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# The Human Rights Factor in United States Immigration Policies

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Any debate regarding immigration policies—especially those intended to control irregular or undocumented migrants—generally produces conflicting perspectives between destination nations and countries of origin.[2] Within the United States-Mexico paradigm, each nation has a particularly distinct understanding of the situation, a direct consequence of the complexity that from the very beginning has characterized their geopolitics. In Mexico, the prevailing understanding of the situation is that out-migration toward the United States is basically an economic phenomenon, a labor issue where the U.S. benefits and the Mexican government assumes little responsibility. In contrast, the predominant view in the United States is that the majority of these irregular migrants are criminals who violate U.S. laws, take jobs away from American citizens, and imply an economic cost to the nation. Far from the truth, both visions correspond more to a matter of subjective appreciation, myths, or prejudices that promote fear between one group and the other, in turn preventing each party from recognizing the potential of this population movement.

If Mexico's optimistic approach to this social phenomenon is frankly derisory and the negative discourse constructed from the U.S. is often simplistic, then perhaps a better way to fully benefit from and understand this situation is through the lens of human rights. This approach not only allows us to transcend the emphasis on nationhood as a theoretical device, but also achieves a more global understanding of the paradoxes of the transnational political processes which occur today between the migrant's countries of origin and their destination nation. From this position Yasemin Soysal has examined the reconfigurations of the nation-state and citizenship in Europe, and Saskia Sassen has studied the role of the nation-states and the transformation of national sovereignty. The kind of global approach that both Soysal and Sassen have employed can also be useful in acquiring a

deeper understanding of the policy and migration discourses of the Mexican exodus.

The main thrust of this essay is that current U.S. immigration laws—bolstered by the principle of national sovereignty—penalize the importation of the overseas labor force in a manner that is harmful not only to immigrants but furthermore to the United States. The policies pertaining to this issue often produce unwanted effects. They summarize much of the traditional arguments of the "anti-economy" and above all, this type of approach is contrary to the foundation of an open society that is democratic and preserves human dignity.[3] Furthermore, there is a direct correlation between heightened national security, increased border enforcement, and the rise in the incidences of violation of Mexican immigrants' human rights. It is within this context that human rights appear as a central element for the examination of international migration problems. While framing international migrants in their condition of vulnerability and as subjects of human rights, these pages will also highlight some of the more important challenges that international migration poses to policymakers.[4]

## Sovereignty and Human Rights

The commencement of an open discussion on migration would consist of recognizing freedom of movement (emigration and immigration) as a fundamental human right. It is incoherent to defend the free movement of goods, services and capital, as the United States presently does, and concurrently oppose the free movement of people (particularly workers). From this perspective, impeding a person's ability to enter into or depart from a country would constitute an attack on their legitimate rights. Nevertheless, this approach has a fundamental problem—if it is quite clear that any individual has the right to offer their services in any place of the world, it is also true that the societies have the right to accept or reject them for the reasons that they find appropriate. The subtle point in this collision of international principles is found—as indicated by Francisco Alba—in the fact that any type of policy on this topic must have the importance of the individual and their inalienable basic rights as the starting point, independent of the different methods of managing the immigration phenomenon (30).[5]

In the current world order the rule of territorial sovereignty remains a fundamental governing principle of international law, each and every State has the acknowledged authority to allow or refuse the entry of foreigners into their territory. However, and this is the key element, each nation-state should be accountable to a minimum international legal framework that respects the dignity of human beings. Therefore, if a nation decides to implement a restrictive immigration policy, it must ensure that human rights

are not violated as a result of their enforcement, for instance, when an attempt is made to cross the U.S.-Mexico border in a clandestine manner, when the government regulates their stay, and/or when they are deported to their country of origin. The current problem with destination nations is that the increase in national security, border enforcement and the implementation of recent laws governing immigration have not been concomitant with the unrestricted principle of the protection of the dignity of human beings, and on the contrary, have resulted in the rise of the violation of migrants' human rights by authorities and society. The migratory phenomenon between Mexico and the United States will serve to develop this argument worldwide.

## A Historic Memory

Although immigration has always been a controversial issue for the United States, even before the Declaration of Independence—let us remember, for example, how Benjamin Franklin more than two centuries ago stated that the influx of German immigrants could overwhelm the predominantly Anglo culture of Pennsylvania—the U.S. has been perceived throughout its history as a nation that possesses modern, flexible, and quite open policies.[6] Its geographical extension, their determination to colonize, and the denial of the few Native American communities to submit to the invaders of their former territories, gave rise to the general welcoming of migration. However immigration has been limited according to criteria based on nationality and conditions of residence. This nationality-based criterion has influenced migration practices that determine the vulnerability of distinct ethnic groups (Trigueros 88). A clear example of this situation is found in the first immigration law enacted, the so-called *Naturalization Act of 1790*, which enabled the executive government to grant nationality and citizenship to foreigners, while at the same time imposing discriminatory criteria, since the law limited naturalization to aliens who were "free white persons."

Although it could be said that throughout the history of the United States there have been periods of time when authorities have allowed the borders to remain open, discriminatory conditions and violations of human rights have occurred practically since the beginning of Mexican immigration. Remember, for example, the governmental actions executed—as early as the 1930s—to massively deport working immigrants (Balderrama 98) or the *Operation Wetback* of 1954 which through the use of racial profiling achieved the deportation of one million people (Ong Hing 130–132). However, the first massive effort of U.S. authorities to control irregular immigration was by means of the introduction to congress of the infamous *Simpson Mazzoli Act* during the 70s. This was the first time the

U.S. government attempted to sanction employers who hired undocumented aliens, and intensify border enforcement and the coercive power of the former Immigration and Naturalization Service (INS).[7] Though disagreements in the U.S. Congress did not permit their passage then, the bill was ultimately signed into law on November 7, 1986, under the name of *Immigration Reform and Control Act* (IRCA). This legislation would become a watershed in U.S. immigration policy, since for the first time a new classification of residents was created that possessed significantly fewer rights than the rest of the population—they were not allowed to work legally, receive social benefits, and could be apprehended, incarcerated and deported in any moment without the possibility of legal defense (Fry 82). The creation of this new "category of people" (i.e. *illegal*) is essential for my argument, in that from this moment there are important legislative ramifications with respect to the vulnerability of Mexican immigrants. With the passage of time, I will show, the original premise of this law—that irregular immigrants did not have the right to work or gain life sustenance—has increased to the point of the denial of the most basic elements of a normal life, including the right to be part of the U.S. community.

