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# U.S. BORDER SECURITY

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# **U.S. BORDER SECURITY**

A Reference Handbook

Judith A. Warner

**CONTEMPORARY  
WORLD ISSUES**



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# Preface and Acknowledgments

**T**he 21st century has brought an unprecedented range of possibilities and threats to the American way of life. In the 20th century, America was by and large secure from external conflict within its borders except for the bombing of Pearl Harbor at the start of World War II and the first World Trade Center attack in 1993. The United States has a history of internal threats marked by such incidents as the 1995 Oklahoma City bombing. It was not until September 11, 2001, and the second terrorist attack on the World Trade Center, that the public learned that a new era of transnational threats had begun.

In 2003, many separate federal law enforcement agencies were reorganized as the Department of Homeland Security (DHS). The failure to prevent the 9/11 tragedy was perceived to be due to the inability of separate federal agencies to coordinate intelligence on terrorist activity; in other words, they failed to “connect the dots” by integrating discrete pieces of evidence. The failed attempt by Umar Farouk Abdulmutallab to explode an incendiary device hidden in underwear during an air flight on December 25, 2009, demonstrated that merging agencies had not solved the problem concerning sharing and interpretation of intelligence.

Historically, security has been viewed in terms of military capabilities for meeting external threats. Since the end of the Cold War, national security has focused on prevention of terrorism, drug trafficking, arms smuggling, and human smuggling or trafficking. Each security threat involves crossing borders, and an efficient border-management system is necessary to protect citizens. Nations police borders and use border guards. Because border control is no longer viewed as a national defense issue, it involves law enforcement, and most states classify border guards as police (Öövel and Varga 2003). U.S. Customs and

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Border Patrol is the national policing bureaucracy at the Mexican and Canadian borders.

In the 21st century, globalization of the international economy has made border security a matter of international cooperation and alliances. It has extended the border to sites that perform pre-inspection in other countries connected by air and sea. This complex situation has introduced transnational threats in which organized crime and terrorist groups act globally. The complications produced by new technologies of communication and travel have fostered new types of criminal organizations and necessitate new border-control strategies.

Border security involves the use of border police to protect borders and provide safety for citizens. Security concerns at land, air, and sea borders include:

- unauthorized entry and smuggling of foreign nationals
- human trafficking for purpose of prostitution or work enslavement
- drug trafficking and narcoterrorism
- property offenses (e.g., auto theft)
- terrorism
- smuggling of weapons of mass destruction

Within the United States, policing agencies such as Customs, Border Patrol, ICE, and local or federal law enforcement must work together to address these issues. For example, when cargo is shipped from overseas, it travels in a variety of ways, enters and leaves the custody of various people and organizations, and may necessitate processing up to 40 different documents connected to transit across borders (Lake 2007). The task of law enforcement in preventing smuggling and terrorism is further complicated by the need for cooperation between the DHS and other agencies such as the Drug Enforcement Administration (DEA). The massive consolidation of the DHS did not totally unify the federal law-enforcement bureaucracies.

In the second decade of the 21st century, transnational threats such as drug and arms trafficking will be major border-security issues. Mexico has become the leading transshipment point for cocaine, marijuana, and other illegal drugs. Mexican drug-trafficking organizations have fought over control of the key routes into the interior of the United States, and thousands of Mexicans have been killed in the violence. The freedom to own guns, and

limitations on gun control in the United States are associated with arms smuggling into Mexico, which increases lethality. The corruption of the Mexican police and government has contributed to a national security crisis for Mexico and brought increased U.S. assistance. While Mexico is considered unlikely to become a failed state, the terroristic use of violence by Mexican narcotics traffickers, known as narcoterrorism, has generated a crisis that can only be solved by binational cooperation. Indeed, border security is a transnational concern.

To this end, understanding the many issues involved in border security and proposed solutions, the book is organized as follows:

Chapter 1 presents a historical outline of U.S. border relations with former North American colonial powers, Canada, and Mexico. The circumstances and settings that give rise to unauthorized immigration, smuggling, and transnational terrorism are investigated.

Chapter 2 looks at border security as a contemporary issue and examines why the borders are critical but porous sites for legitimate and illicit movement of goods and people. It looks at the impact of border control on border and interior communities. Recent attempts to increase security at the land, air, and sea borders are examined. The methods used to try to contain problems are evaluated from different points of view. In particular, the control of transnational threats involves multiple national, binational, and international agencies and processes, necessitating the development of coordination and cooperation.

Chapter 3 examines the international impact of U.S. border security, particularly on the neighboring countries of Mexico and Canada. Security is represented as a bidirectional process in which the policies of one nation have a feedback relationship, often producing unintended consequences for another nation. Border control is a difficult issue because criminal violations cross borders, which precludes a unilateral solution and necessitates bilateral and multilateral effort.

Chapter 4 presents a chronology of key events in the colonial and postcolonial history of demarcation of the borders. It lists successive laws passed to regulate immigration, drugs, and, since 1993, terrorism. The issues examined concern how the regulatory apparatus and border-control methods deployed have intensified and impacted society in the 21st century.

Chapter 5 presents the biographies of key government officials and social analysts who offer viewpoints and structure border-security policies. In addition it examines major criminals

who have engaged in narcoterrorism, which has challenged the security of Mexico and its people and poses the possibility of spillover violence in the United States.

Chapter 6 presents statistics, research information, and key legislative documents relating to border control of unauthorized immigration, terrorism, and drug trafficking. Through the use of URL addresses provided, the reader can access the vast resources on this issue for download on the internet.

Chapter 7 provides information on governmental agencies, intergovernmental organizations (IGOs), and nongovernmental organizations (NGOs) that shape policy and advocate for various border-control strategies and or humanitarian concerns. These agencies and organizations provide the data for analysis of the effectiveness of border security. Governmental organizations are impacted by the reports of NGOs such as human rights organizations and IGOs connected to the United Nations and supra-regional government structures such as the Organization of American States.

Chapter 8 provides information on books, articles, and films concerning border security. It lists key reports from government, intergovernmental, and nongovernmental organizations. The bibliographic review and Internet sites allow the reader access to mechanisms that will generate very easy-to-use statistical data.

My special thanks go to Mildred Vasan for bringing attention to this topic and to Robin Tutt and Jane Messah of ABC-CLIO for the determination and enthusiasm they brought to this project. I would like to thank the administration of Texas A&M International for supporting the research that led to this book with faculty leave. Finally, I would like to thank Brother Bob Warren; you are no longer residing on the border, but your interest in the issues is not forgotten.

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# 1

## Background and History

### Introduction

**T**he United States' borders coincide with land, water, and the air. A border is a geographic boundary of a nation and defines its legal jurisdiction. Its borders define national sovereignty and the right to citizenship. National sovereignty is defined as "the possession of the sole decisionmaking authority in defining one's policies" (Bagwell and Staiger 2003, 6). Every country exercises sovereignty, the right to make policy decisions, over the people, goods, animals, and plants allowed to enter and exit its borders. Nation-states like the United States protect their citizens by providing for security within their borders (Biersteker 2003). Yet the goal of security is not always compatible with the free movement of people and goods across borders—a source of economic security and improved living standards.

U.S. national security increasingly is based on good border relations throughout the more than 7,500 miles covering the U.S. borders with Canada and Mexico. Because these nations are the two largest trading partners of the United States, there are benefits from allowing the free flow of goods and services between the borders. However, there are concerns about allowing an unregulated flow of what are increasingly considered "dangerous goods and people"; therefore, border security is essential.

All citizens desire an optimal sense of security from foreign threats. National security involves legislating to secure borders against military attack and controlling the traffic in goods and people. Since 9/11 the prevention of international terrorism has

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become the major border-security issue. The United States has ongoing concerns regarding unauthorized immigration, drugs, weapons, and contraband trafficking. Attempts to control national borders in an age of increased international connections create issues such as how to maintain important diplomatic and economic ties with other nations while countering threats to security. After 9/11 trade and immigration across borders became critical counterterrorism issues and triggered policy and legislative changes.

### Geography of the Borders

The United States shares a land and river border with Mexico and a land and lake border with Canada. The land and water borders of the United States, including Alaska and Hawaii, cover 19,841 miles (Beaver 2006, 1–5). There are 95,000 miles of shoreline and defined air space. The United States maintains 327 official ports of entry at its land, sea, and air borders. The ports enforce immigration and import/export law. Customs inspectors also examine any agricultural and wildlife products brought into the country.

The U.S.-Mexican border is 1,933 miles long and partly defined by the Rio Grande River (Beaver 2006, 1–5). Traditionally, the southern border has been the site of extensive drug smuggling and unauthorized entry but no known terrorist efforts. There are 24 official ports of entry in California, Arizona, New Mexico, and Texas. Laredo, Texas, is the busiest port on the Mexican border and has the fastest growth rate because it handles trucks carrying manufactured goods and agricultural products from Mexico. Mexico's border is very controversial because of unauthorized immigration, drug trafficking, arms trafficking from the United States, drug-related violence, and the possibility of terrorist entry.

The United States' geographically complex northern border with Canada stretches for approximately 5,000 miles of both land and water (Beaver 2006, 1–5). This area is sparsely inhabited and includes a border with Alaska that extends into the Arctic. It has been a security zone considered the longest unguarded border in the world and often referred to as "undefended." There are 133 ports of entry, most of which are in unpopulated or wilderness areas. U.S.-Canadian border security is problematic because

of size, wilderness, and water boundaries. Unlike Mexico, Canada has a history of terrorist activity, has been used as an entrance corridor, and is thought to harbor some terror cells. While unauthorized immigration is a lesser issue, the smuggling of high-potency marijuana to the United States and untaxed cigarettes to Canada are recurrent issues.

Canada is uniquely a border nation because 75 percent of its population resides within 100 miles of the boundary and 90 percent within 200 miles (Thompson 2001, 14). In certain sectors the border is unmarked; in others it is only a ditch. Yet Canadians stand in an asymmetric relationship to the more powerful United States, referred to as “subservience” despite a prosperity partly based on trade (Winterdyk and Sundberg 2010b, 29). For them, the border may protect their political, economic, and cultural rights against the power of the United States.

Like Canada, the developing nation of Mexico stands in an asymmetric relationship with the United States, only it is even more lopsided. Mexico’s seat of government is Mexico City. Since the 1960s and the development of export processing zones with factories called *maquiladoras*, border development and urbanization have proceeded at a rapid pace but at a distance from its national government (Martinez 2006). The Mexican border is an area of cultural contact and hybridization that has led to concerns about de-Mexicanization, a concept that refers to the Americanization of Mexicans living in the border zone (Martinez 2006, 113, 114, 115).

## Challenges of Border Security

Despite asymmetries of power, both Canada and Mexico have extensively cooperated with the United States in strengthening border security. The evolving border relationship is one in which the three countries have worked together on mutual protection from external threats. Yet border security is controversial because of the size of the task. The need to have porous borders for the passage of people and trade is counterbalanced by the need to stop the smuggling of people and drugs and to prevent terrorism. Some consider it possible to successfully manage this tradeoff and attain border security. Others believe that the extent of resources needed is self-defeating and that border control is primarily image management (Andreas 2000, 7–9).

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Public attention has concentrated on the land borders, particularly Mexico, but the terrorist threat is more widely dispersed.

On September 11, 2001, 19 jihadist air hijackers flew three commercial jets into the World Trade Center skyscrapers in New York City and the Pentagon in Washington, DC. One additional jet crashed due to passenger resistance and was unable to reach a second Washington, DC, target. The action horrified the world and pointed to weak aviation security. Afterward, the 9/11 Commission (Eldridge et al. 2004) found that prior to the attacks border security had not been considered a national security issue. In the face of the unknown after the tragedy, it was impossible to overreact, yet many of the immediate steps taken lacked planning.

When the terrorists' actions to overcome the system were identified, plans for greater security for Americans were put into action. The 9/11 Commission and the newly created Department of Homeland Security completely reorganized border security while employing and reinforcing much past practice and adding some policy innovations. The depth of the response was due to the Bush administration's zero tolerance for risk. The 9/11 hijackings and subsequent mass fatalities marked a new era in border-security management.

Historically, borders have been sites of conflict over territory. The emergence of contemporary nations led to the association of sovereignty with the right to regulate cross-border movement. Many major boundary disputes between Mexico or British America (now Canada) and the United States have occurred, including Britain's (Canada's) objections over the boundaries of Oregon and Alaska, and Mexico's over Texas. Often these conflicts did not occur until politics or economic or strategic change made a border region desirable to both governments. Boundary disputes still occur, but the massive extent of the border and the low intensity of these disputes compare favorably to the rest of the world.

# U.S.-Canada Border

## Early History of European Expansion

Canada is the world's second largest country, stretching from the Pacific to the Atlantic and into the Arctic (Bothwell 2006, 4).

In 1534 Jacques Cartier staked a claim for New France in the area of the Saint Lawrence Valley. In the 1570s and 1580s, English exploration led to colonies in Newfoundland and Virginia. In the 16th century, Samuel de Champlain established a colony in Quebec. Sixty years of Iroquois wars repressed the growth of French colonial enterprise as the English and Dutch developed colonies along the North Atlantic seaboard. This set the stage for conflict among the European nations over control of territory (Bothwell 2006, 17, 21, 31–35).

In the 17th century, the English forced the Dutch to sign over their New Amsterdam colony and entered into competition with France over Hudson Bay and New York. In 1686, France entered into a war with England that lasted until 1697. Queen Anne's War involved the Iroquois, traditional enemies of the French and allied Algonquin tribes. This conflict resulted in French colonial seizure of Hudson Bay forts but took place mostly in Europe. France was bankrupt, and the Treaty of Utrecht ceded all of Acadia (now Nova Scotia) and Newfoundland to the British, who emerged as the major colonial power (Bothwell 2006, 57, 64–65).

From 1689 to 1815 North America was the seat of warfare between the European nations and the Indian nations. The Seven Years' War (1755–1761) resulted in Great Britain's takeover of the French territories and land east of the Mississippi that became British America (Bothwell 2006, 63, 87–88). Subsequently, the American Revolution resulted in the recognition of the United States.

## Origins: Territorial Conflict

The U.S.-Canadian border was first established by the 1783 Treaty of Paris that ended the war between the thirteen U.S. colonies and Great Britain. Afterwards, a series of border disputes between the United States and Great Britain, involving British America, occurred because of desire for territorial expansion. The western boundary was especially a source of territorial conflict. An 1818 U.S.-British agreement placed the British America border at the 49th parallel from the Lake of the Woods to the Rockies (Bothwell 2006, 158). Lake of the Woods is a body of water in the Canadian provinces of Ontario and Manitoba that borders on the U.S. state of Minnesota. Britain and the United States agreed to jointly occupy Oregon territory, west of

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the Lake of the Woods, for 10 years. This was extended to a further 10 years in 1827 (Bothwell 2006, 109–110, 158).

After 1838 disputes arose over which nation had the right to Oregon. In the 1840s, the American settlers drove their wagon trains across the Oregon Trail, so the United States sought to claim territory up to the 54th parallel. To avoid war, a compromise between the U.S. and Great Britain placed the border at the 49th parallel. The dispute was settled by the 1846 Oregon Treaty (Bothwell 2006, 159). It established the boundary from the 49th parallel at the Lake of the Woods to the Strait of Georgia. This treaty granted the United States control of the territories that became the states of Oregon, Washington, Idaho, and Montana. The British retained Vancouver Island and the right to navigation on a portion of the Columbia River.

