

# ESSAYS

## NAFTA's Effect on Human Rights at the Border

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The North American Free Trade Agreement (NAFTA) was touted as a solution to the problems of Mexico's unstable economy, and the U.S. access to Mexico's market as a possible solution to illegal immigration. This approach not only rests on unreasonable assumptions, but completely ignores the contradiction inherent in NAFTA: Goods from both countries would enjoy free movement across our southern border, but labor would not. Tariffs would eventually come down, allowing for more access to Mexico's market, but physical barriers would remain. Tariffs would come down, but wages would not go up. One of the biggest hypocrisies of NAFTA is that a free trade zone would be created at the corporate level, while a virtual war zone exists at the border level between the United States and Mexico.

Ironically, immigration and human rights were not discussed during NAFTA talks. However, NAFTA involves human rights issues, especially when one considers human rights abuses against labor leaders, human rights advocates, and indigenous peoples in Mexico. NAFTA also ignores the environmental devastation inflicted by maquiladoras (U.S. twin plants) on both sides of the U.S.-Mexico border. This situation is environmental racism at its worst because the pollution affects only the poorest in the border

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region and creates health and medical nightmares on both sides of the border.

Also ignored by NAFTA are the human and civil rights abuses of undocumented immigrants and refugees by U.S. border agents along the U.S.-Mexico border. Our office, the U.S.-Mexico Border Project of the American Friends Service Committee (AFSC) in San Diego, has been monitoring and documenting human and civil rights abuses by U.S. Border Patrol and police for over ten years. At legislative hearings from California to Washington, D.C., we have been protesting the lack of Border Patrol accountability and the impunity with which border agents commit acts of violence against unarmed civilians crossing the border into the United States.

The Immigration Law Enforcement Monitoring Project of the AFSC has been tracking these abuses through its database program since 1987. One of the most significant findings in its first report, released in February 1992, was that a large percentage of the victims were U.S. citizens, resident aliens, or persons residing in the United States legally. In 1993, we find that abuses against these groups of people are not only increasing, but are expected to surpass the fifty percent mark.

The key factor underlying the continued abuse of persons by immigration law enforcement officers is the lack of officer accountability and an adequate system, either internal or external, for reviewing complaints. Legislation expanding the size, power, and scope of the authority of immigration law enforcement agents will increase the number and intensity of abuses unless adequate safeguards are implemented. It is ironic that this legislation restricting the movement of people coincides with the passage of NAFTA, which expands the movement of trade. In response to these abuses, AFSC has recommended the creation of a federal law enforcement review commission to investigate abuses by border agents. This idea has now taken the form of a bill (HR 2119) introduced by Congressman Xavier Becerra in September 1993.

I believe it is important at this time to put the U.S.-Mexico human rights situation in its proper historical perspective. Although the decades of the 1980s and 1990s will very likely go down in history as one of the most violent periods in recent border history, it is by no means a unique period in the U.S.-Mexico border's 150-year history.

The U.S.-Mexico border is a line drawn by war. One-and-a-half centuries after that war, the border still bears signs of the violence

of its origins. Rodolfo Acuña calls this phenomenon "the legacy of hate."<sup>1</sup> According to Acuña, "violence was not limited to the taking of the land; Mexico's territory was invaded, her people murdered, her land raped and her possessions plundered. Memory of this destruction generated a distrust and dislike that is still vivid in the minds of many Mexicans, for the violence of the United States left deep scars."<sup>2</sup>

Now the borderlands belong to two sovereign nations who are important trading partners and, on the surface, friends. But the border is also a wound that divides two countries of immensely unequal power. No policy reflects that inequality better than U.S. immigration law.

In 1924, the U.S. Border Patrol was created, the same year the infamous Texas Rangers were first disbanded, and the same year that coincided with the adoption of an exclusionary Immigration Act. Today, Mexicans account for the largest percentage of Border Patrol apprehensions, and the U.S.-Mexico border is where the largest number of Border Patrol agents are assigned. On top of the deep scars of another century, the enforcement of U.S. immigration laws is carried out in a violent climate.

In a meeting with Attorney General Janet Reno in August 1993, four other human rights and immigrant rights activists and I expressed our deep concerns about the lack of prosecutions of federal agents accused of abusing undocumented immigrants. She assured us that she was closely monitoring such cases and would assign only the most experienced prosecutors.

