, nationality or ethnic origin is discriminatory if it has no reasonable or objective justification. What will almost never be justified is the use of ethnic criteria to place entire communities under suspicion, or subject members of a particular group to intrusive security measures that interfere with their human rights.

The US Supreme Court has ruled that in order for a stop and search of an individual to be lawful, law enforcement officials must have reasonable suspicion that a crime has been or is being committed, and that the individual is armed and dangerous.[132] In the context of immigration stops near the border, the Supreme Court held in US v. Brignoni-Ponce that Border Patrol agents on roving patrol need a "reasonable suspicion" that a vehicle contains undocumented immigrants in order to stop the vehicle and question its occupants about their citizenship and immigration status.[133] The Court held that Border Patrol should not stop a vehicle when the only ground for reasonable suspicion is that the occupants appear to be of Mexican ancestry. Some of the other relevant factors that needed to be considered included proximity to the border and the characteristics of the surrounding area in which the vehicle was encountered, the conduct of the driver and the passengers, as well as the appearance of the vehicle.[134] However, US courts have held that no individual factor in isolation is sufficient to stop a vehicle.[135] Once a vehicle is stopped, agents need either consent or probable cause in order to search it, whether in the context of a roving patrol or at a checkpoint search.[136]

The "reasonable suspicion" standard allows officers to consider race, ethnicity, or language in combination with other factors as potentially relevant when conducting a stop or inquiring about immigration status. However it fails to provide clear guidance as to how much weight law enforcement officials should give to such characteristics. As a result, it is often difficult to ensure in practice that law enforcement officials do not engage in discriminatory profiling.

Federal law enforcement

Border Patrol uses various types of stops near the border as a method of immigration enforcement. Traffic checkpoints are set up on many of the roads that stretch out from or run along the border and all vehicles are stopped and occupants are questioned about their immigration status.[137] Border Patrol vans and trucks also patrol the streets of towns and cities near the border and stop vehicles that agents suspect contain undocumented immigrants. In addition, Border Patrol agents carry out "transportation checks", boarding and conducting sweeps on buses, trains, and other public transport vehicles, operating near the border.[138]

""[ICE agents] are doing linguistic profiling. They are asking people waiting for the buses basic questions in English. If the person can't answer in English, the agents ask for papers."

Linda Brandmiller, Catholic Charities, an organization that works with immigrants and survivors of trafficking in Texas, 28 September 2010

According to Assistant Chief George Allen of the CBP Tucson Sector, Border Patrol agents must have reasonable suspicion of illegal activity before deciding to stop and briefly detain an individual, and probable cause of illegal activity to board a "conveyance," such as a train or a bus. The standards for what constitutes reasonable suspicion and probable cause are defined by US case law.[139] However, recent court decisions in Texas have found that CBP agents are engaging in immigration stops without reasonable suspicion of criminal activity.[140]

State and local law enforcement

The increased involvement of state and local law enforcement agencies in immigration enforcement has contributed to the rise in reports of racial profiling. Several ICE programs, collectively known as ICE ACCESS (ICE Agreements of Cooperation in Communities to Enhance Safety and Security),[141] engage state and local agencies in the enforcement of immigration laws. These include the following three programs.

- **THE SECTION 287(G) PROGRAM** allows the US government to authorize state and local law enforcement officials to perform the duties of

federal immigration officers in investigating, detaining, and initiating removal proceedings against immigrants.[142] 287(g) enforcement can take place in two contexts – The Task Force Model where deputized officers make determinations on immigration status in the field and the Jail Enforcement Model where deputized officers make determinations following arrest.[143] Overall, 287(g) program activity has decreased significantly in recent years. Only about 10 per cent of removals have been through 287(g) referrals and that percentage has been declining since its peak in 2008.[144]

- **THE CRIMINAL ALIEN PROGRAM (CAP).** This screens inmates held in US prisons and jails in order to identify possible immigrants whose details are then passed to ICE.[145] An individual may be transferred to ICE even if she or he is never charged or convicted of a crime.[146] CAP has existed since the 1980s but has been expanded in recent years.[147] As of March 2008, CAP was implemented in all state and federal prisons and more than 300 local jails.[148]

- **THE SECURE COMMUNITIES PROGRAM.** This enables federal immigration authorities to screen the fingerprints of people arrested by state and local law enforcement in order to determine whether they are unlawfully present in the USA. If ICE determines that the individual is unlawfully present in the country, it may issue a detainer – a request that the jail hold the person so that ICE can conduct an interview.[149] In February 2012, Secure Communities operated in 2,274 local and state jurisdictions in 45 states.[150] DHS expects to implement the program nationwide by 2013.[151] When Secure Communities was originally implemented, ICE assured state and local jurisdictions that it was voluntary and that jurisdictions could "opt-out." In 2010, a number of jurisdictions pushed to opt out of the program because, among other concerns, it could lead to racial profiling by local officers and make immigrants who are victims of crime reluctant to come forward. However ICE responded by announcing that the program was mandatory[152] and that jurisdictions could no longer refuse to share information with ICE.[153] Several states, including New York, Massachusetts and Illinois, have declared they will not participate in Secure Communities due to ongoing concerns.[154] Advocates also argue that the Secure Communities program's sweeping approach separates families and destroys immigrant communities.[155]

US Border Patrol agents patrolling the highways outside of Tucson, Arizona.
© Amnesty International

State and local law enforcement agencies in these programs, frequently conduct stops, searches, and identity checks that target individuals based on their racial and ethnic identity. Studies and surveys show that Latinos and other communities of color are disproportionately stopped for minor infractions and traffic violations and that these stops are often used as a pretext to inquire about citizenship and immigration status. For example, a 2006 study by the Texas Criminal Justice Coalition which has the most recent comprehensive analysis on racial profiling in Texas found that two out of every three law enforcement agencies in the state reported searching the vehicles of Latino drivers at higher rates than white drivers, with more than 25 per cent of those agencies searching Latino drivers at twice the rate of white drivers.[156] The ACLU of Arizona reported that between 1 July 2006 and 30 June 2007 law enforcement officers searched Native Americans more than three times as often as whites and that African Americans and Hispanics were 2.5 times more likely to be searched than whites.[157]

"287 (G) KEEPS PEOPLE AFRAID AND THEY ARE USING IT TO HOLD PEOPLE BACK AND PREVENTING THEM FROM ORGANIZING BECAUSE WHEN WE GO SOMEWHERE TO PROTEST, POLICE, ICE AND CBP ARE THERE.

Tarsha Jackson, Grassroots Leadership, 27 January 2011

Much of the criticism aimed at the 287(g) program has focused on deputized officers making traffic stops based on the race of the driver and passengers.[158] In addition, deputized agencies are also engaging in so-called "immigration roadblocks" whereby police create checkpoints in areas with large Hispanic populations. Under the guise of checking for licenses and miscellaneous traffic violations, police require those passing through to verify their legal status.[159] In practice, the 287(g) program typically is carried out by local law enforcement officers screening individuals in jails who have been arrested on criminal charges or investigating people in the field during police operations.[160]

Some of these practices clearly contradict directives issued by the federal immigration authorities, which have routinely prioritized individuals involved in serious criminal offenses for immigration enforcement.[161] For example, in September 2007 ICE clarified its policy regarding the use of traffic violations to enforce immigration laws during the implementation of the 287(g) program. According to the 2007 ICE Fact Sheet, "Officers trained and certified in the 287(g) program may use their authority when dealing with someone suspected of a state crime that is more than a traffic offense [emphasis added]."[162] However, while never stating a change in the policy publicly, ICE has since removed this information from its website and replaced it with a document that does not discuss whether local police can use their federal powers during routine traffic stops.[163]

In December 2011, the Department of Justice released the findings of its investigation into the Maricopa County Sheriff's Office (MCSO) in Arizona. The investigation found that, since 2007, MCSO had conducted discriminatory policing whereby Latino drivers were four to nine times more likely to be stopped than non-Latino drivers in similar situations.[164] After reviewing the Department of Justice findings, ICE terminated the MCSO's remaining 287(g) agreement for Jail Enforcement, restricted the law enforcement agency's access to Secure Communities, and informed the Sheriff's Office that it would cease ICE responses to Maricopa County Sheriff's traffic stops, civil infractions, or other minor offenses.[165] While MCSO clearly represents an extreme example of these types of discriminatory enforcement programs, there currently are no ongoing government investigations of other jurisdictions with 287(g) agreements in place. More studies of the program are needed to ensure it is being implemented without discrimination against immigrants and communities of color. The use of 287(g) agreements should be suspended until it has been demonstrated that it does not result in racial profiling in other jurisdictions where implemented.

In Texas, the Secure Communities program was implemented in several jurisdictions in 2008. Since then, advocates report concerns about a potential increase in racial profiling by state and local law enforcement officers, who appear to pull individuals over for "driving while brown" to check whether the person has a driver's license or identification, or to inquire about his or her immigration status.[166] Advocates believe that these types of stops are much more prevalent in smaller, more rural communities.[167] Undocumented immigrants in both Arizona and Texas are unable to obtain state issued identification,[168] such as driver's licenses, and are, therefore, more likely to be taken in to custody for fingerprinting in order to verify their identity, which then triggers Secure Communities.[169] In some cases law enforcement officials appear to be acting as immigration agents even without a formal agreement with ICE. For example, even after ICE rescinded its 287(g) Task Force agreement with Maricopa Country, Arizona in 2009, the Maricopa County Sheriff, Joe Arpaio, stated publicly that "he would continue to exercise authority to enforce federal immigration laws in the field," citing a non-existent federal statute to justify immigration stops and inquiries.[170] The Sheriff added that he "would drive those caught on the streets to the border if federal officers refused to take them into custody."[171]

"Officers are making inquiries about immigration status without 287(g) authority or training to assess someone's immigration status. Or they will assume that a person is undocumented merely because they don't speak English."

Marisa Bono, Mexican American Legal Defense and Educational Fund (MALDEF), 24 February 2011[172]

Immigrants' rights attorneys and advocates report that officers in towns across southern Texas carry out racial profiling and stop people on the pretext of minor offenses and then call ICE after inquiring about a person's immigration status, without the authority of a 287(g) contract.[173] For example, advocates report that in the City of Pasadena, where more than 60 per cent of the population identifies as Hispanic,[174] police stop Latino residents on the streets and in their cars and implement roadblocks in order to check people's immigration status in predominantly

Latino neighborhoods. Maria Jimenez, a local immigrant rights advocate, was involved in a meeting[175] with Representative Luis Gutierrez from Chicago who came to the area in March 2010 to meet immigrants' rights groups.[176] She told Amnesty International that the Pasadena Police Department set up a checkpoint outside of the venue to check the immigration status of people coming to the meeting, preventing many people from attending the event.[177]

On 9 December 2009, Maria and her husband were driving with their two children, and Maria's sister, to a family outing. An officer from the Tucson Police Department in Arizona began to follow them, flashed his lights, and pulled them over. "The speed limit was 45 [mph] and that's exactly what we were doing." The police officer asked Maria's husband to surrender his car keys and produce his license, registration, and insurance. Maria recalls the officer saying that he had stopped them for expired car registration. Maria denies the registration had expired: "The cop had no excuse [for stopping us]. His excuse was that my husband is Mexican." When the officer asked her husband if he had papers her husband said "no" and the officer laughed.

When CBP arrived, Maria refused to get into their van, because she was due to give birth in three and a half weeks. The Tucson Police Department officer attempted to push her inside. "[The immigration agent] wanted us all to get in the car. The cop was pushing me and pushing me. He tried so hard to make me get in, and I think my water must have broken." Maria was placed in custody and taken to a hospital where CBP posted officers both inside the delivery room and outside the door. Becoming impatient at how long her labor was taking, the CBP agent in the delivery room kept telling Maria, "Come on, come on, push, push, because you're going to Mexico with the baby." "It was a nightmare... I tried to concentrate but unfortunately I couldn't give birth, because I was thinking about my children, and instead of my husband next to me, it was el migra [the immigration agent]." After repeated requests, the doctors and medical personnel moved the agent out of the delivery room. However, after Maria gave birth, the agent would sit outside of her room and open the door periodically to say, "Remember, when you're getting out that you're getting deported" and continue to taunt her. The couple agreed to voluntary departure to Mexico on 31 December 2009.[178]

The Tucson Police Department in Arizona allows its officers discretion to inquire about a person's immigration status when reasonable suspicion exists.[179] However, Tucson Police Chief Roberto Villaseñor has previously voiced concerns regarding the involvement of local police in enforcement of immigration laws. When Amnesty International raised its concerns about Tucson Police Department (TPD) officers

US Border Patrol vehicle patrolling the streets of Tucson, Arizona.
Photo courtesy of Tasya van Ree

reporting individuals to CBP, he explained that the TPD works locally with CBP to hand over suspected undocumented immigrants and has a policy whereby officers cannot stop or detain a person solely on suspicion that the person is present in the USA unlawfully. However, they can inquire about a person's immigration status based on reasonable suspicion that the person is undocumented during an authorized stop. When asked how TPD officers assess reasonable suspicion about a person's status that is not based on overt actions, he stated:

"THERE ARE A WIDE VARIETY OF ACTIONS LIKE NERVOUSNESS, ADMISSIONS, INABILITY TO SPEAK ENGLISH. THESE ARE VERY EASILY EXPLAINED. [REASONABLE SUSPICION] BECOMES A TIGHTROPE OUR OFFICERS WALK BECAUSE IT'S HARD TO EXPLAIN."

Tucson Police Chief Roberto Villaseñor,
25 April 2011

The use of language by TPD officers in order to determine reasonable suspicion of unlawful presence within the country raises concerns considering the large number of Arizonans who identify as Latino and speak Spanish[180] and the impact it could have on indigenous communities along the border since more Indigenous languages are spoken in Arizona than almost any other state.[181]

In addition, close proximity to the Mexican border means that the City of Tucson and surrounding areas are treated like a port of entry, and long-term residents may be subject to the

same removal procedures experienced by an immigrant journeying through the desert for the first time. Therefore, any interaction with CBP may lead to serious consequences for local undocumented immigrants since they could be removed from the country under a process called expedited removal without judicial review.[182]

"We live in an environment where people are terrified of law enforcement."

Jaime Ferrant, Border Action Network, 11 November 2010

Arrests, detention, and deportations

In the early hours of 15 April 2010, more than 800 agents, some wearing black hoods over their faces, from federal, state and local US law enforcement agencies raided five shuttle-bus operators in a number of Arizona towns including Phoenix and Tucson, as well as Nogales and Rio Rico. The raids involved helicopters, drawn weapons including rifles and pistols, and dozens of police vehicles. The targeted shuttle-bus operators, owners and employees were accused of smuggling people from Mexico into the USA. Led by ICE, the raid, known as "Operation in Plain Sight", has been described as one of the government's largest deployments ever for a people smuggling operation.[183] While ICE officials said that the operation was not focusing on rounding up undocumented immigrants, the agency said it would take appropriate enforcement action if undocumented immigrants were encountered during the raids.[184] Locals described the events to the media as an act of intimidation, "paralyzing them with fear and panic."[185] One local Tucson activist reported being threatened with arrest by an ICE agent if she interfered in any way.[186] Coalición de Derechos Humanos received calls from concerned individuals following the raid.[187] Media reports indicate that local residents were scared to go to work or to go shopping and that school buses filled with children were stopped by law enforcement officials. Local churches opened their doors to fearful families, particularly to children who were separated from their parents during the raids.[188]

Massive immigration enforcement operations, sometimes involving disproportionate use of force, have contributed to an increased risk of racial profiling and a climate of fear in immigrant and Latino communities living along the border. The additional powers of CBP, which allow for "expedited removal" within 100 miles of the border, raise additional concerns about whether immigrants' rights are respected during deportation.

To be lawful, an arrest must be based on a showing of probable cause that a crime has been committed.189 Arrests solely based on the racial and ethnic identity of an individual do not meet the probable cause standard.190 Sweeps, raids, and mass arrests by federal and state law enforcement officials result in the apprehension of numerous individuals simply on the basis of their racial or ethnic identity and can subsequently trigger federal immigration enforcement programs and lead to prolonged immigration detention, including for people lawfully present in the USA.

The wide discretion given to law enforcement officers as to whom they can stop and detain can lead to discriminatory arrests for minor offenses, or no criminal offense at all. Programs such as the Secure Communities, CAP and 287(g) that require law enforcement officials to verify an individual's immigration status may also encourage arbitrary detention based on racial profiling.

Once arrested, individuals may be further profiled during booking in a local jail or prison, and may be detained for prolonged periods of time while state authorities verify their immigration status. Recent statistics released by ICE show that many individuals are arrested for minor offenses and that individuals who were never convicted of any criminal offense are being deported, contradicting ICE's stated objective of focusing on those involved in serious criminal offenses.[191] Nationally, according to statistics released by ICE in May 2011, about 29 per cent of all those deported through the Secure Communities program since 2008 were not convicted of any crime.[192] The large numbers of individuals who have been deported through Secure Communities who never committed a crime may be indicative of the level of profiling occurring in jurisdictions where the program is in operation.

Similarly, there is a growing concern about discriminatory arrests and arbitrary detention through the implementation of the 287(g) program. For example, the investigation of the Maricopa County Sheriff's Office released by the Department of Justice in December 2011, found that crime suppression sweeps initiated by the law enforcement agency were not based on reported criminal activity, but rather on reports of individuals with "dark skin" congregating in a specific area or individuals speaking Spanish at a specific business."[193]

Racial profiling by state and local law enforcement has been observed during jail and prison booking where 287(g) agreements for local jails are in operation. According to one former Harris County official who observed the booking process at the Harris County Jail in Texas in 2008, while all individuals go through the process and are asked where they were born, if an individual said "here" and appeared to be Caucasian, no follow-up questions were asked by the Sheriff Department's 287(g) deputies. However, if the person looked like an "immigrant" and gave the same reply, they were asked for their citizenship papers or other documentation. Advocates in Texas have voiced similar concerns about racial, ethnic and linguistic profiling in local jails. For instance, they have told Amnesty International that if someone doesn't speak English when he or she is brought into the jail, he or she is sent to speak with ICE.[194]

Under CAP, ICE agents are placed in or have access to the local jails.[195] Although this purportedly takes immigration enforcement out of the hands of local officials, it can encourage discriminatory arrests based on racial profiling because the individuals identified for questioning by ICE may have been arrested in the first place precisely by local officers who relied on racial or ethnic identity as an indication of undocumented status. In 2009, the Chief Justice Earl Warren Institute on Law and Social Policy at the University of California-Berkeley School of Law analyzed arrest data which indicated a marked increase in discretionary arrests of Hispanics for petty offenses immediately following the September 2006 implementation of a CAP partnership in Irving, Texas, in which local law enforcement had 24-hour access to ICE via video and telephone conferencing. Analysis of arrests data found strong evidence to support claims of racial profiling by Irving police. The Warren Institute study found that felony charges accounted for only 2 per cent of ICE detainers; 98 per cent of detainers resulted from arrests for misdemeanors under CAP. Studies have also found that Hispanics were arrested at disproportionately higher rates than whites and African Americans for the least serious offenses; that is, offenses that afford police the most discretion in decisions to stop, investigate and arrest.[196]

State anti-immigrant laws

Immigration enforcement is exclusively a federal responsibility.[197] However, increasingly states have passed anti-immigrant legislation that authorizes and, in certain cases, requires state or local law enforcement officials to verify immigration status, without training or oversight by federal immigration authorities. These state laws place immigrants and communities of color at increased risk of racial profiling and have a negative impact on the right to justice for victims of crime by discouraging immigrants from reporting crimes to local police (for further discussion on access to justice, see Chapter 6).

Several states have passed laws mandating the collection of information on immigration status by law enforcement officers, school officials and health care or other social service and benefit providers. These laws include provisions criminalizing acts such as a failure to carry identification and immigration papers, providing work to undocumented day laborers, and soliciting work without authorization. Even though portions of these laws have been suspended by federal courts pending further review, in several cases alarming provisions have been upheld and have entered into force.

On 23 April 2010, Arizona Governor Jan Brewer signed into law the Support Our Law Enforcement and Safe Neighborhoods Act (S.B. 1070). The law states that police officers are required, "when practicable," to detain people they reasonably suspect are in the country without authorization and to verify their status with federal officials, unless doing so would hinder an investigation or emergency medical treatment. Should the law take effect, it will make failing to carry immigration papers a state misdemeanor and make it unlawful for drivers to pick up laborers on roadways, for laborers to enter a stopped car for the purposes of work on roadways, as well as for individuals to solicit work in public spaces.[198] Before the law came into force, a federal district court suspended certain provisions for further review and in April 2011 a federal court of appeals upheld the injunction. The appeals court found sufficient evidence that elements of the law were unconstitutional because they attempted to regulate areas reserved for the federal government.[199] At the time of writing, an appeal against the ruling was pending in the US Supreme Court.[200] However, the legal challenges to the law have not stopped other states from proposing bills and enacting similar legislation. Moreover, S.B. 1070 provisions that criminalize drivers picking up day laborers for work and day laborers entering a stopped car for

work have gone into effect, despite a pending lawsuit filed by civil rights organizations.[201] Arizona immigrant rights groups and several local law enforcement agencies have voiced opposition to the law.[208] Tucson Police Chief Roberto Villaseñor explained to Amnesty International that he opposed the law on the basis that that it was contrary to law enforcement purposes and would "close off avenues of information needed for law enforcement" as well as "create a second class of residents that criminals see as easy targets for crime."[209]

On 9 June 2011, Alabama enacted the Taxpayer and Citizen Protection Act (H.B. 56),

INCREASED RESTRICTIONS ON DAY LABORERS

Many people come to the USA in order to work and send money to their home countries to support their families. Both documented and undocumented immigrants often find themselves working on the margins of the labor market where there is little legal or physical protection. In 2006, it was estimated that on any given day, 117,600 day laborers wait on street corners or in public places across the USA looking for work. This is one of the main ways in which people get day work whereby employers come to public spaces where day laborers traditionally congregate in order to find workers for projects that may last anywhere from a few hours to several weeks or even longer.[202]

Some States have recently passed legislation that would specifically prevent day laborers from congregating in public space. The state law S.B. 1070 in Arizona, for example, includes a provision to prevent the solicitation of work by undocumented immigrants in public places.[203] This section of the law is currently not in force due to the lawsuit filed by the Department of Justice regarding the immigration enforcement measures of the law.[204] A similar local law in the City of Redondo Beach, California, which banned day laborers from standing on a street or highway to solicit employment, business or contributions from motorists, was ruled to be an unconstitutional restriction on freedom of speech in September 2011.[205]

"A PERSON WHO ENTERS A STATE AND ASSUMES AN EMPLOYMENT RELATIONSHIP, ACQUIRES HIS LABOUR HUMAN RIGHTS IN THE STATE OF EMPLOYMENT, IRRESPECTIVE OF HIS MIGRATORY STATUS… THE MIGRATORY STATUS OF A PERSON CAN NEVER BE A JUSTIFICATION FOR DEPRIVING HIM OF THE ENJOYMENT AND EXERCISE OF HIS HUMAN RIGHTS." [206]

Inter-American Court of Human Rights, Advisory Opinion on Juridical Condition and Rights of the Undocumented Migrants, 17 September 2003

The enactment and enforcement of laws that target day laborers by criminalizing those who seek work in public spaces, restricts their ability to find work and violates day laborers' right to work under international law. The UN Committee on Economic, Social and Cultural Rights has clarified that the "obligation to respect the right to work requires States parties to refrain from interfering directly or indirectly with the enjoyment of that right."[207] The USA has signed the ICESCR and as such should strive to take steps to realize the rights it guarantees and is obliged to avoid actions that would defeat its purpose.

which employs the same policing provisions as Arizona's S.B. 1070, including criminalizing "willful" failure to carry immigration papers.[210] Although modeled on S.B. 1070, Alabama's H.B. 56 goes further and includes what its proponents have called "the toughest immigration… [provisions] in the country."[211] The law requires public schools to collect information on the immigration status of students and their parents and periodically report the data to the state. It authorizes schools to report students and parents they believe to be undocumented to the federal government and prohibits undocumented immigrants from enrolling or attending public universities or from receiving financial aid. The law criminalizes attempts to enter into a "business transaction" with a government agency, for example by applying for a driver's license, and provides that, with limited exceptions, contracts with undocumented immigrants are unenforceable. It also criminalizes the "harboring" or "transporting" of undocumented immigrants, including "knowingly" renting housing to undocumented immigrants, and makes it illegal to solicit or perform work without authorization.[212] As soon as the law went into effect in September 2011, local police detained a Yemeni man for failing to produce immigration papers. It was later determined that he was lawfully in the country on a work visa.[213]

Following a legal challenge, a federal district court upheld most of H.B. 56, but blocked the provisions that outlawed harboring or transporting undocumented immigrants and that barred undocumented immigrants from enrolling in or attending public universities. On 14 October 2011, a federal court of appeals also prohibited the provisions requiring the collection of student information and criminalizing the failure to carry immigration papers. The appeals court left the remainder of the law intact, allowing controversial provisions to remain in force while the appeal process continues.[214]

Similar immigration enforcement legislation has been enacted in four other states: Georgia,[215] South Carolina,[216] Indiana,[217] and Utah.[218] In addition, a number of states, including Texas,[219] have recently proposed anti-immigrant legislation but have failed so far to pass it.[220] More than 1600 immigration bills were introduced nationally in 2011, making it one of the most active years for state legislative initiatives on immigration. Only eight states did not enact any anti-immigrants laws in 2011.[221] The constitutionality of the enacted laws in Georgia, South Carolina, Indiana and Utah is currently being challenged in court and portions have been prohibited pending further review.[222]

Lack of oversight and accountability

"There is no structure for accountability. We have proposed the creation of a review commission to oversee the impact of CBP practices, strategies and institutions on the border community. There is no accountability for all of the [immigration enforcement] programs."