In 1837 a rebellion of Canadian settlers in Eastern British America led Americans to consider annexation. U.S. citizens living proximate to the border assisted the rebels. At one point, several hundred western? New Yorkers crossed into Canada and entered into armed conflict with British soldiers. This provoked British Canadians into crossing into the United States. They killed a Canadian rebel and burned the rebel's supply ship, the American-owned *Caroline*. The United States asked for an apology and reparations, but was refused. Later, the boundary with Maine became a source of dispute as lumberjacks sought control of northern Maine and eastern Brunswick. In 1842 the Webster-Ashburton Treaty allocated 7/12ths of the disputed territory in Maine and New Brunswick to the United States (Bothwell 2006, 159, 175–183).

### Cross-Border Interactions

In the 19th century, the Canadian border was relatively unmonitored, and no barriers or fees faced Canadians or Americans who chose to visit or immigrate (Ramirez 2001). The unguarded northern border had few checkpoints to monitor crossing, and both Canadians and Americans crossed and even changed citizenship. Canadian immigrants were viewed positively as “thrifty, industrious and belonging to all trades and occupations, both skilled and unskilled” (U.S. Bureau of Immigration 1897, 6 Cited in Ramirez, 2001). As Western Hemisphere immigrants, like Mexicans, Canadians were not subject to a head tax.

At the end of the 19th century, concern about the U.S.-Canada boundary developed because overseas immigrants were using it

to avoid inspection and paying the head tax. In 1890, for example, about 20% of all European immigrants had come through the Canadian border to enter (Ramirez 2001). In the 1890s, U.S. checkpoints with immigration inspectors were established and Canadians underwent scrutiny regarding their criminal, health, and labor contract backgrounds.

Borders involve different rules of law and invite smuggling. Border dwellers who smuggle do not consider it a crime. The 20th century brought a clash of governmental policies over issues such as U.S. Prohibition and smuggling across both Canadian and Mexican borders. From 1920 to 1933, the Eighteenth Amendment, from its passing in 1920 to its repeal in 1933, prohibited the making, importing, sale, or transport of liquor in the United States. Canada was a source for bootleg alcohol as well as a tourist destination for those seeking to drink.

Through both world wars, Canada and Mexico supported the United States despite the legacy of conflict over expansion. Nevertheless, the power differential in income and resources between these nations has often meant that the United States has been seen as trying to impose its will on these nations and even engaging in territorial conquest. Mexico has experienced asymmetry of power to a greater degree than more prosperous Canada and lost considerable territory to 19th century U.S. expansionism.

## U.S.-Mexico Border

### Origins: Territorial Acquisition

In the 19th century, borders and boundaries were mostly clearly interpreted lines on maps which often coincided with physical barriers such as mountains or freshwater rivers and oceans. North America was subdivided among the United States and colonies ruled by fading colonial powers such as Spain and Great Britain. Originally a Spanish territory, Mexico became an independent nation in 1821. Mexico faced many issues in trying to integrate its northern "borderlands" territories (Martinez 2006, 11–12), whose administration collapsed after independence. Approximately 15,000 people lived in the frontier territories, and they did not identify with Mexico's central region, where the process of nation-building

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had concentrated. While the 1924 Mexican Constitution gave the states extensive autonomy in decision-making, the frontier territories were under the control of the Mexican Congress. In addition, the territory of Texas was merged with Coahuila. The frontier periphery began to have strained relations with the center.

The possession of physical territory became a major source of dispute. Conquest was perceived as a source of economic expansion. The United States was involved in a rush to acquire territory and promoted the ideology of manifest destiny to control land on the continent, including all of Mexico. Mexico encouraged U.S. citizens to immigrate to its territories, but the colonization policy proved a mistake. Americans came to outnumber Mexicans in Texas and California. Asserting control, the Mexican government outlawed slavery, which was practiced in Texas, and levied high taxes. Texans rebelled and became independent in 1836. The Texas Rebellion resulted in Mexico's first loss of territory (*ibid.*, 12, 13).

The United States annexed Texas in 1845 and war broke out in 1846. The U.S.-Mexico War ended with the signing of the Treaty of Guadalupe Hidalgo in 1848. This treaty included the forced sale of one-third of Mexico to the United States. After the Gadsden Purchase, Mexico lost one-half of its territory altogether. The consolidation of the United States was based on a partial conquest of Mexican territory and set the stage for the power asymmetry in relations that exists today (*ibid.*, 16–18).

After the U.S.-Mexico War, U.S. citizens continued to try to expand into Mexico, and border conflict was intense. "Filibusters" were incidents of armed aggression directed against Mexican citizens on Mexican territory. Through the first quarter of the 20th century U.S. citizens who were independent adventurers ignored national sovereignty and acted as revolutionary agents and colonizers seeking to "liberate" northern Mexican territory both for personal enrichment and so that the territory could become part of the United States. These unlawful invasions occurred because of the Mexican government's weakness and instability. Mexico held on to its northern territory for a variety of reasons. Filibustering failed because of "inadequate planning by the aggressors, insufficient resources, poor judgment, lack of official support and Mexican resistance" (*ibid.*, 31–32, 46–47).

As colonial expansion ended in the 20th century, the ideal of sovereign nonintervention was proclaimed and geographic borders gained in importance (Biersteker 2003, 157–158). After

World War I, the 1919 Covenant of the League of Nations specified that its members should not intervene in independent nations. After World War II ended in Europe in 1945, the Charter of the United Nations reaffirmed this idea. National boundaries began to be used as means of regulating the movement of people and goods. Nation-states began to authorize the entry of immigrants across boundaries and to exercise control of capital through international monetary agreements meant to stabilize their economies. Treaties were created to form alliances to protect national security and territories.

Early in the 20th century, border concerns centered on the U.S.-Mexico border and military or migration issues caused by the Mexican Revolution, which had caused Mexican citizens to flee over the border line (Martinez 2006, 82). From 1910 to 1920, the United States protected its territorial sovereignty and the security of citizens while enforcing neutrality law regarding the outcome of the Mexican conflict. The United States engaged in surveillance of Mexican revolutionary activities, stopping raids into its territory, preventing gun smuggling to Mexico, and protecting U.S. border citizens by using local, state and federal law enforcement (83). For example, federal troops, the Texas Rangers, and state National Guards were mobilized along with border sheriff-led civilian posses and police. A military incident occurred in March, 1916 when Pancho Villa crossed the border at Columbus, New Mexico, and killed 17 U.S. citizens while burning and looting. The United States responded with a military invasion led by General John "Black Jack" Pershing.

## **Cross-Border Incursions and Illicit Activities in Mexico and Canada**

After the end of the U.S.-Mexico War of 1848, banditry was a concern for both the United States and Mexico at the borders. The U.S. military was often involved in tracking down the bandits, which included American Indians on raids (Martinez 2006, 54–55). In 1878 the Posse Comitatus Act restricted but did not preclude military involvement in domestic law enforcement. U.S.-Mexico border law enforcement raids involved vigilantes and unofficial posses as well as military crossing the border to pursue bandits. This activity continued into the early 20th century.

During Prohibition, when production and consumption of alcohol were outlawed in the United States, smuggling of alcohol

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from Mexico and Canada was a major concern (Moore 2004, 3–4). Americans flocked to both Mexican and Canadian border towns to drink. In the case of Mexico, American investors provided capital to start entertainment establishments featuring drinking and prostitution because both were legal in Mexico (Martinez 2006, 108–109). During this period, the Mexican border towns became stereotyped as “sin cities” and centers for vice. The Great Depression brought a decline in border tourism, and the repeal of Prohibition ended a period in which many American citizens left the country to drink.

Today legal prostitution in Mexico brings sex tourists to border towns, and women and some men work this trade while subject to mandatory medical exams (Martinez 2006). Teenagers may cross to Mexico to drink legally if the age limit is lower than the corresponding American state; they also may go if they perceive the trip as an “exotic” experience. To their parents, of course, it is a source of consternation, especially regarding the potential for binge drinking. In the late 20th century, the availability of liquor, drugs, and sex work businesses in the United States decreased the demand for such experiences in the Mexican border cities.

### Ongoing Issues

While major U.S.-Canada and U.S.-Mexico boundary disputes have been settled for years, governmental policies still clash. An important difference between the two borders is the status of the two countries: Canada is a developed nation while Mexico is a developing nation. As a result, the degree of law enforcement at the two borders is very disparate. The United States has created an increasingly fortified border with Mexico to prevent economic migration and, more recently, drug trafficking. The Canadian border has a history of being relatively unguarded and of less concern (Ackleson and Heyman 2010, 39). For all three nations, too careful regulation of people and commodities crossing the borders is viewed as causing costly delay in the flow of legitimate goods under the North American Free Trade Agreement (NAFTA). It is a contradiction in terms that billions in investment in security gravitates to the U.S.-Mexico border, posing constraints to this increasingly economically important trade. Security policies and related post-9/11 laws have often negatively influenced the goodwill of trans border

relationships and are shadowed by the legacy of conflicted border relations.

## Border Security

Three concerns have dominated U.S. border enforcement: immigration, drugs, and international terrorism (Payan 2006, 1–21). Mass unauthorized migration has resulted in the growth of a U.S. Border Patrol–led interdiction regime (Heyman 1999, 619–622). Persons and vehicles crossing at a port of entry are inspected. This is usually done without prior intelligence gathering and is an example of mass enforcement. During the 20th century, the United States' efforts to control contraband have focused on drugs, for example, marijuana, opiates such as heroin and cocaine, and methamphetamines. International terrorism developed as a concern in the 1990s, after the 1993 World Trade Center bombing, and emerged as the primary border concern after the 9/11 attacks.

The focus of counterterrorism is the apprehension of terrorists crossing borders, developing intelligence about transnational networks, and stopping supplies for violent activities. Interdiction relies on mass screening, including radiation monitors used on cargos to detect weapons of mass destruction. Pinpoint actions are used against a limited number of people and conveyances identified by intelligence (Ackleson and Heyman 2010, 38–39).

## Border Trade

The 1980s United States–Canada Free Trade Agreement and the 1990s North American Free Trade Agreement (United States, Canada, and Mexico) were signed to reduce or eliminate export tariffs in several industries including agriculture, automobiles, and textiles. These agreements resulted in a need for infrastructure growth to manage trade. The 1995 United States–Canada Accord on Our Shared Border and the 1999 United States–Canada Partnership Forum addressed these issues but were found inadequate after the 9/11 attacks.

After 9/11, many considered that further transnational integration of the NAFTA economies was precluded by national security needs and demonstrated a negative consequence of globalization. Although the Mexican border has been long

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considered problematic, for the first time, the porosity of the Canadian border came into question. In 2002, the United States and Canada signed the Smart Border Declaration. In 2005, the Trilateral Security and Prosperity Partnership (SSP) a North American initiative involving the United States, Canada, and Mexico, took another step towards addressing border security needs (Villareal and Lake 2005). At the 2005 North American Leaders Summit, "smart and secure borders" was established as a priority for SSP. Leaders seek to coordinate security procedures in order to avoid duplication such as repeat inspection of baggage and cargo, but this initiative may not be enough to address new security challenges.

Representative Silvestre Reyes (Democrat–Texas) has stressed,

Inadequate staffing and outdated infrastructure at our land ports of entry are making America less safe. We need to provide our federal law enforcement agencies with the tools and resources they need to effectively combat the flow of drugs, money, and weapons that are illegally transported between the United States and Mexico. (Reyes 2009)

### Customs Fees and Border Smuggling

Borders, by their nature, create opportunities for smugglers because of the desire to evade taxes on imports called customs duties. The U.S. Customs Service has the job of collecting duties on legal imports and keeping out illegal or untaxed goods, known as contraband. After passage of the Tariff Act of 1789 on July 4, 1789, U.S. Customs began operation on July 31, 1789 (CBP.gov 2009). The fledgling United States was close to bankruptcy and a tax on imported goods, known as a tariff, was imposed to raise money. In the first year of operation \$2 million in duties was collected. In 1886, Customs inspectors on horseback patrolled the Mexico border. Revenue cutters sought to prevent coastal smuggling. Customs was the chief source of federal revenue until 1913, when an amendment authorizing an income tax was passed.

Canada Customs was established by the Customs Consolidation Act of 1841 (McIntosh, 1984). In 1906, the Canadian Immigration Department was created by the Immigration Act of

1906 (Kelly and Treblecock 1998). The Royal Canadian Mounted Police (RCMP) was established February 1, 1920. At this point, Canada initiated a tripartite border strategy in which customs inspectors, immigration officers, and police work to maintain border security (Winterdyck and Sundberg 2010b, 23). Customs is based at all prominent land crossings, airports, and harbors. Immigration officers work alongside Customs inspectors at major ports of entry. The Royal Canadian Mounted Police patrol remote areas and between ports of entry.

U.S. Customs is expected to ensure that all imported and exported goods comply with federal law. It collects and protects tariff duty revenue, excise taxes, and any fees or penalties due on imports (CBP.gov 2009). It seeks to interdict and seize contraband, particularly narcotics, and it apprehends individuals suspected of trying to circumvent U.S. Customs and related law. Even intellectual property rights law is enforced. A new mission of U.S. Customs has been to protect national security by enforcing prohibition on the export or import of critical technology used to develop weapons of mass destruction and to provide defense against money laundering.

Unfortunately, U.S. Customs inspectors are subject to the temptation of corruption. The profit from contraband has meant that U.S. Customs has to wage a perpetual battle against bribery of inspectors. In 1998 Congress asked the Treasury Office's Department of Professional Responsibility to study corruption and U.S. Customs programs to detect it (CBP.gov 2009). The study did not detect organized corruption networks but found that individual Customs inspectors were at great risk of bribery and that there were problems in detecting it. The international drug trade and related arms smuggling present a serious challenge to the ethics of U.S. Customs inspectors, and some give in and accept bribes to wave drugs through.

## Immigration

Immigrants cross by land, sea, and, since the mid-20th century, air to enter the United States. After U.S. independence from Great Britain, a period of open entry to the United States occurred and Europeans were recruited to come. As immigrant origins became diversified, racial and ethnic disputes led to passage of a series of laws restricting entry. In 1882 the Chinese Exclusion Act began what was often a racist process of immigrant exclusion. In 1882

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U.S. Customs inspectors were asked to prevent smuggling of Chinese. In 1904 the Immigration Service undertook this activity. Beginning in 1917, it became necessary for individuals crossing from Mexico into the United States to demonstrate literacy and pay a crossing fee. Because of the porous nature of the land boundary, the era of unauthorized Mexican migration began. Following the passage of restrictive immigration laws in 1920 and 1924, the U.S. Border Patrol was established. Initially it had a budget of \$1 million and 450 officers (Lee 2006, 10, 12–13).

Immigration control is a domain of international law enforcement. The United States' borders are the primary focus of its enforcement efforts. International policing is often synonymous with local policing at the border. The border is a zone of liaisons with foreign officials, boundary crossing, and a concentration of federal law enforcement agencies. Because of the United States focus on immigration control, the United States has focused on interdiction of those who would enter without authorization. Periodic intensification and escalation of immigration enforcement, however, has never ended unauthorized immigration, and associated policies have become increasingly like crime control.

Crossing a border without document inspection or using fraudulent documentation violates the national sovereignty of the United States. The presence of an estimated 11.3 million unauthorized immigrants in the United States indicates that legislation regulating immigration and border enforcement has not succeeded. A majority of unauthorized immigrants originate in North America. Mexicans are most represented, followed by other Latin Americans (Passel and Cohn 2008, iii). Europeans, Asians, and Africans are relatively few in comparison. Mexicans comprise 61% of all unauthorized immigrants, and they have been in the majority since 1990 (Hoefer Rytina and Campbell 2006, 4). The Central American countries of El Salvador, Guatemala, and Honduras are the origin of about 12% of unauthorized immigrants. Other countries represented among the unauthorized include India, Korea, China, and Vietnam.