In later years, a substantial number of legal measures were introduced to continue the restriction of undocumented migrants' rights. On the federal level, one could mention the measures intended to reinforce the southern border of United States through the implementation of low intensity military strategies (Cornelius 665).[8] This national border strategy, initiated at the beginning of the 1990s, was organized into four gradual phases that according to authorities would allow for the total control of all United States territory. The first initiative to be implemented in September of 1993 was *Operation Hold-The-Line*, originally called *Operation Blockade*, stationed throughout the border sector between Ciudad Juárez and El Paso, Texas. Later implemented were *Operation Gatekeeper* in the area of San Diego in 1994; *Operation Safeguard* in central Arizona, launched in 1995; and finally the *Operation Rio Grande* in the south of Texas initiated in 1997.[9]

According to information from former INS Commissioner Doris Meissner, this national strategy was destined to increase the probability of apprehension in those four corridors, to the point that potential immigrants were discouraged to leave their communities of origin in Mexico. The key concept of the plan relied on a vision of "prevention through deterrence" in which a decisive number of enforcement resources would be brought to bear in each major corridor, raising the risk of apprehension high enough to be an effective deterrent.[10] The logic of the designers of the migratory policy was that if indeed they could control those main accesses, "geographically they could do it with the rest" (Nuñez-Neto 5–8). The first step in the fortification of the main accesses was the construction of steel fences ten feet high throughout the urban areas of San Diego and El Paso. Besides the construction of these deplorable physical barriers, reproducing the pattern of

the Berlin Wall, other state-of-the-art technology installed for this operation included unmanned aerial vehicles, helicopters and boat patrols, bright lighting, and new surveillance systems that used electronic sensors linked with low-light video cameras (Cornelius 663). In the most remote areas, observation towers for border monitoring were installed as well. Finally, the most successful element of the strategy was the substantial augmentation of agents on the border; border personnel was increased by 117%—nearly 5,000 more border agents in less than five years.[11] The problem with this "military" strategy is, as Timothy Dunn and others point out, that the use of low-intensity military strategies inevitably produces a systematic violation of human rights.[12] Specifically at risk are those immigrants who attempt to cross the border clandestinely.

In the 1990s, a series of local legal measures were also implemented in the United States—although by law immigration must be regulated by federal authorities—directed to offset the irregular immigration that clearly violated the human and labor rights of these population groups. Perhaps the most well-known of these legislative tools was the *Save our State Initiative* also known as *Proposition 187*, put to vote by the electorate of California in November of 1994. Then Governor Wilson skillfully argued that immigrants were not only guilty of causing economic problems, but also of drug trafficking, violence, crime and an endless number of the evils that the state suffered:

> SECTION 1. Findings and Declarations.
> The People of California find and declare as follows:
> That they have suffered and are suffering economic hardship caused by the presence of illegal aliens in this state. That they have suffered and are suffering **personal injury and damage caused by the criminal conduct of illegal aliens** in this state. That they have a right to the protection of their government from any person or persons entering this country unlawfully. (*emphasis mine*) (1)

As seen in the first section cited, this initiative statute was designed to hold the undocumented immigrants responsible in large extent for the problems affecting the state of California. Mainly this legislative proposal established the obligation of government employees to denounce anyone they would suspect to be an undocumented alien (Reyes 105–106). Due to the content of the same legal disposition, the practice of racial profiling was consequently available to any state authority, since the simple suspicion that an individual seemed Mexican would be a sufficient reason to persecute, harass or apprehend them. In addition, this measure denied most public services to "illegals," even those related to health and education, consequently transgressing that which is called "second generation human rights" (Valencia-Villa 46–50).[13] Although most of the provisions of the law were

overturned by a federal court due to their unconstitutionality (*League of United Latin American Citizens v. Wilson* ), the measure prompted support for similar bills in other state legislatures.[14]

Concern about immigration, terrorism, and welfare led to three major immigration-related laws in 1996: the *Anti-Terrorism and Effective Death Penalty Act* (ATEDPA), the *Personal Responsibility and Work Opportunity Reconciliation Act* (PRWORA), and the *Illegal Immigration Reform and Immigrant Responsibility Act* (IIRIRA). In general, these policies were mainly directed at punishing the illegal immigrant, displaying him with an aura of criminality. Some of the policies of the Acts that directly affect immigrants (both "illegal" and documented) are as follows: the increase of border enforcement and the sanctions for trafficking undocumented people; changes in provisions for inspection, apprehension, and deportation; restriction of welfare benefits and finally, and the introduction of a pilot system by which employers check data on newly hired workers by telephone to ensure that they were legally authorized to work in the U.S. (Martin 12–14).

## Post 9/11 U.S. Immigration Policies

Today Mexican immigration is once again facing a severe dilemma, precisely because of the arousal of a new hysteria and a virulent reaction against migrants in the United States. The problem of unemployment, the concentration of immigrant contingents in certain cities or states, the generalized rebellion against all redistributive fiscal policy and by all means the detonation of world-wide terrorism, largely explains the anti-migrant wrath of the United States. Although the xenophobic reaction has been limited mostly to border states such as California, Texas and Arizona, there is a paradigmatically anti-Mexican slant to the topic, establishing a deceptive identity on a national scale between Mexican and undocumented people. The anti-migrant climate has been translated into real policies at different levels of government which clearly infringe on human rights. In this sense, it can be said that the present violence against the regular and irregular migrant population displays mainly two perspectives: one of institutional nature and the other executed especially by nativist and racist American groups.

Institutional violence can include the approval and application of laws that violate the human rights of migrants, as much as the actions of the authorities who take advantage of their vulnerability, overstepping the functions that they should fulfill. Among the violatory actions that these officials perpetrate are, for example: the abuses of authority (physical mistreatment, intimidation, and threats), injuries, robbery, and illegal deprivation of freedom, destruction of documents and/or seizure, and even

sexual abuse. With regard to the immigration legislation, it may be said that since the attacks of 9/11, the U.S. Congress has approved a series of legal measures under the pretense of its "war against terrorism" that harshly represses the civil and political rights of all people who are within the United States. Perhaps, as Enriqueta Cabrera cautioned, the greatest danger is the *USA Patriot Act* of 2001 (H.R. 3162) signed into law in October 26, 2001, only a few weeks after the attacks (296).

The first element that jumps out when examining this legislation is the fact that it is specifically directed to "immigrants and/or non-citizens of the United States."[15] This contradicts the principle of equality under the law consecrated in the *Universal Declaration of Human Rights* (UDHR) in its Articles 1 and 2 which establishes that all human beings are born free and equal in dignity and rights, and that everyone is entitled to all the rights and liberties set forth in this Declaration, "without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." In the same sense, the wording of Article 26 of the *International Covenant on Civil and Political Rights* (ICCPR) and the Article 1 and 7 of the *International Convention on the Protection of the Rights of All Migrants Workers and Member of Their Families* of 1990 (hereafter *Migrant Workers' Convention*) contributes to the recognition of the equality of treatment with nationals of the United States.[16]

But beyond that, the very content of the law raises numerous questions with respect to human rights. For example, section 412 of the *Patriot Act* permits the Attorney General to indefinitely detain noncitizens without a hearing, if he has "reasonable grounds" to believe that the suspect could threaten the national security of the United States, even if they have not been linked to terrorism [8 U.S.C. 1226(a)].[17] The right to liberty and personal security is guaranteed as we know it within Article 3 of the UDHR and in Article 1 of the *American Declaration of The Rights and Duties of Man* (ADRDM). Also, the aforementioned ICCPR clarifies that no one "shall be subjected to arbitrary arrest or detention" (Article 9.10). Moreover, the (ADRDM) says that "every individual who has been deprived of his liberty has the right to have the legality of his detention ascertained without delay by a court and the right to be tried without undue delay or, otherwise, to be released" (25.3). Nevertheless, none of these guarantees established in international instruments have been fulfilled with respect to prisoners in the United States held under the *Patriot Act*.