Fernando Garcia, Border Network for Human Rights, 18 May 2011

There is inadequate oversight by the US authorities over federal immigration agencies such as CBP and ICE, and over state and local agencies enforcing immigration laws. This has resulted in a failure to prevent and address discriminatory profiling, and has fostered a culture of impunity that perpetuates profiling of immigrants and communities of color along the border during immigration enforcement.

"[A]LL MEASURES AT THE BORDER… ARE CATCHING U.S. CITIZENS AND LAWFUL PERMANENT RESIDENTS AND IT AFFECTS ALL PEOPLE OF COLOR. IT'S OUT OF CONTROL. IT'S UNCHECKED POLICIES WITHOUT OVERSIGHT AND LIMITED TRAINING."

Jennifer Allen, Border Action Network, 11 November 2010

ICE ACCESS programs also lack sufficient oversight and safeguards to ensure that that they do not encourage discriminatory profiling and other abuses by local law enforcement officials. A review by the DHS's Office of the Inspector General (OIG) in 2010 found that ICE needed to develop protocols to adequately monitor local agencies that have entered into 287(g) contracts; to collect data and conduct studies to address potential civil rights issues; and to supervise 287(g) officers and to provide them with proper training on immigration issues.[223] A 2011 report by the Migration Policy Institute (MPI) documents how the 287(g) program fosters racial profiling of immigrants and members of the Latino or Hispanic community without any federal oversight.[224]

At present the Secure Communities program does not contain adequate oversight to determine whether racial profiling is occurring or to prevent it. In September 2011, a taskforce commissioned by DHS completed a review of Secure Communities, which aimed to address some of the concerns about the program, including its impact on community policing, the possibility of racial profiling, and ways to ensure the program's focus is on "individuals who pose a

true public safety or national security threat."[225] Advocates have criticized the taskforce's report for failing to provide concrete recommendations to address some of the fundamental flaws of Secure Communities, and have called for the program to be terminated instead.[226]

CAP has received even less oversight by federal authorities. Although the program has been studied by the Office of Inspector General of DHS to determine whether it is effective in identifying individuals eligible for removal, no analysis was undertaken to determine whether it has led to racial profiling by local law enforcement officials.[227]

Many state authorities lack the legal tools to assess whether discriminatory stops and searches are taking place and those that do, lack effective mechanisms to analyze the data and prevent and address racial profiling. For instance, in Texas, a state law passed in 2001 prohibits racial profiling and requires law enforcement officers to collect information on the race of individuals encountered during stops. However, the law as originally enacted had several deficiencies, for example it did not provide a template for uniform reporting standards or set out penalties for non-compliance and exempted agencies with audio-visual equipment from reporting certain statistical information altogether.[228] For instance, the 2004 racial profiling statistics do not include proper data from 34 per cent of law enforcement agencies.[229] There was no mandatory requirement for all police departments to collect data until the law was amended in 2009 and mandatory reporting did not go into effect until 2011 so that more recent and complete data under this law was unavailable at the time of writing. [230]

Following a class action lawsuit, the Arizona Department of Public Safety (DPS) was required to collect data on the race of all drivers in traffic stops for a five-year period starting in July 2006. However this only applied to the state police; local law enforcement agencies were exempt from this requirement.[231] The Arizona DPS was required to collect this data as part of a legal settlement that stated that if statistical data suggested that a particular officer engaged in racial profiling, Arizona DPS had to take "corrective and/or disciplinary measures" to correct and/or discipline the officer.[232] It is unclear what will happen with any data collected by local civil rights organizations after August 2011 when the Advisory Board which analyzes the data will no longer exist.[233] Recent efforts to introduce anti-racial profiling legislation in Arizona have failed.[234]

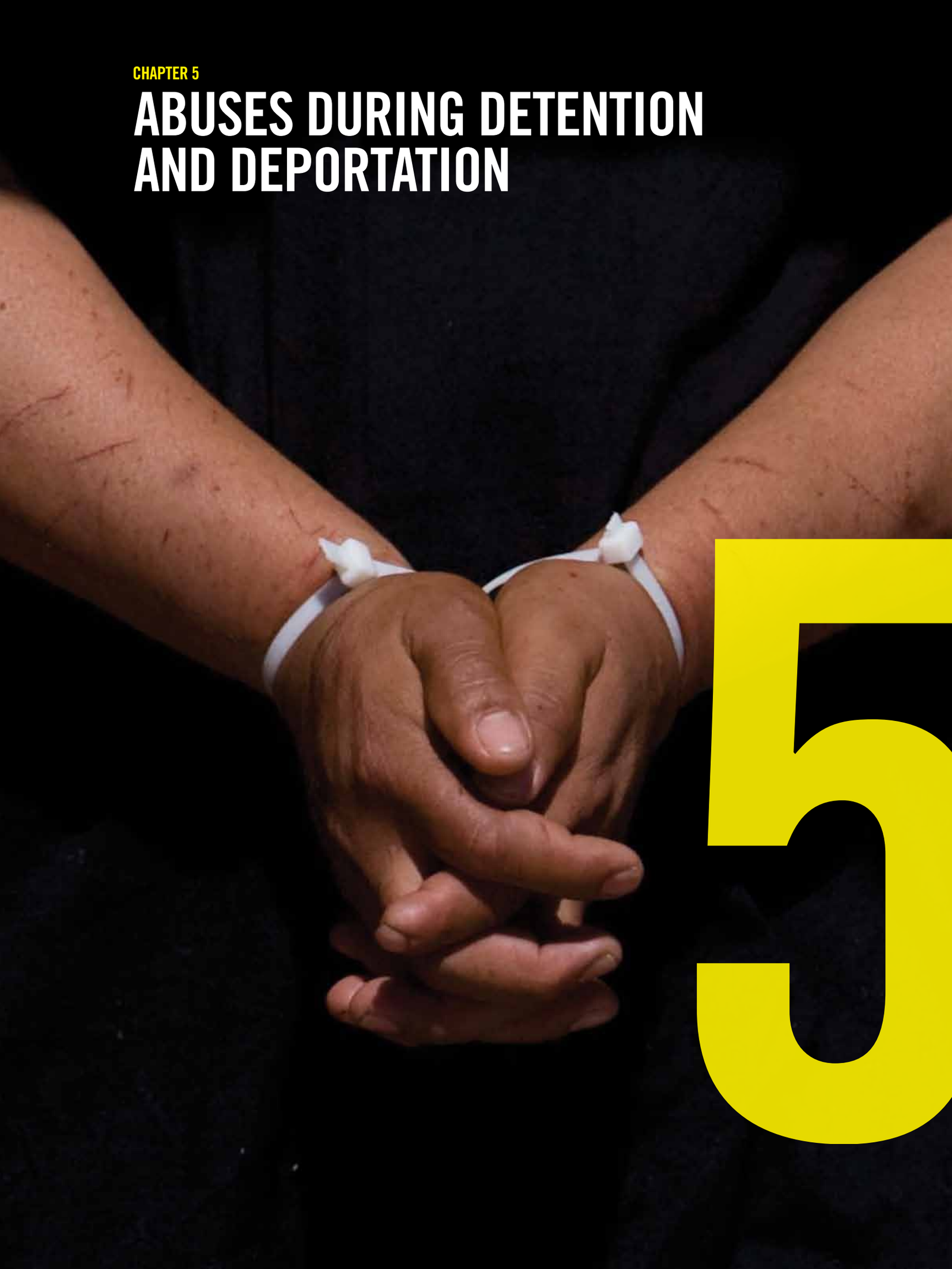
In order to combat racial profiling across the country, the End Racial Profiling Act of 2001 (ERPA 2001) was introduced into the US Congress in 2001. ERPA would compel all law enforcement agencies, to ban the practice of racial profiling, document data on stops, searches and arrests disaggregated by both race and gender, and create a private right of action for victims of profiling.[235] At that time, studies showed that US citizens of all races and ethnicities believed that racial profiling was a widespread problem and this was reflected in bipartisan support for the bill.[236] However, following the terrorist attacks of 11 September 2001, support for ERPA 2001 dissipated.[237] Congress has since tried and failed to pass various versions of the ERPA. The most recent version was introduced into the US Senate in October 2011 and was awaiting further action by Congress at the time of writing.[238] Without passage of ERPA, it is difficult for individuals to challenge violations of their constitutional rights to be free from discrimination since they must show proof of intent of the individual officer to discriminate.

The lack of effective oversight mechanisms in immigration enforcement in the USA has been raised by international human rights bodies including the Inter-American Commission on Human Rights. The Commission has urged the US government to ensure that participating local law enforcement partners collect data disaggregated by ethnic origin, type of charge or accusation, total number of arrests and total number of people against whom charges were later dropped. Such data should be diligently reviewed to identify possible patterns of racial profiling and made available to the public. Where it reveals discriminatory profiling, law enforcement agents should be subject to follow-up investigations and corrective training.[239]

Implementing immigration enforcement programs through local law enforcement relies on stops and arrests that may be initiated based on racial profiling by local law enforcement officers. Without adequate safeguards and oversight by the federal immigration authorities, these programs can also contribute to other problems, including distrust of law enforcement officials and fear of reporting crimes by immigrant communities and communities of color living along the border. The DHS should, therefore, suspend the use of programs that utilize local law enforcement in the enforcement of immigration laws until studies have been able to demonstrate that they do not lead to or rely on racial profiling.

CHAPTER 5

ABUSES DURING DETENTION AND DEPORTATION



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CHAPTER 5

ABUSES DURING DETENTION AND DEPORTATION

H.R. WAS DETAINED BY ARIZONA STATE POLICE on 28 August 2010 and taken to Pima County Jail where, through the Secure Communities program, he was identified by ICE for removal. H.R. told the ICE agents that he had been adopted by US citizens more than 10 years earlier, before he turned 16, and that he had a US birth certificate and Social Security Number. However, he was transferred to an ICE facility where he discovered that his parents never filed for citizenship for him when he was adopted. An ICE agent told H.R., "If you fight your case, you go to Florence [Correctional Facility] for seven months with a $7,000 bond." H.R. told Amnesty International: "I was worried about going there. I thought that I was just going to sign the papers and fight my case from Mexico." The ICE attorneys questioned H.R. about his immigration history and H.R.'s father even suggested that H.R. just sign the voluntary departure forms to avoid further detention, which he did. Later ICE provided him with a second set of paperwork in order to claim citizenship, which he also signed. An ICE agent told H.R. he would be held in detention while his case is being reviewed. H.R. spent five months in immigration detention before the case was closed and he was released on 28 January 2011. Amnesty International was unable to confirm the disposition of H.R.'s citizenship claim at the time of writing.

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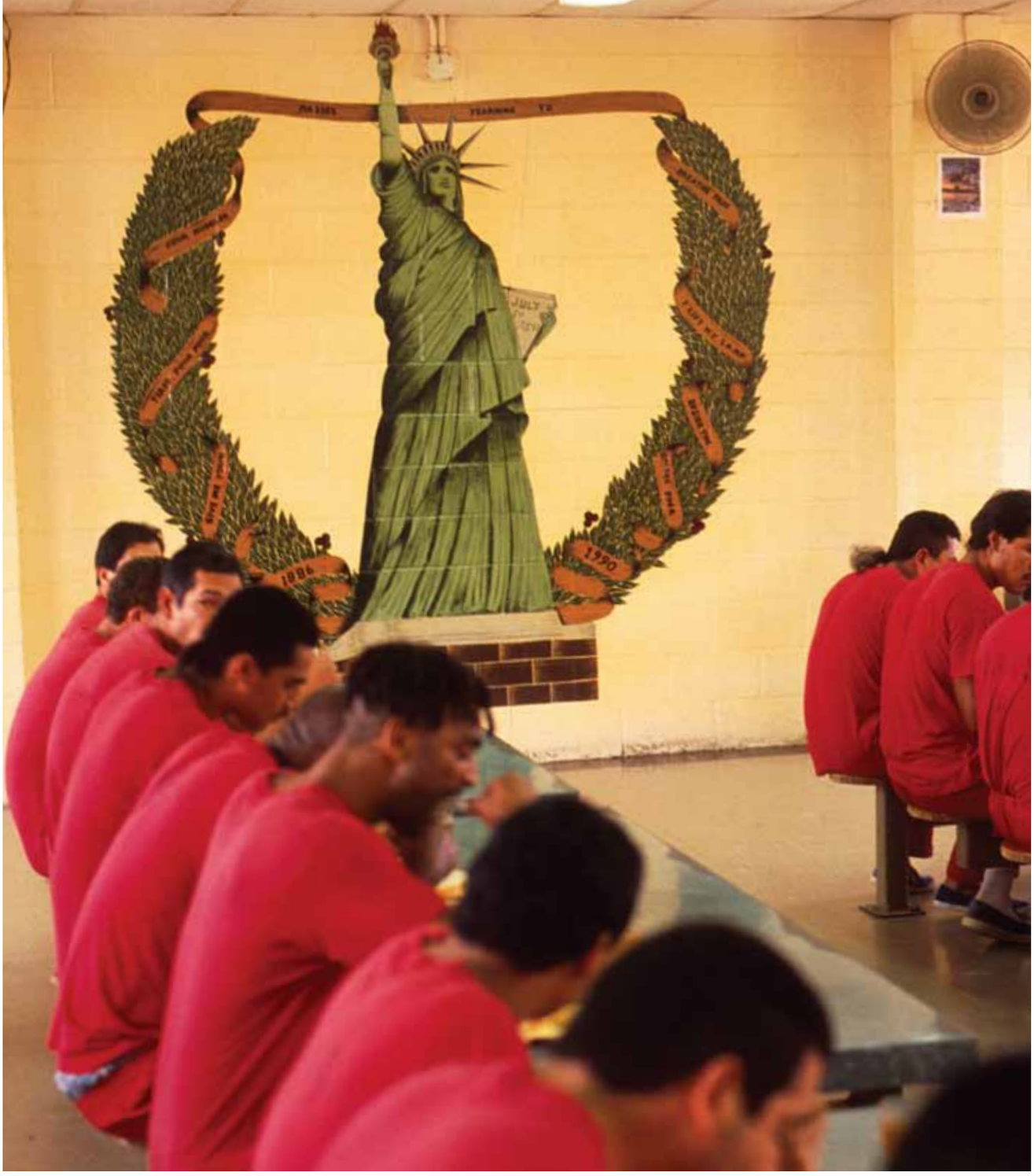
An undocumented immigrant walk with his hands in plastic cuffs after being taken into custody by Maricopa County Sheriff's deputies at a drop house in west Phoenix. The scrapes on his arms are from walking through the desert at night.



Detained immigrants inside the meal room at a facility in California.
© Steven Rubin

H.R.'S CASE IS FAR FROM UNIQUE. People who cannot readily prove their status, including US citizens and others lawfully in the country, are being arbitrarily detained, sometimes for prolonged periods, while the authorities confirm their citizenship or immigration status. For instance, a review by one Arizona NGO of more than 8,000 immigration case files revealed that between 2006 through 2008, 82 people held for deportation at two immigration detention centers, some for up to a year, were later freed after immigration judges determined that they were US citizens.[241] The immigration detention of US citizens cannot be justified on any legal basis and is therefore arbitrary under international law.

All immigrants, irrespective of their legal status, have the right to freedom from arbitrary detention.[242] The decision to detain someone should always comply with international standards and be based on a detailed individual assessment that takes into account, for example, the individual's personal history and the risk of absconding. Under international law the authorities must demonstrate in each individual case that detention is necessary and proportionate.[243]

People who are detained while their case

Immigration detainees at Willacy Detention Center in Raymondsville, Texas.

© Amnesty International

navigates through immigration courts face a number of potential human rights abuses related to due process. Some may be subject to mandatory detention without a bond hearing before an immigration judge. Others may not have access to a lawyer and be held in facilities that do not meet international standards for administrative detention.[244]

Immigrants subject to deportation are also entitled to procedural safeguards including the ability to challenge the decision to deport; access to interpretation services; and access to a review of a negative decision.[245]

Deportation procedures at the border can take a number of forms, one of which assigns criminal penalties and detention for unlawful entry. In 2005, the US government initiated Operation Streamline, a "zero-tolerance" multi-agency law enforcement initiative that has been implemented in some border counties. As originally designed, Operation Streamline mandates the criminal prosecution of all individuals suspected of crossing the US-Mexico border without authorization, regardless of their criminal or immigration history. Prison sentences of up to six months can be imposed for illegal entry; illegal re-entry can carry a penalty of up to 20 years' imprisonment.[246]

Those prosecuted for illegal entry into the USA have access to court appointed attorneys. However, the volume of prosecutions has meant that lawyers are often representing groups of immigrants at court hearings, sometimes as many as 70 or 80 people at a time.[247] The lack of access to individualized hearings and inadequate access to legal counsel through Operation Streamline means that courts cannot properly take into account relevant circumstances in individual cases, such as whether someone is a survivor of trafficking or fleeing persecution, and is resulting in arbitrary detention.

Criminal penalties for unauthorized entry are obstacles to identifying the victims of human rights abuses, such as people trafficking and prevent victims from seeking justice. They are, therefore, undermining human rights protections afforded in international law, including the right to seek asylum.[248] The Special Rapporteur on the Human Rights of Migrants has repeatedly stressed that where detention is used as a punitive measure, it is disproportionate and inappropriate and stigmatizes undocumented immigrants as criminals.[249]

G.H., who arrived in the USA as a young child in 1993 and is now married to a US citizen and has a young son, was placed in immigration detention after serving a one-day sentence as part of a plea agreement for driving without a license in July 2010. He described to Amnesty International how an ICE agent tried to coerce him into signing a deportation order while he was in detention: "At first he came up nicely, 'We'll send you to Eloy and you can be home [in Mexico] tonight.' I said: 'This is home.' The second time he said I had no choice but to sign it. The third time he became more aggressive and told me I had no business in the US, the minute I turned 18, I should have

left. The fourth time, he started harassing me, making me feel like I had no rights. He was very convincing." G.H. wanted to see an immigration judge, but instead the ICE agent tried to rush him through the deportation paperwork. "He was upset that I read everything and said 'Hurry up, we don't have all day.' He was very persistent to hurry up so I did. I understood some and not others." Because G.H. refused to sign a stipulated removal order he was detained for three months until September 2010 when he was released on $3,500 bond. G.H. remained in removal proceedings as of April 2011.[250] Amnesty International was unable to confirm the outcome of G.H.'s immigration case at the time of writing.

Beyond Operation Streamline, immigrants can be removed from the country by other means which may not result in criminal prosecution but may further affect immigrants' rights. According to reports received by Amnesty International, people are routinely pressured by local law enforcement, ICE or CBP officials into signing forms agreeing to their removal without a hearing in front of an immigration judge. If someone agrees to "voluntary departure", they agree to leave the USA within a specific period of time without being issued with a deportation order. Taking this route means that they do not face any bars to readmission to the USA in the future and this is often offered to people without any record of previous immigration violations. Alternatively, people may be offered "stipulated removal" which means that the individual receives a removal order and will be prevented from re-entering the USA for a period of time after removal.

Individuals who agree to voluntary departure or stipulated removal effectively waive their rights to due process, such as the right to a hearing before an immigration judge, and possible claims to remain in the USA. Reports suggest that people signing these removal documents sometimes do so without being aware of the consequences, either because the documents are not provided in a language they understand or because they are not given sufficient time to review the documents. Reports also indicate that people who refuse to sign voluntary or stipulated removal documents are sometimes threatened with lengthy detention.[251]

The International Covenant on Civil and Political Rights, which the US ratified in 1992, guarantees the right to fair deportation proceedings, including the ability to challenge the decision to deport, access to legal counsel, and access to a review – ideally a judicial review – of a negative decision.[253] The Human Rights Committee has noted that "[a]n alien must be given full facilities for pursuing his remedy against expulsion so that this right will in all the circumstances of his case be an effective one."[254] The coercive signing of voluntary and stipulated removal documents violates immigrants' rights to due process.

"THEY EXPLAINED SOME OF MY RIGHTS – BUT TOLD ME THAT I HAVE NO RIGHT TO BE IN THIS COUNTRY, THAT MY COUNTRY IS MEXICO, THAT I WAS WASTING MY TIME IN THE IMMIGRATION PROCESS BECAUSE IT WAS IMPOSSIBLE. IT FELT LIKE THEY WERE TRYING TO BRAINWASH ME. THEY SAID THAT I HAVE TO STAY AT LEAST SIX MONTHS IN JAIL IF I WANT AN IMMIGRATION JUDGE… THEY TRIED TO GET ME TO PUT MY THUMBPRINT ON A SHEET OF PAPER. THE AGENT TWISTED ONE ARM BEHIND MY BACK AND PULLED THE OTHER ARM FORWARD WHEN I TRIED TO KEEP MY HANDS IN MY POCKET. HE KEPT SAYING WHY DIDN'T I SIGN SINCE I DIDN'T HAVE ANY RIGHT TO BE IN THE COUNTRY. HE WAS YELLING AT ME TO SCARE ME INTO SIGNING. THE OTHER AGENTS CAME IN AND TOLD HIM TO RELAX. I FINALLY GOT A CHANCE TO READ IT [THE DOCUMENT]. ON THE BOTTOM IT SAID SOMETHING ABOUT VOLUNTARY RETURN. I READ THE PAPERS AND THEY CROSSED OFF THE FORM THAT SAID I WOULD GET TO SEE AN IMMIGRATION JUDGE."

A 33-year-old Mexican national living in the USA since 1998, describing his experience at an immigration detention processing center in Tucson, Arizona, in 2009.[252]

The detention or deportation of individuals can have devastating consequences for families. Amnesty International has received reports of families along the border being separated by immigration enforcement, with women and children facing the possibility of homelessness when the family breadwinner is detained or deported.[255] For example, one woman whose brother and sister were deported from Laredo, Texas, now cares for their children along with her own. Although she is undocumented, she has a pending Violence against Women Act petition (see Chapter 6) as a survivor of domestic violence and is now struggling to take care of nine US-citizen children.[256]

Once in detention, it is often impossible for parents to make arrangements for their children's care and, as a result, the children may be separated from their families and taken into care temporarily or, in some cases, permanently.

People in immigration detention are often transferred between facilities and have no way of obtaining permission or transport to

"CHILD PROTECTIVE SERVICES PERSONNEL REQUIRE MUCH MORE TRAINING WHEN THEIR POLICIES INTERSECT WITH THE IMMIGRATION ENFORCEMENT SYSTEM. THOUSANDS OF CHILDREN WILL NEVER REUNITE WITH PARENTS DETAINED OR DEPORTED BY ICE BECAUSE THE ENTITIES HAVE NO PROTOCOLS FOR WORKING TOGETHER TO KEEP FAMILIES UNITED."

Laurie Melrood, Immigrant rights advocate working with families and children in Tucson, Arizona, 8 November 2010

attend court hearings regarding their children. According to a 2010 report by the Women's Refugee Commission, "The gaps and failures in [US] immigration laws and child welfare system can create long-term family separation, compromise parents' due process rights and leave children with lasting psychological trauma and dependency on the state."[257]

According to one study, the pervasive fear of engaging with authorities because of the risk of immigration enforcement actions has made many parents reluctant to provide information about relatives who may be able to take care of a child. As a result, the children of people detained or deported as a result of immigration enforcement are more likely to wind up in the foster care system rather than with family members.[258] The Arizona Department of Children, Youth and Families does not keep track of the number of deported parents whose parental rights were terminated or the number of children who have been adopted after their parent was detained or deported. [259]

Fear of family separation has profound effects on the way families at risk live their lives. For example, Amnesty International was told that immigrant families sometimes arrange to take precautions when traveling to and from family outings, such as driving in separate cars from one another, to ensure that if a car is stopped only one parent will be at risk of apprehension.[260] Laurie Melrood described how a local non-profit, the KARE Center in Tucson, Arizona works with mixed-status families to set up a support plan for their children as well as how to contact each other from across the border in the event of deportation. "If a parent gets arrested [in Arizona], they may end up in Florence [Correctional Center] and the kids go into state foster care, while a series of tragedies occur. I work with each family, family by family, but we're also working with the community to have people develop a 'Plan B.'"[261]

A policy memorandum sent on 30 June 2010 to all ICE employees by the Assistant Secretary of ICE John Morton outlined immigration

A detained immigrant visits with his son and family members in a California detention center.

© Steven Rubin.

enforcement priorities for ICE – namely immigrants who pose "a danger to national security or a risk to public safety" including individuals engaged in or suspected of terrorism or espionage, individuals convicted of certain felonies and violent crimes, and repeat offenders – and gives ICE officers discretion in making detention decisions. The memorandum also states: "Absent extraordinary circumstances or the requirements of mandatory detention, field office directors should not expend detention resources on aliens who are known to be… pregnant, or nursing, or demonstrate that they are primary caretakers of children or an infirm person, or whose detention is otherwise not in the public interest."[262] Amnesty International welcomes the memorandum and believes these policies, if implemented, will alleviate the impact on family unity as well as other rights.

In the context of deportation hearings, prior to 1996, Immigration Judges had authority to grant discretionary waivers in immigration proceedings where family unity would be threatened by deportation. However, following changes to the immigration law in 1996, that discretionary authority has been sharply constrained.[263]

The right to family life is enshrined in international law. Article 17 of the ICCPR states: "No one shall be subjected to arbitrary interference with his privacy, family, [or] home".[264] The UN Human Rights Committee has confirmed that family unity imposes limits on the power of states to deport individuals,[265] and the UN Committee on the Elimination of Racial Discrimination has stated that states should "[a]void expulsions of non-citizens, especially of long-term residents, that would result in disproportionate interference with the right to family life."[266] In order to live up to its obligations under international law, the USA should give due consideration to family circumstances, on a case-by-case basis, before detaining or deporting an immigrant. Current policies and practices clearly fall short of this standard.