Legal and unauthorized immigration is a response to the “pull” factor of economic motivation, employer demand, and the “push” factor of lack of economic opportunity in “sending countries,” the countries of origin of immigrants. The United States has one of the world's most active economies, while Mexico and Central America are developing economies in which many must struggle to survive. Mexican workers are pulled by the wage

differential with the United States. In Mexico the minimum wage is set at \$4.86 an hour (Freebairn 2007). The U.S. federal minimum wage is \$6.55 an hour and 24 states have set their minimum wage rate higher than federal law requires (CNN 2008). State minimum wages range from a high of \$8.07 in Washington to \$6.65 in Missouri.

Opponents of immigration argue that unauthorized immigrants drive down the wages of native-born workers. Economists George J. Borjas and Lawrence F. Katz (2005) indicate that Mexican immigrants have less education than native-born workers. Their 1980–2000 econometric statistics indicate that lack of education is associated with low wages for Mexican immigrants. Borjas and Katz state: “The large Mexican influx in recent decades widened the U.S. wage structure by adversely impacting the earnings of less-educated native workers and improving the earnings of college graduates” (42–43). Their calculations indicate that native-born high school dropouts experience a wage reduction of “about 4.8 percent” (39). In contrast, the wages of native-born college graduates were improved because they benefit from the greater availability and reduced prices of goods and services provided by unskilled immigrants.

Immigration critics consider that unskilled unauthorized workers do not receive the minimum wage and that employers refuse to pay overtime. In semi- and low-skilled day labor and the manufacturing and food processing industries, the wages are relatively low. In 2008, as a severe economic recession developed, wage theft became a major complaint at workers’ rights centers (Associated Press 2009). The National Day Laborer Organizing Network reported that an estimated 50% of day laborers, of whom 120,000 work on any given day in the United States, fail to receive some portion of their wages.

Wage theft is pervasive in low-skill jobs. A study of 4,378 workers in low-waged industries in Chicago, Los Angeles, and New York City indicated numerous violations of payment of the minimum wage or overtime, the right to take meal breaks, and access to worker’s compensation when injured (Bernhart et al. 2009, 43). Wage theft rates were lowest among U.S.-born workers: 14.9% of men and 16.1% of women. Among foreign-born authorized workers, 13.5% of men and 24.2% of women experienced wage violations. Unauthorized foreign-born workers experienced the highest rate of violations: 29.5% of men and 47.4% of women. The research indicates that minimum-wage

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violations range from 3% to 43% across industries and that certain industries so commonly violate the law that it appears to be standard business practice (Bernhart et al. 2009, 39). Among sewing and garment workers, 40% experienced a minimum-wage violation and 70% experienced an overtime violation. Private household employment also had a high rate of violations. Among child-care workers, 66.3% experienced a wage violation while 49.6 % of beauty, dry cleaning, and general repair workers received illegally reduced pay.

Those in favor of restricting immigration believe that unauthorized workers are subject to poor working conditions. For example, the U.S. General Accountability Office (GAO 2005) and the Bureau of Labor Statistics (2007) indicate that food processing has one of the highest rates of injury and illness. Musculoskeletal injuries and respiratory and dermatological problems occur at significant rates. Poultry processing has a very high industry rate of injury (Bureau of Labor Statistics 2007). Poultry part cutting mechanization and assembly line production require lengthy periods of standing and repetitive motion. Speed on the assembly line, close proximity, and use of hand tools generate stress, contributing to injury. The use of immigrant labor complicates the likelihood of reporting injury because unauthorized individuals fear deportation.

In an America's Voice 2009 poll, 87% of Americans supported a path to legalization for unauthorized immigrants and 89% favored "cracking down" on employers of unauthorized labor (Brodnitz 2010). Of voters, 67% favored making immigrants without legal documentation into registered taxpayers. One question is whether unauthorized workers make it possible for employers to cut corners. Employers are economically motivated to increase profits by failing to pay living wages and violating workplace safety laws. Many of these jobs are cash only and the lack of paper-work disguises wage violations. Non-hourly payment and lack of paper wage-reporting statements facilitate this crime and make it difficult for workers to report it (Bernhart et al. 2009, 39). Workers may want jobs that are off the books because taxes are not deducted from the wage. Regardless, cash-payment work deprives states and the federal government of taxes on income. Critics also believe that the lack of legal status of unauthorized immigrants leaves them unable to challenge hazardous working conditions.

Will citizens avoid taking unskilled and semiskilled jobs because of the low pay and poor working conditions? A PEW

Hispanic Center national survey (2006) found that 65% of respondents believe that immigrants take jobs that Americans “mostly don’t want” while 24% believe they deprive the native-born of employment opportunity. The most impacted native-born group is minority high school dropouts. There is mixed evidence concerning whether unauthorized workers substitute for less-educated native-born workers. Borjas (2003) estimated that unauthorized immigrants displaced about 10% of native-born workers with low education. Meanwhile, the number of native-born high school dropouts has decreased by 1.2 million, creating the possibility that more unskilled labor was needed than could be provided by native-born workers. Kochar’s (2006) examination of the impact of foreign workers on the native-born did not show a consistent pattern of favorable or unfavorable job outcomes. Instead, from 1990–2005, eight states (North Carolina, Arizona, Arkansas, South Carolina, Tennessee, Oklahoma, Kentucky, and Alabama) had above-average growth for the foreign-born population and below-average employment rates for native-born workers. In contrast, 14 states (Minnesota, Nebraska, Colorado, Iowa, Utah, Kansas, Georgia, Delaware, Nevada, Idaho, Indiana, Oregon, Texas, and Washington) with above-average growth in the foreign-born population had above-average employment rates for the native-born.

The post-2007 economic downturn in the United States has led to increased scrutiny of the impact of immigrants on employment. Initially, the recession resulted in a 17% unemployment rate among immigrants working in construction who were impacted by the decline in housing prices and reduced new construction (Orrenous and Zavodny 2009). In particular, unauthorized Latin American immigrants are often less educated and work at unskilled jobs, making them especially vulnerable to fluctuations in the business cycle. Overall, recessions impact on native-born workers to a greater degree than immigrants with the exception of the severely impacted housing sector.

Lamar Smith (Austin American Statesmen *PolitiFact Texas* 2009) cited March 2008 data when stating, “allowing millions of illegal immigrants to stay and take jobs away from citizens and legal immigrants is like giving a burglar a key to the house. Illegal immigrants currently occupy 8 million jobs. Those stolen jobs rightfully belong to citizens and legal immigrants.” The Center for Immigration Studies (CIS 2009) argues that the recession, combined with unauthorized immigration, has hurt U.S.-born blacks and Hispanics without a high school diploma. In December 2008,

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the unemployment rate for native-born blacks without a high school education was 24.7%. Unemployment among Hispanics with less than a high school education was 16.2%. At this time, rising unemployment dropped jobs estimated to be held by unauthorized immigrants to 6 to 7 million. CIS considers that unemployed native-born high school dropouts could potentially fill some of these jobs. About 12.8 million native-born who held a high school diploma or less were unemployed. Among less-educated immigrants without a high school education, unemployment was 10.6% and those with a high school education faced 11% unemployment.

Gordon H. Hanson, an economist, thinks that "Policy inaction [on immigration] is a result not only of a partisan divide in Washington, but also of the underlying economic reality that despite its faults, illegal immigration has been hugely beneficial to many U.S. employers, often providing benefits that the current legal immigration system does not." The availability of less-educated unauthorized workers does put a downward pressure on wages for unskilled employment. Hanson points out that unauthorized immigrants take unskilled employment because they most often lack a high school education. Their job opportunities are further limited by their lack of legal status. In 2008 unauthorized immigrants worked at labor-intensive agriculture (25%), building and maintenance staff (19%), construction (17%), food preparation and serving (12%), and production labor (10%). They are 5% of the civilian labor force. Losing these workers would cause economic disruption. According to Hanson, the demand from labor-intensive employers is such that only an increase in visas for unskilled workers, making legal immigration policy responsive to market conditions, would legalize this immigration flow (Hanson 2009).

Conservative Patrick Buchanan believes that "As immigrants work for less than Americans, they drive down the wages of our working people. And they represent a wealth transfer from the poorest Americans to the richest" (2006, 264). As a result, he advocates for enforcement of employer sanctions but would not legalize the unauthorized population. An opposing view is given by Robert Scheer, who has worked as a journalist for the *Los Angeles Times* and is a contributing editor for *The Nation*:

Some 2 million immigrant workers now earn less than the minimum wage and millions more work without

the occupational safety, workers' compensation, overtime pay and other protections legal status offers. Consequently, when the president says that immigrants perform work that legal residents are unwilling to do, he may be right—but we don't know. The only way to test that hypothesis is to bring this black market labor pool above ground. (Scheer 2006)

The incompleteness of border control has created a dilemma of an unauthorized population whose economic impact is incompletely understood and whose solution it is difficult to agree upon. The political sensitivity of the issue has led to repeated delays in addressing it.

The proximity of Mexico and Central American countries to the southern land border facilitates migration. This border is the only one in the world between a developed and a developing country. Nevertheless, 2,410,000 immigrants are estimated to have come from non-North American countries using other means (Hoefer, Rytina, and Campbell 2006). Problems with the U.S. visa entrance and exit system and the openness of coasts permit people of many ethnicities to enter legally and fail to depart or to come without inspection along the coasts and over the Canadian border. Globalization has also broadened patterns of unauthorized entry to encompass all types of borders, land, sea, or air, although Americans are not as aware of this issue.

## Attempted Solutions

### U.S. Border Patrol

Since the 1970s, the expansion of U.S. Border Patrol personnel has been a consistent policy response to concern about unauthorized immigration and, later, drug trafficking across the U.S.-Mexico border (see Andreas 2000, 34, 55–56, 87–93, 98; Ackleson and Heyman 2010, 43). Before 9/11, border entry was more monitored than border exit, when inspection was often not carried out or any data entered. Border inspectors either allowed or turned back entrants. They charged unauthorized entrants trying to cross without inspection and documents with fraudulent entry. The first attempt is a civil offense and the second is a felony.

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The U.S. Border Patrol, originally part of the Immigration and Naturalization Service (INS), now in the Department of Homeland Security, manages land interdiction and has the largest budget and political constituency. In 1980, there were 2,268 agents of which 87.2% were at the southern border and 9.3% at the northern border (TRAC 2006a). In 2001 there were 9,651 Border Patrol officers, of whom 93.9% were stationed at the U.S.-Mexico border and 3.4% at the Canadian border (TRAC 2006b).

Public concern about unauthorized immigration has led to a political response that continually increases the size of the Border Patrol and adds new surveillance equipment (Ackleson and Heyman 2010, 42–44). For example, helicopters, fixed-wing aircraft, and motion sensors are increasingly used. By 2000, there were 13,000 sensors, although some were not functionally operational (Kosolowski 2006).

In the 1990s the Border Patrol implemented a new tactic: line watching (Ackleson and Heyman 2010, 43–44) in operations like San Diego's Operation Gatekeeper (Nevin 2002), El Paso's Hold the Line (Dunn 2009, 51–96), Operation Rio Grande in McAllen, Texas (Maril 2004), and Operation Safeguard in Tucson, Arizona. Vehicles were placed close together, a few hundred feet apart and almost on the border line. This was done in urban zones to deter individuals from crossing before they even tried.

### **Criminalization of Immigration**

Criminalization refers to the process of designating particular human behavior, such as crossing a country's border without its authority, as criminally illegal. In the United States, an individual's first crossing is a civil offense. Repeated attempts are a criminal felony. The language of immigration is complicated by the media's use of the term "illegal aliens" and, more recently, the unqualified "criminal aliens" for all apprehended migrants, because the first entry is a misdemeanor (Warner 2006). A more neutral term used by the federal government is "unauthorized immigrants," while a term preferred by immigrant advocates is "undocumented immigrants."

The first attempt at expanding criminalization, of mixed success so far, was directed at citizen and permanent resident employers of unauthorized workers. In 1986 the Immigration

Reform and Control Act (IRCA) passed. Its “amnesty” legalized unauthorized immigrants who could prove they were in the country prior to January 1, 1982, and made employers who hired unauthorized workers subject to civil and criminal penalties referred to as “employer sanctions” (Green and Ciobanu 2006). Regardless of the law’s intent, spending on interior enforcement never matched the amount expended on expanding U.S.-Mexico border enforcement to control unauthorized immigration. The target has always been apprehending unauthorized migrants, a task to which securing the nation from possible terrorists was later added in what is now referred to as the securitization of immigration.

Further criminalization of immigration began in the late 1980s after the passage of IRCA, when the United States began to develop a two-tier system of rights for citizens and noncitizens. It has gradually deprived noncitizens, including permanent resident aliens who had committed certain crimes, of their due process rights under the Constitution. Traditionally foreign-born individuals entering without inspection (EWI) have been deported from the country unless they successfully asked for asylum, which the government does not award to economically motivated migrants. In 1988 deportation was relabeled as “removal” and the Immigration and Naturalization Service (INS, now ICE) began the Institutional Removal Program (IRP) to review the immigration status of federal prisoners (Office of the Inspector General 2002, 1). This program was created to identify and then remove noncitizen prisoners immediately after their prison time was concluded (1999). The IRP later evolved into the Criminal Alien Program (CAP) (ICE 2008). Criminal aliens are defined by the Government Accountability Office as: “noncitizens who are residing in the United States legally or illegally and convicted of a crime” (GAO 2005, 3). The first permanent residents to be designated criminal aliens committed aggravated felonies, a legal concept that has evolved to encompass an expanded set of offenses.

In the late 1980s both immigration and crime control were major public issues. Permanent resident aliens who had committed crimes were subject to additional penalties. Congress began to pass laws that expanded the basis for removal (deportation) of permanent resident aliens who had committed crimes. The War on Drugs began with the 1988 Omnibus Anti-Drug Abuse Act, which specified that if a permanent resident alien was

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convicted of homicide, rape, drug trafficking, and/or arms trafficking, that person would be given expedited removal upon finishing his or her sentence without further access to a lawyer and with expanded exclusion from reentry (Podgorny 2009). These were among the first “criminal aliens” to be expelled. Because the law was retroactive, the numbers deported exceeded those actually finishing criminal sentences in any given year.

In 1993, the first attack on the World Trade Center was carried out; it had been planned by Ramzi Yousef, who had claimed political asylum, and other conspirators (Reeve 2002), creating a linkage between who is allowed to enter and the possibility of terrorism. In 1996 the Anti-Terrorism and Effective Death Penalty Act (AEDPA) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) linked immigration to the terrorism concern, which is the hallmark of later securitization (Chacon 2008; Podgorny 2009). These laws added 50 offenses to those designated as “aggravated felonies” (Garcia 2006). Further, any crime resulting in a sentence of more than a year, including misdemeanor crime like drug possession and shoplifting, was to be a basis for expulsion. Even a suspended sentence was to be a criterion for mandatory detention and removal. As a result, another wave of deportation of criminal aliens occurred. After removal, many convicted of aggravated felonies were banned for a lifetime while others might have to wait 5, 10, or 20 years before returning.

Denying noncitizens the constitutional right to due process of law is another aspect of criminalization. The attempt to control the high volume of unauthorized immigration led to taking away the right to obtain a lawyer and appear at a hearing before an immigration judge, denying the possibility of being pardoned for meritorious behavior and the need to support a family (Siskin and Wasem 2006). Often immigration officials at the nation’s borders make a life-changing decision for an individual seeking asylum with only limited information. Similarly, in the interior, permanent-resident aliens subject to removal for aggravated felonies have no access to a legal appeal before they are summarily removed.