Beside the former point, under *Patriot Act* amendments, foreign nationals can be detainable or deportable from the United States, among other grounds, if they are engaged innocently in an activity with an association that provides support, endorses or advocates for a group who the government considers as a terrorist organization, even if this group was not designated as a terrorist organization [8 U.S.C. 1227 (a)(1)(A), (a)(4)(B); 1182(a)(3)(B)(iv)].

According to section 411(c) the Secretary of State "could designate as terrorist organization any foreign or domestic group which he finds to intend to engage in terrorism or terrorist activity" without any constitutional guarantees (8 U.S.C. 1189(a)(1)(B). It is not even a requirement that these groups have been involved in a violent activity, or that the person to be deported knows of the group's designation [8 U.S.C. 1182 (a)(3)(b)(VI), (a)(3)(b)(IV)]. Moreover, individuals that also provide support to groups non-designated as a terrorist organization (disfavored groups) could be detained or deported unless the solicitor can demonstrate that he did not know, and should not reasonably have known, that the solicitation would further the organization's terrorist activity [8 U.S.C.1882 (a)(3)(b)(i)(IV); 1182 (a)(3)(b)(i)(VI), (a)(3)(f)(cc)]. Had this law been in place in 1980, it would have denied entry to those who publicly endorsed the African National Congress and would have empowered the Attorney General to detain and deport anyone who contributed to Nelson Mandela's lawful anti-apartheid political activities. This situation can become as absurd as to consider humanitarian groups, in spite of being antagonistic of terrorism, in the same light as those who support a terrorist organization. These provisions clearly transgress the right to freedom of association with others established under Article 20 of the UDHR, and Article 22 of the ADRDM, and the ICCPR. This last instrument declares that "[n]o restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others" (Art 22.2).

What is more, the civil liberties of Americans and foreigners have taken a tremendous blow with this law, especially the right to privacy in online communications. Yet there is no evidence that previous civil liberties posed a barrier to the effective tracking or prosecution of terrorists. The process leading to the passage of the bill did little to ease these concerns. To the contrary, they are amplified by the inclusion of so many provisions that, instead of being aimed at terrorism, are aimed at nonviolent, domestic crime. In this sense, one of the chief concerns is that The *Patriot Act* has expanded all four traditional tools of surveillance used by law enforcement—wiretaps, search warrants, pen/trap orders and subpoenas—which means that the government may now monitor the online activities of innocent people, and perhaps even track which websites they visit, by merely telling a judge anywhere in the U.S. that the spying could lead to information that is "relevant" to an ongoing criminal investigation (18 U.S.C. 2516). Thus, the provisions of this law could even be applied to the investigation of other crimes. Section 216 to 218 of the statue also permits law enforcement officials to intercept the communications of an intruder within a protected computer system, without the necessity of a warrant or court order [18

U.S.C. 2511(2)(i)]. Previously, along this same line, agents were required at the time of the search or soon thereafter to notify a person whose premises were searched that the search occurred, usually by leaving a copy of the warrant. Today the *Patriot Act*, in its section 213, makes it easier to obtain surreptitious or "sneak-and-peek" warrants under which notice can be delayed [18 U.S.C. 3103(a); 50 U.S.C. 1861(a)(1)]. Consequently, all these measures infringe upon that established by the UDHR that provides that "[n]o one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks" (Art. 12). Article 9 and 10 of the ADRDM and Article 16 of the ICCPR are similarly pronounced, particularly regarding the right to the inviolability of the home and the inviolability and transmission of correspondence. As we have seen, many aspects of the bill increase the opportunity for law enforcement and the intelligence community to return to an era where they monitored and sometimes harassed individuals who were merely exercising their First Amendment rights. However, this is by no means an exhaustive evaluation or presentation of evidence demonstrating how far the present U.S. government has gone in respect to the violation of individual rights, by means of the proclamation of its *Patriot Act*.

In 2002, the U.S. intelligence system underwent one of the largest reforms of the last 50 years, through the publication of the document titled *The National Security Strategy of the United States of America* (2002), which establishes the premises necessary to confront the challenges of the twenty-first century in regard to peace and war (Green 137). [18] Within this strategy we find for the first time a patent linkage between terrorism and immigration thereby creating a malicious parallel between criminal conduct by commission of terrorist acts and conduct that transgresses migratory dispositions.[19]

Here the government of the United States emphatically resumed the logic that associates sovereignty with territory and that invariably enemies of a State come from abroad: "The massive flow of people and goods across our borders helps drive our economy, but can also serve as a conduit for terrorists, weapons of mass destruction, illegal migrants, contraband, and other unlawful commodities. The new threats and opportunities of the twenty-first century demand a new approach to border management" (*Securing America's Borders Fact Sheet*). While it is certain, as affirmed by Santibáñez, that the great majority of Americans do not identify immigrants as terrorists, the previous quote is an irrefutable indicative that senior officials of the Bush Administration sought to associate or link migration to terrorism and identify the border as the main entrance for enemies of the country (202–207).

One of main provisions of this strategy having a direct relationship with this study, is the creation of the new cabinet, the Department of Homeland

Security (DHS), which is in charge of coordinating more than 22 government agencies.[20] One of these agencies, the INS, was moved in 2003 from the U.S. Department of Justice to DHS and divided into three DHS agencies. One focused on border enforcement and inspection of persons arriving in the U.S., another focused on enforcement of immigration laws within the U.S., and finally another focused on applications for immigration benefits, such as dealing with foreigners inside the U.S. seeking immigrant visas and those wishing to become naturalized citizens. The implication of this administrative reorganization is, in my opinion, a demonstration of the cynical way in which the United States has tied the immigrant to terrorism, thereby increasing their vulnerability.

Along with these administrative measures, the United States has also directed a much more aggressive strategy to safeguard its borders, primarily those located in the southwest portion of the country, through the mobilization of troops, and the construction of new fences on the border with Mexico. The year 2006 was crucial in this enforcement strategy: First, President Bush ordered 6,000 troops of the National Guard to support the work of the Border Patrol; and second, an overwhelming majority of the senate (80–19) approved the *Secure Fence Act of 2006*, which stipulates the construction of a 700-mile double-reinforced wall along the U.S.-Mexico border aimed at stopping illegal immigration. The last measure conceives, in addition to the physical infrastructure enhancements to prevent unlawful border entry (See Fig.1), a virtual fence with technology, equipment, and personnel so that the DHS has total operational control of the border (H.R. 6061).[21] The extraordinary element of this technological component is that the "virtual fence" streams live images from dozens of cameras on the Internet, some equipped with infrared vision, through which users can virtually "patrol" the border and contact U.S. authorities in the event they locate an irregular immigrant in the area. This imitates the unfortunate portrayal of the migration phenomenon seen in videogames of human hunting that are found on consoles such as "Playstation" or "Xbox" (http://texasborderwatch.com/).