Amnesty International has also received reports of alleged excessive use of force during apprehension, detention and deportation. CBP agents are authorized to use reasonable force in order to prevent a crime or to carry out lawful arrests. However, under international law, the use of force is permitted only when strictly necessary and to the extent required to carry out their duties. Any use of force must also be proportionate to the threat posed. Several local NGOs, including the Border Action Network, Border Network for Human Rights, No More Deaths, and Coalición de Derechos Humanos have documented and called CBP to task for violations of these standards in the context of immigration enforcement. A Mexican official working with immigrants who have been returned to Mexico told Amnesty International that he often receives reports and sees the results of abuses committed by CBP agents: "The moment they are feeling better, [CBP] ships them out. I have gotten people who are really beaten up and injured [from the United States]."[267] Concerns have also been raised about the use of lethal force and tasers[268] against immigrants: at least four fatal shootings and another death involving CBP agents have been reported in the media since June 2010.[269] On 26 January 2012, Amnesty International wrote to both the Departments of Justice and Homeland Security regarding all five cases, expressing concern that the deaths appeared to violate international standards on the use of lethal force, urging a review of the standards and policies by Customs and Border Protection, and calling for the detailed findings of investigations into each case to be made public.[270] At the time of writing, no response has been received from either agency.

CHAPTER 6

SURVIVORS OF CRIME DENIED ACCESS TO JUSTICE

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SURVIVORS OF CRIME DENIED ACCESS TO JUSTICE

IN 2004, TWO SISTERS – DOROTEA AND NILDA (not their real names) – were sold by their uncle to a man who took them from Honduras to Mexico. In Mexico, Dorotea and Nilda were beaten and forced into prostitution. Dorotea described how she was raped and subjected to repeated psychological abuse and humiliation. Dorotea's traffickers took her to the US border and forced her to cross. She recalled how the traffickers instructed her on what to tell ICE at the border and told her that they were watching her in case she tried to ask for help. ICE gave Dorotea a Notice to Appear (NTA)[271] requiring her to report to immigration court at a later date, and allowed her to enter the USA.[272] Dorotea was then taken to a cantina (bar) in Houston where she was again forced into prostitution and prevented from appearing in court as required.

In 2005, Dorotea managed to escape from her abusers and was eventually reunited with her sister, who had been taken to a different cantina in Houston and forced into prostitution before managing to escape. Dorotea and Nilda later found out that, following their escape, the uncle who had sold them to the traffickers had been killed; they believe that it was a reprisal killing by the traffickers.

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Courtroom at Willacy Detention Center in Raymondsville, Texas.
© Amnesty International

AFTER A VISIT TO THEIR APARTMENT by an ICE officer, the sisters were required to check in with ICE every month. When ICE asked Dorotea how she came to the USA, she described the circumstances of her arrival: "I told them that when I entered there was someone constantly watching me. That… I didn't know anything, I was scared." Despite this, ICE did not inquire further to determine whether she was trafficked. Each sister faces an active deportation order for failing to appear in court as required in the NTAs they received when crossing the border. Neither Dorotea nor her sister has identification, other than their consular IDs. Both are applying for special US visas for survivors of trafficking (T-visas). As of October 2011, their applications were still being processed.[273]

US legislation provides temporary legal immigration status to immigrants who are victims of certain crimes, including trafficking and domestic violence. However, immigrants are often fearful of reporting crimes committed against them, because interaction with the police may result in immigration enforcement actions against themselves or others in their household. Sixty-seven per cent of police chiefs and district attorneys in the 50 largest US cities have indicated that immigrants report crimes less frequently than other victims.[274] A majority of surveyed police chiefs, prosecutors, administrators, and immigrant community leaders across the USA believe immigration policies that require local police to act as immigration agents would further reduce the rates of reporting by immigrants.[275]

Immigrants' reluctance to report crimes to law enforcement, and the widespread knowledge of this fact by perpetrators of crime increase the likelihood that individuals perceived as undocumented immigrants will be targeted for crimes.[276] Law enforcement officials from several states reported that Latinos were victimized significantly more than the rest of the population because they were considered "easy" targets.[277] For example immigrant day laborers have become the frequent targets of robberies. After a day's work, day laborers are likely to carry cash and sometimes store cash in their homes because they are not permitted,[278] or are afraid, to open bank accounts.[279] The fact that they may also fear reporting crimes to the police in case this leads to detention or deportation increases the confidence of those committing crimes against them that they can do so with impunity.

The southwestern border serves as a principal entry point for human trafficking with Texas and California as two of the major trafficking hubs.[281] In 2006, the Department of Health and Human Services reported that of all certified trafficking survivors found within the United States, 25 per cent were in Texas.[282] Law enforcement officials have also recently designated Arizona as a major hub and corridor for human trafficking.[283]

ACCORDING TO THE US GOVERNMENT, THERE ARE APPROXIMATELY 14,500-17,500 PEOPLE TRAFFICKED INTO THE USA EACH YEAR FOR LABOR OR SEXUAL EXPLOITATION. [280]

Primary forms of human trafficking in the USA include sexual slavery, debt bondage, and forced labor. Women and girls trafficked into the commercial sex industry are forced into prostitution in the streets, in massage parlors, and in brothels. People trafficked as forced labor work in many services and industries including domestic service, agriculture, manufacturing, hotel services, construction and health care.[284] Debt bondage, forcing people to work until they pay off the "debt" incurred in bringing them to the USA and providing lodging afterwards, can take a variety of forms, including all of those listed above. Often, the "debts" are impossible to repay because of the "interest" and other charges added to the original sum.[285]

The US government has an obligation to prevent and address abuse of immigrants and ensure that all immigrants are able to access available remedies.[286] This includes acting with due diligence to investigate and punish criminal conduct, such as domestic violence or human trafficking, committed by private individuals, and guaranteeing access to justice for immigrant victims of crime.[287]

Failure to identify survivors

"There is lots of money in trafficking, but they can't find anyone who's been trafficked. It's no wonder with the way they question people."

Jennifer Long, Casa Marianella,
9 September 2010

Despite important protections under the law, survivors of trafficking and domestic violence often face considerable obstacles in getting access to justice. Law enforcement officials may not actively cooperate in identifying who is entitled to the protections available while some appear not to be aware of relevant legal provisions. Stringent statutory requirements and the climate of fear within immigrant communities caused by concerns about detention and deportation are further barriers.

T-visas remain a significantly underutilized resource. Despite substantial funding dedicated to educating and training law enforcement agencies about the issue of trafficking and mechanisms available to assist and protect trafficking survivors,[301] advocates report and statistics indicate that this has not led to a significant increase in the proportion of trafficking survivors who are identified and actually receive T-visas.[302] Of the 5,000 T-visas available annually to trafficking survivors, statistics released at the January 2010 Stakeholder Meeting of US Citizenship and Immigration Service (USCIS) show that only 6 per cent of these were actually used in 2009. According to USCIS, 313 T-visa applications were approved in the 2009 fiscal year. While the number of approved visas has increased from 113 in 2005 and the number of denials has declined over the same period, [303] compared to the tens of thousands of trafficking survivors that the US government estimates are in the country at any given time, the low number of T-visas issued highlights the inadequate identification of trafficking survivors.

"THE POLICE ARRIVED IN MASKS. THEY CAME WITH GUNS, AND THREW US ALL ON THE FLOOR AND SEARCHED MY STOMACH. [T]HEY SAID THAT IF WE SAW THEIR FACES THEY WOULD SHOOT US. I WAS PREGNANT, AND WAS VERY SCARED AND NERVOUS… WE WERE SCARED, AND NO ONE HELPED US. AFTER ALL THAT HAPPENED WE DIDN'T KNOW WHAT TO DO… THEY DIDN'T PROTECT US AT ALL."

Susana, one of the women present during the raid of five cantinas in Houston in 2005, describing the raid to Amnesty International

On 13 November 2005, more than 100 officers from federal, state, and local law enforcement agencies raided five cantinas in Northwest Houston, freeing approximately 120 women and girls. Agents arrested eight members of a human trafficking ring run by Maximino "El Chimino" Mondragon of El Salvador. Women and girls from Nicaragua, El Salvador, and Honduras told the authorities that they had been lured to the USA under false promises of legitimate work, then made to repay inflated smuggling fees through forced sex work. Told that their families would be beaten if they did not cooperate, the women and girls were forced to offer sexual favors to cantina patrons. According to some of the women, one of Maximino Mondragon's associates performed forced abortions on them. Maximino Mondragon and his co-defendants were charged with human trafficking, alien smuggling, holding women in conditions of forced labor, harboring women for financial gain, and obstruction of justice. In April 2009, Maximino Mondragon was sentenced to 13 years in federal prison and three years of post-release supervision. He and his co-defendants were ordered to pay $1.7 million in restitution to the survivors. Despite the cooperation of the trafficking survivors, more than two years after the raids, only 67 of the 120 women and girls present during the cantina raids had received T-visas. In some cases, survivors of trafficking were initially mistakenly identified as criminals.

Although Susana was found in one of the cantinas, she was never questioned by the police or provided with information about the services or immigration remedies available to trafficking survivors. At the time of writing, more than six years after the raid, Susana was in the process of being certified as a survivor of trafficking. Susana has no identification and is unable to receive benefits that she would have been eligible for if she was identified as a trafficking survivor earlier. When Amnesty International spoke with Susana's advocate in October 2011, she expected that it would take at least six to nine more months before she would learn whether she would receive any kind of assistance or benefits.[304]

Although smuggling, the procurement of the illegal entry of a person who is not a US national or a permanent resident in the USA,[305] is not in itself a human rights violation, smuggling may expose the immigrants involved to serious abuses. Many people who think that they are being smuggled subsequently discover that they have in fact been abducted or deceived for the purpose of exploitation, including forced sex work and forced labor. Once they have become victims of trafficking in this way, they too are entitled to the protections afforded under US law. Determining when someone who consents to being smuggled in to the US becomes a trafficked person, especially when coercion is psychological and not physical, may be difficult to identify, including for law enforcement officials.

LEGAL REMEDIES FOR SURVIVORS OF TRAFFICKING AND DOMESTIC VIOLENCE

The Victims of Trafficking and Violence Protection Act of 2000 provides temporary legal status to immigrants who are survivors of trafficking who assist with investigations or prosecutions. The three goals of the Act are to combat and prevent trafficking, to punish traffickers, and to protect people who have been trafficked.[18] The Act established the T-visa and the U-visa which allow undocumented immigrant survivors of trafficking and other crimes who meet strict eligibility criteria to remain in the USA temporarily; to receive assistance, such as food and health benefits; and to seek permanent legal status.

THE T-VISA is a non-immigrant visa that generally cannot exceed four years.[289] People granted T-visas have authorization to work and may be eligible to apply for lawful permanent residence.[290] In order to qualify for a T-visa, a person must be a victim of "severe trafficking";[291] either be younger than 18 or have been certified by the government as being willing to assist in the investigation and prosecution of trafficking;[292] and be able to demonstrate extreme hardship if returned to his or her home country.[293]

THE U-VISA[294] is a non-immigrant visa, created to protect victims of a variety of crimes including trafficking, domestic violence, indentured servitude, rape and debt bondage. The U-visa was established to encourage the reporting of crimes that might otherwise go unreported due to fear of deportation. A U-visa recipient obtains temporary legal status for up to four years, and may request lawful permanent residence after three years.[295] Some immediate family members[296] of survivors can also obtain the benefits of the visa, including children and spouses of the applicant. To obtain U-visas, applicants must demonstrate that they have suffered "substantial physical or mental abuse"; possess information concerning the criminal activity; and provide a certification form, completed and signed by law enforcement, stating that the applicant is likely to be helpful to an investigation or prosecution of the criminal activity, unless an exception applies.[297]

The Violence against Women Act (VAWA) of 1994[298] sought to remove immigration status barriers preventing undocumented immigrants from escaping and reporting violent household situations. Perpetrators of domestic violence often use the threat of deportation to prevent their undocumented partner from reporting abuse to the police or from leaving the abusive relationship.[299] Under the VAWA, survivors and their children can petition for legal residence without the knowledge or consent of the abusing spouse. Eligibility for VAWA protection requires that the petitioners demonstrate that they entered a marriage in good faith; resided with their lawful permanent resident or US citizen spouses; would suffer extreme hardship if deported; and possess "good moral character".[300]

"[It is] extremely common, especially for women, to be kept in smuggling 'stash houses' and be forced to work either cooking or cleaning for the smugglers and other immigrants, or sent to work outside the house to pay off their 'debt' incurred upon passage to the United States. Very frequently… [they] are raped and sexually abused. When the conditions are reported to the police by advocates, law enforcement sometimes ignores the issue of forced labor and dismisses the circumstances as a smuggling case because the women hired a smuggler to come to United States and therefore should expect abuse. Therefore, the survivors are blamed for the deception instead of the traffickers being prosecuted for deceiving and then forcing people to work in slave-like conditions."

Erica Schommer, an attorney who formerly practiced immigration law in the border area of Texas, August 2011

Discussing some of the reasons ICE fails to identify or protect many trafficking survivors, Linda Brandmiller from Catholic Charities, an organization that works with immigrants and survivors of trafficking in Texas, explained:

"ICE DOES RAIDS, BUT THEN DOESN'T GIVE THE VICTIMS VISAS [WHICH THEY ARE ELIGIBLE FOR]… THERE IS A PERCEPTION THAT IF YOU'RE NOT PHYSICALLY CHAINED UP, YOU'RE NOT A VICTIM, WHICH IS NOT ACCURATE".

Linda Brandmiller, Catholic Charities, 28 September 2010

The US Department of State reports that, although the majority of US trafficking investigations and prosecutions involve sex trafficking rather than labor trafficking, the majority of immigrant victims are actually found in labor trafficking, for example on farms, in factories and in private homes.[306] While this discrepancy may well in part be due to the fact that it is easier to disguise labor trafficking victims among the regular workforce, advocates also report that law enforcement officials do not focus on labor trafficking cases, and are not skilled at identifying victims of labor trafficking.[307] In one example provided to Amnesty International, a restaurant worker managed to pass a note to law enforcement officers describing the conditions under which he was being compelled to work. The officers conducted surveillance over several days and witnessed workers being moved between the restaurant and the house next door, which can be an indicator that the establishment is using trafficked workers since they are unable to live and move freely. However, because it was the perception of officers that the restaurant workers did not take advantage of the brief opportunity to flee the premises when being moved, the situation was never investigated further as a trafficking case.[308] This assessment by the officers did not take into account common tactics used by traffickers and businesses that use trafficked labor such as confiscating travel documents and money and threatening the lives of family members.

"INSTEAD OF IDENTIFYING VICTIMS, IT FINDS WAYS TO ELIMINATE PEOPLE FROM BEING IDENTIFIED AS VICTIMS."

David Walding, Bernardo Kohler Center, an organization based in Austin, Texas, that provides education and assistance to immigrants and legal professionals in immigration matters, 5 May 2010

Inappropriate questioning – the issue of consent

In order to qualify for a T-visa, a trafficking survivor must demonstrate that he or she is in the USA or at a port of entry due to trafficking.[309] Officials interviewing survivors routinely base their assessments on whether at any time the person intended or consented to enter the USA without permission. David Walding, an advocate working at the Bernardo Kohler Center, explained that staff members at the Office of Refugee Resettlement ask victims a list of "yes"/"no" questions, one of which is: "Did you want to come to the US?" According to Walding, if a person answers "yes", they are not deemed to be a trafficking survivor, regardless of the coercion, fraud, or violence the individual was subject to either on route to or after entering the USA.

Carolina made the difficult decision to leave her two small children in Honduras and travel to join her husband in the USA. "I thought it was the best for all of us." In Veracruz, Mexico, Carolina was abducted by three men and driven hundreds of miles to an isolated house near Reynosa, Mexico, where they took her identification documents and locked her in a room.

"[A woman] rubbed make-up on my face and then took me into another room that had a

bed. A man entered and gave her money. I tried to fight him off but he was so much larger than I was, he easily overpowered me and raped me while I cried… I was repeatedly sold for sex, beaten, threatened, drugged and starved. Sometimes more than one man raped me at the same time. If I tried to scream they gagged my mouth. Sometimes they took photographs of me being raped."

One of the abusers told Carolina she had been sold and was being taken to Hidalgo, Texas. She was locked in the trunk of a car and driven across the Mexico-US border. US immigration agents stopped the car and found Carolina in the trunk with bruises and bite marks all over her body. She recalls the agents asking her lots of questions and videotaping her testimony to be used against the traffickers. Carolina spent six months in detention in Pearsall, Texas, before another inmate called Catholic Charities on her behalf, and Linda Brandmiller, the Director of Immigration Services in San Antonio, came to see her.

"That was the first time that anyone told me I was a trafficking victim… She told me that someone would come to interview me again so that I could qualify for benefits… A week or so later, I was surprised that a woman brought a man with her to interview me. When they found me in the trunk of the car, initially I could not speak, and I am still very afraid of men. Even the staff at the detention facility kept men away from me because they knew the trauma I had suffered. I was nervous during the interview and did not feel comfortable at all."

Several weeks later, Carolina found out that the trafficking experts would not certify her as a trafficking victim because she said she had initially wanted to come to the USA. "I became so depressed at this news that I tried to commit suicide by cutting my wrists." Eventually Carolina was released pending a review of her case. In February 2011, more than two years after she was discovered in the car trunk, Carolina's application for a trafficking visa was approved, allowing her to remain in the USA, receive mental health and support services and eventually petition for residency. "For the first time in years, that night I slept soundly and I finally feel safe. Now I can finally begin to heal."

Although Carolina's abuse was reported to the police, the perpetrators were never prosecuted for the crime of trafficking and were deported to Mexico.[310]

Difficulties obtaining certificates of cooperation

In 2004, Kamchana (not her real name) came to the USA from Thailand believing that she had a job working in a restaurant. Once in the USA, she was held captive and forced into the sex industry. After several months, she was able to pay off her "debt" to the traffickers and came into contact with an anti-trafficking organization which identified her as a survivor of trafficking; helped her obtain services, such as health care and English classes, and a passport from the Thai embassy; and began preparing her T-visa application. In May 2006, she met with an agent from the Human Trafficking Rescue Alliance, a local coalition that includes the Harris County Sheriff's Office, the FBI, ICE, and local NGOs. Kamchana provided the agent with information about the traffickers and where she had been held. Early in 2007, Kamchana learned that the FBI was unable to bring criminal charges based on her information and as a result, declined to support her T-visa application, deeming her "non-cooperative." According to her attorney at the time, "someone who meets with the FBI three or four times to give their statement and travels to another city to pursue that, and someone who is open to their interrogations – to me, that defines someone who is cooperative." Kamchana went back underground, because she was afraid of what the traffickers would do to her if she were deported to Thailand. Eventually Kamchana was detained by ICE. Only after she refused to sign deportation papers and obtained the help of an advocate was Kamchana able to convince an immigration judge to reopen her case and allow her to submit her application for a T-visa. Several months later, after spending a year in detention, Kamchana was released. With the help of her advocate, she was approved for a T-visa in 2010.[311]

Although T-visa applicants, unlike U-visa applicants, are not required to provide a certificate[312] stating they are willing to assist in the investigation and prosecution of the crime, it is nevertheless helpful evidence in proving the survivor's cooperation. If law enforcement officials are reluctant or unwilling to issue certificates of cooperation to visa applicants, they can deprive survivors of remedies to which they are entitled under US law.

In practice, it can be difficult, if not impossible, for survivors to obtain certification. A guide on T-visas commissioned by the Department of Justice acknowledges that there are many circumstances in which law enforcement agents will not be able to grant certificates including, but not limited to when: "The [law enforcement agency] has not responded to a victim's report of a trafficking incident, the law enforcement agency has not been able to complete interviews needed for them to determine that the victim is a trafficking victim, the law enforcement agency has a policy not to provide certifications or has a timeline for providing certifications."[313]

However the certification requirement for U-visa applications may act as a barrier for victims of other crimes. An immigration lawyer told Amnesty International that local law enforcement officials have refused to sign U-visa certifications for any number of reasons including that the agent: fails to understand the visa's requirements; is unwilling to document the survivor's participation in law enforcement efforts; or, harbors negative attitudes towards immigrants generally.[314] Even when local law enforcement officers are trained on the purpose and details of the U-visa, advocates report that some law enforcement agencies still refuse to sign the certification forms for immigrants, incorrectly believing that by signing the certification the officer is giving the person a visa.[315]

Some reports indicate that prosecutors require witnesses to testify in court in order to get their certification, even though courtroom testimony is not required by the law. Furthermore, if a case is resolved without the witness having been given the opportunity to testify (even if they were willing to do so), the prosecutor may refuse to grant the certification on the grounds that the witness did not actually assist in the prosecution.[316] According to Wayne Krause of the Texas Civil Rights Project, one prosecutor informed him that a client's grand jury testimony was not sufficient for certification and that she would need to participate in the entire trial. He told Amnesty International: "[The prosecutors] are using [the survivors'] immigration status as a lever for what they need."[317]

Amnesty International raised these issues regarding the certification of U-visas with Police Chief Roberto Villaseñor of Tucson, Arizona. He described the current protocols including the requirement for an accompanying case report, participation by the applicant in the criminal investigation and a requirement that the investigation must be open. However, he stated: "We are not under an obligation to issue a U-visa recommendation. It can be done by someone else if we don't do it. If it's an active investigation of a case, then we can do it. People can also go to the County Attorney or the City Courts for the certification if we won't do it."[318] Amnesty International is concerned that the sort of policies described create unnecessary obstacles for survivors of crimes, forcing them to go from one law agency to another to seek certification, or having their application determined by the status of a criminal case, rather their status as survivors and witnesses.

Even after a person has obtained certification U-visa petitions may take a year or longer to be completed and, according to USCIS, the time taken to process applications in late 2011 was at least eight months.[319] During that time, individual applicants are not authorized to work and do not have access to social services such as food stamps, housing assistance or Medicaid. In addition, their irregular immigration status leaves them at risk of arrest, detention or deportation by the immigration authorities. As Luis Gonzalez, who works with survivors of crimes and witnesses for Texas Rio Grande Legal Aid in Del Rio, Texas, told Amnesty International: "what really hurts is wondering how they are going to survive."[320]

Inadequate access to assistance for trafficking survivors

Many trafficking survivors are either entirely unaware of existing protections afforded to them under US law or find the process of seeking immigration relief and other benefits too complex to navigate without the assistance of an advocate. However, DHS enforcement interrogations often take place without advocates present.[321] And once trafficking survivors are in detention, advocates and service providers find it difficult to reach and identify them.

According to Dottie Laster, an anti-trafficking advocate: "With no procedure to address the fact that victims are in detention, there is no way [for advocates] to identify cases. People are doing 'know your rights' presentations in jails, but it's not enough because it's hard to identify these victims."[322] As an example, she told Amnesty International about a client who was forced to undergo an interrogation lasting more than two hours with a male officer after she had previously expressed a fear of being alone in a room with a man. Elizabeth Crooks, who also works with trafficking survivors in Texas, explained: "Law enforcement gets offended if I demand to have an advocate in the room during the interview. Quite a few slip through the cracks because of it."[323]

Checkpoints and other obstacles

Undocumented immigrants petitioning for a T-visa or a U-visa, or relief under VAWA, may need to obtain medical testimony, psychological evaluation, or other relevant assistance in order to document their abuse and qualify for a remedy, a process that may take months or even years to complete. To access necessary documentation and services, undocumented immigrants near the border often have to travel through immigration checkpoints or to provide proof of legal status when stopped by roving patrols. As a result, undocumented immigrants may be detained for questioning, sometimes for lengthy periods, because officials do not recognize or accept their temporary immigration papers. In some cases, people have even had their documentation destroyed before being deported.[324]

An attorney who previously represented immigrants seeking U-visas at the border described how one of her clients with interim U-visa documentation had been detained and another deported because Border Patrol agents had refused to recognize the documents as valid. One client, who was eight months pregnant at the time was pulled over at a traffic stop in May 2007 and held overnight at a Border Patrol station with her seven-year-old son. Agents repeatedly told her that her U-visa interim relief documentation was fake, refused to let her call her attorney, and threatened to send her son back to Mexico with relatives who were being processed for removal. Finally, at 3pm the following day, she was released. In another, similar incident, a client traveling with her four children, who were US citizens, and two children with U-visa documents was stopped at a checkpoint in September 2007 as they were leaving Rio Grande valley. CBP agents did not believe that their documentation was valid and told her that if she did not agree to voluntary departure, they would detain her and her two daughters with U-visas and send her other children into Child Protective Services custody. She agreed to be deported to Mexico.[325]

To access the remedies available to them with a U-visa, survivors of sexual violence may need to undergo a medical exam to collect forensic evidence. However, undocumented immigrant survivors may be reluctant to go to a hospital or clinic because they fear that medical personnel will act unilaterally to report them to immigration authorities. Montserrat Caballero of the Su Voz Vale program of Southern Arizona Center Against Sexual Assault in Tucson, which provides culturally appropriate services for Latino survivors of sexual assault, told Amnesty International that some nurses at local hospitals will take it upon themselves to call CBP if a rape survivor comes in without documentation: "If CBP gets to them, we are able to do a rape kit [to collect the evidence], but the survivor will be [quickly deported]."[326] The reporting of undocumented survivors of sexual assault to immigration enforcement by hospital staff impedes the ability of survivors to seek justice and remedies that are available to them.