Expedited removal is applied to unauthorized entrants arriving at the land, sea, or air borders and permanent-resident or unauthorized-resident aliens serving time in detention or prison. For convicted noncitizens, any time in the United States after a prison sentence is completed is to be spent in mandatory detention without release on bond, which further isolates individuals

from legal help. The denial of access to legal representation and immigration court means that there is little transparency in treatment of noncitizens.

The reason for expedited removal is to avoid the costly, time-consuming legal procedures. The combination of detention and expedited removal is supposed to deter individuals from attempting to enter without authorization. Opposition to expedited removal has come from immigration advocates who argue that the process denies asylum applicants of the legal opportunity to state their case (Human Rights First 2000). At present, asylum seekers who attempt to enter and have their initial claim denied are placed in mandatory detention, often in jails with criminals due to lack of space.

A penultimate step in the criminalization of immigration, irrespective of the legal entrance status of noncitizens, was the 2001 USA PATRIOT Act. It specified that immigration enforcement could detain or deport any noncitizen considered a possible threat to national security without due process of law. This legislation has been criticized for promoting racial profiling of Arabs and Muslims who were then expelled, often based on immigration violations such as overstaying a legal entrance visa, regardless of criminal or terrorist involvement (Cole 2003).

## Terrorism

Terrorists have sought to enter the United States in the guise of visitors coming for tourism or business and as asylum applicants or legal immigrants. Although terrorists are thought, at present, to constitute only a handful of the millions of people entering and exiting the United States, their potential for harm has led the country to take extraordinary steps to exercise control over the flow of people.

Before 9/11 the pattern of disallowing constitutional rights to noncitizens was established. Subsequent securitization initiatives have taken this path by applying immigration law rather than developing new criminal laws to control terrorist suspects (Stumpf 2006, 12–24). After government officials understood the threat of international terrorism, immigration and interdiction of unauthorized immigrants became more important as a national security issue.

Although airlines screened passengers to avert hijackings, nothing stood in the way of the largest terrorist action in U.S.

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history on 9/11. This failure of preparation occurred despite prior known terrorist crossings of the Canadian border. The 9/11 hijackers entered legally by air on various types of legitimate and fraudulent visas and passports (Eldridge et al. 2004). As a consequence, the United States undertook the drastic actions of the War on Terror. Ports of entry acquired new significance as increased scrutiny of visitors for business or pleasure, asylum applicants, and new immigrants occurred.

### Counterterrorism before and after 9/11

Prior to 9/11, the United States had warning that it could be an international terrorist target and that the direction of the threat came from the northern border. In 1988 U.S. Customs arrested three Syrian terrorist group members linked to al-Qaeda for attempting to bring explosives across the Canadian border (Winterdyk and Sundberg 2010b, 19–20). The 1993 World Trade Center bombing was connected to Islamic terrorism, and certain plotters entered the United States from Canada (Hataley 2007; Winterdyk and Sundberg 2010b, 22).

In 1999 Ahmed Ressay, a member of al-Qaeda, was stopped at the U.S.-Canadian border after being tracked by Canadian intelligence for linkage to a bomb plot (Winterdyk and Sundberg 2010b, 22–23). The “millennium bomber” had planned to bomb Los Angeles International Airport during the 2000 Millennium celebration and was later convicted of terrorism and given a sentence of 22 years. The Royal Canadian Mounted Police (RCMP) first collected intelligence on Ressay, and then he was arrested when he attempted to cross the border to the United States in a joint operation with the United States (Ackleson and Heyman 2010, 48).

Before 9/11, security priorities were the interdiction of unauthorized migrants and contraband, especially drugs, on land at the U.S.-Mexico border, by air travel, or at sea, off Florida (Ackleson and Heyman 2010, 42–43). Less attention was given to port of entry security, the visa and admission process, and the U.S.-Canadian land and maritime borders, which include the Great Lakes. The 9/11 attack initially resulted in inspecting all entrants and vehicles at the borders, including the trucks that are a major element of international trade (Ackleson and Heyman 2010, 50). This created massive backups (Andreas 2003, 10), including a 36-mile traffic line at the Windsor, Ontario, and

Detroit port of entry bridges. Counterterrorism surveillance procedures increased border-crossing time, and migrant apprehensions for unauthorized entry dropped. The intensive enforcement created transaction costs for international business and slowed or diverted trade to other countries.

After 9/11, the Bush administration sought to maintain borders that were open to entry but the major emphasis was on lengthy background checks, aggressive immigration enforcement, and new border controls. Border security has been enhanced in many ways but many of the policies undertaken are a continuation of past trends. Initial response to the attack was marked by confusion and the need to reassess all aspects of border-security policy. The attack provoked both innovation and greater investment in prior programs (Ackleson and Heyman 2010, 49–50). In the post-World Trade Center attack world, planners began to consider a wide variety of terrorist attacks that could be carried out on U.S. soil. Border-control strategies that were emphasized after 9/11 included nonintrusive scanning equipment for cargo and differentiating trusted (low risk) shippers from those unknown or suspected of smuggling contraband.

The 9/11 Commission (see Eldridge et al. 2004) found that the United States was slow to react to the development of international terrorism. Al-Qaeda terrorism against U.S. embassies and military abroad did not result in improved U.S. border security. Terrorism, rather than immigration or drug smuggling, became the major border-security issue after 9/11, although terrorists have been few and seldom encountered in the United States (Ackleson and Heyman 2010, 58–59). As a result, most border-security efforts concentrate on unauthorized entry and drug control. The initiatives undertaken are mostly a reprioritization of established programs for improving surveillance technology, fencing, and certain enforcement procedures. Federal terrorism prosecutions, never more than marginal in number, rose in the 12 months after 9/11 and then declined (TRAC 2006c). To illustrate, there were 355 international terrorist prosecutions in 2002 and 19 in 2006.

## Monitoring Ports of Entry

Originally, ports of entry had dual governance (Ackleson and Heyman 2010, 40–41). The Immigration and Naturalization Service (INS) in the Department of Justice inspected noncitizen visitors, immigrants, and citizens in transit. Customs, in the Treasury

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Department, regulated legitimate goods and sought to prevent smuggling through inspection of land vehicles and airplane inspections, a task shared with the Federal Aviation Agency (FAA). Customs shared oceanic vessel inspection with the Coast Guard, in the Department of Transportation. Further inspection was carried out by the Animal and Health Inspection Service in the Department of Agriculture and the Nuclear Regulatory Commission in the Department of Energy.

Every nation exercises border control and seeks to confine transit to special zones known as ports of entry. Ports of entry, places where movement occurs across borders, are deterritorialized from physical borders when individuals enter at international airports or seaports. Since 1976, the legal case of *U.S. v. Martinez-Fuente* has allowed the establishment of permanent or fixed checkpoints on highways within 100 miles of the border. These have been situated above the Mexican border. Vehicles traveling through these checkpoints are checked for individual documentation and contraband such as drugs. The inspections must be brief and a warrant is not required.

Ports of entry regulation is central to border security, and Customs inspectors make many arrests. The port traffic of legal entrants is 1,000 times that of unauthorized entries; 500,000 enter via the ports, and it is loosely estimated that at least 500 million attempt clandestine entrance each year. Major publicity is given to land borders outside of the ports, especially abutting Mexico. Entrance between ports, by air, land, or sea, is unauthorized. The Border Patrol is in charge of preventing unauthorized entry over the land borders. The Department of Defense is responsible for air interdiction, and the Coast Guard patrols the coast (Ackleson and Heyman 2010, 41, 42).

Before 9/11 residents of the two countries bordering the United States had two different procedures which reflected the relative social inequality between the nations. Canadian citizens, from a prosperous country, did not need a visa (Ackleson and Heyman 2010, 48). Mexican citizens, from a developing nation, were required to have a border-crossing card or visa. The card for Mexico was biometric and allowed 72-hour visits within 25 miles of the border. These visits could be extended if approved at a port of entry or consulate. An additional 27 prosperous countries had visa waivers and could enter with a passport. This was a key vulnerability, as these countries, with low rates of unauthorized immigration to the United States,

were known to harbor terrorists or were a part of terrorist travel patterns.

Both pre- and post-9/11, the Department of State has regulated visas for nonimmigrant travel. Pre-9/11 immigrant visas involved the Immigration and Naturalization Service (INS) and the Department of State. The 9/11 terrorists used visas, some fraudulent, and their entry was linked to lack of consular and port inspector training in examining terrorist travel patterns or identifying fraudulent documents. The 9/11 Commission found that U.S. Consulates prioritized prevention of unauthorized immigration over screening for potentially dangerous terrorists (Eldridge et al. 2004, 7, 73–74, 82; Ackleson and Heyman 2010, 42, 47).

Land port inspectors were and are under pressure to clear traffic (Andreas 2000, 46, 47; Heyman 1999, 626–627) but are also mandated to interdict drugs, and checking people was deemphasized (Ackleson and Heyman 2010, 46). Staffing and port-of-entry expansion had not kept up with demand. Individuals crossing at land borders were waved through after very brief questioning. Trucking connected the manufacturing of commodities in the U.S.-Mexico economic partnership. The volume of such traffic meant that port inspectors had heavy work schedules and substantial overtime. Previously, land-port workers were pressured to clear goods quickly while searching for contraband and inspection of visitors was not emphasized. Sea-ports prioritized clearance of cargo over security while the Coast Guard concentrated on interdiction of Haitian and Cuban migrants and drugs (Ackleson and Heyman 2010, 46). Terrorism had not been a priority and the United States was caught by surprise.

Screening at airports was cursory because of pressure to clear passenger entries. Air travelers and luggage/goods were screened by the INS and Customs. International airports gave priority to clearing passengers instead of inspection of travelers for immigration violations. Before 9/11 the United States was one of the most open countries in the world to visit. After 9/11, it was found that the United States had been underprepared in addressing international terrorism with border-security measures (Eldridge et al. 2004, 3).

Before 9/11 biometric electronic databases containing biographical, criminal, and security information were being developed (Eldridge et al. 2004, 87–96; Ackleson and Heyman 2010, 46). These included IDENT, IBIS, NAILS, TECS, and TIPOFF.

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Despite their availability, use of these databases was discretionary. Identity documents were not machine readable for comparison. Oral declarations of citizenship were accepted at the discretion of the land-port officers. The biometric database was to be used for immigration enforcement and port security officials were distracted from searching for terrorists. After 9/11, new systems and procedures heavily regulated visa applicants and increased the difficulty for visitors, foreign students, and temporary workers trying to enter the United States.

### Department of Homeland Security

Prior to their reorganization into the U.S. Department of Homeland Security, border-control and law-enforcement agencies were fragmented and did not share intelligence (Eldridge et al. 2004). The Bush administration adopted a zero-tolerance risk-management approach to improving border security. They sought to balance concerns about identifying and preventing terrorist entry, stopping unauthorized immigration, and preventing criminals' entry with economic concerns.

The most significant development after 9/11 was the reorganization of federal agencies under the umbrella of the U.S. Department of Homeland Security (Ackleson and Heyman 2010, 51–52). The 9/11 Commission had substantially faulted the lack of cooperation among government intelligence agencies (Eldridge et al. 2004). They indicated that the United States had not been prepared to counter a major terrorist attack because of lack of coordination of intelligence agencies and law enforcement. The Homeland Security Act of 2002 joined 22 federal agencies and 180,000 employees. The U.S. Immigration and Naturalization Service (INS) ceased to exist on March 1, 2003. Its functions were reallocated to the Bureau of Citizenship and Immigration services (CIS), U.S. Immigration and Customs Enforcement (ICE), and U.S. Customs and Border Protection. The DHS director became a Cabinet-level member of the government. Whether the huge bureaucratic organization, which was again reorganized in 2004, has been successfully integrated has been questioned (Carafano and Heyman 2004). The DHS budget has consistently had massive and constant increases.

The U.S.-Canadian border was proudly referred to as the “longest undefended border” in the world, but that changed dramatically after 9/11 (Winterdyk and Sundberg 2010a, 27).

Armed police and paramilitary organizations patrol this bilateral border. In a move parallel to the United States' creation of the Department of Homeland Security, Canada created the umbrella Canadian Border Services Agency (CBSA) to house the former customs, immigration, and food inspections services, and it became the first armed service to patrol. In 2006, the Canadian government allocated \$101 million to arm 4,800 Border Services officers. They wear ballistic vests and carry handguns to operate as a paramilitary organization.

## Layered Traveler Screening

The 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) had mandated the development of a data system to track foreign visitor arrival and departure as did the Immigration and Naturalization Service Data Management Improvement Act of 2000 (Ackleson and Heyman 2010, 57). The system was to integrate the Department of Justice and Department of State databases. The goal was to identify unauthorized entrants, not terrorists. The original databases were faulty as immigration and consular watch lists lacked comprehensive information. This was partly due to lack of cooperation among intelligence agencies, the State Department, and the FBI, which the 9/11 Commission later noted. Although consular terrorist watch lists were electronic, they were incomplete.

The 9/11 Commission determined that better information from a layered approach would identify high-risk travelers to maintain security and be less disruptive to regular travel (Eldridge et al. 2004). They determined that the border of the United States should be electronically “moved abroad” to begin the process of security checks for a layered defense (Ackleson and Heyman 2010, 56). This necessitated working with foreign governments to begin checks. The physical border and its inspectors would be the last—not the first—step in security screening.

The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act) of 2001 sought to strengthen surveillance and intelligence sharing (Ackleson and Heyman 2010, 53). It focused on review of immigrants and noncitizen visitors. A new deadline was set for requiring machine-readable passports for nations that were not required to request a visa to travel. The Enhanced Border Security and Visa Entry Reform

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Act of 2002 changed security reviews for visa applicants, established data sharing, and sought to integrate the entry and exit systems at U.S. ports of entry (Ackleson and Heyman 2010, 54).

Changes in the visa-application process were a needed counterterrorist response. The United States is seeking to unify consular and international travel system watch lists for visa screening. Before 9/11, the CIA, FBI, and Defense Department watch lists were integrated but they did not share data, permitting duplication and waste of intelligence (Ackleson and Heyman 2010, 55–56). A new Terrorist Screening Center is unifying watch lists and has information on individuals and their records. The security of the original sources is protected while the information is shared.

Layered inspection is occurring (Ackleson and Heyman 2010, 56). The first step is to apply for a visa at consulates (although many European countries and Canada have this process waived). At step two, pre-inspection of documents against watch lists is done and individuals may be questioned prior to boarding airplanes or ships. Certain individuals may be denied transit if they are on a “no-fly list.” The Secure Flight program uses a computerized risk assessment algorithm (Automated Targeting System) which searches by computer to indicate “no fly” or further inquiry of “selectees.” Step three involves three procedures: document inspection, a watch-list check, and questioning at entry. A preflight manifest is sent to international airports under Secure Flight and inspectors have backgrounds and risk scores. This approach is also used at sea and air freight entry points. All individuals entering and cargo paperwork are inspected. Most actual air or marine cargo is not inspected.

A necessity for control of terrorism is screening of aircraft flight lists. In the 1995 Bojinka plot, Ramzi Yousef and Khalid Shaikh Mohammed planned to bring down 11 Trans-Pacific commercial jets (Hamm 2007). Although the United States recognized its vulnerability, before 9/11 foreign air carriers only cooperated voluntarily, and countries like Saudi Arabia refused to do so. The United States now operates the Advanced Passenger Information System (APIS) and receives information on foreign passengers from all international airlines.