Figure 1. The new wall proposed in the *Secure Fence Act of 2006*
Source: Secretariat of External Relations in Mexico. (www.sre.gob.mx)

As shown in the map above, the existing wall along the border only covers some of the border corridors from San Diego, Tucson, and El Paso. With this new proposal, the border fence will multiply and cover specific sections at the entry points of Tecate (10 miles east and west) and Caléxico (10 miles west) in California; Douglas, Arizona; other portions in Columbus, New Mexico; and El Paso, Del Rio, Eagle Pass, Laredo and Brownsville, Texas. From a human rights perspective, the wall, the fence, the barrier or whatever name one prefers to use, represents a violation of the international right of the free movement of persons (Article 13 UDHR). However, of deeper concern is the increased danger immigrants face resulting from the erection of the wall, forcing them to attempt to cross over more remote areas, desolate and dangerous, provoking the horrendous rise of the missing and dead among border-crossers.[22] The solution to the immigration phenomenon by all means is not found in the construction of physical barriers because, as it has been seen throughout the last decade, these types of policies have been ineffective in decreasing the flow of migration. On the contrary, I believe, as does Immanuel Wallerstein, that the walls built at the border contribute to the magnification of inequalities, are politically abrasive, are not friendly and, as has been demonstrated with the construction of other barriers (for instance Berlin or Israel) violate human rights and exacerbate racial violence (1–3). The unilateralist migration policies of Washington and public discourse linking undocumented migration with delinquency and terrorism are translated in this manner in the daily violations of the human rights of these individuals and a wave of xenophobia driven by various organizations and social actors.

The court decision in *Hoffman Plastic Compounds Inc. v. National Labor Relations Board* (2002) has been by far the greatest blow to workers' rights in the workplace in recent U.S. history, since the Supreme Court of the United States decided to deny the right to compensation and back-pay for immigrants' jobs due to unjustified layoffs. The Hoffman case involved an undocumented Mexican worker, Juan Castro, and three other employees, who were fired because of their union involvement. Although initially the National Labor Relations Board (NLRB) ruled that Hoffman Plastic violated the *National Labor Relations Act* (NLRA) and ordered the reinstatement and back-pay for the four employees, in March 2002, the Supreme Court (5–4) reversed the NLRB's decision. The Court held that the IRCA was specifically enacted by Congress to combat employment of undocumented workers. The Court specifically noted that under the IRCA, illegal aliens who attempt to use false documents are subject to fines and criminal prosecution. Therefore, awarding back-pay to an illegal alien "would unduly trench upon explicit statutory prohibitions critical to federal immigration

policy" (Hoffman 122 S. Ct. at 1283–84). The Court deduced that "[t]here is no reason to think that Congress nonetheless intended to permit back-pay where but for an employer's unfair labor practice, an alien-employee would have remained in the United States illegally, and continued to work illegally, all the while successfully evading apprehension by immigration authorities" (Hoffman., 122 S. Ct. at 1283–84).

Because within the U.S. legal system a single decision may set a precedent, the main outcome of the abovementioned court ruling is that since March 27, 2002, undocumented workers are not entitled to back-pay for NLRA violations. Simply put, "the message for undocumented workers is: work, but keep quiet" (Robin 9). Thus, the Hoffman decision establishes that in the United States the only individuals with legal capacity in labor matters are U.S. citizens (Bustamante, *Migración* 171–175). This legal decision places irregular migrants in a greater condition of defenselessness against human and labor rights abuses. These become evident for instance, if we turn to the text of the UDHR, which established that all human beings are equal in dignity and rights and that "everyone is entitled to all the rights and, without distinction of any kind" (Articles 1 and 2). Also, it is clear that this verdict violates the right to due process as established in Article 14 of ICCPR and 16 of the *Migrant Worker's Convention*, in view of the fact that although in theory a judicial proceeding was held, it was far from being just and impartial, thus contradicting the advisory opinion of the Inter-American Court of Human Rights that establishes that for "the due process of law a defendant must be able to exercise his rights and defend his interests effectively and in full procedural equality with other defendants."[23] Finally, the court decision in *Hoffman Plastic v. NLRB* infringes upon several international principles on labor matters, such as the freedom of association, collective bargaining, the right to collective negotiation, and the elimination of discrimination in labor matters guaranteed by the 1948 *Freedom of Association and Protection of the Right to Organize Convention* (CO 87) and the 1949 *Right to Organise and Collective Bargaining Convention* (CO98) of the International Labour Organization (ILO). The legal differences between nationals and foreigners established by the State, which Jorge Bustamante calls a "power asymmetry," causes a surge in the condition of vulnerability of immigrants. It is in this legalized differentiation that we find the structural origin of unequal access to State resources between nationals and foreigners or immigrants.[24]

There has also been a rise in anti-immigrant activism at the state and municipal level beginning with the Arizona laws approved in the summer of 2005, in particular *Proposition 200*. These measures, without explicitly expressing it, have been designed to hinder the life and labor integration of irregular Mexican immigrants to the U.S. society. Along with this law, in 2006 alone there were more than 500 initiatives proposed across the United States, 57 of which were approved in 27 states according to the National

Conference of State Legislatures.[25] The most extreme cases without a doubt have been the immigration bill signed by Georgia governor Sonny Perdue in April 2006 (the *Georgia Security and Immigration Compliance Act*) and the *Colorado House Bill 1023* approved by the Colorado legislature on July 10, 2006, that restricted the rights of the undocumented people in labor and health matters. My sense is that anti-immigrant ordinances will not adequately address the issue of illegal immigration, but will instead invite litigation and create ill will within the community as a whole. Such laws are divisive and unproductive, and only promote discrimination against immigrants.[26]

All the measures analyzed thus far, as can be seen, have increased the violation of many safeguards established in international treaties on human rights, and consequently have augmented the associated risk and vulnerability of these social groups. Nevertheless, the most dramatic consequence of this strategy to fight irregular immigration has been the percentage increase of immigrant mortality of those who attempt to cross the southern U.S. border (Sassen, "Migration Policy" 1–4).

The U.S.-Mexico border has become a death trap for thousands of immigrants who are seeking a better life due to economic imbalance or simply rejoining their family (Ong Hing 192). According to the American Immigration Law Foundation (AILF), border enforcement, characterized by a repressive and military approach, herds unauthorized border-crossers into increasingly inhospitable and dangerous areas, which has resulted in a death toll greater than the number of deaths registered during the 28 year existence of the Berlin Wall.[27] Obviously this tragic situation is not the exclusive responsibility of the United States; in fact, it reveals the repeated incapacity of the Mexican government to create the jobs that the country needs to end poverty and the marginalization of their population. It also undoubtedly represents a serious violation of international law, from a country that has claimed to be the biggest defender of human rights worldwide. Today the official figures mention roughly an average of 350 and 450 deaths every year registered during the last decade, which means more than one death per day (see Figure 2). And, if this number is not indicative of the serious and morbid relation characterized by the violation of individual human rights, I do not know what else could be.