Under-reporting of violence in the home and family

Violence in the family and home is one of the most under-reported crimes in general and immigrant communities are no exception.[327] Studies suggest that only 50 per cent of women who experience domestic violence in society at large seek help from law enforcement agencies. For immigrant women who are undocumented or have temporary legal status, this figure drops to less than 20 per cent.[328] In a study on domestic violence in Latino immigrant households, the reason most often given by women for not reporting was fear that they would endanger their own immigration status, their abuser's status, or others in their community.[329] Abusers often use their partner's immigration status as a tool of control to prevent the victim from seeking help.[330]

For example, Isaac Harrington of the Texas Civil Rights Project described a case where a survivor of domestic violence in the process of receiving a U-visa went to the police for a background check to submit with her application for the visa. However, the local officers called ICE and she was detained for a week, even though she was breastfeeding a six-week-old child at the time. He told Amnesty International: "If that's the attitude they have towards immigrants, why would [immigrants] report [domestic violence]?" The

"IF YOU'RE A VICTIM OF DOMESTIC VIOLENCE AND GO TO COURT TO GET A PROTECTION ORDER OR IF YOU'RE A WITNESS TO A CRIME, YOU MAY NOT WANT TO REPORT IT AND STICK YOUR NECK OUT. THERE ARE RAMIFICATIONS FOR COMMUNITY SAFETY BECAUSE OF [THE FEAR OF IMMIGRATION ENFORCEMENT]."

Marisa Bono, Mexican American Legal Defense and Educational Fund (MALDEF), 24 February 2011

Texas Civil Rights Project no longer sends clients to the police to get documentation unless they are accompanied by a support worker.
In order to be eligible for immigration benefits and protection under VAWA, victims of domestic violence must demonstrate "good moral character." The requirement has been vigorously criticized, because mandatory arrest laws and policies and the nature of domestic violence enforcement can result in a criminal record for the survivor of violence.[331] Records of prior arrests, even those resulting from the domestic violence disputes from which the individual is seeking protection can result in women being denied benefits or protection because of this requirement.[332]

Anti-immigrant hate crimes

In May 2010, Juan Varela was shot and killed in Phoenix, Arizona, by his neighbor, Gary Kelley, who hurled racist abuse at Juan Varela and told him to "go back to Mexico". Gary Kelley then attempted to shoot Juan Varela's brother but his gun misfired. Juan Varela's family attributes his death to extreme ethnic tensions surrounding passage of Arizona's anti-immigration law S.B. 1070, which was about to take effect at the time (see Chapter 4).[63] Local officials initially declared that they did not think the crime was racially motivated. A month later, the County Attorney's Office stated that it did in fact consider the incident a hate crime.[334] At his criminal trial, the jury convicted Gary Kelley of second-degree murder and aggravated assault, but did not convict of him of a hate crime as an aggravating factor. In July 2011, Gary Kelley was sentenced to 27 and a half years in prison.[335]

Official statistics have shown a marked increase in "hate crimes" – crimes motivated by the victim's perceived identity, including race, national origin, religion, sexual orientation, gender or disability – against Latinos. According to FBI Uniform Crime Reports, which capture only a small percentage of the such crimes,[336] hate crimes against Latinos steadily and dramatically increased by 32 per cent from 2003 (426) to 2008 (561).[337] Of the hate crime offenses committed in 2008 that were motivated by prejudice on account of the victim's perceived ethnicity or national origin, 64 per cent were committed against Latinos, a significantly larger proportion than in 2003, when it was just 43 per cent.[338]

This dramatic increase in hate crimes against people perceived to be Latinos or immigrants is particularly troubling in light of the fact that hate crimes overall have actually decreased by 6 per cent during the same period. During this time, all other racial, ethnic, and religious groups had decreasing or unchanging rates of hate crimes.[339] The increase in anti-Latino hate crimes correlates with a significant rise in the number of active groups hostile to immigrants in the USA, according to a recent study produced by the Southern Poverty Law Center. Much of the growth in such groups has been in the southwestern border states of Texas, Arizona, and California where the immigration controversy is especially contentious.[340] In response to this growing problem, Congress has tasked the Department of Justice National Institute of Justice to research and evaluate the trends and causes of rising numbers of hate crimes against immigrants, those perceived to be immigrants, and people of Latino heritage.[341] The study was ongoing at the time of writing.

It is also important to note in the light of these statistics that an estimated 56 per cent of victims of hate crimes do not report them to the police, frequently because they believe the police will be unable or unwilling to help them.[342] Immigrants have the added fear that by reporting a crime, they will attract the attention of law enforcement, and find themselves subject to detention and deportation.[343]

Undocumented immigrants face the additional problem that in order to report a crime or to act as a witness to a crime they have to produce a valid form of identification. For example, the City of Houston, Texas, has an agreement with the Mexican government to allow the use of Mexican Matricular Consular Cards to act as a valid form of ID. However, Houston Police Department officers have discretion in accepting this.[344]

CHAPTER 7

BARRIERS TO EDUCATION AND HEALTH CARE

7

CHAPTER 7:

BARRIERS TO EDUCATION AND HEALTH CARE

IMMIGRANTS IN THE USA face particular barriers to accessing essential health care and education. New laws and policies at the state and local level have increasingly targeted Latinos for immigration enforcement and have contributed to a growing fear of deportation among immigrant communities, further restricting immigrants' rights to health and education.[345]

Access to Education

Education is both a human right in itself and an indispensable means of realizing other human rights.[346] Education has a protective role in reducing vulnerability to exploitation, trafficking, and child labor. It also serves as "the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities."[347]

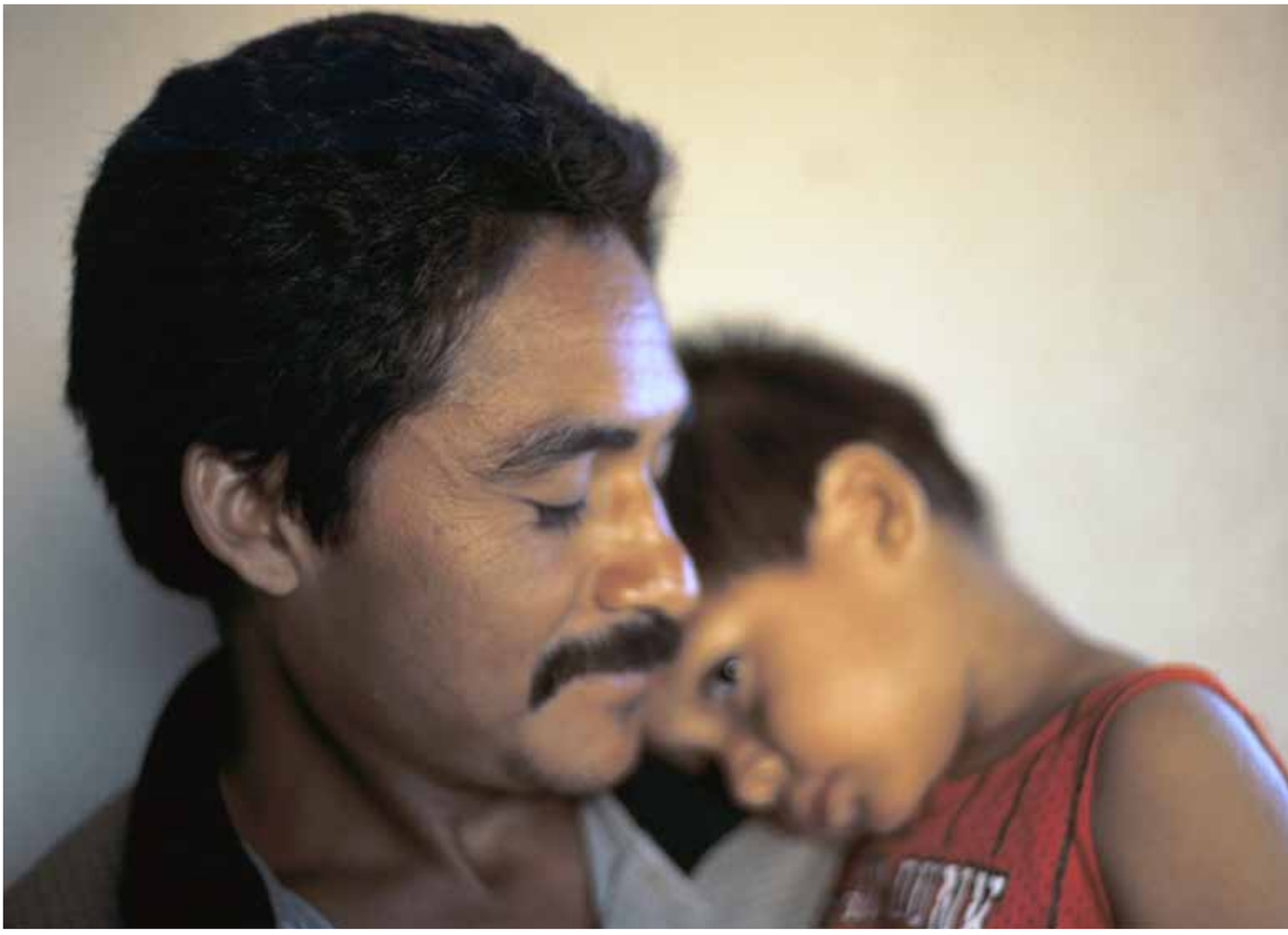
All US states have laws on compulsory education and free public education is available at the primary and the secondary levels.[348] Education is primarily a state, rather than federal, responsibility and state and local communities determine enrollment and graduation requirements. However, states and local school districts have an obligation to provide education in a manner consistent with US constitutional protections against discrimination.[349] In 1974, the US Supreme Court affirmed the government's duty to effectively educate non-English speakers.[350] In 1982 the Court ruled in Plyler v. Doe that the withholding by states of funds from school districts that provide education for unauthorized immigrant children is unconstitutional.[351]

However, US states and local school districts have proposed, and in some cases implemented, laws and policies that would limit access to education and create barriers for students who are undocumented or whose parents are undocumented.[352] According to the Pew Hispanic Center, there were roughly a million undocumented children in the USA in 2010.[353]

"THE RESULT WOULD BE TO CREATE A PERMANENT UNDERCLASS OF UNEDUCATED AND VULNERABLE CHILDREN."

Laurie Melrood, who works on guardianship issues for children in the Tucson area of Arizona, speaking to Amnesty International about proposed legislation in Arizona that would make it possible for states to exclude undocumented children from the public education system, 8 November 2010

Alabama's H.B. 56, enacted on 9 June 2011, includes a provision that would allow schools to inquire about an incoming student's immigration status. The ACLU and the Alabama-based



Doctor holding a Mexican immigrant child at a clinic in the Rio Grande Valley, Texas.
© Alison Wright/Corbis

PREVIOUS SPREAD

Photo courtesy of Tasya van Ree

Southern Poverty Law Center filed a lawsuit against the state of Alabama, seeking to prevent the enforcement of the new law.[354] The law was initially upheld by the federal district court in Alabama. However, on 14 October 2011, the federal court of appeals blocked the entry into force of that provision while the law's constitutionality is being further reviewed.[355] The review had not been completed at the time of writing.

Portions of the state's Hispanic students stopped attending school as soon as the lower court ruled that Alabama's H.B. 56 could go into effect, despite the fact that data collection on students' immigration status would not begin until the following school year. According to media accounts, several days after a federal judge upheld portions of Alabama's H.B. 56 law, more than 100 students had withdrawn from the schools in the small town of Albertville and even more were absent. Statewide, nearly 2,000 Hispanic students were reportedly absent from school immediately following the announcement of the Judge's decision, which represented nearly an 80 per cent increase when compared to the previous week.[356] Although H.B. 56 will probably continue to be challenged in court, it has clearly served to deter immigrant and mixed-status families and children from registering and attending classes.

Similar laws have been proposed in Arizona, Oklahoma, Tennessee, Texas and Virginia.[357] In 2011, both Arizona and Texas state legislatures proposed, but did not pass, bills that would require schools to gather information on whether students were lawfully residing in the USA.[358] The Texas bill would require schools to collect data on how many undocumented students attend Texas schools, who they are, and where they live.[359] Some Hispanic leaders and school officials have opposed these types of bills on the grounds that they would deter immigrant children from attending schools and force school administrators to act as federal immigration agents.[360]

The US Administration has attempted to address the exclusion of students based on their or their parents' immigration status and to mitigate the chilling effects of the proposed and enacted state legislation. The US Department of

THE DREAM ACT

Certain states have taken proactive steps to ensure undocumented students have access to higher education. California, for example, enacted legislation in 2011, which would allow undocumented students at public universities who meet certain requirements to access privately funded scholarships as well as state-funded financial aid.[362] California's legislation came as a response to Congress' failure to pass the federal Development, Relief, and Education for Alien Minors (DREAM) Act. The DREAM Act would provide an opportunity for some undocumented immigrant students to pursue higher education by returning to states the authority to determine who qualifies for in-state tuition. It would also provide conditional legal status to immigrant students if they finish high school and attend college or join the military for two years. Students who complete all requirements will have the opportunity to permanently legalize their immigration status.[363] Although the DREAM Act has been introduced in Congress repeatedly[364] over the past 10 years, at the time of writing it had not been passed.

Education's Civil Rights Division and the US Department of Justice indicated in a letter sent to school districts nationwide that school district practices that may chill or discourage school enrollment based on immigration status violate the US Supreme Court's decision in Plyler v. Doe.[361]

Access to health care

"Immigration status trumps medical care." –

Montserrat Caballero, Southern Arizona Center Against Sexual Assault – Su Voz Vale, 9 November 2010

Along with individuals living in poverty and communities of color,[365] documented and undocumented immigrants face considerable barriers in accessing essential health care services in the USA, including financial barriers and the fear of being reported for immigration enforcement. Often such concerns delay or prevent undocumented immigrants from seeking care and result in hospital emergency room visits for illnesses and conditions that have become critical due to a lack of preventative care or early intervention treatment.[366]

Many people living in the USA do not have health care insurance and the cost of paying for medical care is often prohibitive. While the Patient Protection and Affordable Care Act of 2010 (often referred to as "health care reform") is expected to substantially improve health coverage, significant gaps remain. Many of the provisions that would increase health coverage will not be implemented until 2014 or later. Even following full implementation, undocumented immigrants and documented immigrants living in the USA for less than five years will remain ineligible for publicly funded or subsidized health care coverage.[367] The exception to this bar is that states were recently given the option of covering documented immigrant children and pregnant women who have entered the USA in the last five years, if they so choose.[368]

Immigrants are far more likely to be uninsured than people born in the USA. In 2008, over 44 per cent of non-citizens were uninsured,[369] and among undocumented immigrants, approximately 60 per cent of adults had no insurance.[370] By comparison, about a third of all Hispanics (36 per cent) were uninsured, compared to 13 per cent of the white population and 22 per cent of African Americans.[371] Of the five states with the highest percentages of people who are not insured, four states – Arizona, Nevada, New Mexico, and Texas – are located on or near the southwestern border and have a high percentage of undocumented immigrants, and the fifth, Florida, also has a high percentage of immigrants.[372]

Even if a low-income undocumented immigrant or a documented immigrant who has entered the country in the last five years has a serious, even potentially fatal, medical condition, the federal funding available to them is extremely limited. In order to be covered, Emergency Medicaid requires the "sudden onset" of acute

symptoms of sufficient severity that the absence of immediate treatment could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment of bodily functions, or serious dysfunction of a bodily part.[373] Emergency Medicaid does not pay for treatment of chronic conditions, such as cancer, even if the condition is potentially or even certain to become life threatening.[374]

Fear of deportation is among the major factors undocumented immigrants take into account when deciding whether to seek medical care.[375] Amnesty International has received reports of undocumented immigrants being denied treatment, receiving substandard care or being reported to CBP when seeking medical care at hospitals in Arizona.[376] Advocates in Tucson, Arizona, who work with victims of crime report that local hospitals often check the immigration status of individuals seeking medical care and call CBP to detain those they suspect of being undocumented.[377]

Existing and proposed legislation and regulations include provisions requiring the collection at health facilities of information regarding immigration status. This has led to fears that the information will be passed to the immigration authorities. In 2003, Congress authorized some funding relief for hospitals providing uncompensated care to unauthorized immigrants. However, in order to qualify for federal reimbursement for emergency care, hospitals are required to collect information proving that the patient is ineligible for public insurance, including information regarding their immigration status.[378]

leaders, among others, criticized the bill, saying it would turn hospital staff into de facto ICE agents and would force undocumented immigrants to weigh the risk of being deported against the risk of forgoing medical treatment.[380]

Access to medical services is essential for individuals to enjoy the right to health. States should not enact legislation that deters undocumented immigrants from receiving medical care or requires the collection of immigration status. Amnesty International calls on the Office of Civil Rights for the US Department of Health and Human Services to investigate reports that hospitals or medical personnel are actively assisting immigration enforcement and ensure that they are prohibited from inquiring into the immigration status of patients unless it is necessary for determining eligibility for coverage and/or required under federal law.

Although undocumented immigrants are ineligible for many federal and state benefits, their US citizen children may be wrongfully denied services and benefits despite being eligible for them. The children of undocumented immigrants are already at greater risk than other children in the USA of having no health insurance – in 2007, nearly half of the children born to unauthorized immigrants had no health insurance, as compared to the national rate of 11 per cent for all under-18s. However, the enactment of state legislation which requires the disclosure of a person's immigration status during the application process for benefits may impact their access to health and nutrition even further.

In Arizona, under H.B 2008,[381] parents who

"[ARIZONA HOUSE BILL] 2008 TARGETS MIXED [IMMIGRATION] STATUS FAMILIES AND PERPETUATES THE SEPARATION OF FAMILIES. US CITIZEN CHILDREN ARE NOT GETTING WHAT THEY NEED. [WHEN THE LAW IS ENFORCED AND PARENTS ARE DEPORTED,] PARENTS HAVE TO DECIDE TO BRING THEIR KIDS TO A COUNTRY THEY'VE NEVER KNOWN, OR THE KIDS CAN END UP IN CHILD PROTECTIVE SERVICES EVEN THOUGH THEY HAVE LOVING PARENTS THAT WANT TO BE WITH THEM."

Hannah Hafter, No More Deaths,
8 November 2010

Some states have introduced legislation that would restrict access to health care services for immigrants even further. For example, Arizona Senate Bill 1405 was among a number of anti-immigrant bills proposed in the Arizona State Legislature in 2011. It would have required hospitals to check the immigration status of patients and notify immigration enforcement if they could not confirm that an individual was in the country legally.[379] Local medical and faith

are undocumented and are seeking benefits for their US citizen children, such as food, health care and housing benefits, have been required to provide identification and, in some cases, sworn affidavits affirming their own citizenship.[382] Agencies are required to turn over to ICE the names of people who they believe may be illegal immigrants.[383] If staff members of the Arizona Department of Economic Security, the state agency in charge of determining eligibility for

benefits, do not report undocumented applicants to ICE, the staff member can be fined and prosecuted under the law and serve up to four months in jail.[384] As of November 2010, the two main Arizona state agencies administering public benefits had reported 1,503 people to ICE.[385] In August 2010, Valle del Sol, a non-profit organization that provides health and social services to Latinos in Arizona, filed a discrimination complaint with the Office of Civil Rights at the US Department of Health and Human Services against the main agencies enforcing H.B. 2008.[386]

In 2011, Alabama enacted H.B. 56 (see Chapter 4), Section 7 of which includes the same reporting requirements for immigrants to access benefits, including those for their US citizen children, as Arizona's H.B. 2008.[387] Although several of the provisions of H.B. 56 are currently prohibited by federal courts following lawsuits filed by the Department of Justice and local NGOs, Section 7 was not included in the lawsuits and was in effect at the time of writing.[388]

H.B. 2008 and other bills which affect the ability for children of immigrants who are US citizens to access benefits administered by the state are in violation of guidance provided by the US Department of Health and Human Services, which states, "states may not require applicants to provide information about the citizenship or immigration status of any non-applicant family or household member or deny benefits to an applicant because a non-applicant family or household member has not disclosed his or her citizenship or immigration status."[389] Bureaucratic procedures including burdensome documentation requirements pose significant obstacles and delays to accessing services[390] for US citizen children of undocumented immigrants in violation of the right to health.[391]

Denial of benefits that provide access to adequate food and nutrition, which is a necessary underpinning of the right to health, further disadvantages such children and increases obstacles to achieving their right to the highest attainable standard of health.[392] The UN Committee on the Elimination of Racial Discrimination has emphasized that "Different treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and the purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim".[393] Any restrictions on access to health care services or education by the US authorities have to meet these criteria and the US authorities must ensure that health care and education systems are equitable, non-discriminatory, and accessible to all, including non-US citizens.

"STATES PARTIES UNDERTAKE TO… GUARANTEE THE RIGHT TO EVERYONE, WITHOUT DISTINCTION AS TO RACE, COLOUR, OR NATIONAL OR ETHNIC ORIGIN, TO EQUALITY BEFORE THE LAW… IN THE ENJOYMENT OF… (E)(IV) THE RIGHT TO PUBLIC HEALTH, MEDICAL CARE, SOCIAL SECURITY AND SOCIAL SERVICES; (V) THE RIGHT TO EDUCATION AND TRAINING…"

Article 5, International Convention on Elimination of All Forms of Racial Discrimination

CHAPTER 8

AMNESTY INTERNATIONAL'S RECOMMENDATIONS

CHAPTER 8

AMNESTY INTERNATIONAL'S RECOMMENDATIONS

THIS REPORT HIGHLIGHTS the link between violations of immigrants' rights in the southwestern states of Texas and Arizona and the failure of federal, state and local authorities to enforce immigration laws on the basis of non-discrimination. The report demonstrates that communities living along the border – particularly Latinos and individuals perceived to be of Latino origin, and Indigenous communities – are disproportionately affected by a range of immigration control measures, resulting in a pattern of human rights violations.

The failure to respect and protect immigrants' right to life; to prevent and address racial profiling by law enforcement officials; to ensure access to justice for immigrant survivors of crime; to ensure equitable access to the rights to health and education; and to hold state officials and private individuals or groups accountable for abuses of immigrants' rights – all breach international human rights standards.

These following recommendations set out specific steps that need to be taken to address violations of immigrants' rights.

Ensure federal and state laws respect immigrants' rights

1. **ALL IMMIGRATION ENFORCEMENT** (known as ICE ACCESS programs) should be suspended pending a review by the Department of Homeland Security's Office of Inspector General to determine whether the programs can be implemented in a non-discriminatory manner.

2. **THE US CONGRESS** should ensure that all laws related to immigration, including migration control and immigration enforcement, respect immigrants' rights in accordance with its obligations under human rights law and standards.

3. **ALL STATE GOVERNMENTS** should ensure that state legislation respects immigrants' rights, including the rights to freedom from discrimination, to due process and the rights to health and education. In the event that legislation is passed at the state level that interferes with the rights of immigrants, the federal government should intervene to ensure that the federal responsibility for immigration enforcement is not impinged upon by the state law, and if necessary the US Department of Justice should review the constitutionality of the law and intervene as necessary to ensure that the law does not result in discrimination, or other rights violations.

4. **THE US GOVERNMENT** should ratify the International Convention on Economic Social and Cultural Rights and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families to ensure the protection of Economic, Social, and Cultural Rights for all individuals, including immigrants.

Ensure that border policies respect and protect the right to life

5. **THE US CONGRESS** should review and revise the policy of "prevention by deterrence" implemented in its 1994 Plan for border control to ensure the policy control policies and practices are compliant with the USA's obligations under international law and standards, including with the right to life.

6. **THE GOVERNMENT ACCOUNTABILITY OFFICE** should update its 2006 review of migrant deaths in order to evaluate whether Customs and Border Protection has provided consistent protocols and procedures across all sectors to ensure accurate data collection on the numbers of migrants who lose their lives while crossing the US-Mexico border. Accurate data collection is essential in order to have a full and comprehensive analysis of the factors that contribute to these deaths and the steps that will be needed to mitigate the prevalence of migrant deaths along the border.

7. **THE CIVIL RIGHTS DIVISION** of the U.S. Department of Justice should review border policies and practices to see if border agents are engaging in a pattern of civil rights violations. The Department of Justice, which oversees the National Missing and Unidentified Persons System, should reform the online database system to allow foreign nationals to upload information of missing family members who may have crossed into the USA in order to help facilitate the identification of remains of those migrants found after crossing into the USA.

8. **BORDER STATES SHOULD** increase the number of water stations and cell towers along migrant paths in order to prevent migrant deaths and help lost individuals who are in distress to contact Border Patrol.

Respect rights of Indigenous Peoples along international borders

9. **THE US GOVERNMENT** must ensure that all immigration laws, policies and practices respect the rights of Indigenous peoples and adhere to the standards set in the UN Declaration on the Rights of Indigenous Peoples.

10. **THE US GOVERNMENT** should undertake immediate consultations with Tribal Nations that straddle the border to develop solutions, policies and practices that respect the human rights of Indigenous Peoples regarding migration enforcement and immigration enforcement on Tribal lands.

11. **US CUSTOMS AND BORDER PROTECTION** should respect and facilitate the use of Indigenous Nations/ Tribal passports, identifications, and immigration documents for travel across borders, specifically for Tribes along borders between Mexico and the USA. The Department of Homeland Security should ensure that qualifications for these documents are not so burdensome as to create a barrier for Indigenous Peoples and members of non-federally recognized Tribes to qualify.

12. **US CUSTOMS AND BORDER PROTECTION** should recognize and permit the use of traditional, rural crossing points for indigenous communities and adopt policies and procedures that allow for the exercise of discretion by Border Patrol agents regarding the use of Tribal IDs at traditional, rural crossing points.

13. **IN COOPERATION** and with the participation of the Tribal Councils and local Indigenous rights activists and organizations of each relevant Indigenous Nation, US Customs and Border Protection should provide comprehensive training in Tribal languages, cultures and customs of the Indigenous Tribes where Border Patrol agents are stationed.