### Border Inspections

The Intelligence Reform and Terrorism Prevention Act (IRTP) of 2004 ended the passport exemption for travel among the

United States, Canada, and Mexico (Ackleson and Heyman 2010, 58). Under the Western Hemisphere Travel Initiative (WHTI) everyone must have a passport or another approved identity document to cross over the borders. Communities located on the borders were concerned about impact on cross-border traffic and increased crossing times. Previously, U.S. citizens could verbally declare their status and cross without verification. WHTI has caused consternation in border communities concerned about crossing times (Abelson and Wood 2007).

A trusted traveler program was created to pre-clear certain noncitizens. Preferred flows of travelers have been established to structure inspection programs. Identity card standards were raised and standards for "breeder documents," birth certificates, and other documents used to establish personage were set. SENTRI is the Secure Electronic Network for Traveler's Rapid Inspection and is meant to expedite entry of cleared individuals (Ackleson and Heyman 2010, 55). This program is called NEXUS in Canada.

In 2002 the Container Security Initiative (CSI) was begun, as was the Customs-Trade Partnership Against Terrorism (C-TPAT) (Ackleson and Heyman 2010, 55; DHS 2007a). These public and private initiatives created a risk-based automated targeting system and signed up businesses for a trusted shipper program in which they would agree to guarantee security of goods from their supply chain. It is a layered form of security because goods are inspected prior to coming to the border and may be inspected at the port of entry. Radiation screening and advanced inspection technology are used to detect weapons of mass destruction such as nuclear materials for a dirty bomb.

Pressure exists for speedy border transit because inspection can create bottlenecks in the international transport grid. Both business owners and politicians push for fast transit of people and goods. Yet the completeness of the inspection process is inversely related to speed. Despite the emphasis on paying fees for passage of legal goods and apprehending smugglers and taking contraband, most shipping is not inspected. The 9/11 Commission Act of 2007 requires that 100% of air cargos be physically inspected by August, 2010 (GAO 2009). Similarly, 100% of maritime shipping containers are to be inspected by July, 2010. The Government Accountability Office (2009) reports that 100% scanning of inbound foreign maritime cargo is not feasible and the deadline has been extended to 2014. In 2009, about 50% of nonexempt air cargo was being screened due to

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labor and resource issues. A formal declaration is made for all shipped goods, and tariff fees and regulations are applied.

The 2004 Border Strategic Plan made terrorism the most important issue but has focused on the U.S.-Mexico border corridor. Border Patrol officers have been given access to terrorist and criminal watch databases and are apprehending criminal non-citizens attempting reentry. Border communities are receiving increased street patrolling.

Overall, the massive efforts to arrest terrorists after 9/11 have produced few solid leads resulting in prosecution. Immigration law was used to detain noncitizens on the basis of nationality and religion without charge and for lengthy periods of time without bond. A major problem is that immigrant communities were alienated from cooperating to find potential terrorists. Counter-terrorism and immigration enforcement have begun to overlap.

Although the basic thrust of legislation has been counterterrorism, most funded initiatives impact visitors, cargo, and citizens crossing the borders. These changes primarily address the past issues of immigration and smuggling while incorporating concerns about terrorism. The DHS has continued its integration of formerly separate agencies and the ID system at U.S. consulates and airports has been strengthened.

Canada has resisted fortification of its border, and Smart Border screening and entry will be the major strategy. In North America, policy was based on Smart Border Accords and the Security and Prosperity Agreement of the United States, Mexico, and Canada. Trilateral cooperation in intelligence, inspection, and prescreening was arranged. After establishing that the al-Qaeda hijackers did not cross as unauthorized entrants, screening was the priority. Although no system is infallible, new strategies seek to assess and manage indirect and unintended risks (Naim 2005). Screening involves filtering for threats using a layered approach (Ackleson and Heyman 2010). Developed countries have a Smart Border preference and the resources to implement it.

The original Canada-U.S. Smart Border Declaration initiated a biometric identification system in Canada and sharing of intelligence data. The Security and Prosperity Agreement of the United States, Canada, and Mexico extended intelligence sharing to Mexico and established a trusted traveler program for all three countries. The three security priorities are (1) traveler and cargo inspection and bioprotection; (2) shared critical

infrastructure protection, port security, and intelligence against transnational threats; and (3) trusted travel (Ackleson and Justin 2006; Villareal and Lake, 2009).

## Conclusion

The 9/11 incident demonstrated that border security involves more than the land borders. The air and sea ports of entry need careful monitoring and application of intelligence data to prevent terrorism. Consulates issuing visas and passports are carrying out layered screening. The DHS and the Terrorist Screening Center have integrated electronic watch lists. Homeland Security now has officers at some consulates. Implementation of intelligence-led law enforcement is under way. Despite or because of this upgrading, the land and sea ports have operational problems. Inspectors turned away 200,000 inadmissible entrants in 2006, but it is estimated that they missed 20,000 (GAO 2007). It is thought that the inspection process is inconsistent. This may be due to ports being understaffed by 7–25%. There is an extreme workload with poor training, outdated facilities, and a lack of full documentation standardization. It is not surprising that there are delays, inadequacies in security, low morale, and high turnover among inspectors. In 2007 the exit check at land ports was abandoned, making calculation of visa overstayers problematic. The DHS lacks the capacity to arrest all visa violators.

The United States is attempting to safeguard its physical length and numerous borders against “terrorism.” Terrorism is hard to combat because, relative to an issue like unauthorized immigration, looking for terrorists is like searching for a needle in a haystack (Winterdyck and Sundberg 2009). It is suggested that border-security personnel should search for criminals rather than terrorists (Hamm 2007). Meanwhile, the U.S. Government Accountability Office (GAO 2008) has determined that the huge and complex Department of Homeland Security is expending billions of dollars without appropriate oversight, including 15 major investments deemed to be underperforming.

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# 2

## Problems, Controversies, and Solutions

### Introduction

**O**ur world is being transformed by a high rate of internationally interconnected social changes that are beyond individual nations' capacity to control. Economic globalization involves a process of integration of the world economy and travel circuits. Globalization was widely viewed as a social force leading to a new era of economic integration and peace. Instead nonstate criminal actors such as terrorists and organized criminals are using new technology to exploit opportunities within the growing web of global linkages. Transnational threats are not confined to one nation; they cross borders and are not subject to sovereign control (Thachuk 2007, 3, 8). They include terrorism, drug, arms, and human trafficking, money laundering, and corruption. Three major trends are increasing transnational threats: (1) the globalization of trade and communications has generated unequal opportunities while increasing awareness of new technology; (2) the number of politically unstable states is increasing; and (3) the ethnic and religious hatred that produces terrorism, civil conflict, and war has increased. Nonstate actors are as important to maintaining national and border security as nation-states.

Increasingly nation-states are presented with the serious issue of how to deal with transnational threats and maintain economic ties while cooperating to stop transnational terrorism and crime. Nonstate actors smuggle and traffic goods, services,

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and people. Kimberly Thachuk of the Center for Technology and National Security Policy at the National Defense University notes; "While much of this illicit trade brings great misery and sorrow to many, so too does it provide jobs and buoys up sagging economies, often blending seamlessly into busy commerce." Newly democratic nations that are struggling to develop economically during globalization face survival issues (Thachuk 2007, 3-5). These countries may choose to look the other way or participate in corruption as they seek income. Criminal enterprise may be deeply embedded within legitimate activities, which complicates the task of keeping the social order. For example, illicit goods like drugs are often smuggled in regular cargos. Criminals may commit terroristic acts like the multiple murders committed by Mexican drug-trafficking organizations in conflict over territory and the police. Nations must learn to integrate law enforcement with military defense activities. Further, the types of threats that are faced are not discrete but interconnected, as when terrorists commit crimes to raise money such as al-Qaeda trafficking heroin.

Thachuk suggests that power is no longer solely located in societal institutions. Individuals and loosely organized collectives have taken advantage of the fluidity of global networks. According to Thachuk,

Errant individuals of indeterminate origins, loosely knit gangs of determined killers, small bands of criminal clans with excessive international connections and numerous other combinations of nonstate actors, many of whom possess statelike capabilities, are proving to be elusive, sophisticated, and deadly enemies, not only in the war on terror but also for the stability of many sovereign states in a number of regions. (2007, 5)

Governments are subject to corruption and extortion, and citizens are threatened by violence and experience economic distortion caused by criminal investment. As a result, domestic security is no longer distinct from national security and international military conflict. The key event precipitating this change is 9/11. The "War on Terror" is a domestic and international policy involving border security and international armed conflict in Afghanistan and Iraq.

Al-Qaeda is a loosely networked terrorist organization. It cannot be addressed without international cooperation, although

nations are often unwilling to cooperate if their sovereignty is threatened. Terrorism is merged with criminal activity as al-Qaeda has smuggled both drugs and diamonds. The U.S. Department of State indicates that many major international terrorist groups have ties to drug traffickers (Thachuk 2007, 16). The money raised is used for the cause. In 2002, the FBI caught an American and two Pakistanis trading 5 metric tons of hashish and 600 kilograms of heroin for four Stinger anti-aircraft missiles ("Feds Break Up" 2002). Other criminal activity linked to terrorists includes extortion, kidnapping, document forgery, identity theft, and credit card fraud. The international scope of this activity makes them a threat to global security and stability rather than just a law enforcement problem (Thachuk 2007, 17–18). Violence and corruption can destabilize governments, making individuals and their organizations as powerful as some nation-states.

The development of transnational terrorism occurred before a comprehensive security strategy could be developed. Controlling jihadist terrorists is difficult for four reasons: (1) jihadists are deliberately distributed in multiple countries to make detection more difficult; (2) the United States has a large flow of visitors and asylum applicants arriving each year; (3) intolerance is a problem if jihadist terrorist profiling is solely based on race/ethnicity and religion; and (4) the problem of jihadist terrorism can be "homegrown" by social alienation if the second and third generations after immigration are not socially integrated into American society.

After 9/11, the prevention of terrorism became a major element of border policy. In the struggle to monitor access to the United States for business and travel while preventing entry of terrorists, two positions came to predominate among the nation's leaders (Alden 2008). In Washington, DC, technocrats proposed a risk-management strategy for border security that adhered to the Constitutional Bill of Rights and utilized information and surveillance technology to better monitor border access. Advocates of this strategy included former Secretary of Homeland Security Tom Ridge and, to a moderate extent, Robert Bonner, former Commissioner of Customs and Border Security.

A competing perspective on border control is that taken by law-enforcement advocates who used existing immigration law to screen immigrants and prevent terrorist entry. The key advocate of this position was former Attorney General John Ashcroft,

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who stated, "If a terrorism suspect committed any legal infraction at all, regardless how minor, we would apprehend and charge him" (Alden 2008, 81).

An intelligence-based approach to terrorism is developing but, once again, the priority is immigration and law enforcement at the U.S.-Mexico border. Politicians have focused on immigration and promote special operations and building a wall at the U.S.-Mexico border. The U.S. Border Patrol is the primary agency targeted for increased funding. In September 2006, it was comprised of 12,300 agents, and it grew to 18,875 in April, 2009: a 53% increase in under three years (Kouri 2009). Adding a large number of new hires has a potential for problems. The standards for hiring may be lowered, training attenuated, and less experienced agents are likely to be less worthy in the field. In contrast, the Canadian border had 980 officers in September 2005 and 1,128 in May 2008 (Heyman and Ackleson 2010: 59). The Canadian- border agents are 8.8% of U.S. Border Patrol staffing as compared to 7.1% in prior years.

### Free Trade and Security

The North American Free Trade Agreement (NAFTA) was followed by an expansion of trade among the United States, Canada, and Mexico. Experts disagree about the extent to which NAFTA itself widened economic ties (Teslik 2009). According to the Office of the U.S. Trade Representative (2008), "From 1993 to 2007, trade among the NAFTA nations more than tripled, from \$297 billion to \$930 billion." Tellingly, trade between the NAFTA nations constitutes 80% of Canadian and Mexican trade and is over one-third of U.S. trade (Teslik 2009).

In Canada, the extent of trade makes the degree to which cross-border traffic is scrutinized a major business-cost issue. Of Canadian exports, 82% are to the United States, its major international trade partner; in contrast, 22% of U.S. exports are sent to Canada. Canada inspects an estimated 4.5% of shipments. At the Canadian border, Free and Secure Trade (FAST), NEXUS, and C-TPAT are risk-management programs that seek to preclear low-risk shipments based on shipper compliance. The degree of importance that should be attached to protecting key U.S.-Canada ports of entry relative to less trafficked locations is open to debate. One-third of all truck traffic goes through Windsor,

Canada, and Detroit. Two-thirds of traffic utilizes four crossings in Southern Ontario. Eight of the top 10 crossings in use are bridges or tunnels. The key ports of entry are more vulnerable to terrorist disruption because of the volume of traffic.

Mexico's border-security apparatus has developed parallel to the United States' War on Terror (Heyman and Ackleson 2010). The Mexican International Migration Institute (El Instituto Nacional de Migración, INM) is developing a biometric immigration document system. The Secure Electronic Network for Traveler's Rapid Inspection (SENTRI) promotes the free and rapid flow of people. In Mexico, the Container Security Initiative and the Customs-Trade Partnership Against Terrorism (C-TPAT) for shipment certification are being deployed.

## Terrorism

The terrorist threat faced by the United States and other Western nations has changed dramatically since 9/11. Historically, terrorism involved state-sponsored military activity directed toward changing the foreign policy of other nations. Today's terrorism is a privatized non-nation state activity using criminal financing. Three trends distinguish transnational terrorism (Armitage 2008). First, international agreements promoting economic liberalization such as NAFTA and the European Common Market promoted the free movement of people, goods, and capital across borders. As a result, regional borders were opened. Second, advances in global communication and transportation made it easier for international organization and travel. Al-Qaeda is a global network using commercial travel routes and the Internet. Third, major political events such as the collapse of the Soviet Union, wars in the Balkans, and the Gulf War destabilized societies and increased the opportunity for organized crime.

Pre-globalization terrorist organizations were involved in perpetrating fraud, extortion, theft, bank robbery, and counterfeiting. The contemporary organized criminal activities of terrorist organizations include drug trafficking, smuggling of arms and weapons of mass destruction (WMD), kidnapping, money laundering and other financial crimes, and human trafficking. Terrorist financial crimes include theft of identity, cell phones, and credit cards. Transnational organized crime and terrorist

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organizations have much in common. For al-Qaeda, the need to commit crime to raise money is an “Achilles heel” because it attracts law enforcement. Islamic jihadist groups have banked in the Middle East and Africa, making it difficult to control money laundering. As might be expected, Middle Eastern countries are not receptive to Western oversight of banking.

The collapse of the Soviet Union has exposed its substantial nuclear armament to diversion for sale to terrorists. Soviet activity in Afghanistan, Azerbaijan, and Tajikistan left behind potentially catastrophic weaponry. For example, in 2002, al-Qaeda used a Russian antiaircraft missile in an attempt to shoot down an Israeli jet in Kenya. National security investigators know that terrorist organizations have repeatedly tried to purchase WMDs on the black market.

### **Weapons of Mass Destruction and Security**

After hijackers used airplanes to destroy skyscrapers, the world entered a new era of global threats from weapons of mass destruction (WMD). Dick Cheney (Vanderbilt, Harris, and Allen 2009) considers that: “the ultimate threat to the country” is “a 9/11-type event where the terrorists are armed with something much more dangerous than an airline ticket and a box cutter—a nuclear weapon or a biological agent of some kind.” Texas Governor Rick Perry (Texas Border Sheriff’s Coalition 2007) points out: “A vulnerable border also gives terrorists opportunities to smuggle weapons of mass destruction into the U.S. undetected.”