In addition, we expressed our concern to Attorney General Reno about the recent proposals to increase the Border Patrol without resolving the problems of screening, training, supervision, and accountability, which directly influence policy, immigration law, and treatment of immigrants crossing the border. We reiterated our recommendations to her on the need for civilian oversight, as well as a review of the use-of-force policy, especially deadly force. Also, we discussed the enactment of national standards and guidelines to define the proper exercise of Immigration and Naturalization Service (INS) powers.

Another major concern of human rights activists is increased militarization of the border under the pretext of drug interdiction

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<sup>1</sup> RODOLFO ACUÑA, *OCCUPIED AMERICA: THE CHICANO'S STRUGGLE TOWARD LIBERATION* 9 (1972).

<sup>2</sup> *Id.*

while the United States and Mexico are moving towards economic integration. Any major multilateral economic agreement involving Mexico, Canada, and the United States should include the assurance of human rights protections for persons crossing the border. Negotiations on NAFTA, intended to grant greater freedom to the movement of goods and capital, should have included the inter-related issue of labor mobility in order to guarantee recognition of immigrants' dignity and protection of their human and labor rights, independent of their immigration status.

In today's anti-immigrant political climate, little distinction is being made between documented and undocumented immigrants, especially when it comes to blaming someone for California's fiscal problems. Ironically, a small percentage of the population is being blamed for an inordinate amount of the problems—problems they did not create. One proposed solution is to deny public services to all immigrants, both documented and undocumented. These services include health care, education, and housing. The local, state, and federal officials involved in the scapegoating neglect to mention the immeasurable economic and cultural contributions immigrants have made, and continue to make, to California and to this country.

As I have said in many congressional and state hearings and presentations around the country, the United States continues to condemn human rights violations in other countries, while denying them here in this country. U.S. violations affect basic human rights such as education, health care, and housing. Over the last few months, much has appeared in the media about the Clinton Administration's criticism of China's human rights record. It has admonished China either to improve its human rights record or lose its most-favored-nation status.

I find this criticism incredibly hypocritical, in light of the ten to twelve years the AFSC has been complaining to this government about human rights and civil rights abuses of undocumented immigrants by U.S. Border Patrol agents along the U.S.-Mexico border. Equally incredible is a report issued recently by the U.S. State Department criticizing Mexico's human rights record. Opponents of NAFTA have often cited human rights abuses in Mexico as one of the reasons for not entering into the agreement. Human rights groups from the United States and Mexico are already documenting human rights abuses by the Mexican army during the recent uprising in Chiapas.

The fact that human rights groups from the United States, Mexico, and Canada have all agreed that NAFTA will increase immigration from Mexico should alert us to the fact that the United States will make preparations for this eventuality. The INS, backed by several Republican politicians, has been working overtime to reinforce the border with steel walls, blockades, stadium-type lighting, and proposals to increase the Border Patrol and send the National Guard to the border. This build up appears to be part of the preparation for the implementation of NAFTA.

Militarizing the border at this time is part of the siege mentality and scapegoating that is sweeping the country, particularly the Southwest. Whole Chicano/Mexicano communities and barrios along the U.S.-Mexico border are under attack by Border Patrol agents and local police who have increased their cooperation with the INS. We have begun receiving many complaints of harassment of U.S. citizens and legal residents by police, Border Patrol, and INS and U.S. Customs agents. Last year we documented three cases of U.S. citizens being deported from California.

We are also getting more complaints from young Chicanos about local police and Border Patrol agents harassing and insulting them, telling them to go back to Mexico. It is obvious to me that this is part of the overall backlash being experienced as a result of all the immigrant bashing and scapegoating sweeping California. The backlash is also reflected in the severity and viciousness we have documented of the beatings Border Patrol officers are inflicting on undocumented immigrants. The overall dehumanizing treatment immigrants receive, especially women, reflects the lack of accountability, as well as the impunity with which agents commit these violent acts.