End discrimination in the enforcement of immigration laws

14. **THE US CONGRESS** should ensure that the End Racial Profiling Act is fully debated. It should establish national standards and prevent law enforcement from engaging in racial profiling among communities of color and immigrants. The Act should then be passed into law as a matter of priority.

15. **ALL STATE LEGISLATURES** should pass legislation that explicitly prohibits racial profiling by state, county and local law enforcement agencies, and require the collection of data disaggregated by race, age and gender in order to identify and assess whether or not law enforcement activities result in racial profiling.

16. **THE DEPARTMENT OF HOMELAND SECURITY'S** Office of Inspector General should immediately conduct and complete thorough reviews of all relevant immigration enforcement programs, including the Immigration and Customs Enforcement Agreements of Cooperation in Communities to Enhance Safety and Security – Criminal Alien Program, the Secure Communities program and 287(g) agreements – to determine whether they are resulting in racial profiling and/or other human rights violations. These programs should be suspended pending the completion of the reviews and until it can be determined that the programs can be operated in a non-discriminatory manner. Transparent oversight and accountability measures must be put in place in order to prevent, identify, and address violations of civil and human rights.

17. **ALL STATE, COUNTY AND LOCAL** police departments should implement policies that prevent officers from inquiring into the immigration status of individuals when people are reporting crime as victims or witnesses so that immigrants are not afraid of reporting victimizations. Police have an obligation to ensure the public safety of all community members.

Ensure that border officials are adequately trained

18. **THE DEPARTMENT OF JUSTICE** should conduct a review of federal law enforcement policies and training on the use of force and firearms, to ensure that they conform fully to international standards, including those set out under the UN Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of force and Firearms.

19. **THE DEPARTMENT OF HOMELAND SECURITY** should ensure that training for all federal agents stationed at the border covers such issues as human rights, civil rights, cultural sensitivity and community relations with communities along the border, and that it includes practical exercises.

Improve accountability

20. **THE DEPARTMENT OF HOMELAND SECURITY** should implement the recommendations developed by the multi-stakeholder US-Mexico Border and Immigration Task Force. These include the creation of a Review Commission to assess, monitor and investigate all federal border and immigration policies; and the development of a structured, accessible and transparent complaint process; the imposition of appropriate disciplinary, and where necessary criminal, measures are taken against agents found responsible for human rights violations.

21. **THE DEPARTMENT OF HOMELAND SECURITY** should ensure that immigrants apprehended at the border are treated without discrimination and that all immigrants who are apprehended, detained or deported are informed of available complaints mechanisms, including mechanisms available to document and report abuses after removal to their country of origin.

22. **THE DEPARTMENT OF HOMELAND SECURITY'S** Office of the Inspector General should conduct an investigation into Customs and Border Protection practices and abuses along the border, in particular around ill-treatment of members of communities of color, including immigrants and Indigenous Peoples.

23. **IF IT IS FOUND THAT** offenses committed by Customs and Border Protection agents amount to human rights violations, agents must be brought before courts in processes which respect international fair trial standards, and victims should receive reparations.

Ensure due process protections during immigration detention and deportation proceedings

24. **THE SECRETARY OF** the Department of Homeland Security should ensure that every person who is at risk of removal from the USA is given access to a judicial hearing, interpretation services and to a review by a judicial authority in the event of a negative decision. All immigrants in detention while in removal proceedings should have access to legal representation in order to be able to challenge their detention.

25. **IMMIGRATION AND CUSTOMS ENFORCEMENT** should ensure that every person who is at risk of removal from the USA is given an opportunity for international protection, including trafficking survivors and asylum-seekers, and access to a review by a judicial authority for any negative decision.

26. **THE OFFICE OF CIVIL RIGHTS** and Civil Liberties of the Department of Homeland Security should conduct a review of all immigration removal programs and implementation practices, investigating specifically whether immigration officers are coercing immigrants into waiving their rights to appear before an immigration judge. Safeguards should be developed and implemented to ensure that immigrants understand and can exercise their right to appear before a judicial body

Aim to preserve family unity in immigration detention and deportation proceedings

27. **THE US CONGRESS** should restore authority to immigration judges to exercise discretion and consider all of the factors of an individual case, such as long-term ties to the USA or the impact on mixed-status families, that would result in an interference with the right to family and private life.

28. **IMMIGRATION AND CUSTOMS ENFORCEMENT** headquarters should monitor whether field and national officers are exercising prosecutorial discretion at all points of decision-making consistent with the memo issued on the 30 June 2010 by the Assistant Secretary of Immigration and Customs Enforcement. Specifically it should ensure that officers' decisions to pursue immigration charges and to issue detainers, to place individuals in removal proceedings, or to detain individuals during removal proceedings, are consistent with the stated goals of preserving family unity.

29. **IMMIGRATION AND CUSTOMS ENFORCEMENT** should suspend all deportation proceedings against individuals who would qualify for permanent residency under any proposed Development, Relief and Education for Alien Minors Act and not seek to deport individuals with strong ties to the USA and minimal ties to their country of origin.

Ensure equitable access to justice and protection for survivors of crimes

30. **THE US CONGRESS** should pass the Violence Against Women Reauthorization Act of 2011 and the Trafficking Victims Protection Reauthorization Act of 2011.

31. **THE US CONGRESS** should pass legislation that would make law enforcement certification for U-visa applications optional, as it is with T-visas. Criteria must be developed to make the process to obtain certification and any reasons for denial, transparent and uniform. This should include eliminating barriers put in place by local law enforcement agencies.

32. **LAW ENFORCEMENT AGENCIES** should refrain from instituting policies not required by law that limit the possibility of certification for U-visas and T-visas or that would place a burdensome restriction on applicants who may qualify for protection.

33. **THE DEPARTMENT OF HOMELAND SECURITY** should clarify and issue guidance to law enforcement agencies that when no prosecution or investigation was pursued or a case is closed, survivors remain eligible to receive U-visa certification.

34. **US CUSTOMS AND BORDER PROTECTION** must immediately develop, distribute and implement training materials in consultation with the Department of Homeland Security Office for Civil Rights and Civil Liberties and must ensure that all officers are trained to be aware that at any time they may be interacting with a survivor of trafficking or another ground for protection. Customs and Border Protection must ensure that adequate mechanisms are in place to monitor compliance with any training conducted.

35. **THE DEPARTMENT OF HOMELAND SECURITY** should encourage partnering between local law enforcement agencies and federal immigration authorities in the identification of trafficking and other crimes to prevent the prosecution and deportation of survivors. Immigration and Customs Enforcement should ensure that survivors of trafficking and other crimes are not detained pending resolution of their claims.

36. **TRAFFICKING AND CRIME VICTIM** support service providers should be present at all immigration raids and allowed to participate in all interviews of potential survivors of crimes eligible for protection to ensure that such survivors are identified and not prosecuted or detained and that they receive the social and mental health services they need and are entitled to.

37. **UPON COMPLETION OF** the currently ongoing study by National Institute of Justice on the trends and causes of rising number of hate crimes against immigrants and those perceived to be immigrants, and people of Latino heritage, the Department of Justice should promptly make the findings of the study public and urge Congress to adopt specific measures to address the causes of such crimes.

Ensure equitable access to education

38. **THE EDUCATIONAL OPPORTUNITIES SECTION** of the Department of Justice's Civil Rights Division and the Department of Education's Office for Civil Rights should monitor compliance with Plyler v. Doe and undertake an investigation into attempts by States to undermine it through the enactment of legislation.

39. **THE US CONGRESS** should pass the Development, Relief and Education for Alien Minors Act to allow undocumented high-school graduates to attend college or university and provide a path to citizenship for children who were brought to the USA without authorization.

Ensure access to health care

40. **THE OFFICE OF CIVIL RIGHTS** for the US Department of Health and Human Services should investigate the effect of Arizona H.B. 2008 on access to health care services available to immigrants and children of immigrants in that state.

41. **STATE AGENCIES AND BENEFIT ADMINISTRATORS** should implement binding regulations prohibiting employees from inquiring about the citizenship or immigration status of non-applicant household members, such as parents, who apply for benefits for their US-citizen children, in compliance with guidance provided by the US Department of Health and Human Services and the US Department of Agriculture.

42. **THE US DEPARTMENT** of Health and Human Services and the US Department of Agriculture should update and re-issue its guidance to state health and welfare agencies regarding the questioning of non-applicant household members regarding their immigration status and monitor whether state agencies are complying with this guidance.

43. **THE OFFICE OF CIVIL RIGHTS** of the Department of Health and Human Services should investigate whether hospitals are denying essential health care to undocumented immigrants, either in practice or policy, by reporting undocumented patients to immigration authorities, including in states where legislation has been introduced that restricts access to health care services for immigrants.

ENDNOTES

1 Amnesty International interview with Alfredo G., 12 April 2011.

2 T. Fertig, "Lawmaker's immigrant remark draws gasps," The Wichita Eagle, 14 March 2011, available at http://www.kansas.com/2011/03/15/1762925/lawmakers-immigrant-remark-draws.html, last visited 10 February 2012.

3 E. Lach, "GOPer compares illegal immigrants to grasshoppers," Talking Points Memo, 30 April 2010,available at http://tpmlivewire.talkingpointsmemo.com/2010/04/rep-poe-compares-illegal-immigrants-to-grasshoppers.php, last visited 11 February 2012.

4 Pew Hispanic Center, Unauthorized immigrant population: National and state trends, 2010, February 1, 2011, available at http://pewhispanic.org/reports/report.php?ReportID=133, last visited 11 February 2012 (Pew Hispanic Center, Unauthorized immigrant population); Migration Policy Institute, Annual Immigration to the United States: The Real Numbers, No. 16, May 2007, available at http://www.migrationpolicy.org/pubs/FS16_USImmigration_051807.pdf, last visited 11 February 2012. See also DHS, Yearbook of immigration statistics: 2007, Washington, DC, September 2008, available at http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2007/ois_2007_yearbook.pdf, last visited 11 February 2012.

5 Pew Hispanic Center, Unauthorized immigrant population; M. Hoefer, N. Rytina and B. C. Baker, Estimates of the unauthorized immigrant population residing in the United States: January 2007, US DHS, Office of Immigration Statistics, Policy Directorate, Table 3, p.4, available at http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2007.pdf, last visited 11 February 2012.

6 For example, a person is required to have a sponsor who earns at least 125 per cent of the federal poverty line to receive a US immigrant visa. 8 U.S.C. § 1183(a)(1)(A) (2011).

7 Index: AMR 41/014/2010.

8 Hampton v. Mow Sun Wong, 426 U.S. 88 (1976), stating that the power of the federal government to establish a uniform Rule of Naturalization under Art. 1, sec. VIII of the US Constitution implies the federal power to regulate immigration, which the states do not possess.

9 Amnesty International documented abuses against immigrants in the USA in three earlier reports: Jailed without justice: Immigration detention in the USA (2009); 'Why am I here?'– Children in immigration detention (2003); and Lost in the labyrinth: Detention of asylum seekers (1999).

10 D. Weissbrodt, Final report on the rights of non-citizens, UN Doc E/CN.4/Sub.2/2003/23, para. 6 (2003), cited in Amnesty International, Living in the shadows, (Index: POL 33/006/2006), p20.

11 UDHR, G.A. Res. 217A, at 71, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc A/810 (12 Dec. 1948).

12 ICCPR Art. 6; and Migrant Workers Convention Art. 9.

13 ICCPR Art. 7; CAT Art. 2; and Migrant Workers Convention Art. 10.

14 ICCPR Art. 2(1), Art. 26; ICESCR Art. 2(2); CRC Art. 2(1); ICERD Art. 1(1); and CEDAW Art. 1.

15 ICCPR Art. 16; and Migrant Workers' Convention Art. 24.

16 ICCPR Art. 8(1) & (2); and Migrant Workers Convention Art. 11(1)); ICCPR Art. 11; Migrant Workers Convention Art. 20(1)).

17 ICESCR Art. 12; ICERD Art. 5(e)(iv); CEDAW Art. 12 and 14(b); CRC Art. 24 & 25; Migrant Workers Convention Art. 28.

18 ICESCR Art. 13 & 14; CRC Art. 28 & 29; ICERD Art. 5(e)(v); and Migrant Workers Convention Art. 30.

19 The USA has not yet signed the Migrant Workers Convention.

20 Vienna Convention on the Law of Treaties, Art. 18

21 ICCPR Art 2.

22 See, UN Human Rights Committee, General Comment No. 31, The Nature of the General Legal Obligations Imposed on State Parties, 26 May 2004, CCPR/C/21/Rev.1/Add.13; and CEDAW Committee, General Comment No. 19, Violence Against Women.

23 CBP's power to control the border is created by 8 U.S.C. § 1347(a)(2) and is explained in 8 C.F.R. § 287.1.

24 Immigration and Nationality Act (INA) of 1952 (McCarran–Walter Act), Pub. L. No. 82-414, 66 Stat. 163 (1952).

25 INA §287(a)(2).

26 INA § 236(c).

27 INA § 236(c) and § 236(e).

28 The UN Working Group on Arbitrary Detention has explicitly stated that where the detention of unauthorized immigrants is mandatory, regardless of their personal circumstances, it violates the prohibition of arbitrary detention in Article 9 of the UDHR and Article 9 of the ICCPR. See Report of the Working Group on Arbitrary Detention on its visit to the United Kingdom, E/CN.4/1999/63/Add.3, 18 December 1998, Recommendation 33.

29 INA § 236(c) and IIRIRA §303(c)(1).

30 Amnesty International, Irregular Migrants and Asylum-seekers: alternatives to immigration detention (Index: POL 33/001/2009).

31 R. Menendez, "Menendez, colleagues re-introduce comprehensive immigration reform", 22 June 2011, available at http://menendez.senate.gov/newsroom/press/release/?id=0c6c73f2-5366-4fde-bd9d-4e5d85c1b8f3, last visited 11 February 2012.

32 H.R. 1482, 112th Cong. (2011).

33 The bill provides an opportunity to gain legal status for undocumented students who entered the country before the age of 15, have been physically present in the USA for at least five years, graduate from high school, and complete at least two years of college or military service. Absent actions or convictions that would undermine a determination of "good moral character".

34 H.R. 1918, 107th Cong. (2001) and S. 1291, 107th Cong. (2001); See, for example, H.R. 1684, 108th Cong. (2003); S. 1545, 108th Cong. (2003); H.R. 5131, 109th Cong. (2006); S. 2075, 109th Cong. (2005); H.R. 1275, 110th Cong. (2007); S. 774, 110th Cong. (2007); S. 2205, 110th Cong. (2007); H.R. 6497, 111th Cong. (2010).

35 Email from Robin Reineke, PCOME – Project on Missing and Unidentified Migrants, 9 January 2012.

36 B. McCombs, "Decade of Death: Medical examiner's office works to ID illegal border crossers, give families peace," Arizona Star 24 August 2010, available at http://azstarnet.com/news/local/border/article_d8972316-b63a-5e4a-ad01-8518b00127730.html, last visited 11 February 2012 (B. McCombs, Decade of Death).

37 M. Jimenez, Humanitarian crisis: Migrant deaths at the US–Mexican Border, ACLU of San Diego and Mexico's National Commission of Human Rights, 1 October 2009, p17, available at http://www.aclu.org/files/pdfs/immigrants/humanitariancrisisreport.pdf, last visited 11 February 2012 (M. Jimenez, Humanitarian crisis).

38 The Green Valley Samaritans is a volunteer organization that provides water to those crossing the desert (known as water drops), conducts searches for migrants on the trails in the Sonoran desert, and organizes clean-ups of areas where migrants leave their belongings.

39 M. Jimenez, Humanitarian crisis, p.17; D. S. Massey, Illegal immigration: Border-crossing deaths have doubled since 1995; Border Patrol's efforts to prevent deaths have not been fully evaluated, GAO, August 2006, Table 1, pp. 14, 47, ("GAO, Illegal immigration: Border-crossing deaths have doubled") available at http://www.gao.gov/new.items/d06770.pdf, last visited 11 February 2012.. CBP numbers for 2005-2008. According to a report by the ACLU and Mexico's National Commission of Human Rights, migrant deaths recorded along the border rose from 23 in 1994 to 827 in 2007. CBP numbers, however, were lower; the CBP figure for 2007 is 329 recorded deaths. (M. Jimenez, Humanitarian crisis, p.17). The discrepancy in the number of reported migrant deaths can be attributed partially to the fact that CBP numbers do not include cases where local law enforcement is the first to respond to reports by humanitarian groups, local residents or other migrants.

40 GAO, Illegal immigration: Border-crossing deaths have doubled.

41 M. Jimenez, Humanitarian crisis, page 17.

42 Border Patrol Strategic Plan 1994 and Beyond, US Border Patrol, July 1994, pp1–14, on file with Amnesty International. "Illegal entrants crossing through remote, uninhabited expanses of land and sea along the border can find themselves in mortal danger," page 2.

43 Border Patrol Strategic Plan 1994 and Beyond, pp. 2, 5 and 7.

44 In 2004, the plan was revised to take into account more national security issues following the 11 September 2001 attacks. However it still formed the basis of all enforcement operations along the southern border. See, "National Border Patrol Strategy," US Customs and Border Protection, Office of Border Patrol, on file with Amnesty International.

45 Backgrounder: Southwest border security operations, National Immigration Forum, December 2010, pp5-6, available at http://www.immigrationforum.org/images/

uploads/SouthwestBorderSecurityOperations.pdf, last visited 11 February 2012.

46 J. A. Vargas, "US border patrol abuses, undocumented Mexican workers, and international human rights", 2 San Diego International Law Journal. 1, 65 (2001).

47 M. D. Fan, "When deterrence and death mitigation fall short: Fantasy and fetishes as gap-fillers in border regulation", 42 Law & Society Review. 701, 707 (2008) (internal citations omitted), (M. D. Fan, "When deterrence and death mitigation fall short").

48 E. Lavandera, "Drones silently patrol US borders," CNN, 12 March 2010, available at http://articles.cnn.com/2010-03-12/us/border.drones_1_border-patrol-predator-unmanned-aircraft/2?_s=PM:US, last visited 11 February 2012. CBP, US guardian UAS maritime variant predator B: Fact sheet, available at http://www.cbp.gov/linkhandler/cgov/newsroom/fact_sheets/marine/uas.ctt/uas.pdf, last visited 11 February 2012.

49 CBP, "Obama administration announces Aug 1 National Guard deployment to support federal law enforcement along the southwest border", Press Release, 19 July 2010; "US predator drones to surveil Mexican border", Associated Press, 24 June 2010, available at http://www.foxnews.com/us/2010/06/24/use-surveillance-drones-mexican-border/, last visited 11 February 2012.

50 Amnesty International Interview with Kat Rodriguez, Coalición De Derechos Humanos, 10 November 2010.

51 Haddal, Chad C., "Border Security: The Role of the U.S. Border Patrol", Congressional Research Service, 11 August 2010, pp. 14-15, available at: http://www.fas.org/sgp/crs/homesec/RL32562.pdf, last visited 11 February 2012.

52 Amnesty International Interview with Dr. Bruce Parks, PCOME, 28 April 2011.

53 "Yearly body count at the Pima County Medical Examiner's Office, Arizona Daily Star, 24 August 2010, available at http://azstarnet.com/article_52acfa44-afc7-11df-af87-001cc4c002e0.html, last visited 11 February 2012.

54 K. Eschback, et al, "Causes and Trends in migrant deaths along the U.S.-Mexico Border 1985-1998", University of Houston Center for Immigration Research, March 2001, p. 35, available at http://web.archive.org/web/20070926034617/http://www.uh.edu/cir/Causes_and_Trends.pdf, last visited 11 February 2012.

55 "Illegal Immigration: Status of Southwest Border Strategy Implementation", US General Accounting Office, May 1999, pp. 17-21, available at: http://www.gao.gov/archive/1999/gg99044.pdf, last visited 11 February 2012 (GAO, Status of Southwest Border Strategy Implementation).

56 "Border Security: The Role of the U.S. Border Patrol".

57 D. Cave, "Better lives for Mexicans cut allure of going north", The New York Times, 6 July 2011, available at http://www.nytimes.com/interactive/2011/07/06/world/americas/immigration.html?hp, last visited 11 February 2012.

58 GAO, Status of Southwest Border Strategy Implementation, pp. 17-21.

59 W. Cornelius, "Death at the Border: The efficacy and "unintended" consequences of US Immigration Control Policy 1993-2000", The Center for Comparative Immigration Studies, University of California, San Diego, December 2001, pp. 668-669, available at http://www.ccis-ucsd.org/PUBLICATIONS/wrkg27.pdf, last visited 11 February 2012 (W.Cornelius, Death at the Border).

60 GAO, Illegal immigration: Border-crossing deaths have doubled, Table 1, pp. 14, 47.

61 W. Cornelius, Death at the Border, pp. 667-669.

62 Amnesty International Interview with Margo Cowan, Pima County Public Defender, 9 February 2011; see also S. A. Cicero-Domínguez, Assessing the US–Mexico fight against human trafficking and smuggling: Unintended results of US immigration policy, 4 Northwestern University Journal International Human Rights 303, 318 (2005), available at http://www.law.northwestern.edu/journals/jihr/v4/n2/2/Cicero-Dominguez.pdf, last visited 11 February 2012.

63 M. Cooper, "On the border of hypocrisy: The unintended consequences of getting tough on illegal immigration", LA Weekly, 4 December 2003, available at http://www.laweekly.com/2003-12-04/news/on-the-border-of-hypocrisy/, last visited 11 February 2012.

64 Fact Sheet: Border Patrol Search, Trauma, and Rescue (BORSTAR), US Customs and Border Protection, available at http://www.cbp.gov/linkhandler/cgov/newsroom/fact_sheets/border/border_patrol/borstar.ctt/borstar.pdf, last visited 11 February 2012; Amnesty International Interview with Assistant Chief of Patrol George Allen, CBP – Tucson sector, 25 April 2011.

65 Amnesty International Interview with Assistant Chief of Patrol George Allen, CBP – Tucson Sector, 25 April 2011.

66 Amnesty International Interview with Assistant Chief of Patrol George Allen, CBP – Tucson sector, 25 April 2011.

67 No More Deaths, A Culture of cruelty: Abuse and impunity in short-term US Border Patrol custody, 2011, available at http://www.cultureofcruelty.org/wp-content/uploads/2011/09/CultureofCrueltyFinal.pdf, last visited 11 February 2012.

68 Amnesty International Interviews with John Chamblee, Humane Borders, 26 April 2011, and Shura Wallin, Green Valley Samaritans, 9 December 2010.

69 Amnesty International Interview with Felipe Lundin, Humane Borders, 26 April 2011.

70 Amnesty International Interview with John Chamblee, Humane Borders, 26 April 2011.

71 A. L. Myers and J. Watson, "Migrants say Arizona worth risk of crossing", AZcentral.com, 31 August 2010, available at: http://www.azcentral.com/news/articles/2010/08/31/20100831migrants-say-arizona-worth-risk.html, last visited 11 February 2012; Amnesty International Interviews with John Chamblee, Humane Borders, April 26, 2011, Mike Wilson, Tohono O'odham Citizen and activist, 9 February 2011.

72 Individual tribal members try to help migrants in need on Nation land. For example, Mike Wilson, a Tohono O'odham citizen, told Amnesty International that he places water jugs on the land in defiance of a Tribal official's order and a Tribal district resolution. Amnesty International interview, 9 February 2011. T. Ahtone, " Tribe divided over providing water to illegal migrants crossing Indian land", PBSNewshour.com, 16 September 2008, available at http://www.pbs.org/newshour/updates/social_issues/july-dec08/waterstations_09-16.html, last visited 11 February 2012.

73 Amnesty International Interview with Robin Reineke, PCOME, 10 May 2011; B. McCombs, Decade of Death.

74 Amnesty International Interview with Robin Reineke, PCOME, 10 May 2011.

75 Amnesty International Interview with Dr. Bruce Parks, PCOME, 28 April 2011.

76 Amnesty International Interview with Dr. Bruce Parks, PCOME, 28 April 2011.

77 Amnesty International Interview with Robin Reineke, PCOME, 10 May 2011.

78 Amnesty International Interview with Robin Reineke, PCOME, 10 May 2011; Amnesty International Interview with Kat Rodriguez, Coalición de Derechos Humanos, 10 November 2010.

79 While states have the right to exercise authority over their borders, they also have the obligation to respect their voluntarily assumed international legal obligations, including protecting the human rights of all migrants (Special Rapporteur on the Human Rights of Migrants, Report of the Special Rapporteur,para 13, delivered to the Human Rights Council, A/HRC/7/12, 25 February 2008), including the right to life (ICCPR Art. 6(1)).

80 Amnesty International Interview with A.B. (name on file with Amnesty International), Tohono O'odham Citizen, 27 April 2011.

81 Treaty of Guadalupe Hidalgo, 2 February 1848, U.S.-Mex., 9 Stat. 922, Art. IX. Affirmed by Article V of the Treaty of Mesilla (Gadsden's Purchase), 30 December 1853.

82 Not all Indigenous Peoples within the United States and its overseas territories have been accorded this status, including, for example, the Indigenous Peoples of Hawaii. Some Peoples are recognized by states but not by the federal government. US Department of the Interior, Indian Affairs, http://www.bia.gov/WhatWeDo/index.htm, last visited 11 February 2012. See also, National Congress of American Indians, http://www.ncai.org/State-Recognized-Indian-Tribes.285.0.html, last visited 11 February 2012.

83 US Environmental Protection Agency, US Mexico Border 2012, available at: http://www.epa.gov/Border2012/framework/people.html, last visited 11 February 2012; see also U.S. Federally Non-Recognized Tribes, Manataka American Indian Council, available at http://www.manataka.org/page237.html, last visited 11 February 2012.