During the Cold War, the United States was very concerned about the possibility of a Soviet nuclear strike. After the breakup of the Soviet Union, concern turned to the lack of security for nuclear materials in its stockpiles (Smigielski 2007, 53). The Russian military dispersed, and tens of thousands of atomic scientists went without pay for months. Policy planners became concerned that rogue regimes and terrorists would gain access to nuclear materials and the means to construct a device. In the United States, the Cooperative Threat Reduction (CTR) Program is active in preventing nuclear smuggling, particularly from the Russian stockpile.

The transnational threat of nuclear smuggling is constrained by the availability of materials and the intention of the end user.

Thachuk (2007, 14) has stated: "While great fear is generated by the chance that a nuclear weapon will be smuggled into the wrong hands, the probability is low." More probable scenarios are the smuggling of nuclear materials or components used to make weapons. Four types of nuclear search by terrorists occur in illicit markets. They seek weapons, raw materials, technological components, and expertise. Rogue regimes and terrorists are known to have tried to acquire a nuclear bomb (Smigielski 2007, 54–55). Muammar Qadhafi of Libya is believed to have offered the Chinese government almost \$1 billion for nuclear weapons and was declined (Federation of Nuclear Scientists, n.d.). Another terrorist option is acquiring fissionable materials, the industrial means to enrich them to bomb quality, and the help of experts. Because terrorists lack the national territory (a state-based homeland) for bomb development, if they wanted to build a bomb they would try to produce a "dirty bomb," which is a low-tech radiological weapon. Al-Qaeda is known to have tried to acquire a nuclear weapon or materials. It is considered unlikely that nuclear bombs will be smuggled because they are guarded. Nevertheless, a rogue technician could attempt insider theft.

Weapons-grade fissile uranium and plutonium require refinement and separation technology. Nuclear-weapon construction requires detonators and timers (Smigielski 2007, 57). Computer design programs and specialized machinery are necessary. Technicians with knowledge of nuclear physics, fissionable material, and weapons manufacture are needed. Furthermore, nuclear materials that have been intercepted have never amounted to enough for bomb construction (Smigielski 2007, 56). Plutonium is toxic when handled outside special facilities. A smuggler attempting to transit sufficient nuclear materials for a bomb would likely be killed by radiation. Nevertheless, highly enriched uranium is easier to use and handle and can be shielded to a degree that would make it difficult to detect with conventional U.S. Customs technology. Dogs are unable to detect uranium and plutonium because they have no odor. The availability of uranium on the black market is the major factor impacting terrorists' ability to construct a dirty bomb.

The manufacture of a dirty bomb requires only low-grade radioactive material and a casing. Most people are unaware that dirty bombs are not considered a WMD because they do not cause casualties outside of the area of the explosion. Dr. Henry

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Kelly, in March 2002 testimony before the Senate Committee on Foreign Relations, stated:

While radiological attacks would result in some deaths, they would not result in the hundreds of thousands of fatalities that could be caused by a crude nuclear device. Attacks could contaminate large urban areas with radiation levels that exceed . . . health and toxic materials guidelines [and] would require prompt evacuation and create terror in large communities even if radiation casualties were low. (Federation of American Scientists 2002)

Dirty bombs have been labeled “weapons of mass disruption” because they cause panic among the public (Smigielski 2007, 56). In November 1995, Chechen rebels placed a cesium-137 radioactive bomb in a Moscow park to cause terror, but it was disabled.

In 1991, concerns about the security of Russia’s nuclear stockpile resulted in the Nunn-Lugar Cooperative Threat Reduction Program. The U.S. Department of Defense cooperated in an international program to prevent nuclear smuggling at the source (Smigielski 2007, 58–59). Dismantled Russian warheads were secured and fencing and surveillance for deterrence were provided. Russian weapons-grade reactors were converted to nuclear power plants and enriched uranium was blended with lower-grade uranium to stabilize it.

David Smigielski (2007, 60–61), an analyst at the Central Intelligence Agency (CIA), suggests that the U.S. effort to prevent smuggling by helping Russia must be broadened to other countries. In 2001, al-Qaeda was reported to have contacted Pakistani nuclear scientists (Kelly 2001). The Pakistani scientists indicated they would only go to Afghanistan if their government approved and, fortunately, it did not. Later, al-Qaeda contacted A. Q. Khan, a nuclear scientist in Pakistan who was found to have sold nuclear components to Libya.

Although attention is focused on fissile nuclear material, nonfissile material including medical and scientific radioactive waste can be used to make a dirty bomb with devastating consequences (Smigielski 2007, 61). A cesium-137 or strontium-90 bomb exploded in New York City would contaminate tens of square miles and necessitate building demolition costing trillions

of dollars. Smigielski considers that preventing nonfissile dirty bomb attacks requires greater attention than nuclear materials.

## Border Documents and Visas

Acts of terrorism by noncitizens have been very limited in the United States. Most individuals entering on visas are travelers on business or pleasure. The United States needs to maintain security at the ports of entry and overcome vulnerabilities in the legal visitation and immigration system. Major violations include extending a stay without authorization after entering on a visa, known as visa overstay, and using fraudulent documents to enter. Nevertheless, Americans associate unauthorized immigration with U.S.-Mexico border migrants who enter without inspection. The reality is that about 45–50% of the unauthorized population is estimated to be comprised of visa overstayers who enter legally using nonimmigrant visas or border crossing cards (PEW Hispanic Center 2006). The tracking of international visitors is an important aspect of the securitization of immigration.

Keeping track of immigration is a major task at the air borders because of business and tourist visitation. It is estimated that 250,000–350,000 of the unauthorized population entered with permission and overstayed (PEW Hispanic Center 2006). This is about 1–1.5% of visitors and they comprise 35–45% of the annual increase in unauthorized residents. This number is augmented by individuals who cross at the Canadian or Mexican borders with border-crossing cards and overstay. Immigration monitoring is far more complex than just policing the Mexican border as it involves any land, sea, or air port of entry and searching within the interior of the United States for unauthorized entrants.

Air borders have been a site for U.S. vulnerability to terrorism. Two of the 9/11 hijackers were on a terrorist watch list on the day they passed through air security (Eldridge et al. 2004). The training camps developed by terrorist groups like al-Qaeda teach military and criminal skills for unauthorized entry. Altering visas, passports, and other documentation is a part of the lesson. The 9/11 terrorists entered on temporary visas, and some used fraudulent documents while coming by air. The 9/11

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Commission recommendations (Eldridge et al. 2004) resulted in many changes to immigration policy for both business and visitation to the United States.

The knowledge that the 9/11 terrorists had traveled from foreign nations using visas obtained by legal or fraudulent means has generated new security and detention regimes. New biometric identification requirements for visitors, security checks prior to issuing visas, and mandatory detention of asylum applicants and unauthorized entrants are major initiatives to contain the threat of terrorism. Stringent visa screening policies have resulted in processing delays. Applicants often have a long waiting period before they can be interviewed by a consular official. Visitors applying for a visa need to prove that they are coming for a limited period of time and a specified objective, such as business or tourism. The portion of visitors for whom the interview is not waived increased as a result of 9/11 Commission identification of laxness in carrying out visa policy.

On December 25, 2009, the continued vulnerability of the air borders became evident as Umar Farouk Abdulmutallab, a Nigerian citizen, was observed attempting to light a powder and liquid explosive on a Northwest Airlines flight from Holland (O'Conner and Schmidt 2009). The passengers and crew subdued the terrorism suspect while the plane was landing at Detroit's airport. Although he was allowed to fly, Abdulmutallab was in a law-enforcement intelligence database because his father had reported his radicalization. He later stated that al-Qaeda in Yemen had sponsored him (Baker 2010). The intelligence community has been criticized for not integrating intelligence information that Abdulmutallab could be connected to terrorism with reports that al-Qaeda was training a Nigerian suicide bomber.

President Obama ordered immediate changes in the use of the terrorism database to increase the number of individuals from Nigeria and Yemen who are on a terrorism watch list. Millimeter full body scanning technology, not available in most airports, might have detected the explosive device. Intelligence can identify potential terrorists and targets for additional security precautions and multilayered, unpredictable screening to deter attempts. Anytime security is heightened at airports, it increases delays.

After the 9/11 World Trade Center attacks one might expect that a viable entry *and exit* tracking system would be in

operation but, as the December 25, 2009, Northwest Airlines incident has demonstrated, that is not the reality. The visa process entails checking both terrorist watch lists and no-fly lists. Abdulmutallab is another case in which the United States had access to information indicating he was a terrorism suspect, but he was not subjected to a pat-down search or placed on a no-fly list.

The U.S. VISIT (U.S. Visitor and Immigrant Status Indicator) Program uses biometric identification (digital photographs and fingerprints) to scan travelers before flying and at arrival but it is not used at exit. This new identification system supplements the arrival and departure forms referred to as "I-95s" that air travelers are supposed to fill out by hand when they enter through U.S. Customs at ports of entry. This pre-computer age form is typed into a computer network at entrance, when identification documents are also inspected to verify personal identity and checked against watch lists. A problem is that the departure form is not always received. At departure, forms are collected and not always entered into a national or global database to verify that a visa holder exited. Further complications occur when the two I-95 departure and exit forms do not match (GAO 2004). In 2001 20% of I-95 departure forms were estimated to be uncollected. In the process, some people leave without being registered and some unauthorized entrants stay and become unauthorized immigrants.

Despite the connection between visa overstay and unauthorized immigration, the United States is still unable to track departures (McKinley and Preston 2009). Although Congress passed legislation mandating the creation of such a universal exit electronic monitoring system, inspection only occurs at arrival, not at departure. In 2009, Hosam Maher Husein Smadi, a 19-year-old Jordanian national who overstayed a tourist visa, was arraigned on charges of plotting to bomb a Dallas skyscraper. This directed attention to the gap in the visa-monitoring system. In 2008, 2.9 million people came to the United States on temporary visas and some were never officially recorded as checking out. The current exit system relies on turning in a paper stub with personal information. Approximately 93% turn in this paperwork. Some of the remainder exit without knowing how to process their departure forms. About 200,000 may have overstayed their visas and joined the unauthorized population. It is estimated that 40% of the population of unauthorized immigrants overstayed their visas.

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DHS has indicated that, with over one million visitors a day, monitoring exits is a formidable task (McKinley and Preston 2009). Pilot exit programs have not functioned in a speedy manner to facilitate visits and commerce through borders. Airlines have refused to take photographs and fingerprints of departing passengers. This inability to track departure has led DHS to emphasize the role of law enforcement in apprehending terrorists. In addition, the penalty for visa overstay has been greatly increased. Failure to renew a visa for additional time of stay could result in deportation and being banned from returning to the U.S. for 10 years.

Border-crossing cards are issued to Canadian and Mexican citizens for facilitating border transit. In 1998 the federal government began a process of issuing biometric border-crossing cards to Mexican citizens. A U.S.-Mexico border-crossing card authorizes a visit of no longer than 30 days within a 25-mile radius of the border in California, Texas, and New Mexico, and 75 miles in Arizona. In order to obtain a visa for a longer stay, an individual must fill out an additional application. Many requests are denied when individuals cannot show financial means in an effort to prevent undocumented economic migration.

Border-crossing cardholders are not checked when they exit the border, which creates vulnerability in the tracking system. In addition, crossing at U.S.-Mexico ports of entry does not mean that biometric data is verified. It is estimated that 1.7% of legal border crossers overstay (PEW Hispanic Center 2006). At the inland border mileage limit checkpoints, all vehicles stop and the occupants are asked about citizenship, but many vehicles are waved on after a verbal validation without the documents being checked for everyone in the car. Interior checkpoints do not have the necessary computers or staffing to validate all vehicle occupants.

At borders, an economic premium is placed on getting people across in a speedy manner. The U.S. Government Accountability Office (GAO 2008) found that individuals in a test program sent across the Canadian border without documentation or with counterfeit driver's licenses or passports were almost uniformly allowed to enter without detection of their unauthorized status. The U.S. Customs and Border Patrol (CBP) responded that they lacked the resources to inspect all documents at land crossings and the situation was acute at the northern border. The implementation of the Western Hemisphere Travel Initiative (WHTI) ended the ability to enter the U.S. with only a verbal declaration and no document inspection.

## U.S.-Canada Border Issues

The American media constantly focus on the Mexican border although no terrorists have ever been apprehended at that border (Chavez 2009). In contrast, the Canadian border has been the site of major arrests of terrorist plotters. Hataley (2007, 1) states: "A catastrophic event at the U.S.-Canadian border would be an event having the potential to seriously disrupt . . . economic linkages vital to the well-being of Canadians and the Canadian state." Besides the vulnerability of border economic infrastructure, tunnels and bridges are major targets. These transit points across the border function as "chokepoints" (Ackleson 2009, 345) for disrupting trade. According to Hataley (2007, 2), 80% of Canadian trade uses a very limited number of checkpoints which would make terrorist attacks more damaging at these crossings.

In congressional testimony prior to 9/11, Congressman Lamar Smith of Texas said that police investigator Claude Pacquette criticized Canada as a "Club Med for terrorists" (Committee of the Judiciary 2000, 12). The Canadian immigration and refugee system is viewed as creating a U.S. security risk. Approximately 30,000 refugees are allowed to enter Canada each year, and claims are made that efforts to determine terrorist connections are not sufficient. It is easier to enter Canada than the United States, and there is facility of movement within Canada and potentially to the United States. The Canadian Security and Intelligence Service (CSIS) found that Canada's entrance rules had attracted terrorists. Ward Elock, director of the CSIS, states,

the following terrorist groups or front groups acting on their behalf have been and are active in Canada: Hezbollah and other Shiite Islamic terrorist organizations, several Sunni extremist terrorist groups, including Hamas, with ties to Egypt, Libya, Algeria, Lebanon and Iran; . . . the Tamil Tigers [Sri Lankan]; the Kurdistan Worker's Party (PKK); and all of the world's major Sikh terrorist groups. (Emerson 2000, 7, citing Elock)

Prior terrorist attempts to cross the Canadian border into the United States have resulted in arrests on two occasions and

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successful entry by certain 1993 World Trade Center bombers (Hataley 2007). U.S. intelligence believes there are terrorist sleeper cells in Canada and that its border represents a security risk. Prior to 9/11, Canada began tightening its policies by passing the Immigration and Refugee Act of 2000 (Adelman 2002, 22–23). In response to the terrorist security risk, the Post 9/11 Public Safety Act has provisions for denying asylum to individuals connected to terrorism and detaining such individuals at the border or in the interior of Canada.

Canada's passing of securitization legislation is not considered sufficient. Stewart Bell (2004) and Clark Kent Erwin (2006) have suggested that the United States faces a major risk of terrorists crossing from Canada. Former U.S. ambassador to Canada Paul Cellucci stated: "It is inevitable that terrorists would look to Canada as a potential launching pad to get into the U.S." (Dawson and Fife 2005).

Ackleson (2009, 341) believes the unease created in the United States by 9/11 has caused the United States to think of Canada and its border as a major security threat. Canada is criticized by DHS Secretary Janet Napolitano as lax in immigration and refugee policy. The United States wants the same level of scrutiny given to Canadian applicants for asylum and immigration that foreign applicants receive when they come to the United States.

The U.S. Northern Command considers Canada a "favorable" environment for terrorism because of its immigration policies toward Pakistani, Afghan, and Egyptian applicants. The Great Lakes region and areas of upstate New York, Vermont, and New Hampshire were cited for concern about terrorist network formation. Suggestions for increasing security include intelligence sharing through both cross-border criminal and terrorist databases and law-enforcement programs, such as the extant Integrated Border Enforcement Team, which targets dangerous people. More complicated would be coordinating Canadian and United States visa policies for foreign entrants to have matching entrance criteria (McNeill and Nguyen 2009).