On February 3, 1994, Attorney General Janet Reno announced her two-year strategy to curb illegal immigration. It included increasing the Border Patrol by 1,000 agents by 1995, adding nearly 100 stadium lights along the border in San Diego, using new technology and equipment to improve the Border Patrol's effectiveness, and fingerprinting all illegal crossers to identify repeat offenders. As we expected, there was no mention in Attorney General Reno's announcement about guaranteeing the protection of human rights of undocumented immigrants arrested by Border Patrol agents, only the creation of citizen advisory panels—which are totally powerless and controlled by the Border Patrol.

Another idea Attorney General Reno plans to implement is the setting up of nearly 100 stadium lights along a five mile stretch of

border between the San Ysidro port of entry and the ocean. This proposal raises serious concerns about what direction this will force the flow of the immigrants. This will leave only two options open to them—the ocean to the west and the canyons to the east. Both are guaranteed to make crossing into the United States extremely dangerous.

The dangers of illegal border crossings is one of the reasons why NAFTA should contain specific provisions for protecting the labor, human, and civil rights of immigrants. NAFTA should provide legal protection for the movement of labor across borders comparable to the regulations that NAFTA provides for the free movement of capital and goods between the three countries. This is important because the consensus among human rights and immigrant rights groups in the United States and Mexico is that NAFTA will in the short term trigger more Mexican migration because of the displacement caused by economic restructuring and flooding the Mexican market with U.S. products.

Like the rights of undocumented immigrants, the rights of farmworkers in the United States have always been a low priority. As a result, these workers are the lowest paid, the most exploited, and live in the worst living conditions in the country. An anonymous quotation probably best describes the migrants' plight: "The migrant is someone to exploit as a worker, and to exclude as a person." Today, they are still run out of encampments throughout the state, primarily because of the encroachment of housing developments, but also because of the xenophobia and racism that exists against Mexicans.

Today, we often find documented farmworkers with their families living in squalor because they cannot afford to live where they work. Part of Attorney General Reno's recent two-year plan to control the border includes enforcing employer sanctions. Instead of wasting time and money on unworkable and unenforceable laws, she should invest in enforcing existing state labor laws, as well as in decent, affordable migrant housing.

The present anti-immigrant sentiment, immigrant bashing, and scapegoating has also increased open hostility toward all immigrants, regardless of nationality. Elected officials have publicly demonstrated their contempt for immigrants' rights by continuing to play on the fears and tension in California. One example is the recent introduction of legislation by two California Congressmen to deny emergency aid to undocumented immigrant victims of the Los Angeles earthquake on January 16, 1993. In my opinion, this

proposal demonstrates the depth of xenophobia that politics has reached since immigrant bashing and scapegoating began last year.

I also find it absolutely incredible and hypocritical that this government does not even flinch at spending \$100 billion to bail out the savings and loans, but will complain about spending a few million dollars to help earthquake victims who may or may not be in this country legally, or on education, health care, and housing for those who need it the most. In other words, human rights will lose out to corruption every time.

In the final analysis, the U.S.-Mexico border should be a region of cooperation that serves the human needs of all inhabitants, on both sides of the border. The U.S.-Mexico border should thrive in a demilitarized, noncoercive atmosphere, as the Canadian border does, so that a double standard does not exist between the two borders. The historical existence of the economic, social, and cultural interdependency could cease to exist with the implementation of physical barriers, such as walls, Border Patrol blockades, and other physical and psychological barriers. A peaceful border region cannot exist until the United States adopts a humane immigration policy that is based on the economic realities of both countries and respects the human and civil rights of immigrants and refugees.

The release of the Clinton Administration's plan to control illegal immigration is disturbing on several key points. First, it fails to address the underlying causes of immigration such as poverty, hunger, civil strife, human rights abuses, and economic development. The plan assures that this country will enter the 21st century with a 19th century immigration policy. With the prospects of a global economy and a global village on the horizon, U.S. immigration policy, for all intents and purposes, appears to be moving in the wrong direction. We should be moving toward demilitarizing the border, not fortifying it. We should be moving toward a policy of inclusion, unity, and mutual cooperation; not divisiveness, tension, and distrust. Mexico should be treated as a friendly, respected neighbor, not with contempt.

Immigration is a binational issue; therefore, solutions regarding immigration and border issues should include Mexico's participation. We can start by tearing down the walls and building bridges of communication, in the same way NAFTA has done for trade.