84 A Native American Tribe in Southern Arizona.

85 Amnesty International Interview with Sylvester Valenzuela, Tohono O'odham citizen, 27 April 2011.

86 A. Lipowicz, "DHS approves enhanced Tribal ID cards", Federal Computer Week, 4 November 2009, available at http://fcw.com/articles/2009/11/04/dhs-approves-enhanced-tribal-id-cards.aspx, last visited 11 February 2012.

87 Amnesty International Telephone Interview with Jose Matus, Indigenous Alliance Without Borders, 10 May 2011.

88 Border crossing cards act as both a crossing document as well as visitor visa for citizens of Mexico.

89 See 25 US Code § 1300b-13(d).

90 Amnesty International Interview with Antonio Díaz, Texas Indigenous Council, 14 April 2011.

91 E. te Wechel, Yaqui: A short history, available at http://www.lasculturas.com/aa/vs_EdithYaqui.htm, last visited 11 February 2012.

92 Amnesty International Telephone Interview with Jose Matus, Indigenous Alliance Without Borders, 10 May 2011.

93 Amnesty International Interview with Isabel Garcia, Cóalicion de Derechos Humanos, 10 Nov. 2010.

94 Amnesty International Telephone Interview with Jose Matus, Indigenous Alliance Without Borders, 10 May 2011.

95 Amnesty International Telephone Interview with Jose Matus, Indigenous Alliance Without Borders, 10 May 2011.

96 Amnesty International Telephone Interview with Jose Matus, Indigenous Alliance Without Borders, 10 May 2011.

97 N. Thornburgh, "Postcard from Sells, Arizona", Time Magazine, 1 November 2010, available at http://www.time.com/time/magazine/article/0,9171,2026896,00.html#ixzz1D0i0fllA, last visited 11 February 2012.

98 T. Ahtone, " Tribe divided over providing water to illegal migrants crossing Indian Land", PBS Newshour.com, 16 September 2008, available at http://www.pbs.org/newshour/updates/social_issues/july-dec08/waterstations_09-16.html, last visited 11 February 2012.

99 E. Ekholm, "In drug war, tribe feels invaded by both sides", New York Times, 24 Jan. 2010, available at http://www.nytimes.com/2010/01/25/us/25border.html?pagewanted=all, last visited 11 February 2012 (E. Ekholm, "In drug war").

100 Amnesty International Interview with Margo Cowan, Pima County Public Defender's Office, 9 Feb. 2011.

101 E. Ekholm, "In drug war"; Amnesty Interview with Assistant Chief of Patrol George Allen, CBP, 25 April 2011; Amnesty International Telephone Interview with Ofelia Rivas, Tohono O'odham citizen and Indigenous rights activist, 3 March 2011.

102 The Tohono O'odham Nation is divided into five districts on the US side of the Nation. Tribal identity cards for members born in the USA lists one of the five O'odham Districts to which the person belongs, while the cards for members born in Mexico lists "ND" for "No District".

103 Amnesty International Interviews with Mike Wilson 9 February 2011; Ofelia Rivas, 27 April 2011; and Sylvester Valenzuela and Raymond Valenzuela, 27 April 2011. Tohono O'odham citizens are able to use Tribal ID cards to pass through gates in the border. See Bulletin from the Office of the Chairman and Vice Chairman, Tohono O'odham Nation, 20 May 2009, available at: http://www.tonation-nsn.gov/uploads/press_release/WHTI_PSA.pdf, last visited 11 February 2012.

104 Amnesty International Interview with Mike Wilson, 9 February 2011.

105 Amnesty International Interview with Raymond Valenzuela, 27 April 2011.

106 Email to Amnesty International from Ofelia Rivas, 1 May 2011.

107 Amnesty International Telephone Interview with Ofelia Rivas, Tohono O'odham Citizen and Indigenous Rights Activist, 3 March 2011.

108 See response to Freedom of Information Act Request, 21 June 2011, on file with Amnesty International USA.

109 Amnesty International Telephone Interview with Ofelia Rivas, Tohono O'odham citizen and Indigenous rights activist, 3 March, and 27 April, 2011.

110 The Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, ¶40, E/CN.4/2006/78/Add.4 (Jan. 26, 2006). See also, UN Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, Annex, U.N. Doc. A/Res/61/295 (Sept. 13, 2007), Art. 25: "Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with

their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard."

111 Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, ¶49, E/CN.4/2002/97 (Feb. 4, 2002).

112 UN Permanent Forum on Indigenous Issues, Report on the Sixth Session (May 14-25, 2007), para.151, E/2007/43-E/C.19/2007/12.
See also, UN Permanent Forum on Indigenous Issues, Report on the Ninth Session (April 19-30, 2010),para.98, E/2010/43-E/C.19/2010/15.

113 Amnesty International Interview with Johnny (name on file with Amnesty International USA), 26 April 2011. This testimony is corroborated by documentation obtained in September 2011 through a Freedom of Information Act request to the Office of Civil Rights and Civil Liberties in the Department of Homeland Security. Amnesty International was able to obtain a copy of the Tohono O'odham Tribal Police report and Johnny's medical records. Both reports confirm the contradictory statements made by the CBP agents to stop Johnny, and that Johnny was abused by the CBP agents.

114 UN Human Rights Committee, General Comment No.15: The position of aliens under the Covenant, 11/04/1986, UN Doc. HRI/GEN/1/Rev.6 at 140.

115 ICERD Committee, General Recommendation No.30: Discrimination against non-citizens, 01/10/2004 CERD/C/64/ Misc.11/rev.3.

116 Report on immigration in the United States: Detention and due process, Inter-Am. C.H.R., OEA/Ser.L/V/II, doc. 78/10, para. 95, 30 December 2010.

117 U.S. Const. Amend. XIV, §1. See also, id. Amend. V.

118 Civil Rights Act of 1964, Pub.L. 88-352, 78 Stat. 241.

119 CERD, Report submitted by the United States of America, CERD/C/USA/6, 1 May 2007, ¶42.

120 UN Human Rights Committee, General Comment No.18: Non-discrimination, 10/11/1989, HRI/GEN/1/Rev.6 at 146. ICERD Art. 1. See also, T. Meron, "The Meaning and Reach of the International Convention on the Elimination of All Forms of Racial Discrimination", American Journal of International Law, Vol.79, 1985, pp.287–8.

121 Concluding observations of the Committee on the Elimination of Racial Discrimination, 8 May 2008, CERD/C/USA/CO/6, paras.10, 14, available at http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/419/82/PDF/G0841982.pdf?OpenElement, last visited 10 February 2012.

122 Rosalind Williams Lecraft v. Spain, CCPR/C/96/D/1493/2006, Communication No. 1493/2006, para7.2.

123 UN CERD, General recommendation XXXI on the prevention of racial discrimination in the administration of criminal justice system, A/60/18, pp98–108, para20.

124 Report on Immigration in the United States: Detention and Due Process, Inter-Am. C.H.R., OEA/Ser.L/V/II, doc. 78/10, para.95, 30 December 2010.

125 Report on immigration in the United States: Detention and due process, Inter-Am. C.H.R., OEA/Ser.L/V/II, doc. 78/10, paras.18 and 417, 30 December 2010 (IAHCR, Report on immigration in the United States: Detention and due process).

126 IAHCR, Report on immigration in the United States: Detention and due process, para.426.

127 United States v. Cipriano Rangel-Portillo, 586 F. 3d 376, 378-9 (Ct. of App 5th Cir. Texas, 27 October 2009).

128 United States v. Cipriano Rangel-Portillo, 586 F. 3d 376, 381 (Ct. of App 5th Cir. Texas, 27 October 2009).

129 United States v. Cipriano Rangel-Portillo, 586 F. 3d 376, 382

130 For example, see M. Totman, An analysis of racial profiling data in Texas, ACLU, 2006 available at http://www.aclutx.org/reports/2006racialprofilingreport.pdf, last visited 11 February 2012; ACLU of Arizona, Driving while black or brown: An analysis of racial profiling in Arizona, 2008, p3, available at http://www.acluaz.org/sites/default/files/documents/DrivingWhileBlackorBrown.pdf, last visited 11 February 2012,

131 US v. Brignoni-Ponce, 422 US 873, 885-7. The Court held that apparent Mexican ancestry was not sufficient, standing alone, to justify stopping a vehicle. Id. at 886-7.

132 Terry v. Ohio, 392 U.S. 1 (1968). Arizona v. Johnson, 555 U.S.323 (2009)

133 US v. Brignoni-Ponce, 422 US 873, 881–882 (1975).

134 The reasonable suspicion test is heavily fact specific under US law. Any number of factors may be taken into account in deciding whether there is reasonable suspicion to stop a car in the including: (1) the characteristics of the area in which a vehicle is encountered; (2) proximity to the border; (3) the usual patterns of traffic on the particular road; (4) previous experience with alien traffic; (5) information about recent illegal border crossings in the area; (6) the driver's behavior, e.g., erratic driving or obvious attempts to evade officers; (7) aspects of the vehicle itself, e.g., suitability of the design for concealment and transport of aliens; (8) appearance of the vehicle, e.g., appears heavily loaded; (9) vehicle has an extraordinary number of passengers; (10) persons in the vehicle are observed attempting to hide; (11) appearance of the driver or passengers, e.g., certain aspects of dress and haircut, may indicate that the driver or passenger is from Mexico. Brignoni-Ponce, at 884-885 (citing cases).

135 United States of America v. Cipriano Rangel-Portillo, 586 F. 3d 376 (Ct. of App 5th Cir. Texas, 27 October 2009).

136 US v. Ortiz, 422 US 891, 896-7 (1975).

137 "US–Mexico border policy report – Effective border policy: Security, responsibility and human rights at the US–Mexico Border", US-Mexico Border and Immigration Task Force, November 2008, at 15, http://www.utexas.edu/law/centers/humanrights/borderwall/communities/municipalities-US-Mexico-Border-Policy-Report.pdf, last visited 11 February 2012.

138 "US–Mexico border policy report – Effective border policy: Security, responsibility and human rights at the US–Mexico Border", US-Mexico Border and Immigration Task Force, November 2008, http://www.utexas.edu/law/centers/humanrights/borderwall/communities/municipalities-US-Mexico-Border-Policy-Report.pdf, last visited 11 February 2012.

139 Amnesty International Interview with Assistant Chief of Patrol George Allen, CBP, 25 April 2011.

140 See United States of America v. Jorge Olivares-Pacheco, 633 F.3d 399 (5th Cir. 2011).

141 See Dr. D. Shriro, Immigration detention overview and recommendations, DHS, ICE, 6 October 2009, p12, available at http://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf, last visited 11 February 2012.

142 R. Capps, M. R. Rosenblum, C. Rodriguez and M. Chishti, Delegation and divergence: A study of 287(g) state and local immigration enforcement, Migration Policy Institute, January 2011, p1, available at http://www.migrationpolicy.org/pubs/287g-divergence.pdf, last visited 11 February 2012(R. Capps et al, Delegation and divergence); See also INA § 287(g).

143 ICE Fact Sheet: Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act, available at http://www.ice.gov/news/library/factsheets/287g.htm, last visited 10 February 2012.

144 R. Capps et al, Delegation and divergence, pp. 12, 18.

145 "Miranda warnings" are not considered necessary because removal proceedings are described as civil in nature. Miranda v. Arizona, 384 U.S. 436 (1966). The police are required to provide Miranda warnings in all criminal cases. The person in custody must, prior to interrogation, be clearly informed of his/her US Constitutional rights.

146 CAP proceedings are triggered simply by an arrest and booking into jail indiscriminate of the cause of a person's arrest. Thus a person can be transferred to ICE for removal proceedings under CAP even if her/his arrest was on the basis of racial profiling or if he/she is facing no charges.

147 A. Guttin, Esq., "The Criminal Alien Program: Immigration Enforcement in Travis County, Texas", Immigration Policy Center, February 2010, p4, available at http://www.immigrationpolicy.org/sites/default/files/docs/Criminal_Alien_Program_021710.pdf, last visited 11 February 2012 (A. Guttin, The Criminal Alien Program).

148 ICE Fact sheet: Secure Communities, 28 March 2008, p1, available at http://www.aila.org/content/default.aspx?docid=25045, last visited 11 February 2012, (ICE Fact sheet: Secure Communities). A. Guttin, Esq., "The Criminal Alien Program", p6.

149 ICE, Secure Communities, available at http://www.ice.gov/secure_communities, last visited 11 February 2012, (ICE, Secure Communities program webpage).

150 ICE, Secure Communities: Activated jurisdictions, available at http://www.ice.gov/doclib/secure-communities/pdf/sc-activated.pdf, last visited 11 February 2012.

151 ICE, Secure Communities: The basics, available at http://www.ice.gov/secure_communities, last visited 11 February 2012.

152 S. Vedantam, "Local jurisdictions find they can't opt out of federal immigration enforcement program", The Washington Post, 30 September 2010. See, "Confusion over Secure Communities", The New York Times, 5 October 2010, available at http://www.nytimes.com/2010/10/05/opinion/05tue3.html?_r=1&th&emc=th, last visited 11 February 2012.

153 T. Francis, "Internal documents prove ICE misled public about Secure Communities", Florida Center for Investigative Reporting, 22 February 2011, available at http://fcir.org/2011/02/22/internal-documents-prove-ice-misled-public-about-secure-communities/, last visited 11 February 2012.

154 M. Sachetti and N. Bierman, "US overrules Patrick on immigration", The Boston Globe, 7 June 2011, p5, available at http://www.boston.com/news/local/massachusetts/articles/2011/06/07/us_overrules_patrick_on_immigration/

155 D. Gonzalez, "Federal immigration program mainly nets low-level criminals, analysis says", The Arizona Republic, 9 March 2011, available at http://www.azcentral.com/arizonarepublic/news/articles/2011/03/09/20110309arizona-immigration-analysis.html#ixzz1GK7xYGNy, last visited 11 February 2012.

156 M. Totman, An analysis of racial profiling data in Texas, ACLU, 2006 available at http://www.aclutx.org/reports/2006racialprofilingreport.pdf, last visited 11 February 2012.

157 ACLU of Arizona, Driving while black or brown: An analysis of racial profiling in Arizona, 2008, p3, available at http://www.acluaz.org/sites/default/files/documents/DrivingWhileBlackorBrown.pdf, last visited 11 February 2012, (ACLU of Arizona, Driving while black or brown).

158 M. Capps, Delegation and divergence, pp36–7; Rights Working Group, Faces of Racial Profiling: A Report from communities across America, 2010, pp35–6, http://www.rightsworkinggroup.org/sites/default/files/ReportText.pdf, last visited 11 February 2012; American Civil Liberties Union & Immigration and Human Rights Policy Clinic, The policies and politics of local immigration enforcement laws: 287(g) program in North Carolina, February 2009, pp28–9, 44–5, available at http://www.acluofnorthcarolina.org/files/287gpolicyreview_0.pdf, last visited 11 February 2012; A. Shahani and J. Greene, "Local democracy on Ice: Why state and local governments have no business in federal immigration law enforcement", Justice Strategies, February 2009, p39, available at http://www.justicestrategies.org/sites/default/files/JS-Democracy-On-Ice.pdf, last visited 11 February 2012.

159 Ryan Gabrielson & Paul Gibline, "Reasonable Doubt", East Valley Tribune, July 8, 2008, http://www.eastvalleytribune.com/page/reasonable_doubt., last visited 11 February 2012.

160 R. Capps et al, Delegation and divergence, p1.

161 For further information on ICE priorities for immigration enforcement, see the discussion of the ICE Prosecutorial Discretion Memo in Chapter 5.

162 ICE, "Delegation and Immigration Authority, Section 287(g), Immigration and Nationality Act" (factsheet, 6 September 2007). On file with Amnesty International.

163 ICE, "Delegation and Immigration Authority, Section 287(g), Immigration and Nationality Act" (factsheet, 6 September 2007). On file with Amnesty International.

164 "United States' Investigation of the Maricopa County Sheriff's Office", US Department of Justice, Civil Rights Division, 15 December 2011, available at http://www.justice.gov/crt/about/spl/documents/mcso_findletter_12-15-11.pdf, last visited 11 February 2012.

165 Letter to Bill Montgomery, Maricopa County Attorney, from John Morton, US ICE, 15 December 2011, on file with Amnesty International, see also, "Statement by Secretary Napolitano on DOJ's Findings of Discriminatory Policing by Maricopa County," US Department of Homeland Security, Press Release, 15 December 2011, available at http://www.dhs.gov/ynews/releases/20111215-napolitano-statement-doj-maricopa-county.shtm, last visited 11 February 2012.

166 Amnesty International Interviews with Nancy Shivers, Attorney, 29 September 2010, Lee Teran, St. Mary's University School of Law, 29 September 2010, Tarsha Jackson, Grassroots Leadership, 27 January 2011, and Wafa Abdin, Catholic Charities, 24 January 2011.

167 Amnesty International Interview with Lee Teran, St

Mary's University School of Law, 29 September 2010.

168 See Arizona Department of Motor Vehicle Identification Requirements: http://mvd.azdot.gov/mvd/formsandpub/viewPDF.asp?lngProductKey=1410&lngFormInfoKey=1410, last visited 11 February 2012; see Texas Department of Motor Vehicles Acceptable Identification Documents: http://www.txdps.state.tx.us/internetforms/Forms/DL-17.pdf, last visited 11 February 2012.

169 Amnesty International interviews with anonymous Houston official, 15 April 2011, and Francisco Arguellas, Colectivo Flatlander, 27 January 2011.

170 IACHR report on US, para 204 and 205.

171 New York Times, "Immigration Hard-Liner Has His Wings Clipped" (October 6, 2009), available at: http://www.nytimes.com/2009/10/07/us/07arizona.html, last visited 11 February 2012.

172 Amnesty International Telephone Interview with Marisa Bono, MALDEF, February 24, 2011.

173 Amnesty International Interview with Marisa Bono, MALDEF, 24 February 2011; Maria Jimenez, CRECEN, 27 September 2010; and Justin Tullius and Eric Tijerina, RAICES, 28 September 2010.

174 US Census Bureau, "State and County QuickFacts", available at: http://quickfacts.census.gov/qfd/states/48/4856000.html, last visited 11 February 2012;Amnesty International Interviews with Maria Jimenez, CRECEN, 27 September 2010; Francisco Arguellas, Colectivo Flatlander, 27 January 2011.

175 Amnesty International Interview with Maria Jimenez, CRECEN, 27 September 2010; KHOU.com, "Hispanics accuse Pasadena Police of harassment", 15 August 2001, available at http://www.khou.com/news/local/65871062.html, last visited 11 February 2012, see also, KHOU.com, "ACORN demands Pasadena police stop arresting illegal 'Brown' people, 21 August 2008, available at http://williamamos.wordpress.com/2008/08/21/acorn-demands-pasadina-texas-police-stop-arresting-illegal-brown-people/, last visited 11 February 2012.

176 H. Chavana, "Reforma Migratoria event a success", Nueva Raza.com, 14 March 2010, available at http://nuevaraza.wordpress.com/2010/03/14/houston-reforma-migratoria-event-a-success/, last visited 11 February 2012.

177 Amnesty International Interview with Maria Jimenez, CRECEN (Central American Resource Center), September 27, 2010.

178 Amnesty International Interview with Isabel Garcia, Coalición de Derechos Humanos, 10 November 2010. Also Video documentary: Checkpoint Nation? Building Communities across Borders at [00:50 – 1:27 min], available: http://restorefairness.org/2011/09/watch-the-new-restore-fairness-documentary-checkpoint-nation-building-community-across-borders/, last visited 11 February 2012.

179 Amnesty International Interview with Chief Roberto Villaseñor, TPD, 25 April 2011. Amnesty International received a copy of the current policy from the TPD and it states, in part: "If, after a person is stopped, the officer reasonably suspects that person is undocumented, the officer may… [r]equest a Customs and Border Protection (CBP) agent to respond to while the officer completes the original stop. The subject shall not be detained longer than necessary to conduct any investigation necessary to complete the original stop." See TPD General Order 2110.1, Undocumented Persons, on file with Amnesty International.

180 Nearly one third of the population of Arizona identifies as Hispanic or Latino, while more than 20 per cent speak Spanish or Spanish creole in the home. See US Census Bureau, "2010 Census Data,"available at ahttp://2010.census.gov/2010census/data/, last visited 11 February 2012; see also, US Census Bureau, "2010 American Community Survey 1-Year Estimates – Language Spoken at Home: Arizona," available at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_10_1YR_S1601&prodType=table, last visited 11 February 2012.

181 U.S. Census Bureau, American Community Survey Briefs – Native North American Languages Spoken at Home in the United States and Puerto Rico: 2006–2010 5 (Dec. 2011), available at http://www.census.gov/prod/2011pubs/acsbr10-10.pdf, last visited 11 February 2012; For a further discussion of indigenous communities along the border, see Chapter 3.

182 The IIRIRA of 1996 authorized the DHS to quickly remove certain inadmissible immigrants from the United States. The authority covers immigrants who are inadmissible because they have no entry documents or because they have used counterfeit, altered, or otherwise fraudulent or improper documents. The authority covers immigrants who arrive in, attempt to enter, or have entered the United States without having been admitted or paroled by an immigration officer at a port-of-entry. The DHS has the authority to order the removal, and the individual is not referred to an immigration judge except under certain circumstances after an individual makes a claim to lawful status in the United States or demonstrates a credible fear of persecution if returned to his or her home country.

183 CBS News, "Arizona shuttle bus human smugglers busted" 15 April 2010, available at http://www.cbsnews.com/stories/2010/04/16/national/main6402133.shtml, last visited 11 February 2012; J. Jordan, "ICE agents carry out military-style raids in Arizona", Fight Back! News, 18 April 2010, available at http://www.fightbacknews.org/2010/4/18/ice-agents-carry-out-military-style-raids-arizona, last visited 11 February 2012 (J. Jordan, "ICE agents carry out military-style raids in Arizona"); M. Marico, "Shuttle services are target of massive immigration raid", Nogales International, 16 April 2010, available at http://www.nogalesinternational.com/articles/2010/04/16/news/doc4bc88340c21f6127666120.txt, last visited 11 February 2012.
B. McCombs, "Border shuttles in Tucson raided in AZ immigration sweep", Arizona Daily Star, 15 April 2010, available at http://azstarnet.com/news/local/border/article_6d121a36-48b1-11df-ac5b-001cc4c002e0.html, last visited 11 February 2012; R. C. Archibold, "Immigration raids focus on shuttle vans", The New York Times, 15 April 2010,available at http://www.nytimes.com/2010/04/16/us/16raid.html, last visited 11 February 2012; ICE, "Commercial transportation companies implicated in sweeping ICE investigation targeting Arizona human smuggling networks", 15 April 2010, available at http://www.ice.gov/news/releases/1004/100415phoenix.htm, last visited 11 February 2012.

184 B. McCombs, "68 arrested in smuggling raid", Arizona Daily Star, 16 April 2010, available at http://azstarnet.com/news/local/border/article_3ec9bf86-6f57-5a5b-aa6d-ccebc30e5344.html.

185 B. McCombs, "Border shuttles in Tucson raided in AZ immigration sweep", Arizona Daily Star, 15 April 2010, available at http://azstarnet.com/news/local/border/article_6d121a36-48b1-11df-ac5b-001cc4c002e0.html; C. Tactaquin, "Massive ICE sweep terrorizes Arizona communities following state passage of anti-immigrant profiling law", National Network for Immigrant and Refugee Rights, Press Release, 21 January 2011, available at http://www.nnirr.org/~nnirrorg/drupal/node/81, last visited 11 February 2012.

186 P. Teitelbaum, "Anti-immigrant terror unleashed in Arizona", International Action Center, 21 April 2010, available at http://www.iacenter.org/immigrants/arizona-terror042210/, last visited 11 February 2012 (P. Teitelbaum, "Anti-immigrant terror unleased in Arizona").

187 Amnesty International interview with Kat Rodriguez, Coalición de Derechos Humanos, 10 November 2010.

188 P. Teitelbaum, "Anti-immigrant terror unleashed in Arizona"; V. Fernández, "Arizona ICE, tea parties panic immigrants", New America Media, 16 April 2010, available at http://newamericamedia.org/2010/04/arizona-ice-tea-parties-panic-immigrants.php, last visited January 18, 2011; B. McCombs, "Border shuttles in Tucson raided in AZ immigration sweep".

189 U.S. Const. Amend. IV.

190 M. Newell, Law of Malicious Prosecution, False Imprisonment, and Abuse of Legal Process § 2, p 57 (1892)

191 See ICE, "Memorandum of Agreement template for Secure Communities", available at http://www.ice.gov/doclib/foia/secure_communities/securecommunitiesmoatemplate.pdf, last visited 11 February 2012.

192 Secure Communities, IDENT/IAFIS Interoperability Monthly statistics through 30 April 2011, US ICE, available at http://www.ice.gov/doclib/foia/sc-stats/nationwide_interoperability_stats-fy2011-feb28.pdf, last visited 11 February 2012; For a description of level I, II and III offenses, please see, Example of Secure Communities Memorandum of Agreement, available at http://www.ice.gov/doclib/foia/secure_communities/securecommunitiesmoatemplate.pdf, last visited 11 February 2012.

193 "United States' Investigation of the Maricopa County Sheriff's Office", US Department of Justice, Civil Rights Division, 15 December 2011, available at http://www.justice.gov/crt/about/spl/documents/mcso_findletter_12-15-11.pdf, last visited 11 February 2012.