### **Bolstering Canadian Security**

Global terrorists have developed the communications and logistical capacity to form international networks and to cross borders. Both "homegrown" and foreign-born terrorists figure in

these networks. The bombing of London mass transit in 2005 was the first example of a self-organized terrorist group not composed of foreign nationals. A 2006 Canadian plot to bomb buildings was disrupted by the Royal Canadian Police (CBC News 2010). Seventeen young Muslim males were arrested on charges of participating in a terrorist group. Three were charged with importing weapons and ammunition while 12 were charged with planning a bombing. As with earlier plots, a Muslim imam had preached violence. Their arrest led to an investigation of their possible ties to jihadist groups in the United States, Great Britain, and other countries.

Serious concerns exist about Canadian border-security infrastructure. The U.S. Government Accountability Office (GAO 2007) found areas of the border designated as “unmanned and unmonitored” and simulated movement of radioactive materials that went undetected in tests. They concluded: “Our work shows that a determined cross border violator would likely be able to bring radioactive materials or other contraband undetected into the United States by crossing the U.S.-Canada border at any of the locations we investigated” (GAO 2007, 1). CBP responded that a lack of visible Border Patrol agents did not mean that the border was not monitored. The ground surveillance camera, radar, and mobile infrared detection sensor systems are being upgraded and increased.

On June 1, 2009, the Western Hemisphere Travel Initiative (WHTI) was implemented. Individuals from countries other than Canada, Western Europe, Japan, and select other countries need to attend an interview with a U.S. embassy official regardless of the reason for entry: visits, business, study, or work. Prior to 9/11, it was thought that international visitors posed little risk. Concerns have been raised that long delays required for interviews will block the flow of people and trade over the borders. Since 2004, most visa applicants must come for an interview, photograph, and fingerprinting, which results in delays of up to months. Young men from Muslim nations, regardless of religious orientation, must undergo an additional questionnaire interview including information on U.S. family, contacts, and income. Upon departure, they need to notify U.S. border inspectors that they are leaving or face a ban of five years or more. Individuals previously cleared for U.S. entry who travel back to the country of origin undergo “secondary screening” for return. One result of tightened security is that the number of visitors,

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workers, and foreign students applying for visas has dropped. Foreign investors have also been discouraged. The United States has to pay a price in loss of talent as well as money to maintain exceptional security standards (Alden 2008).

A process of militarization largely began after 9/11 at the previously “unguarded” Canadian border. The northern strategy has relied on high-tech detection equipment including sensors and radar because only a little over a thousand U.S. Border Patrol agents are stationed there. Ongoing efforts include identifying high-threat areas and intelligence sharing across databases. Canada and the United States are high-income countries and the funding and development of cross-border initiatives involves more bilateral decision-making than at the Mexican border but is still unequal. Due to U.S. pressure, Canada has undertaken a series of securitization measures that parallel those of the United States. Patrick Lennox (2007, 1021) states: “Given the vast asymmetry in power capabilities between the two countries, the United States has and continues to have the prerogative to define and determine the means to deal with threats to the continent.” The size and relatively lower degree of enforcement of the Canadian border are ongoing issues.

### Immigration

Although the passage of tough immigration laws in the 1990s was meant to resolve public concern, throughout the first decade of the 21st century, immigration has been a divisive issue. Notably, a series of Presidents, Democrat Bill Clinton, Republican George W. Bush, and Democrat Barack Obama, have all successfully backed legislation to support policing of the borders and failed to gain Congressional authorization for legalization of unauthorized entrants residing *sub rosa* in the country. The only remaining form of leniency has been for the first attempt at unauthorized entry to remain a misdemeanor civil offense instead of passing legislation making it a felony crime.

### Key Players

The Clinton administration and Congress passed tougher laws to deter unauthorized immigration and remove “criminal aliens.” This legislation included the 1996 Anti-Terrorism and

Effective Death Penalty Act (AEDPA) and Illegal Immigration Reform and Immigrant Responsibility Act (IARIRA. President Clinton (1993) stated:

The simple fact is that we must not—and we will not—surrender our borders to those who wish to exploit our history of compassion and justice. . . . But the solution to the problem of illegal immigration is not simply to close our borders. The solution is to welcome legal immigrants and legal, legitimate refugees and to turn away those who do not obey the laws. We must say no to illegal immigration so we can continue to say yes to legal immigration.

In 2001, President George W. Bush indicated that immigration would be a signature issue but attempts to achieve a bipartisan compromise on immigration reform were unsuccessful. President Bush (2006) supported the legalization of undocumented immigrants and a new guest-worker program. Bush introduced an approach to legalization with penalties that was promoted by Senators Ted Kennedy and John McCain and shapes current proposals on legalization. Bush (2006) stated:

Illegal immigration puts pressure on public schools and hospitals, it strains state and local budgets, and brings crime to our communities. These are real problems. Yet we must remember that the vast majority of illegal immigrants are decent people who work hard, support their families, practice their faith, and lead responsible lives. They are a part of American life, but they are beyond the reach and protection of American law.

The election of Barack Obama as president was accompanied by the creation of a two year Democratic majority in the Senate and House of Representatives. In 2009, the issue of immigration was placed on the back burner, but slated for future action. President Obama (2009) has stated:

Here's what I believe: We are a nation of immigrants, number one. Number two, we do have to have control of our borders. Number three, that people who have

been here a long time and have put down roots here have to come out of the shadows, because if they stay in the shadows, in the underground economy, then they are oftentimes pitted against American workers. Since they can't join a union, they can't complain about minimum wages, et cetera, they end up being abused, and that depresses the wages of everybody, all Americans.

So I don't think we can do this [immigration reform] piecemeal. I think what we have to do is come together and say, we're going to strengthen our borders. We have to combine that with cracking down on employers who are exploiting undocumented workers. (Obama 2009)

Obama's views on immigration reform involve supporting legalization of unauthorized residents who pay a fine, return to Mexico, and then enter the legal immigration system. As a part of legalization, they would be expected to learn English. To control unauthorized economic migrants, an effective employment-verification system would be set up. In this regard, many aspects of the renewed immigration reform initiative are not new.

### Opposing Viewpoints on Immigration Reform

It has been hard to achieve immigration reform because some favor all out-border control and immigration restriction while others suggest that a combination of border and interior enforcement, legal immigration reform, and legalization is needed. The two positions have stalled congressional debate as border enforcement advocates have refused to consider changes to the legal immigration system until the problem of unauthorized immigration is solved. Five key issues of this debate are as follows: (1) Can a level of border enforcement be reached that prevents unauthorized immigration? (2) What is the role of employer sanctions and/or interior enforcement to locate unauthorized immigrants in the solution? (3) Should the unauthorized population be legalized and under what specific conditions—or should they be deported? (4) Should legal immigration be primarily based on admitting skilled workers or family reunification? and (5) How many unskilled permanent or guest workers should be allowed into the United States?

Republican and Democratic conservatives had a major role in preventing passage of the Senate Comprehensive Immigration Reform (CIR) bills of 2006 and 2007 (Orchowski 2008, 169). Conservatives in the House emphasized securing the border and visa restriction rather than legalization, which they negatively call “amnesty,” which was an aspect of the Senate bill. Conservative Republican grassroots organizations sent over a million faxes or phone calls to defeat CIR. These bills failed because there was a deadlock over whether the “broken immigration system” can be fixed through just border control and immigration restriction or if a redesign of the criteria for legal residence is needed. Neoconservative Charles Krauthammer (2007) summed up the prior failure to pass a bill as follows:

Comprehensive immigration reform is in jeopardy because it is a complex compromise with too many moving parts and too many competing interests. Employers want a guest-worker program; unions want to kill it. Reformers want to introduce a point system that preferentially admits skilled and educated immigrants; immigrant groups naturally want to keep the existing family-preference system. Liberals want legalization now; conservatives insist on enforcement “triggers” first.

Current attempts to pass immigration legislation will involve a degree of compromise that only wholehearted intra-party and bipartisan support can provide. Neither the Republican nor the Democratic Party speak with one unified voice. There are three Republican groups: corporate libertarians, neo-conservatives, and traditional conservatives (Orchowski 2008, 169). The Democratic Party is divided into centrist progressives, populist progressives, moderates, and conservatives. Conservative and moderate Democrats meet in the “Blue Dog Caucus” which has a maximum membership of 47 (Orchowski 2008, 175).

The late Senator Ted Kennedy, former chair of the Senate immigration subcommittee, was the most vocal supporter of immigrants in Washington, DC. Kennedy was a supporter of the 1965 Immigration and Nationality Act and an architect of the Immigration Reform and Control Act of 1986, which had a one-time amnesty for individuals resident in the United States prior to 1986. Orchowski (2008, 171) considers that both Kennedy and former President George W. Bush represent libertarians in favor of more

permissive immigration. Nevertheless, Bush wanted immigration for economic reasons while Kennedy promoted humanitarianism and social justice.

“Corporate libertarians” include corporate lobbyists, many of whom are representatives of industries involved in mass hiring of unauthorized workers and legal immigrants (Orchowski 2008). Daniel Griswold (2009), the director of the Center for Trade Policy Studies at the Cato Institute, has urged the adoption of a guest-worker program which corporate libertarians connect to positive economic expansion. This reform of the legal immigration system would occur in addition to legalization. Centrist Democrats favor expanding work visas and legalization. To illustrate how complex the issue is, some centrist Democrats want to simultaneously increase border control and interior enforcement of immigration laws to contain the immigrant population. This implies that they do not believe opening more legal ways to enter, such as a guest-worker program, will stop the problem of unauthorized border crossing for immigration.

Democratic Senator Charles Schumer (2007) of New York presents a pro-legalization view in his book, *Positively American: Winning Back the Middle Class Majority One Family at a Time*. Schumer advocates a balanced approach through his “50% solution”: reducing unauthorized immigration by 50% and increasing legal immigration by 50%. Interior enforcement of labor law through employer sanctions and legalization is emphasized in this strategy. Both centrist and populist progressive Democrats favor social justice for the poor and minorities. As a result, they are concerned about public opinion on interior immigration enforcement such as raids impacting immigrant communities. Progressive think tanks representing this position include the Center for American Progress and People for the American Way. Media proponents include Jon Stewart at Comedy Central and Keith Olbermann of MSNBC. Other advocates of liberal immigration policy include *The Progressive*, *The Nation*, *In These Times*, and the American Catholic Church.

Many centrist progressive Democrats are allied with conservative Republicans in wanting increased border enforcement. The conservative position on immigration is tied to individual politicians rather than political parties. Patrick Buchanan (2006, 250), editor of the *American Conservative*, is a strong advocate of immigration restriction and believes in an “immediate moratorium on all immigration” and removal of the unauthorized population.

He emphasizes border control as the major strategy by supporting a “permanent fence along the entire 2,000 mile border with Mexico, defining, sealing and securing it forever” (P. Buchanan 2006, 254). Many Democrats who are Blue Dog Caucus members favor enforcement without legalization, known as the SAVE proposal, which was cosponsored by congressmen Heath Shuler (D-NC) and Brian Bilbray (R-CA). Opinion is further divided as some would increase enforcement and expand immigration permits as well.

Conservatives are said to have a media pipeline through supportive news anchors: Bill O’Reilly of FOX News and Lou Dobbs, a former CNN anchor who works in talk radio. Bill O’Reilly supported the border fence and legalization of the unauthorized population via an initial U.S. Post Office administered Department of Homeland Security registration program tied to later passing a criminal background check. With this initiative, employers hiring workers without legitimate documents would be penalized. Since leaving CNN, Dobbs has continued to promote border control. He considers: “We need to be able to influence the direction of the conversation toward securing the border because until we can control immigration, we cannot meaningfully, substantively alter immigration law because it would have no point if we cannot establish the basis for the control of the flow of people across that border” (Rhee 2009). Dobbs’s views changed after he left CNN as he had not previously emphasized “humane immigration policy” or the “ability to legalize illegal immigrants under certain conditions.”

Given the public’s acceptance of border control as the main strategy for ending unauthorized immigration, support for legalization, often referred to as a new “amnesty,” is a divided issue. Kris Koback (2009), a law professor and advisor to the Attorney General on immigration law and national security (2001–2003), indicated that the size of the undocumented population makes legalization ill-advised because of “(1) the inability of U.S. Citizenship and Immigration Services (USCIS) to implement the amnesty and (2) the national security risks that would result. He considers that undertaking legalization in one year would present a monumental task and that there would be insufficient time for background checks.

The negative public attitude towards “illegal immigration” has been viewed as a moral panic. “Moral panics” refer to a situation in which the public is falsely manipulated to believe in

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the existence of a threatening social problem. According to this view, since the 1970s, undocumented immigrants have been repeatedly made scapegoats for employment problems related to fundamental changes in the global economy. Due to the 21st-century emphasis on counterterrorism, U.S.-Mexico border enforcement has been strengthened, but critics say it does more to give the appearance of protection than actually achieving a concrete goal of stopping undocumented immigration or terrorism (Andreas, 2000; Rothe and Muzzatti 2004; Sharma 2006).

Progressive U.S.-Mexico border scholars view negative media and political attention toward unauthorized entrants as a form of cultural violence. "Cultural violence" refers to symbols and ideas that rationalize, appear to make legitimate, or mystify the impact of structural violence. According to proponents of this idea (Spener 2009), cultural violence occurs when "illegal immigrants" are stigmatized while their human dilemma as citizens of developing nations who have a difficult time economically supporting their families is overlooked.

In light of the representation of "illegals" as scapegoats, it is surprising that the American public favors remedial action. An America's Voice opinion poll conducted by the Berenson Strategy Group of 1,000 likely voters in May 2009 (Immigration Forum 2009) indicated that 75% wanted congressional action on immigration reform; and 68% supported a path to legalization, including 62% of Republicans. Respondents reported that 71% wanted unauthorized workers to become legal taxpayers and also considered that they do not deprive American citizens of jobs. These results were somewhat higher than a PEW Research Center poll of a sample of 1,000 taken in May 2009 indicating 63% of voters and 50% of Republicans supported a path to citizenship (Immigration Forum 2009).

Immigration reform has always been difficult to pass, but public opinion is definitely in favor of ending "illegal immigration." A November 2008 America's Voice national poll of 1,000 respondents found that 78% of voters considered it a "serious problem" (Immigration Forum 2009). In a November, 2009 speech at the Center for American Progress, DHS Secretary Janet Napolitano (DHS 2009) stated:

a larger segment of the American public has embraced the need to engage this debate and arrive at a sensible

solution to this problem. . . . There are leaders of the law enforcement community speaking out, saying that immigration reform is vital to their ability to do their jobs keeping Americans safe. Faith leaders, including the National Association of Evangelicals, have announced their support for immigration reform as a moral and practical issue. We are seeing more business leaders and more labor leaders engaged in this debate in a constructive way than we have ever seen before.

In 2009 Rep. Luis Gutierrez (D-IL) introduced an immigration bill: The Comprehensive Immigration Reform for America's Security and Prosperity Act (CIR ASAP). It is supported by 90 House members, including the Congressional Hispanic Caucus, the Congressional Black Caucus, the Congressional Asian Pacific Caucus, and the Progressive Caucus. CIR ASAP provides a path to legalization, updates the family and employment-based legal immigration system, provides more resources for border ports of entry to deter unauthorized immigration and drug and arms smuggling, sets standards for detention and provides for community alternatives, repeals the Section 287 program linking federal immigration enforcement with local and state police, restores due process through judicial review of immigration proceedings, and provides for an electronic employment verification system. The progressive group Reform Immigration FOR America has organized more than 600 business, community, faith, labor, and civil rights organizations to support immigration reform and is organizing media events to support it.