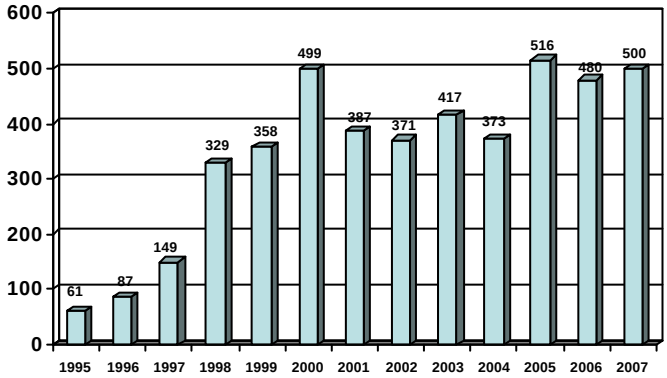


Figure 2. Deaths among unauthorized border-crossers by year, 1995–2007
Source: Secretariat of External Relations in Mexico. (www.sre.gob.mx)

Immigrant deaths at the border are already indicated by many social activists as a humanitarian crisis with all the requirements to be typified as silent genocide. As can be seen in Figure 2 above, from 1995 to 2006 between 4.5 and 5,000 corpses of men, women and children along the U.S.–Mexico border strip have been recovered.[28] Worse yet, according to the AILF, these deaths are an unfortunate phenomenon that will continue to increase in the future. Without a doubt, as pointed out by Alonso-Meneses, the circumstances under which these deaths occur are those that allow us to speak of continuous or systematic human rights violations (272–273). We must not forget that human rights are "instruments for protecting human beings against cruelty, oppression and degradation of rights, and have been created to defend the individual against the brutality and insensibility of the State" (Gutmann xi).

In the issue at hand**,** we are talking about undocumented migrants that risk their lives when crossing the border in inhospitable areas (deserts, mountains and rivers) no matter the consequences. What Alonso-Meneses argues, and I support, is that apart from individual cases of the human rights violations described above, there exists a dimension of responsibility of the United States due to the arbitrary and unjust manner in which their government handles immigration (13–15). The issue presented here is not whether the Unites States has the right to control its border. Rather, the issue is whether the U.S. has abused that right with a strategy designed to maximize physical risks (Ong Hing 203). Everything suggests that the

United States does not have a manifest intent to cause or to induce the death of immigrants; but, regrettably, it cannot be said that there exists a clear unintentionality. As has been shown, most of the solutions brought to the table by the authorities are ineffective since they neither avoid the infiltration of immigrants nor the deaths of immigrants. This situation, together with the unilateral and warlike policy used to combat immigration opens up the possibility to discus the systematic violation of human rights.

Unfortunately, this official casuistic that has come to link irregular immigration with delinquency, drug trafficking and even terrorism, in turn has accentuated the violent manifestations of the extremist anti-immigrants groups or "hate groups" in the United States. According to a study elaborated by the Social Studies and Public Opinion Center of the House of Representatives of Mexico and the Poverty Law Center, there are currently 844 associations in the country known for their extremist actions against immigrants (www.splcenter.org). These manifestations of non-institutional violence include the neo-fascist and right wing extremist groups such as the Montana Militia, Christian Patriots and Minutemen Project, the Branch Davidian and Christian Covenant Community of Idaho sects, and finally the well-known white nationalistic groups the Skinheads and the Ku Klux Klan.[29] In their study, the Social Studies and Public Opinion Center of the House of Representatives of Mexico and the Poverty Law Center states that these hate groups are committed to performing criminal acts, marches, protests, speeches, meetings, and producing and distributing publications with xenophobic hues and ethnic, religious and ideological animosity towards immigrants and have even reached the extreme of murdering immigrants and U.S. citizens of Hispanic origin. The recent testimony of David Ritcheson last April before the House Judiciary Committee of the United States, which recounts how he was brutally beaten, raped, and left for dead by a group of Skinheads in 2006, is irrefutable proof of the countless acts of racial violence that are currently happening in the country.[30] The aforementioned suggests that "racism" today has been transformed from the ideology that used racial differences as means to justify the extermination of the inferior race (as happened with Nazism), towards a new ideology whose livelihood is discrimination based on cultural, anthropological, and linguistic differences. Without a doubt this has given way to the segregationist stance in much of America that considers the communication between cultures impossible and maintains an intolerance that denies the fundamental rights of foreigners and ethnic minorities, condemning them to exclusion.

The regular or irregular immigrants who try to cross the border now face a machinery that is doubly repressive. A legalistic one carried out by government entities in charge of the elaboration, instauration, and monitoring of immigration laws, which produces a *de facto* condition of inequality between nationals and foreigners, and another ideologically fueled by the media that promotes acts of racial violence in the population

generating a higher associated risk for the immigrants. This leads me to believe that the vulnerability of migrants to human rights violations by the American State is not only due to the fact that legal protection is inadequate or nonexistent, as some authors have indicated—that is, the real absence of legal instruments for the protection of human rights—but is also in close connection with a series of adverse economic, social, and institutional factors which impede the full enjoyment of such rights.[31] First we have the well-known reluctance of the United States to adhere to the international conventions, declarations and treaties on human rights, especially those related to immigration issues. This likewise brings to attention the imposition of unilateral legal measures of the United States that clearly violate the fundamental freedoms of these human conglomerates. Additionally, the unilateral policies of Washington and public discourse linking undocumented migration with delinquency are in this manner translated to the daily violation of human rights of undocumented Mexican people and in a wave of xenophobia impelled by various organizations and social actors. Finally, we have the inaction of the Mexican government to act in the defense of its citizens and to strongly face the decisions made by the United States.

## Discussions and Conclusions

In the first pages of this investigation I mentioned two important guidelines to follow in order to fully tap the energy of migratory movements: the first is to dismantle the conceptual trap of U.S. sovereignty and capricious globalization, to which I aim to develop a set of social actions that permit the demystification of the phenomenon of undocumented immigration to the United States and will become a natural transnational phenomenon instead of an explosive problem, whose benefits will permit us to crystallize and exercise that which González-Souza has called the "right to the global family" (85). Secondly, I referred to the need to establish a legal framework of reference on migration policies that transcends the national level, enabling the governing of this phenomenon by protecting the human rights of immigrants and maximizing the advantages therein.

What becomes clear on this long journey through some of the historical migration policies is that since 1848, when the border between the two countries was defined, the United States has not had a political relationship involving cooperation, support and good neighborly relations with Mexicans. Of course migration has not occupied the totality of diplomatic relations and there have been significant advances in other aspects. However, the migration of Mexicans to this country remains unresolved and a source of diplomatic and political tensions. The U.S.-Mexico migratory

phenomenon, as has been indicated constantly by scholars of the subject (Bustamante 2003; Cornelius; Santibáñez) has complex ramifications that involve both countries, but most notable is the U.S. economy's important historical demand and need for the laborers. For this reason the United States attracts or repels migrants according to the cycles of their economy, but this is also a function of prejudice, xenophobia, and the fear that the migrants debilitate the identity and culture of the country. The increase of these last components (prejudice, xenophobia, and fear) during the 90s and following the terrorist attacks of the early twenty-first century, has led the U.S. government to fortify their border with Mexico, to impede the passage of migrants on the border and to view the border as a national security concern. The outcome has of course been negative, or rather "sinisterly tragic," and has proven the efficacy of U.S. policies in managing the migratory flow to be profoundly questionable. The militarization of the border with Mexico has only provoked death, violence, and the cooling of bilateral relations. The United States border with Mexico today is practically a war zone, not only because of the introduction of highly aggressive security policies, but also the increased presence of military personnel.