194 Amnesty International Interview with Maria Jimenez, CRECEN, 27 September 2010.

195 For a further discussion of CAP, see Chapter 2. ICE, Fact sheet: Criminal Alien Program, 29 March 2011, available at http://www.ice.gov/news/library/factsheets/cap.htm, last visited 11 February 2012.

196 T. Gardner and K. Aarti, "The C.A.P. effect". See also, I. Menashe and D. Varma, We're not feeling any safer, California Immigrant Policy Center, Summer 2010, available at http://www.caimmigrant.org/enforcement.html, last visited 11 February 2012.

197 Hampton v. Mow Sun Wong, 426 U.S. 88 (1976)

198 S.B. 1070, §2(B); §3; §5(A - C). R. Archibold, "Arizona enacts stringent law on immigration"

199 U.S. v. Arizona, 641 F.3d 339 (9th Cir. 2011).

200 U.S. v. Arizona, 641 F.3d 339 (9th Cir. 2011), cert. granted, Arizona v. U.S., 132 S. Ct. 845 (U.S. Dec. 12, 2011) (No. 10A1277, 11-82).

201 ACLU, "Frequently asked questions – Update on legal challenges to Arizona's Racial Profiling Law (S.B. 1070)", http://www.aclu.org/immigrants-rights-racial-justice/frequently-asked-questions-update-legal-challenges-arizonas-racial-, last visited 11 February 2012.

202 A. Valenzuela Jr., et al, On the corner: Day labor in the United States, UCLA, Los Angeles, 2006.

203 A.R.S. Sec. 13-2928(c).

204 United States v. Arizona, 703 F. Supp. 2d 980, 987 (D. Ariz. 2010) aff'd, 641 F.3d 339 (9th Cir. 2011).

205 Comité de Jornaleros de Redondo Beach v. City of Redondo Beach, 623 F. 3d 1054 (Ct. of Apps. 9th Circuit).

206 Inter-American Court of Human Rights, Advisory Opinion on Juridical Condition and Rights of the Undocumented Migrants, OC-18/03 of 17 September 2003.

207 UN Committee on Economic, Social and Cultural Rights, General Comment 18: The Right to Work (Art. 6.), ¶22, 24 November 2005.

208 D. Smith, "Tens of thousands protest SB 1070 at Phoenix march", Tucson Sentinel, 29 May 2010, available at: http://www.tucsonsentinel.com/local/report/052910_1070march/tens-thousands-protest-sb-1070-phoenix-march/, last visited 11 February 2012;J. Hing, "Pima County Sheriff refuses to cooperate with SB1070", Colorlines, 27 April 2010, available at http://colorlines.com/archives/2010/04/breaking_pima_county_sheriff_refuses_to_cooperate_with_sb1070.html, last visited 11 February 2012 ; M. Truelsen, "TPD chief criticizes AZ immigration law to AG Holder", Tucson Sentinel, 26 May 2010, available at: http://www.tucsonsentinel.com/local/report/052610_villasenor_holder/tpd-chief-criticizes-az-immigration-law-ag-holder/, last visited 11 February 2012; N. Riccardi, "Both sides in Arizona's immigration debate use crime argument", Los Angeles Times, 3 May 2010, available at: http://articles.latimes.com/2010/may/03/nation/la-na-arizona-crime-20100503, last visited 11 February 2012.

209 Amnesty International Interview with Chief Roberto Villaseñor, TPD, 25 April 2011.

210 Alabama H.B. 56 §12; §10.

211 Alabama H.B. 56; See also, A. N. Sanchez, "Alabama governor signs SB-1070 on steroids into law", Think Progress.com, 9 June 2011, available at http://thinkprogress.org/justice/2011/06/09/240976/alabama-immigration-arizona/, last visited 11 February 2012.

212 Alabama H.B. 56 §28; § 8; §30; §27; §13; §11.

213 Associated Press, "Man detained in Gadseden under new Alabama immigration law turns out to be legal", 4 October 2011, available at http://blog.al.com/wire/2011/10/man_detained_in_gadsden_under.html, last visited 11 February 2012.

214 USA v. Alabama, Order for Injunctive Relief, 14 October 2011, available at http://www.nilc.org/immlawpolicy/LocalLaw/HICA-v-Bentley-and-US-v-Alabama-11th-Cir-inj.pdf, last visited 11 February 2012.

215 ACLU, Fact sheet on House Bill 87, "Show me your papers" legislation, http://www.acluga.org/news/2011/03/02/aclu-of-georgia-fact-sheet-on-house-bill-87-%e2%80%9cshow-me-your-papers%e2%80%9d-legislation/, last visited 11 February 2012; See also Georgia Latino Alliance v. Deal, No. 1:11-CV-1804-TWT (N.D. GA, 27 June 2011).

216 ACLU, "ACLU and Civil Rights Coalition file lawsuit against South Carolina's anti-immigrant law", 12 October 2011, available at http://www.aclu.org/immigrants-rights/aclu-and-civil-rights-coalition-

file-lawsuit-against-south-carolinas-anti, last visited 11 February 2012; See US Department of Justice, Department of Justice Challenges South Carolina's Immigration Law, Complaint Cites Conflict with Federal Enforcement of Immigration Laws, 31 October 2011, available at http://www.justice.gov/opa/pr/2011/October/11-ag-1429.html, last visited 11 February 2012.

217 Buquer v. City of Indianapolis, No. 1:11-cv-708-SEB-MJD (S.D. IN, 24 June 2011).

218 ACLU, Court blocks implementation of Utah "Show me your papers" law, 10 May 2011, http://www.aclu.org/immigrants-rights/court-blocks-implementation-utah-show-me-your-papers-law, last visited 11 February 2012.

219 Texas legislators introduced a number of bills, containing anti-immigrant provisions during 2011, including:
H.B. 10; H.B. 11; H.B. 57; H.B. 58; H.B. 59; H.B. 1387.

220 For example, some of the states that have introduced anti-immigrant legislation in 2011 but failed to pass it so far include New Mexico, Oklahoma, Louisiana and Tennessee.

221 A. Sinha and R. faithful, "Issue Brief: State Battles Over Immigration: The Forecast for 2012," Advancement Project, February 2012, page 2, available at http://www.advancementproject.org/sites/default/files/publications/Immigrant%20Rights%202012%20Legislative%20Battles_FINAL%20Feb%201%202012_0.pdf, last visited 10 February 2012.

222 J. Davenport, "South Carolina Governor signs illegal immigration police checks law", Boston Herald, 27 June 2011, available at http://www.bostonherald.com/news/national/south/view/20110627sc_gov_signs_illegal_immigration_police_checks_law/srvc=home&position=recent, last visited 11 February 2012.

223 D. M. Weissman and R. C. Headen, The policies and politics of local immigration enforcement law: 287(g) program in North Carolina, ACLU of North Carolina Legal Foundation and Immigration and Human Rights Policy Clinic University of North Carolina at Chapel Hill, February 2009, p41; R. Gabrielson and P. Gibline, "Reasonable doubt", East Valley Tribune, July 8, 2008, available at http://www.eastvalleytribune.com/page/reasonable_doubt, last visited 11 February 2012; R.L. Skinner, The Performance of 287g Agreements, DHS, OIG, March 2010, pp.14-15, 20, 25-29, available at http://www.oig.dhs.gov/assets/Mgmt/OIG_10-63_Mar10.pdf, last visited 11 February 2012.

224 The MPI study questioned the 287(g) program's goals and evaluated whether, in practice, it focuses on identifying and removing top enforcement priorities (targeted approach) or removing as many immigrants as possible (universal approach). MPI chose not to study 287(g) sites in Arizona because the public and legal controversy related to high-profile enforcement sweeps conducted by the Maricopa County sheriff created a highly charged political context that would have compromised the research environment.

225 Homeland Security Advisory Council, "Task Force on Secure Communities Findings and Recommendations", September 2011, available at http://big.assets.huffingtonpost.com/TaskForce.pdf, last visited 11 February 2012.

226 ACLU, "Leaked Secure Communities Task Force report shows program's many flaws", available at http://www.aclu.org/blog/immigrants-rights/aclu-lens-leaked-secure-communities-task-force-report-shows-programs-many, last visited 11 February 2012.

227 A. L. Richards, US Immigration and Customs Enforcement identification of criminal aliens in federal and state custody eligible for removal from the United States, OIG, DHS, January 2011, available at http://trac.syr.edu/immigration/library/P5234.pdf, last visited 11 February 2012.

228 Texas Criminal Code Annotated sec. 2.132. See also, Texas Criminal Justice Reform Coalition, Racial profiling: Texas traffic stops and searches, February 2004, pages 6-7, available at http://www.criminaljusticecoalition.org/files/userfiles/publicsafety/2004_rp_report.pdf, last visited 11 February 2012.

229 Texas Criminal Justice Reform Coalition, Racial profiling: Texas traffic stops and searches, February 2004, pages 6-7, available at http://www.criminaljusticecoalition.org/files/userfiles/publicsafety/2004_rp_report.pdf, last visited 11 February 2012.

230 Texas Code of Criminal Procedure, Art. 2.132(b) Law Enforcement Policy on Racial Profiling.

231 See Settlement in Arnold v. Arizona Department of Public Safety, available at http://www.aclu.org/files/FilesPDFs/arizona%20dps%20settlement.pdf, last visited 11 February 2012.

232 ACLU of Arizona, Driving while black or brown.

233 Arnold v. Arizona Department of Public Safety, 2006 U.S. Dist. LEXIS 53315 (2006).

234 See S.B. 1071, available at: http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=1071&Session_Id=102, last visited 11 February 2012.

235 ERPA 2001 – End Racial Profiling Act, HR2074/S.989/, (107th Congress, 1st Session) available at http://www.gpo.gov/fdsys/pkg/BILLS-107s989is/pdf/BILLS-107s989is.pdf, last visited 11 February 2012.

236 See Wrong then, wrong now: Racial profiling before & after September 11, 2001, The Leadership Conference on Civil Rights Education Fund, 2003, available at http://www.civilrights.org/publications/wrong-then/racial_profiling_report.pdf, last visited 11 February 2012; The 2001 Act was co-sponsored by 95 Congressmen and women. See ERPA 2001.

237 See Restoring a national consensus: The need to end racial profiling in America, The Leadership Conference on Civil Rights and Education Fund, March 2011, available at http://www.civilrights.org/publications/reports/racial-profiling2011/racial_profiling2011.pdf, last visited 11 February 2012.

238 S. 1670 End Racial Profiling Act 2011, available at http://www.govtrack.us/congress/bill.xpd?bill=s112-1670, last visited 11 February 2012.

239 IAHCR, Report on immigration in the United States: Detention and due process, paras.18 and 426.

240 Amnesty International Interview with H.R., 28 April 2011.

241 According to the study, while no information was provided on 22 of the citizens detained and seven individuals were held for as little as one week, 45 individuals were held for periods between one and six months, and eight individuals were held for periods between six and 12 months. J. Stevens, "U.S. government unlawfully detaining and deporting US citizens as aliens," Virginia Journal of Social Policy and the Law, Fall 2011, 622, on file with Amnesty International.

242 Art. 9(1), ICCPR.

243 For instance, see, Amnesty International, "Migration Related Detention: A research guide on human rights standards relevant to the detention of migrants, asylum seekers and refugees", November 2007, AI Index: POL 33/005/2007, available at: http://www.amnesty.org/en/library/info/POL33/005/2007, last visited 11 February 2012.

244 For instance, administrative detention should not be punitive in nature, however immigration detainees are often detained in jail facilities with barbed wire and cells, alongside those serving time for criminal convictions. They are not able to wear their own clothes but instead wear prison uniforms and are often handcuffed. For more information regarding issues related to immigration detention in the US, please see Amnesty International's report Jailed Without Justice: Immigration Detention in the USA

245 Art. 13 and 14(3), ICCPR.

246 See 8 U.S.C. §1325 and 8 U.S.C. §1326. See also J. Lydgate, "Assembly-line justice: A review of Operation Streamline", The Chief Justice Earl Warren Institute on Race, Ethnicity & Diversity, University of California, Berkeley Law School, January 2010, pp. 1, 3, available at http://www.law.berkeley.edu/files/Operation_Streamline_Policy_Brief.pdf, last visited 11 February 2012. (J. Lydgate, "Assembly-line justice").

247 American Civil Liberties Union (ACLU) and National Immigration Forum, "Operation Streamline fact sheet", 21 July 2009, available at http://www.immigrationforum.org/images/uploads/OperationStreamlineFactsheet.pdf, last visited 11 February 2012; J. Lydgate, "Assembly-line justice", pp1, 4; The Criminal Justice Act Panel consists of attorneys in private practice who are appointed to represent indigent criminal defendants in the US district courts. See 18 U.S.C. § 3006A; CBP, "DHS launches 'Operation Streamline II'", 16 December 2005, available at www.cbp.gov/xp/cgov/newsroom/news_releases/archives/2005_press_releases/122005/12162005.xml, last visited 11 February 2012.

248 Convention Relating to the Status of Refugees, G.A. Res. 429 (V), 189 U.N.T.S. 150, entered into force April 22, 1954. Article 31 provides: "(1) The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence. (2) The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country. U.N. High Commissioner for Refugees, UNHCR's Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers, 26 February 1999, available at http://www.unhcr.org/refworld/docid/3c2b3f844.html, last visited 11 February 2012. Guideline 2 provides "As a general principle asylum-seekers should not be detained." Guideline 3 provides ". . . Detention of asylum-seekers which is applied for purposes other than those listed above, for example, as part to deter future asylum-seekers, or to dissuade those who have commenced their claims from pursuing them, is contrary to the norms of refugee law. It should not be used as punitive or disciplinary measures for illegal entry or presence in the country." Convention Relating to the Status of Refugees, G.A. Res. 429 (V), 189 U.N.T.S. 150, entered into force April 22, 1954. Article 31, para. 1 provides: "The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence. (2) The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country."

249 Special Rapporteur on the Human Rights of Migrants, Report of the Special Rapporteur, ¶43, delivered to the Human Rights Council, A/HRC/7/12, 25 February 2008. See also, Special Rapporteur on the Human Rights of Migrants, Report of the Special Rapporteur on the Mission to the Border between Mexico and the United States of America, ¶43 and ¶73, E/CN.4/2003/85/Add.3, 30 October 2002.

250 Amnesty International Interview with G.H. (name on file with Amnesty International), 28 April 2011.

251 Amnesty International Interviews with Valerie Hink and Mary Day, Southern Arizona Legal Aid, 10 November 2010, and Hannah Hafter, No More Deaths, 8 November 2010.

252 Amnesty International Interview with C.F. (name on file with Amnesty International), 28 April 2011.

253 International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, art. 13.

254 U.N. Office of the High Commissioner for Human Rights [OHCHR], Human Rights Committee, General Comment 15: The Position of Aliens under the Covenant, ¶ 9 and ¶10 (April 11, 1986).

255 Amnesty International Interviews with Maria Jimenez, CRECEN, 27 September 2010, and Jennifer Long, Casa Marianella, 29 September 2010.

256 Amnesty International Interview with Eric Tijerina, RAICES, 28 September 2010.

257 E. Butera, Torn apart by immigration enforcement: Parental rights and immigration detention, Women's Refugee Commission, December 2010, pp2-3, available at http://www.womenscommission.org/programs/detention/parental-rights, last visited 11 February 2012 (E. Butera, Torn apart by Immigration Enforcement).

258 N. Rabin, Disappearing parents: A report on immigration enforcement and the child welfare system, Southwest Institute for Research on Women, University of Arizona, May 2011, p2, available at http://www.law.arizona.edu/depts/bacon_program/disappearing_parents_report.cfm, last visited 11 February 2012.

259 Freedom of Information Act request of Arizona Department of Children, Youth and Families, 20 April

2011, on file with Amnesty International USA.

260 Amnesty International Interview with Barbara Hines, University of Texas School of Law, 29 September 2010.

261 Amnesty International Interview with Laurie Melrood, Immigrant rights advocate working with families and children in Tucson, Arizona, 8 November 2010

262 ICE, "Civil immigration enforcement: Priorities for the apprehension, detention, and removal of aliens", Policy Memorandum, Assistant Secretary John Morton, 30 June 2011, available at http://www.ice.gov/doclib/detention-reform/pdf/civil_enforcement_priorities.pdf, last visited 11 February 2012.

263 See, Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978. Antiterrorism and Effective Death Penalty Act, Pub. L. No. 104-132, 110 Stat. 1214. See also INA § 212(c) (1995). Section 212(c) was subsequently repealed by section 304(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Division C of Pub. L. No. 104-208, 110 Stat. 3009-546.

264 ICCPR art 17

265 Special Rapporteur on the Human Rights of Migrants, Report of the Special Rapporteur on His Mission to the United States of America (30 April – 18 May 2007), ¶17, delivered to the Human Rights Council, A/HRC/7/12/Add.2, (5 March 2008).

266 UN CERD, General Comment 30: Discrimination Against Non-Citizens, ¶ 28 (10 Jan. 2004).

267 Amnesty International Interview with anonymous Mexican official, 8 February 2011.

268 Anastasio Hernández-Rojas was beaten with batons and "tasered" after allegedly resisting being deported at the San Ysidro Port of Entry in California on 29 May 2010 and died two days later ("Man shot with Taser in fight at border dies," San Diego Union Times, 1 June 2010, available at http://www.signonsandiego.com/news/2010/jun/01/man-who-was-shot-with-taser-at-border-dies/, last visited 11 February 2012.) Amnesty International has repeatedly raised concerns about deaths following the use of tasers by law enforcement officials. For instance, see, Amnesty International, 'Less Than Lethal?' The use of stun weapons in US law enforcement, December 2008, AMR 51/010/2008, available at: http://www.amnesty.org/en/library/asset/AMR51/010/2008/en/530be6d6-437e-4c77-851b-9e581197ccf6/amr510102008en.pdf, last visited on 10 February 2012.

269 S. Dibble and D. Baker, "Border shooting reignites use of force debate", San Diego Union Times, 22 June 2011, available at www.signonsandiego.com/news/2011/jun/22/border-shooting-re-ignites-use-force-debate/, last visited 11 February 2012; Valencia and Martinez, Police: Border Patrol agent fatally shoots rock throwing migrant, CNN.com, 22 June 2011, available at http://www.nogalesinternational.com/articles/2011/01/07/news/doc4d272fc9733a6461195366.txt, last visited 11 February 2012.

270 Amnesty International, Letter to the Departments of Justice and Homeland Security on the Use of Lethal Force by US Border Patrol, 26 January 2012, AI Index: TG AMR 51/002/2012, on file with Amnesty International. In response to an earlier letter to the Department of Justice regarding the cases of Sergio Hernández Guereca and Anastasio Hernández, a spokesperson from the Federal Bureau of Investigation responded that "The FBI and Department of Justice policy limits public comment on investigative matters". Response on file with Amnesty International.

271 Notice to Appear, or -NTA,- (Form I-862) is a written notice to a migrant, which includes information about the legal and deportation proceedings against the migrant. Removal proceedings begin when DHS files an NTA with the Immigration Court after it is served on the migrant. See 8 C.F.R. §§ 1003.13, 1003.14.

272 ICE officials allowed Dorotea through the border because she was from a country other than Mexico and was not eligible to immediate removal to Mexico.

273 Amnesty International Interview with Dorotea (name on file with Amnesty International), 18 October 2011. All names in this case are pseudonyms.

274 National Institute of Justice, "Immigrants as Victims", available at http://www.nij.gov/topics/victims-victimization/immigrants.htm, last visited 11 February 2012.

275 International Association of Chiefs of Police, "Police chiefs guide to immigration issues", 2007, available at http://www.theiacp.org/Portals/0/pdfs/Publications/PoliceChiefsGuidetoImmigration.pdf, last visited 11 February 2012.

276 SPLC, Reporting crime: Key finding: Only 46% say they have confidence in police, April 2009, available at http://www.splcenter.org/publications/under-siege-life-low-income-latinos-south/reporting-crime, last visited 11 February 2012; R. L. Cowell, "What rights do undocumented immigrants have when they become crime victims?", Independent Weekly, 22 September 2010, available at http://www.indyweek.com/indyweek/what-rights-do-undocumented-migrants-have-when-they-become-crime-victims/Content?oid=1684579; US Department of Justice, Bureau of Justice Statistics, NCJ 234085: Hate crime, 2003–2009 6 (released June 2011) available at http://bjs.ojp.usdoj.gov/content/pub/pdf/hc0309.pdf; SPLC Intelligence Report, Hate crimes: Anti-Latino hate crime up for fourth year, Issue No. 132 (2008) available at http://www.splcenter.org/get-informed/intelligence-report/browse-all-issues/2008/winter/hate-crimes, last visited 11 February 2012; Leadership Conference on Civil Rights Education Fund, Confronting the new faces of hate: Hate crimes in America, 2009, p12 (2009) available at http://www.protectcivilrights.org/pdf/reports/hatecrimes/lccref_hate_crimes_report.pdf, last visited 11 February 2012.

277 Police Executive Research Forum, Police Chiefs and Sheriffs Speak Out on Local Immigration Enforcement, April 2008, p14, available at http://www.policeforum.org/library/critical-issues-in-policing-series/Immigration($25).pdf, last visited 11 February 2012.

278 SPLC, Under siege.

279 L. McCormack, J. Styczynski and K. Zraick, "Latinos recall pattern of attacks before killing", The New York Times, 8 January 2009; E. Londono and T. Vargas, "Robbers stalking Hispanic migrants, seeing ideal prey", The Washington Post, 26 October 2007

280 National Human Trafficking Resource Center: Polaris Project, Human trafficking statistics (2010), available at http://www.polarisproject.org/resources/resources-by-topic/human-trafficking, last visited 11 February 2012; A. Siskin and L. Sun Wyler, RL34317: Trafficking in persons: US policy and issues for Congress, US Congressional Research Service, 23 December 2010, p22, available at http://www.fas.org/sgp/crs/misc/RL34317.pdf, last visited 11 February 2012.

281 Coalition Against Trafficking, Houston, http://homeofhopetexas.com/index.php/news/blog, last visited 11 February 2012.

282 The Honorable Ted Poe and The Honorable Leticia Van de Putte, "Eliminating modern-day slavery", Journal of Applied Research on Children: Informing Policy for Children At Risk, 1:2, p2, 15 March 2011, available at http://digitalcommons.library.tmc.edu/cgi/viewcontent.cgi?article=1036&context=childrenatrisk&sei-redir=1#search=%22U.S.%20Department%20Health%20Human%20Services%2C%20April%202004%20January%202006%2C%20Rescue%20Restore%20Campaign%20Results%22, last visited 11 February 2012.

283 D. González, -Human trafficking targeted by ICE agents in Arizona-, azcentral.com, 2 February, 2010, available at http://www.azcentral.com/arizonarepublic/local/articles/2010/02/02/20100202humantrafficking.html, last visited 11 February 2012.

284 US Department of State, Trafficking in persons Report 2011, pp7, 372.

285 C. M Ribando, RL30545: Trafficking in persons: US policy and issues for Congress, p5, US Congressional Research Service, 20 June 2007, available at http://www.humantrafficking.org/uploads/publications/20070806_120229_RL30545.pdf, last visited 11 February 2012.

286 See, Article 2, ICCPR; Human Rights Committee, General Comment No. 31; CEDAW Committee, General Recommendation No. 19.

287 As a party to the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention against Transnational Organized Crime, the USA is obliged to combat and prevent human trafficking, and to provide protection and assistance to survivors with full respect for their human rights.

288 TVPA sec. 102(a). The TVPA has been reauthorized and amended three times since it was first enacted, most recently in 2008. A reauthorization of the TVPA was recently introduced in the US Senate on 29 June 2011; See "Leahy, Brown, Kerry introduce bill to fight human trafficking", Patrick Leahy Press Release, 29 June 2011, available at http://leahy.senate.gov/press/press_releases/release/?id=75fc72c4-5dbf-4efe-a5be-f7673308d308, last visited 11 February 2012.

289 INA § 214(o); 8 U.S.C. § 1184(o) (2008). The duration of status was added to section 214 after passage of the -Violence Against Women and Department of Justice Reauthorization Act- Pub. L. No. 109-162, 5 January 2006.

290 DHS, Improving the process for victims of human trafficking and certain criminal activity, pp1, 5, 16. To be eligible to apply for lawful permanent residence, an applicant must show: 1) Lawful admission to the United States as a T-non-immigrant and continuation of T-visa status at the time of filing the application for adjustment; 2) Continuous presence of a least three years since admission as a T-non-immigrant or continuous presence during the investigation or prosecution; 3) Admissible at the time of adjustment of status or otherwise received a waiver by USCIS [Citizenship and Immigration Services] for any applicable ground of inadmissibility; 4) Good moral character; and 5) Continued compliance with any reasonable request for assistance in an ongoing investigation or prosecution, or extreme hardship upon removal from the United States. See USCIS Interim Final Rule, "Adjustment of status to Lawful Permanent Resident for aliens in T or U nonimmigrant status" 73 Fed. Reg. 75540, 12 December 2008. Effective 12 January 2009.

291 Severe trafficking- includes three categories: 1) victims of sex trafficking who are under 18; 2) victims of sex trafficking for whom -a commercial sex act is induced by force, fraud, or coercion-; and 3) victims of labor trafficking, through the use of force, fraud or coercion for the purpose of -involuntary servitude, peonage , debt bondage, or slavery.- Victims of Trafficking and Violence Protection Act of 2000, 22 USCA § 7101, §103 (8)(a) and (b).

292 VTVPA of 2000, 22 USCA § 7101, § 107 (b)(1)(C) and (E).

293 DHS, Improving the process for victims of human trafficking and certain criminal activity, p15, available at http://www.dhs.gov/xlibrary/assets/cisomb_tandu_visa_recommendation_2009-01-26.pdf, last visited 11 February 2012.