The entire analysis thus far demonstrates the direct linkage between the intensification of national security and border restrictions on one hand and the increasing vulnerability, associated risks, and death of immigrants on the other. As highlighted in the last section, one of the most important concepts in the field of human rights that has been violated as a result of the increased restrictive measures taken by the United States government is the right to be free from discrimination, or the right to equality. This right is established in virtually all of the human rights instruments starting with the *Universal Declaration of Human Rights*. Despite their low participation in the signing of international treaties, the United States government has signed some treaties that specifically prohibit discrimination based on motives of race, sex, national origin, social status, and or any other factor. In this regard, according to this international commitment, the government is obligated to not discriminate against immigrants on the basis of their "immigration status." Likewise, the Inter-American Court pointed out in its opinion in regard to the *Juridical Condition and the Rights of the Undocumented Migrants*, that the right to equality is an *erga omnes* obligation, that is to say, that the right belongs to the people within the jurisdiction or State or territory even when a treaty has not been signed that binds them to comply with the right (OC–18/03). Moreover, as established in international law, affirmative and negative obligations exist. In this sense all States not only have the obligation to not violate rights, they also have the affirmative obligation to ensure and protect the rights of all persons within its territory without discrimination.

In the case of migrant workers, there are certain rights that assume a fundamental importance and yet have still been violated, such as the rights

corresponding to the association and freedom of association with unions, collective bargaining, fair wage for fair work, social security, judicial and administrative guarantees, reasonable work day and adequate working conditions (health and safety), rest, and compensation. It is of great relevance to safeguard these rights of migrant workers, bearing in mind the principle of the inalienability of human rights, of which are held by all workers, regardless of their immigration status, as well as the fundamental principle of the human dignity enshrined in Article 1 of the UDHR, which states that "[a]ll human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." Finally, the worst consequence of the implementation of the U.S. migration policies has been without a doubt the death of nearly 5,000 individuals in a period of just over ten years.

The concept of the imperial power of the United States, renewed by the fall of the Berlin Wall and now by the threat posed by terrorism and the displacement of people constitutes again the biggest barrier to a relationship based on cooperation and understanding with other countries. The border militarization, as well as the interpretation of the immigration phenomenon as a problem of legality or illegality, based in the field of Law, especially in that of sovereignty doctrines and national security, perverts the nature of the phenomenon and impedes the proper management of it in all its economic and socio-cultural complexity.

From the fundamental premise of the analysis of U.S. immigration legislation, it is inferred that it is necessary to articulate a transnational immigration policy. In this sense, it is essential to separate the immigration phenomenon from the national security debate. At the same time, it is necessary to review U.S. strategy for border enforcement to avoid the growing number of casualties that have followed. Given the fact that immigration laws violate the fundamental human rights of immigrants and local residents, it is relevant to amend such provisions on the basis of a legal framework that respects the dignity of human beings. On one hand, the treatment of international migration matters compels us to surpass the restrictive official normative visions and on the other to impel a more progressive flexibility that facilitates migratory movements and protects the people involved. The governance of contemporary immigration is an exigency for all countries and their foundations extend beyond the quantitative dimension, which supposes to recognize that migratory movements are a constituent part of the social, economic and individual processes and to accept that there must be progress towards objective and modern modalities of management, promotion, and protection of human rights.

## Notes

1. The author would like to recognize and thank the Mexico-North Research Network for its fellowship and the Colegio de la Frontera for their hospitality, which supported the completion of this article.
2. Following the terminology used by the United Nations, in this article I will use the word "irregular"—instead of illegal, a term used to dehumanize them—to refer to those immigrants who enter or remain in a country without the required documentation.
3. In Blakeslee and Garcia's book *The Language of Trade* prepared for the U.S. Department of State a "nonmarket economy" or "antieconomy" is defined as: "A national economy in which the government seeks to determine economic activity largely through a mechanism of central planning, in contrast to a market economy, which depends heavily upon market forces to allocate productive resources. In a nonmarket economy, production targets, prices, costs, investment allocations, raw materials, labor, international trade and most other economic aggregates are manipulated within a national economic plan drawn up by a central planning authority. Hence the public sector makes the major decisions affecting demand and supply within the national economy" (77).
4. I make use of the term vulnerability in the sense of a "condition of powerlessness" as applied by Bustamante, 2003.
5. For a more detailed examination on the linkage between irregular migration, security and human rights see also the *Informe de la Comisión Mundial sobre las Migraciones Internacionales del 2005*, of which Francisco Alba is also a member: www.gcim.org/mm/File/Spanish.pdf.
6. In *The Support of the Poor,* Benjamin Franklin not only showed how the debate over newcomers was part of the political and social discourse of that time, but also gave us an idea of the xenophobic view of the Anglo culture while asserting that "those Germans who came hither are generally the most stupid of their own nation" (3).
7. In 2003 the Immigration and Naturalization Service (INS) ceased to exist and was divided into three new agencies within the Department of Homeland Security (DHS): The U.S. Citizenship and Immigration Services (USCIS); The U.S. Immigration and Customs Enforcement (ICE), and The U.S. Customs and Border Protection (CBP).
8. The low-intensity strategy is a military term for the deployment and use of troops and/or assets in situations other than war. Generally these operations are against non-state adversaries, and their purpose is to disarticulate the planning efforts of the groups. The main elements of this strategy are psychological tactics, military and police pressure, disinformation, and to instill fear.
9. For a more detailed examination on the national border strategy and its consequences on Mexican irregular immigrant see Krouse; and Cornelius.
10. For more information regarding the national border strategy see the *Border Patrol National Strategic Plan for 1994 and Beyond*, and *Border Control: Revised Strategy Is Showing Some Positive Results*.
11. For an idea of the evolution of the subsidy destined to this agency, consider the expenditure by the government of the United States in the fortification of anti-

immigrant measures: from 580 million dollars in 1990 to 2.308 billion in 2000, and to 5.000 billion in 2005. When the Border Patrol was formed, it only had 450 officials; at present there are nearly 13,000.

12. Regarding the connection between low-intensity military strategies and human rights violations, see Dunn; Thompson; and Kraska.
13. The second generation rights are fundamentally social and economic in nature. They contrast with first generation rights which have been perceived as "individual entitlements," particularly the prerogatives of individuals contrary to those of collectivities. Examples of second generation rights include the right to education, to work, to social security, to food, to self-determination, and to an adequate standard of living.
14. The only sections of *Proposition 187* currently in effect are those that find the manufacture, distribution, or use of false documents to obtain employment or public benefits a state felony.
15. Regarding the negative impact the *Patriot Act* has on non-citizens see particularly Title II. Enhanced Surveillance Procedures; Title III. International Money Laundering Abatement and Antiterrorist Financing Act of 2001 and Title IV. Protecting the Border.
16. In spite of the reduced number of signing countries, the *International Convention on the Protection of the Rights of All Migrants Workers and Member of Their Families*, which became effective just a few years ago, currently represents the most complete legal instrument on human rights in immigration matters. For an extended analysis on the importance of this international treaty see Bosniak.
17. From this point on, all references to the U.S.C. will stand for the United States Code. This citation is the codified numbering system used by the United States for the statute being reviewed in this essay.
18. Although the 2006 Strategy of National Security (www.whitehouse.gov/nsc/nss/2006) was published at the end of that year, it is based heavily on the document instituted in 2002 to which I make reference.
19. See especially *Title X* in regards to the transformation of America's national security institutions and the link between terrorism and immigration.
20. For more information regarding the Department of Homeland Security, see the *Homeland Security Act* of 2002.
21. Regarding the construction of the fence to be built across the border see especially Section II and III of the Secure Fence Act of 2006. www.govtrack.us/congress/billtext.xpd?bill=h109-6061.
22. The Council of Foreign Relations (www.cfr.org/content/publications/attachments/secure/

fence) offers more information on border-crossing related deaths.

23. Inter-American Court Of Human Rights Advisory Opinion Oc-16/99 *The Right to Information On Consular Assistance In The Framework Of The Guarantees Of The Due Process Of Law*.
24. For a detailed analysis on the dialectics of vulnerability see Bustamante 2002.
25. Among the programs that Proposition 200 prohibits are: public benefits such as food stamps and subsidized school lunches, general assistance for those who can not access temporary financial help and are unable to get a job because of disability, the Sight Conservation program, and Neighbors Helping Neighbors, which helps pay utility bills, among other things. But certainly the most important element is the provision that charges public officials with a misdemeanor if they fail to report persons unable to produce documentation of citizenship who apply for these benefits, to allow citizens who believe that public officials have given

undocumented persons benefits to sue for remedies, and finally mandating the obligation of civil servants to report to immigrants seeking public benefits (www.ncsl.org/programs/immig/).

26. Most of the local ordinances have already been challenged in court and we are still waiting for their respective decisions. Most of the legal arguments are based on the fact that the federal government has exclusive power to regulate immigration.
27. The American Immigration Law Foundation: www.ailf.org.
28. National Network for Immigrant and Refugee Rights (NNIRR) and the Arizona Coalition for Migrant Rights. "Preliminary Report and Findings of the Emergency National Border Justice and Solidarity Community Tour: Impacts of Militarization and Impunity at the Border." October 2006. www.nnirr.org. Along the same lines, see Rubio et al.
29. See *The Second Report of Human Rights Violations of Mexican Migrants Workers in their Transit to the Northern Border and in the Crossing to United States Territory* of the National Commission of Human Rights in Mexico.
30. A good source of information about hate crimes, including the case of David Ritcheson can be found at www.adl.org/combating_hate/.
31. See for instance Bosniak 737–770; and Cholewinski 29.

## Works Cited


Alba, Francisco. *Las migraciones internacionales.* México: CONACULTA, 2001.

Alonso-Meneses, Guillermo. "Human Rights and Undocumented Migration Along the Mexican U.S. Border." *UCLA Law Review* 51.1 (2003): 267–281.

Balderrama, Francisco, and Raymond Rodriguez. *Decade of Betrayal: Mexican Repatriation in the 1930s*. Albuquerque: University of New Mexico Press, 1995.

Blakeslee, M.R. and C.A. Garcia. *The Language of Trade*. 3rd edition. Washington, D.C: U.S. Department of State, 2000.

*Border Patrol National Strategic Plan for 1994 and Beyond*. July 1994. Unpublished document in author's possession.

*Border Control: Revised Strategy Is Showing Some Positive Results*, GAO/GGD-95-30. Dec. 1994. 5–8. http://www.gao.gov/products/T-GGD-95-92.

Bosniak, Linda. "Human Rights, State Sovereignty and the Protection of Undocumented Migrants under the International Migrant Workers' Convention." *Irregular Migration and Human Rights: Theoretical, European and International Perspectives*. The Netherlands: Martinus Nijhoff Publishers, 2004.

Bustamante Jorge. *Migración internacional y derechos humanos*. México: UNAM, 2002.

_____. *A Virtual Contradiction Between International Migration and Humans Rights*. Chile: CEPAL, 2003.

Cabrera, Enriqueta. "Migración: Inaceptable el unilateralismo." *Desafíos de la Migración: Saldos de la Relación México-Estados Unidos*. Ed. Enriqueta Cabrera. México: Editorial Planeta, 2007. 135–156.

Cholewinski, R. *Study on Obstacles to Effective Access of Irregular Migrants to Minimum Social Rights*. European Committee on Migration (CDMG), 48th Meeting, Strasbourg 24–26 November 24–26, 2004.

Cornelius, Wayne. "Death at the Border: The Efficacy and 'Unintended' Consequences of U.S. Immigration Control Policy 1993–2000." *Population and Development Review* 27.4 (2001): 661–68.

Dunn, Timothy. *The Militarization of the U.S.-Mexico Border, 1978–1992: Low-Intensity Conflict Doctrine Comes Home*. Austin: University of Texas Press, 1996.

_____. "Border Militarization via Drug and Immigration Enforcement: Human Rights Implications." *Social Justice* 28.2 (January): 7–30.

Franklin, Benjamin. *The Writings of Benjamin Franklin: Philadelphia 1726–1757*. Vol. III. www.historycarper.com/resources/twobf2/letter18.htm.

Fry, Brian N. *Responding to Immigration: Perceptions of Promise and Threat*. New York: LFB Scholarly Publishing LLC, 2001.

González Souza, Luis. "La problemática de los migrantes en la frontera México-Estados Unidos." *Los derechos de los migrantes: Fascículo 5*. México: CNDH, 2003. 71–87.

Green, Rosario. "De fantasmas y otras fantasías." *Desafíos de la Migración: Saldos de la Relación México-Estados Unidos*. Ed. Enriqueta Cabrera. México: Editorial Planeta, 2007. 135–156.

Gutmann, Amy. "Introduction." *Human Rights as Politics and Idolatry*. By Michael Ignatieff. Princeton: Princeton University Press, 2001.

*Informe de la Comisión Mundial sobre las Migraciones Internacionales del 2005*. www.gcim.org/mm/File/Spanish.

Kraska, Peter. *Miltarizing the American Criminal Justice System*. Boston: Northeastern University Press, 2001.

Krouse, Bill. *U.S. Border Patrol Operations*. CRS Report 97–989 (www.fas.org/sgp/crs/).

Martin, Philip. "Immigration: Shaping and Reshaping America." *Population Bulletin*. 58.2 (2003): 3–46.

Nuñez-Neto, Blass. *CRS Report RL3256. Border Security: The Role of the U.S. Border Patrol*. Congressional Research Service, 2008. www.fas.org/sgp/crs/homesec/RL32562.pdf.

Ong Hing, Bill. *Defining America through Immigration Policy.* Philadelphia: Temple University, 2004.