294 VTVPA of 2000, 22 USCA § 7101. The U-visa was reauthorized again under the TVPRA.

295 L. M. Saucedo, "A new "U": Organizing victims and protecting immigrant workers", 42 University of Richmond Law Review 891, 913, and 907 (2008).

296 8 C.F.R. § 214.14 (f).

297 VTVPA of 2000, 22 USCA § 7101, § 1513 (b)(3).

298 VAWA was originally passed in 1994, as part of the Violent Crime Control and Law Enforcement Act. S. Chen and K. Cunningham, "Violence Against Women Act", 1 Georgetown Journal of Gender and the Law 711 (1999). Unless Congress reauthorizes the act, it will expire in 2011. A Congressional Hearing was held 13 July 2011 in which Congress was urged to renew the bill and continue funding. C. Wetzstein, "Senate panel is urged to renew domestic violence law", The Washington Times, Wednesday,13 July 2011.

299 A. Hanson, "The U-visa: Immigration law's best kept secret", Note, 63 Arkansas Law Review 177, 184 (2010).

300 8 U.S.C.A. §1154 Protections for Battered Immigrant Women and Children.

301 Attorney General's Annual Report to Congress and Assessment of U.S. Government Activities to Combat Trafficking in Persons, FY 2009, published July 2010, p63, available at http://www.justice.gov/archive/ag/annualreports/tr2009/agreporthumantrafficking2009.pdf, last visited 11 February 2012.

302 Amnesty International Interviews with Linda Brandmiller, Catholic Charities, 28 September 2010, and David Walding, Bernardo Kohler Center, 5 May 2011.

303 USCIS, National Stakeholder January Meeting, available at http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=74adc3531a176210VgnVCM100000082ca60aRCRDmenuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=74adc3531a176210VgnVCM100000082ca60aRCRD&vgnextchannel=994f81c52aa38210VgnVCM100000082ca60aRCRD,&vgnextchannel=994f81c52aa38210VgnVCM100000082ca60aRCRD, last visited 11 February 2012.

304 Amnesty International Interview with Susana (name on file with Amnesty International), 19 October 2011; Amnesty International Interviews with Anne Chandler, Tahirih Justice Center and Wafa Abdin, Cabrini Center of Catholic Charities, 24 January 2011; US Department of Justice, US Attorney's Office, Southern District of Texas, Press Release, "Brothers sentenced for human trafficking and alien smuggling charges," 28 April 2008, citing 18 U.S.C. 371,

available at http://officialcoldcaseinvestigations.com/showthread.php?t=3442, last visited 11 February 2012; US DOJ, US Attorney's Office, Southern District of Texas, Press Release, "Last defendant sentenced for human trafficking and alien smuggling charges," 27 April 2009, citing 18 U.S.C. 1324(a)(1)(A)(v)(I) and (B)(I), available at http://www.justice.gov/usao/txs/1News/Archives/Archived%20Releases/2009%20April/042709Mondragon.htm, last visited 11 February 2012; US Department of State, FY 2011 Performance Budget, Civil Rights Division, Congressional submission, p26, available at http://www.justice.gov/jmd/2011justification/pdf/fy11-crt-justification.pdf, last visited 11 February 2012. US DOJ, US Attorney's Office, Southern District of Texas, Press Release, "Houston man sentenced for human trafficking and alien smuggling charges," 27 April 2009, available at http://houston.fbi.gov/dojpressrel/pressrel09/ho042709.htm, last visited 11 February 2012; L. Olsen, "Details emerge from sex ring crackdown", Houston Chronicle, 29 June 2008, available at http://www.chron.com/disp/story.mpl/nb/cyfair/news/5862358.html, last visited 11 February 2012; L. Olsen, "Sex trafficking victims' lives in visa limbo", Houston Chronicle, 24 November 2008, available at http://www.chron.com/disp/story.mpl/special/immigration/6129019.html, last visited 11 February 2012.

305 UN Protocol against Smuggling of Migrants by Land, Sea and Air, Supplementing the UN Convention against Transnational Organized Crime (2000), Article 3(a).

306 US Department of State, Trafficking in persons report 2011, p372 (2011), available at http://www.state.gov/j/tip/rls/tiprpt/2011/, last visited 11 February 2012.

307 Amnesty International Interviews with Jonathan Ryan, RAICES, 28 September 2010, and Rebecca Koford, Cabrini Center – Catholic Charities, 24 January 2011.

308 Amnesty International Interview with Eric Tijerina, RAICES, 28 September 2010.

309 USCIS, Victims of human trafficking: T nonimmigrant status, available at http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=02ed3e4d77d73210VgnVCM100000082ca60aRCRD&vgnextchannel=02ed3e4d77d73210VgnVCM100000082ca60aRCRD,last visited 11 February 2012.

310 Carolina, correspondence with Amnesty International, 29 September 2011.

311 Amnesty International Telephone Interview with Dottie Laster, 6 October 2010; M. Swartz, "The lost girls", Texas Monthly, April 2010, available at http://www.texasmonthly.com/2010-04-01/feature3.php, last visited 11 February 2012.

312 8 C.F.R. § 214.14 (2008). Certifying agencies could include federal, state, or local law enforcement agencies, prosecutors, or judges.

313 See Human Trafficking and the T-Visa, Office on the Violence Against Women, Legal Momentum, 2010, available at http://vaw.umn.edu/documents/humantrafficking/humantrafficking.pdf, last visited 10 February 2012.

314 Amnesty International Telephone Interview with Jodi Goodwin, immigration attorney, 12 May 2011.

315 Amnesty International Interviews with Wayne Krause, Isaac Harrington and Abby Frank, Texas Civil Rights Project, 29 September 2010; Alpha Hernandez, Texas Rio Grande Legal Aid, 26 January 2011; Wafa Abdin, Cabrini Center – Catholic Charities, 24 January 2011; and David Walding, Bernardo Kohler Center, 5 May 2011.

316 Amnesty International Interviews with Wayne Krause, Texas Civil Rights Project, 29 September 2010; Anne Chandler, Tahirih Justice Center, 24 January 2011; Jodi Goodwin, immigration attorney, 12 May 2011; and Valerie Hink, Southern Arizona Legal Aid, 10 November 2010.

317 Amnesty International Interview with Wayne Krause and Isaac Harrington, Texas Civil Rights Project, 29 September 2010.

318 Amnesty International Interview with Chief Roberto Villaseñor, TPD, 25 April 2011.

319 In November 2011, the Vermont Service Center of USCIS which processes U Visa applications was processing applications filed in February 2011. See USCIS, Processing Time Information, available at: https://egov.uscis.gov/cris/processTimesDisplayInit.do, last visited 11 February 2012.

320 Amnesty International Interview with Luis Gonzalez, Texas Rio Grande Legal Aid, 26 January 2011

321 Amnesty International Telephone Interviews with Elizabeth Crooks, Embassy of Hope, 6 October 2010; Linda Brandmiller, Catholic Charities, 29 September 2010; and Dottie Laster, Laster Global, 6 October 2010.

322 Amnesty International Telephone Interview with Dottie Laster, Laster Global, 6 October 2010.

323 Amnesty International Telephone Interview with Elizabeth Crooks, Embassy of Hope, 6 October 2010.

324 Amnesty International Interview with Alpha Hernandez, Diana Abrego and Luis Gonzalez, Texas Rio Grande Legal Aid, 26 January 2011.

325 Email to Amnesty International from Erica Schommer, attorney, 3 August 2011.

326 Amnesty International Interview with Montserrat Caballero, SACASA – Su Voz Vale, 9 November 2010.

327 National Institute of Justice, Research in Brief, R. C. Davis and E. Erez, Immigrant populations as victims: Toward a multicultural criminal justice system, May 1998, p2, available at https://www.ncjrs.gov/pdffiles/167571.pdf, last visited 11 February 2012.

328 "Legal momentum joins the court battle to overturn Arizona's immigration law," States News Service, 28 June 2010.

329 G. Vidales, "Arrested justice: The multifaceted plight of immigrant Latinas who faced domestic violence", Journal of Family Violence, Vol. 25, No. 6, August 2010, p533–44, 25.6 (2010): 533–44 (G. Vidales, "Arrested justice").

330 M. Dutton, L. Orloff, and G. Aguilar Hass, "Characteristics of help-seeking behaviors, resources, and services needs of battered immigrant Latinas: Legal and policy implications", Georgetown Journal on Poverty Law and Policy, 7(2), 2000.

331 S. Chen and K. Cunningham, "Violence Against Women Act", 1 Georgetown Journal of Gender and the Law, 711, 722 (1999).

332 Amnesty International Interview with Isaac Harrington, Texas Civil Rights Project, 29 September 2010.

333 N. Riccardi, "Arizona immigration law tints neighborhood dispute", Los Angeles Times, 26 July 2010, available at http://articles.latimes.com/2010/jul/26/nation/la-na-immigration-arizona-20100726, last visited 11 February 2012.

334 M. Kiefer and M. Ferraresi, "Phoenix slaying now termed a hate crime", Arizona Republic, 18 June 2010, available at http://www.azcentral.com/arizonarepublic/local/articles/2010/06/18/20100618phoenix-murder-called-hate-crime.html, last visited 11 February 2012.

335 Arizona v. Kelley, CR2010-123572-001 DT, Superior Court of Arizona, Maricopa County, 5 July 2011, available at http://www.courtminutes.maricopa.gov/docs/Criminal/072011/m4797770.pdf, last visited 11 February 2012; B. Smith, "Phoenix man gets 27 years in neighbor's death", Arizona Republic, 5 July 2011, available at http://www.azcentral.com/news/articles/2011/07/05/20110705phoenix-man-shoots-neighbor-sentence-abrk.html, last visited 11 February 2012.

336 US DOJ, Bureau of Justice Statistics, NCJ 234085: Hate crime, 2003–2009 3 (released Jun. 2011) available at http://bjs.ojp.usdoj.gov/content/pub/pdf/hc0309.pdf, last visited 19 January 2012.

337 US DOJ, FBI, Uniform crime report: Hate crime statistics, 2008, Nov. 2009 available at http://www2.fbi.gov/ucr/hc2008/index.html, last visited 11 February 2012; US DOJ, FBI, Uniform crime report: Hate crime statistics, 2003, Nov. 2004 available at http://www.fbi.gov/about-us/cjis/ucr/hate-crime/2003, last visited 11 February 2012.

338 US Federal Bureau of Investigation, Hate Crimes Statistics, 2003 and Hate Crimes Statistics, 2008, Table 1, available at http://www.fbi.gov/about-us/cjis/ucr/hate-crime, last visited 11 February 2012; Leadership Conference on Civil Rights Education Fund, Confronting the new faces of hate: Hate crimes in America, 2009, p. 26, 2009, available at http://www.protectcivilrights.org/pdf/reports/hatecrimes/lccref_hate_crimes_report.pdf, last visited 11 February 2012. (Leadership Conference on Civil Rights Education Fund, Confronting the New Faces of Hate).

339 US DOJ, Bureau of Justice Statistics, NCJ 234085: Hate crime, 2003–2009 3 (released Jun. 2011) available at http://bjs.ojp.usdoj.gov/content/pub/pdf/hc0309.pdf, last visited 11 February 2012; Leadership Conference on Civil Rights Education Fund, Confronting the New Faces of Hate, p.14.

340 SPLC Intelligence report, The year in hate and extremism, 2010, by M. Potok, Issue No. 141, 2010, available at http://www.splcenter.org/get-informed/intelligence-report/browse-all-issues/2011/spring/the-year-in-hate-extremism-2010, last visited 11 February 2012; See also, SPLC Intelligence Report, Hate crimes. See also, Leadership Conference on Civil Rights Education Fund, Confronting the New Faces of Hate.

341 Departments of Transportations and Housing and Urban Development, and Related Agencies Appropriations Act of 2010, House Report 111–366, 8 December 2009, p679, available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_reports&docid=f:hr366.111.pdf#page=683, last visited 11 February 2012.

342 US DOJ, Bureau of Justice Statistics, NCJ 234085: Hate crime, 2003–2009 6 (released June 2011) available at http://bjs.ojp.usdoj.gov/content/pub/pdf/hc0309.pdf, last visited 11 February 2012.

343 SPLC, Hate crimes; Leadership Conference on Civil Rights Education Fund, Confronting the New Faces of Hate: Hate crimes in America, 2009, p12, 2009, available at http://www.protectcivilrights.org/pdf/reports/hatecrimes/lccref_hate_crimes_report.pdf, last visited 11 February 2012; CW Harlow, U.S. Dept. of Justice, Bureau of Justice Statistics, "Hate Crimes Reported by Victims and Police," November 2005, available at http://bjs.ojp.usdoj.gov/content/pub/pdf/hcrvp.pdf, last visited 19 January 2012.

344 M. Glenn, "Police to honor Mexican ID cards", The Houston Chronicle, 8 March 2002, available at http://www.freerepublic.com/focus/fr/643186/posts, last visited 11 February 2012; Amnesty International interviews with anonymous Houston official, 15 April 2011, and Francisco Arguellas, Colectivo Flatlander, 27 January 2011.

345 A. Weilbaecher, Immigrant health care: Social and economic costs of denying access: First Annual Beazley Symposium on Access to Health Care, 17 Annals Health L. 337, 340 (2008).

346 UN Office of the High Commissioner for Human Rights (OHCHR), Committee on Economic, Social and Cultural Rights, General Comment No. 13: The Right to Education (Art. 13), E/C.12/1999/10, para.1, 8 December 1999.

347 OHCHR, Committee on Economic, Social and Cultural Rights, General Comment 13: The Right to Education (Art. 13), E/C.12/1999/10, para.1 8 December 1999.

348 See Compulsory Education, National Conference of State Legislatures, available at http://www.ncsl.org/default.aspx?tabid=12943, last visited 11 February 2012; See also, Education in the United States: A Brief Overview, US Department of Education at 13 (September 2005), available at http://www2.ed.gov/about/offices/list/ous/international/edus/index.html, last visited 11 February 2012.

349 See US Department of Education website, available at http://www2.ed.gov/about/overview/fed/role.html?src=ln, last visited 11 February 2012.

350 Lau v. Nicohols, 414 U.S. Reports 563 (1974). It was held that lack of linguistically appropriate services for limited English proficiency (LEP) students effectively denied LEP student equal educational opportunities – in violation of Title VI, which prohibits discrimination on the basis of national origin.

351 Plyler v. Doe, 457 U.S. 202 (1982).

352 A. N. Sanchez, "Architects of SB-1070 looking at challenging historic Plyler vs. Doe Decision", Think Progress.com, 6 August 2010, available at http://thinkprogress.org/security/2010/08/06/176205/tuition-school-immigration/, last visited 11 February 2012.

353 J. S. Passel and D. Cohn, Unauthorized immigrant population: National and state trends, 2010, The Pew Hispanic Center, 1 February 2011, pp9, 13, available at http://pewhispanic.org/files/reports/133.pdf, last visited 11 February 2012.

354 B. Johnson, "Groups sue to block Alabama illegal immigration law", Associated Press, 8 July 2011, available at http://news.yahoo.com/groups-sue-block-ala-illegal-immigration-law-160803467.html, last visited 11 February 2012.

355 ACLU, "Appeals court blocks two sections of Alabama anti-immigrant law fought by ACLU".

356 C. Robertson, "After ruling, Hispanics flee an Alabama town", New York Times, 3 October 2011, available at http://www.nytimes.com/2011/10/04/us/after-ruling-hispanics-flee-an-alabama-town.html?_r=1&ref=todayspaper, last visited 11 February 2012; MJ Lee, "Alabama Hispanic students not coming back", Politico, 2 November 2011, available at http://www.politico.com/news/stories/1111/67438.html, last visited 17 February 2012.

357 2010 Virginia House Bill No. 1775; 2011 Oklahoma House Bill No. 2086; 2011 Tennessee House Bill No. 943.

358 Arizona Senate Bill 1407 (Ariz. 2011), available at

http://www.azleg.gov//FormatDocument.asp?inDoc=/legtext/50leg/1r/bills/sb1407o.asp&Session_ID=102, last visited 11 February 2012; Texas House Bill No. 22, 82d(R) (Tex. 2011) available at: http://www.legis.state.tx.us/tlodocs/82R/billtext/pdf/HB00022I.pdf#navpanes=0, last visited 11 February 2012.

359 H.B. No. 22, 82d(R) (Tex. 2011) available at http://www.legis.state.tx.us/tlodocs/82R/billtext/pdf/HB00022I.pdf#navpanes=0, last visited 11 February 2012; A. Beard Rau, "Arizona Senate rejects 5 major immigration bills", azcentral.com, 18 March 2011, available at http://www.azcentral.com/news/election/azelections/articles/2011/03/17/20110317arizona-birthright-citizenship-bills-rejected.html, last visited 11 February 2012; Texas Legislature Online, No. 82R 992 GCB-D, available at: http://www.legis.state.tx.us/BillLookup/History.aspx?LegSess=82R&Bill=HB22, last visited 11 February 2012. 2010 Virginia House Bill No. 1775; 2011 Oklahoma House Bill No. 2086; 2011 Tennessee House Bill No. 943.

360 S. Khimm, "Arizona's next target: 'Student' amnesty?", Mother Jones, 14 May 2010, available at http://motherjones.com/mojo/2010/05/arizona-students-illegal-immigrants, last visited 11 February 2012.

361 See http://www.justice.gov/crt/about/edu/documents/plyler.php, last visited 11 February 2012."Pending Alabama immigration law violates federal law"; see alsoJ. Pape, "US Department of Education sends warning to school districts about questioning students' citizenship", InstantNewsKaty.com, 9 May 2011, available at http://instantnewskaty.com/2011/05/09/21183, last visited 11 February 2012.

362 Migrant students must have attended a California high school for three or more full academic years; must have or will graduate from a California high school or have attained a G.E.D. or received a passing mark on the California High School Proficiency Exam (CHSPE); must register or is currently enrolled at an accredited institution of public higher education in California. If undocumented, they must file an affidavit with the college or university stating that they have applied for a lawful immigration status or will apply as soon as they are eligible to do so. See California DREAM network, AB 130 Facts, available at http://www.cadreamnetwork.org/AB130-facts, last visited 11 February 2012. See Governor Brown Signs California DREAM Act, available at http://gov.ca.gov/news.php?id=17268, last visited 11 February 2012.

363 The DREAM Act would permit migrant students to legalize their status if they entered the United States by the age of 15, have been physically present in the country for at least five years, graduate from high school, and complete at least two years of college or military service, and demonstrate "good moral character".

364 H.R. 1918, 107th Cong. (2001) and S. 1291, 107th Cong. (2001); See e.g. H.R. 1684, 108th Cong. (2003); S. 1545, 108th Cong. (2003); H.R. 5131, 109th Cong. (2006); S. 2075, 109th Cong. (2005); H.R. 1275, 110th Cong. (2007); S. 774, 110th Cong. (2007); S. 2205, 110th Cong. (2007); H.R. 6497, 111th Cong. (2010).

365 For information related to barriers to access health care for communities of color and people living in poverty in the USA, please see Amnesty International, Deadly Delivery: The Maternal Health Care Crisis in the USA, AMR 51/019/2010, 12 March 2010, available at http://www.amnestyusa.org/sites/default/files/pdfs/deadlydelivery.pdf, last visited 10 February 2012.

366 S. Lebedinski. "EMTALA: Treatment of undocumented aliens and the financial burden it places on hospitals", 7 J.L. Society, 2005, pp146, 148.

367 Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and Title XIX of the Social Security Act.

368 Children's Health Insurance Program Reauthorization Act of 2009.

369 C. DeNavas-Walt et al, Income, poverty, and health insurance coverage in the United States: 2008, US Census Bureau, Washington, DC, September 2009, available at http://www.census.gov/prod/2009pubs/p60-236.pdf, last visited 11 February 2012.

370 J. Passel and D. Cohn, A portrait of unauthorized immigrants in the United States, Pew Hispanic Center, 14 April 2009, p18.

371 Kaiser Commission on Medicaid and the Uninsured, The uninsured: A primer: Key facts about Americans without health insurance, October 2007, p30, Table 1, available at http://www.kff.org/uninsured/upload/7451-03.pdf, last visited 11 February 2012.

372 State Health Facts, Health Insurance Coverage of the Total Population, states (2009-2010), available at http://www.statehealthfacts.org/comparetable.jsp?ind=125&cat=3, last visited 11 February 2012; J. Passel, "Unauthorized immigrant Population, National and State Trends, 2010", Pew Hispanic Center, 1 February 2011, page 14, available at http://pewhispanic.org/files/reports/133.pdf, last visited 11 February 2012.

373 42 U.S.C. §1396b(v)(3) (2009); 42 C.F.R. § 440.255(b) (2009).

374 S. Kershaw, "US rule limits emergency care for immigrants.".

375 M. Greenspon, "The emergency medical treatment and Active Labor Act and sources of funding", First Annual Beazley Symposium on Access to Health Care, 17 Annals Health L. 309 312 (2008).

376 Amnesty International Interviews with Montserrat Caballero, SACASA – Su Voz Vale, 9 November 2010, and Mary Day, Southern Arizona Legal Aid, 10 November 2010, Kat Rodriguez, Coalicion de Derechos Humanos, 10 November 2010.

377 Amnesty International Interview with Montserrat Caballero, SACASA – Su Voz Vale, 9 November 2010.

378 B. R. Clark, "The immigrant health care narrative and what it tells us about the US health care system", 17 Annals of Health L. 229, 237 (2008).

379 Arizona Senate Bill 1405, available at http://www.azleg.gov/legtext/50leg/1r/bills/sb1405p.pdf, last visited 11 February 2012.

380 Similar legislation requiring hospitals to collect information on patients' immigration status for data collection purposes before providing treatment was introduced in Tennessee (H.B. 0943) and Georgia (H.B. 296). However neither bill was passed when both states' legislative sessions ended. The Tennessee House Bill 0943 is available at http://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=HB0943, last visited 11 February 2012, and the Georgia House Bill 296 is available at http://www1.legis.ga.gov/legis/2011_12/sum/hb296.htm, last visited 11 February 2012.

381 A.R.S. §§ 1-501, 1-502. In 2011, similar legislation requiring proof of citizenship to obtain state benefits was proposed in both Pennsylvania (H.B. 355) and Louisiana (H.B. 59), available at http://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?syear=2011&sind=0&body=H&type=B&BN=0355, last visited 11 February 2012, Louisiana H.B. 59, available at http://www.mygov365.com/legislation/view/id/4db6708249e51bd334500a00/tab/overview/, last visited 11 February 2012.

382 C. Newton, "Benefits law nets illegal immigrant suspects", The Arizona Republic, 18 December 2009, available at http://www.azcentral.com/news/election/azelections/articles/2009/12/18/20091218desrepor ts1218.html#ixzz16nUITUfY, last visited 11 February 2012.

383 J. Armin, and R. Reineke, "Expanding vulnerability: Health care, well-being, and Arizona's immigration policies" Access Denied: A Conversation on Unauthorized Immigration and Health, 2010, available at http://accessdeniedblog.wordpress.com/2010/07/11/expanding-vulnerability-health-care-well-being-and-arizona%E2%80%99s-immigration-policies-%E2%80%93-julie-armin-robin-reineke/, last visited 11 February 2012.

384 V. Fernandez, "New Arizona law rattles immigrant community," New American Media, 30 November 2009, available at http://news.newamericamedia.org/news/view_article.html?article_id=0b54cfcfc7f95adfe97e2e7d2668a037, last visited 11 February 2012.

385 V. Fernandez, "One year later, Arizona law keeps families from getting public benefits", New American Media, 22 November 2010, available at http://newamericamedia.org/2010/11/one-year-later-arizona-law-keeps-families-from-getting-public-benefits.php, last visited 11 February 2012 (v. Fernandez, One Year Later).

386 V. Fernandez, "One year later".

387 Text of H.B. 56, Sec. 7, available at: http://alisondb.legislature.state.al.us/acas/searchableinstruments/2011rs/bills/hb56.htm, last visited 11 February 2012.

388 US v. Alabama, (11-14532), available at: http://www.ca11.uscourts.gov/unpub/ops/201114532ord.pdf, last visited 11 February 2012.

389 See Triagency Letter from US Department of Health and Human Services and the US Department of Agriculture to State Health and Welfare officials, available at http://www.hhs.gov/ocr/civilrights/resources/specialtopics/tanf/triagencyletter.html, last visited 11 February 2012.

390 See, for example, B. Gotbaum, "Hurdles to a healthy baby: Pregnant women face barriers to prenatal care at City Health Centers, Office of the New York City Public Advocate, May 2007, available at http://publicadvocategotbaum.com/policy/documents/HurdlestoaHealthyBaby.pdf, last visited 11 February 2012; I. Hill and A. Westpfahl Lutzky, Getting in, not getting in, and why: Understanding SCHIP enrollment, Urban Institute, Assessing the New Federalism, Occasional Paper No. 66, 16 May 2003, pp8–9, available at http://www.urban.org/UploadedPDF/310793_OP-66.pdf, last visited 11 February 2012.

391 See, for example, A. Yamin, "How do courts set health policy? The Case of the Colombian Constitutional Court", PLoS Med 6(2): E1000032. Doi:10.1371/journal.pmed.1000032, citing Corte Constitucional de Colombia (2008) Sala Segunda de Revision, Sentencia T-760, 31 July 2008.

392 ICESCR, Art. 12.2; UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14, The right to the highest attainable standard of health, UN Doc.E/C.12/2000/4, para4,11, available at http://www.unhchr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En, last visited 11 February 2012.

393 UN Committee on the Elimination of Racial Discrimination, General Recommendation 30: Discrimination against non-citizens, 2004, para 4, available at: http://www.ohchr.org/english/bodies/cerd/comments.htm, last visited 10 February 2012.

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