*Report on Human Rights Violations of Mexican Migratory Workers on Route to the Northern Border, Crossing the Border and Upon Entering the Southern United States Border Strip*. National Human Rights Commission: Mexico, D.F., 1996.

Reyes Zaga, Héctor A. *Análisis a la legislación migratoria de los Estados Unidos de América*. BA thesis. Universidad Iberoamericana, 1999.

Robin, Gabriela. "*Hoffman Plastic Compounds Inc. v. NLRB*: A Step Backwards for All Workers in the United States." *New England Journal of International and Comparative Law* 9.2 (200): 1–9.

Rubio, et al. "A Humanitarian Crisis at the Border: New Estimates of Deaths Among Unauthorized Immigrants." American Immigration Law Foundation, February 2007. http://immigration.server263.com/index.php?content=B070201.

Santibáñez Romellón, Jorge. "La frontera México-Estados Unidos: Espacio de integración, separación y gestión." *Desafíos de la Migración: Saldos de la Relación México-Estados Unidos.* Ed. Enriqueta Cabrera. México: Editorial Planeta, 2007. 193–208.

Sassen, Saskia. *Losing Control? Sovereignty in an Age of Globalization*. New York: Columbia University Press, 1996.

_____. "Migration Policy: From Control to Governance," *Open Democracy* (July 13, 2006): 1–4.

*Securing America's Borders Fact Sheet: Action Plan for Creating a Secure and Smart Border*. Office of Press Secretary, January 25 2002.

Soysal, Yasemin. *Limits of Citizenzhip: Migrants and Postnational Membership in Europe*. Chicago: University of Chicago Press, 1994.

Thompson, Loren B. *Low-Intensity Conflict: the Pattern of Warfare in the Modern World*. Lexington: Lexington Books, 1989.
Trigueros Legarreta, Paz. "La diferenciación de los migrantes mexicanos en E.U. y sus derechos humanos." *Prevención de la violencia, Atención a grupos vulnerables y los derechos humanos*. México: CNDH, 2003. 87–108.
U.S. General Accounting Office. *Border Control: Revised Strategy Is Showing Some Positive Results*. GAO/GGD-95-30, Dec. 1994. 5–8.
Valencia-Villa, Hernando. *Los derechos humanos*. Madrid: Acento Editorial, 1998.
Wallerstein, Immanuel. *European Universalism: The Rhetoric of Power.* New York: The New Press, 2006.

## Laws and Other Legal Instruments

*Anti-Terrorism and Effective Death Penalty Act* (ATEDPA). Public Law 104–132. 110 Stat. 1214. (1996). www.uscis.gov/propub/DocView/publawid/12?hilite=#0–0–0–881.
*American Declaration of the Rights and Duties of Man.* April 1948. www.cidh.org/Basicos/English/Basic2.American%20Declaration.htm.
*Colorado House Bill* 06S-1023. (2006). www.cdhs.state.co.us/adad/PDFs/1023enr.pdf.
*Freedom of Association and Protection of the Right to Organize Convention* (CO 87). June 17, 1948. www.ilo.org/ilolex/english/convdisp1.htm.
*Georgia Security and Immigration Compliance Act*. Senate Bill 529 (2007). www.legis.state.ga.us/legis/2005_06/fulltext/sb529.htm.
*Hoffman Plastic Compounds, Inc. v. NLRB*. 535 U.S. 137 (2002). www.law.cornell.edu/supct/html/00-1595.ZS.html.
*Homeland Security Act of 2002*. Public Law 107–296. Stat. 116.2135 (2002). www.whitehouse.gov/deptofhomeland/analysis/.
*Illegal Immigration Reform and Immigrant Responsibility Act* (IIRIRA). Public Law 104–208. 110 Stat. 3009 (1996). www.uscis.gov/propub/ProPubVAP.jsp?dockey=de345ed0d6403b03 13399258421d4b64.
*Immigration Reform and Control Act*. Public Law 99–603 (1986). www.oig.lsc.gov/legis/irca86.htm.
Inter-American Court Of Human Rights. *The Right To Information On Consular Assistance In The Framework Of The Guarantees Of The Due Process Of Law*. Advisory Opinion OC-16/99. www.corteidh.or.cr/docs/opiniones/seriea_16_ing.pdf.
Inter-American Court Of Human Rights. *Juridical Condition and Rights of the Undocumented Migrants Advisory*. Opinion OC-18/03. www1.umn.edu/humanrts/iachr/series_A_OC-18.html.
*International Covenant on Civil and Political Rights.* Dec. 16, 1966. www.unhchr.ch/html/menu3/b/a_ccpr.htm.
*International Convention on the Protection of the Rights of All Migrants Workers and Member of Their Families of 1990*. Dec. 18, 1990. www2.ohchr.org/english/bodies/cmw/cmw.htm.
*League of United Latin American Citizens v. Wilson*. Case No. CV 94–7569 MRP (1995). www.courttv.com/archive/legaldocs/government/187.html.
*National Labor Relations Act*. (1935) www.nlrb.gov/about_us/overview/national_labor_relations _act.aspx.
*National Security Strategy of the United States of America*. www.whitehouse.gov/nsc/nss/2006/.

*Naturalization Act of 1790*. "A Century of Lawmaking for a New Nation: U.S. Congressional Documents and Debates." 1774–1875. Statutes at Large, 1st Congress, 2nd Session. rs6.loc.gov/cgi-bin/ampage?collId=llsl&fileName=001/llsl001.db&recNum=226.

*Personal Responsibility and Work Opportunity Reconciliation Act* (PRWORA), Public Law 104–193. 110 Stat. 2105 (1996). www.access.gpo.gov/congress/wm015.txt.

*Proposition 200*. (2005). www.azsos.gov/election/2004/info/PubPamphlet/english/prop200.htm.

*Right to Organise and Collective Bargaining Convention* (CO98). June 8, 1949. www.ilo.org/ilolex/english/convdisp1.htm.

*Save our State Initiative*. (1994). www.americanpatrol.com/REFERENCE/prop187text.html.

*Secure Fence Act Of 2006*. Public Law 109–367. Stat. 2638 (2006). frwebgate.access.gpo.gov/cgibin/getdoc.cgi?dbname=109_cong_public_laws&docid=f:publ367.109.

*Simpson Mazzoli Act*. Public Law 99–603, 100 Stat. 3359. (1986). www.whitehouse.gov/news/releases/2002/01/20020125.htmlp.

*Title X*. Transform America's National Security Institutions to Meet the Challenges and Opportunities of the Twenty-First Century. www.whitehouse.gov/nsc/nss.pdf.

*Universal Declaration of Human Rights*. Dec. 10, 1948. www.un.org/Overview/rights.html.

*USA Patriot Act of 2001*. Public Law 107–56. 115 Stat. 272 (2001). www.fincen.gov/statutes_regs/patriot/index.html.

Reyes, Hector A. "The Human Rights Factor in United States Immigration Policies." *Human Rights and Latin American Cultural Studies.* Ed. Ana Forcinito and Fernando Ordóñez. *Hispanic Issues On Line* 4.1 (2009): 150–173. http://spanport.cla.umn.edu/publications/HispanicIssues/pdfs/REYES.pdf