## Federal Government

The securitization of immigration is connected to the move of immigration visa and citizenship processing and enforcement from the Department of Justice (DOJ) to the Department of Homeland Security (DHS). The July 2002 "National Strategy for Homeland Security" of the Bush administration focused on mobilization to protect the homeland from terrorism. The 2002 "National Security Strategy of the United States of America" included immigration policy. The DHS is a counterterrorism bureaucracy and more militarized than the policing-oriented

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DOJ. Immigration and Customs Enforcement (ICE) is now located in the DHS national security bureaucracy. This led to increased militarization of ICE and the U.S. Border Patrol (Lovato 2008).

Begun in the late 1980s, policies to criminalize immigration are increasingly deployed in an effort to arrest, detain, and deport unauthorized entrants. As a result, an unprecedented policing bureaucracy has been developed. The fear that terrorists might use the same forms of unauthorized entry as other migrants over the land borders has created a domestic security industry (Lovato 2008). Billions of dollars have been awarded in military contracts for Boeing, General Electric, and Haliburton to build virtual walls, ground sensor systems, radar systems, drones, and surveillance technology for a geographically complex border.

### Law Enforcement

The apprehension of undocumented residents in the interior is an important aspect of border security because it is thought to deter further attempts at unauthorized entrance. Historically, the United States has primarily relied on interdiction at the U.S.-Mexico border instead of in the interior. Conservatives such as Carafano and colleagues (2006) have suggested that worksite enforcement and *not* legislating legalization of undocumented residents would send a stronger message to individuals considering migration. Janet Napolitano, DHS Secretary, notes: "border security by itself will not stop illegal entrants into our country. Our border strategy must be combined with better enforcement of the immigration laws within the United States" (McKinley 2009).

The Immigration Reform and Control Act of 1986 is ineffective because it instituted worker document checks but did not require employers to verify if they were valid. INA Section 274A authorized employer sanctions for hiring unauthorized workers (Smith 2005). It prohibits *knowing* hiring of undocumented immigrants and provides for civil fines of \$250 to \$10,000 per worker and a criminal sanction of up to six months imprisonment. To comply, employers submit I-9 forms showing that a Social Security card, driver's license, voter registration card, passport, or other identification indicates an individual is a citizen or a U.S. resident alien.

In the mid-1980s, the failure to make an employer responsible for document verification resulted in the development of a cottage fraudulent-document industry followed by organized criminal document rings (Simcox 2000). Traditionally, interior enforcement has been understaffed and unable to track the level of fraudulent document use. This is shown by the undetected cases of Zoe Baird, Kimba Wood, Linda Chavez, and others unable to gain high-ranking federal positions because they had hired unauthorized labor. After 9/11, diversion of resources to counterterrorism reduced enforcement through employer audits. They declined from 1,300 in 1990 to less than 500 in FY2003 (Brownell 2005). As a result, many unauthorized workers submit work-related documents that are false (such as a made-up Social Security number unconnected to an individual) or fraudulent (a Social Security number connected to an individual, i.e., illegal use of an authenticated identity).

ICE workplace raids were stepped up during the second half of the Bush administration. Yet only 863 out of 4,077 “administrative arrests” in FY2007 involved owners, managers, or human resource supervisors (ICE 2007). Those who suffer the penalty for this white-collar crime are the unauthorized workers. In 2008, out of 7.4 million employers, 42 companies were raided and 16 had administrative employees who were arrested and convicted (some cases pending appeal) (ICE 2009). At the end of the decade, ICE shifted its priorities and sought to target employers rather than conduct numerous workplace raids. Nevertheless, ICE audits are still connected to mass firings of unauthorized workers.

Immigration enforcement has especially targeted criminal aliens. The 287(g) program authorized by the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) provides for cooperation in immigration enforcement between the fed and state and local law enforcement (ICE 2010). Participating municipalities enter the program by signing a Memorandum of Agreement (MOA). At the prompting of the Obama administration, the DHS has expanded the 287(g) immigration enforcement program and has issued a revised MOA. Participating 287(g) police are supervised by Immigration and Customs Enforcement.

Criticism of 287(g) has come from both immigrant advocates concerned about racial profiling and those who support tougher enforcement, who claim that prioritizing criminal aliens would

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lead to neglect of unauthorized immigrants. The U.S. Government Accountability Office (GAO 2009a, 4) audit of police departments participating in 287(g) found that:

while ICE officials have stated that the main objective of the 287(g) program is to enhance the safety and security of communities by addressing serious criminal activity committed by removable aliens, they have not documented this objective in program-related materials consistent with internal control standards. As a result, some participating agencies are using their 287(g) authority to process for removal aliens who have committed minor crimes, such as carrying an open container of alcohol. While participating agencies are not prohibited from seeking the assistance of ICE for aliens arrested for minor offenses, if all the participating agencies sought assistance to remove aliens for such minor offenses, ICE would not have detention space to detain all of the aliens referred to them. ICE's Office of Detention and Removal strategic plan calls for using the limited detention bed space available for those aliens who pose the greatest threat to the public, until more alternative detention methods are available.

Evidence exists indicating that 287(g) had not met its targets but resulted in arrest of nonviolent unauthorized migrants. In El Paso, Texas, the Sheriff's Office's Operation Linebacker, connected to 287(g), resulted in the arrest of 1,076 unauthorized entrants and four noncitizens on drug-related charges (Staudt 2008a, 303). Kathleen Staudt, a political scientist, considers that did not reflect the emphasis placed on stopping drug- and violence-related crime. Due to concerns expressed by the GAO (2009a) and immigration advocates, ICE has changed its 287(g) agreements to stress that its priority is to remove dangerous criminal aliens. 287(g) is designed to increase apprehension of noncitizens that commit violent crimes, human smuggling, gang/organized crime activity, sexual-related offenses, narcotics smuggling, and money laundering.

Reliance on ICE and the U.S. Border Patrol occurs because immigration enforcement is a federal responsibility. When local and state police are allowed to use immigration status as a factor

in questioning and arrest, they are considered a “multiple force amplifier” One argument for this involvement is that four of the 9/11 hijackers were subject to routine traffic stops and could have been detained for visa violations (Eldridge et al. 2004). An argument against giving local and state police this power is it could foster alienation of immigrant communities, which often contain many unauthorized residents. Immigrants may hesitate to report crime and victimization or otherwise cooperate with the police if they fear family or community members will be deported (Romero 2006; Martinez 2007).

Community policing strategies rely on steady contact between police and neighborhood residents, which is difficult if there is a fear of the police (Martinez 2007). Many immigrants originate from nations where the police are corrupt and not trusted. They bring this attitude to the United States and are aware of negative public attitudes toward immigrants. Another problem associated with nonfederal police involvement is the possibility of screening based on racial and ethnic profiling rather than suspicious behavior (Kretsedemas 2008, 346–351).

The federal government has taken many steps to offer immigration enforcement authority to state and local police but municipalities have not uniformly responded (Kretsedemas 2008, 341–342). Regardless, information on noncitizens with immigration violations and, after 9/11, noncitizens under suspicion of terrorist activity, has been incorporated into a National Crime Information Center (NCIC) database. The database includes noncitizens with both criminal and civil violations.

Arizona bypassed the 287(g) federal and state law enforcement linkage program when Governor Jan Brewer signed Senate Bill 1070 into law on March 23, 2010 (Archibold 2010b). The bill makes unauthorized entrance and presence of a migrant in the United States a state misdemeanor crime. It stipulates that state and local police should check an individual’s immigration status if there is reasonable suspicion that a person is an unauthorized alien. If an individual cannot prove legal residency, law enforcement officers can make a warrantless arrest if there is probable cause that an individual is an unauthorized alien. Upon arrest, individuals cannot be released unless they establish legal immigration status under § 1373(c) of Title 8 of the United States Code. The first offense carries a \$500 fine and up to a six-month jail term. In order to avoid arrest, permanent

resident aliens and visitors holding visas must carry identification. The documentation necessary to prove legal status includes Arizona driver's licenses, Arizona nonoperating identification licenses, or any form of valid federal, state, or local identification which can certify immigration status. Arizona's law is the first to require state and local police to check immigration status. It is considered that the law makes a failure to carry immigration documents a crime.

Because immigration is a matter of federal law, Arizona's bill may be unconstitutional. Multiple law suits at the federal and state level have been filed by the American Civil Liberties Union, the Mexican American Legal Defense and Educational Fund, and Phoenix, AZ mayor Phil Gordon. The ACLU lawsuit makes the argument that the bill violates the Supremacy Clause of the U.S. Constitution, which provides for federal authority over the states, including on immigration matters. Erwin Chemerinsky, Dean of the School of Law at the University of California Irvine, is quoted: as follows: "The law is clearly pre-empted by federal law under Supreme Court precedents." Defenders of the bill, including Kris W. Kobach, a co-drafter of the AZ bill and law professor at the University of Missouri-Kansas City School of Law, present the principle of "concurrent enforcement": that the state law parallels the federal law which makes first entry without authorization a misdemeanor (Schwartz and Archibold 2010).

President Barack Obama criticized passage of the law, stating that it would "undermine basic notions of fairness that we cherish as Americans, as well as the trust between police and our communities that is so crucial to keeping us safe" (Archibold 2010b). Arizona governor Brewer defended the law as: "another tool for our state to use as we work to solve a crisis we did not create and the federal government has refused to fix" (Archibold 2010b). The mandated use of state and local police in immigration enforcement and the requirement for possession of immigration documents generated national protests. Major social criticism includes that the bill justifies racial profiling and will lead to discrimination against both legal immigrants and minority citizens. Former Arizona Attorney General Grant Woods said that: "People will be profiled because of the color of their skin" (Schwartz and Archibold 2010).

Public reaction to the Arizona immigration law included a protest gathering of over one thousand during the signing of the law in Phoenix, Arizona. U.S. Congressman Raul Grijalva,

representative for Arizona's 7th Congressional District, called for an economic boycott of Arizona state products and tourism (Archibold 2010a). The nation's major Spanish language newspaper, *La Opinión*, and the Reverend Al Sharpton were among those supporting a boycott. It is likely that the new Arizona immigration law will galvanize both continued legal reaction and public protest until constitutional issues and probable individual anti-discrimination lawsuits are resolved.

## Militarization of the U.S.-Mexico Border

The U.S.-Mexico border has been subject to repeat military buildups. From 1978 to 1992, when the War on Drugs was initiated, the military was directly deployed to stop drug trafficking (Dunn 1996). In theory, if the supply of drugs was reduced or eliminated, it was thought that drug usage would decline and this social problem would be controlled. Initially, the antidrug campaign was conducted in foreign nations such as Colombia (Payan 2006, 28; Andreas and Nadelman 2006, 130–131). Troops fought growers and associated smuggling operations in the Caribbean with military technology and succeeded in disrupting the Colombian-Caribbean connection. This diverted cocaine trafficking to the Mexico border in the late 1980s. At the same time an increase in Mexican economic migration and Central American war refugees became a military concern.

Attempts to control undocumented entry and drug smuggling resulted in the militarization of the U.S.-Mexico border with armed services troops, the National Guard, and military technologies used to secure the border (Dunn 1996, 147–156). Since the 1980s, given substantial reliance on military surveillance technology, the military has backed up the Border Patrol and Customs at all types of borders: land, sea, and air. The 1878 Posse Comitatus Act proscribes the military from enforcing civilian law, but the National Guard, which is controlled by the states, can and has been repeatedly ordered to the U.S.-Mexico border (Banks 2002; Dunn 1996, 106–108). The National Guard was involved in the first border wall construction at the San Diego, California, urbanized border (Nevins 2002). The Armed Forces and the National Guard have worked on construction, given logistical support, engaged in intelligence

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gathering and interpretation, and conducted ground reconnaissance and surveillance.

For example, Joint Task Force-Six (JTF-6, later renamed JTF North) has been stationed at Fort Bliss in El Paso, Texas. It provides military personnel for assistance to the Border Patrol via observations, reconnaissance, analysis of data, and training (Heyman and Ackleson 2010, 61). During the first eight years of JTF-6, it conducted numerous covert troop operations, mostly at the request of the Border Patrol. Military units patrolled until 1997 when a reconnaissance unit killed a U.S. citizen near Redford, Texas (Dunn 2001, 9). In May 1997, Esequiel Hernandez, a U.S. citizen of Mexican American descent, was shot and killed by four marines during a covert operation. This stopped military patrols but not support and technological assistance by military personnel. In addition, the family of Esequiel Hernandez was awarded \$1.9 million in a settlement for wrongful death (Lubbockonline 1998).

The Immigration Reform and Control Act of 1986 initiated a two-decade expansion of policing of the U.S.-Mexico border. In 1993, border deterrence began to involve walls and line-watch duties for U.S. Border Patrol officers. It was augmented by militarization through the use of troops or military technology. The classic line-watch operations, Operation Gatekeeper in San Diego, Operation Hold the Line in El Paso, and Operation Rio Grande in the McAllen/Laredo, Texas sector, have greatly reduced the possibility of a successful unauthorized migrant urban border crossing (Nevins 2002; Dunn 2009; Maril 2004). Due to line-watching, from 1980 to 2000, U.S. Border Patrol agent staffing increased 3.7 times; line-watch hours were upped by 6.5 times and the cost increased by a factor of 12 (Massey 2009).

Although unauthorized immigration apprehensions began to decrease, the War on Terror brought renewed focus to fortifying the U.S.-Mexico border. Jeb Bush, Thomas F. McLarty, and Edward Alden (2009) state, "In a post 9/11 world in which the U.S. must be able to thwart terrorist plots by extremists coming from abroad, illegal immigration . . . creates an unacceptable security risk." The addition of preventing terrorist entry to the mix of duties that the U.S. Border Patrol handles must be evaluated. Alden (2008, 291) believes that "immigration enforcement and counter-terrorism are two different things, and for either to

be effective, they must be separated." Since 9/11, massive federal expenditure has occurred to support border enforcement. Douglas Massey, a sociologist (2009), states,

Border enforcement nonetheless rose exponentially after September 11, with the Border Patrol Budget increasing 95 times its 1980 level and the number of line-watch hours rising 111 times. After 9/11 deportations also began a marked increase, rising from just 11,000 in 1980 to some 350,000 in 2008.

In 2006, the governors of New Mexico and Arizona requested that the National Guard support border law enforcement. By June 2006, 6,000 National Guardsmen ordered by President George W. Bush were at the California, Arizona, New Mexico, and Texas borders (CNN 2006). They have not been assigned to direct law enforcement. They assist with road and wall or fence construction and operate ground-level radar, visual and other surveillance devices that communicate immediate intelligence about crossing attempts. National Guardsmen are deployed to perform surveillance using high-tech devices that allow USBP officers to be in the field. Currently, many Border Patrol officers are assigned to line-watch duty at the geographical boundary to deter migrants from attempting to cross, but many areas of the border are not watched or do not have ready response units.

In 2009, Governor Rick Perry of Texas requested 1,000 National Guard troops, but a conflict occurred over whether the federal or state government would pay it. This forestalled deployment (Office of the Governor, Rick Perry 2009a). Instead, the Texas Rangers were called in (Office of the Governor, Rick Perry 2009b). Perry has sent Ranger Recon teams combining Texas Rangers and Texas National Guard Counter Drug Forces to conduct surveillance, identify high-intensity smuggling routes, and assist in operations to reduce border-related crime connected to drug trafficking and migrant smuggling. In Texas there has been an increase in burglaries of rural ranches, homes, and hunting camps. Land owners along the Texas boundary also face extortion demands or threats from organized criminal groups connected to drug smuggling.

Although Congress has sought to give the military search, arrest, and seizure assignments along the border, which would

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be a major escalation, such bills have never passed. Critics argue that immigration enforcement is a civil—not military—matter and that troops should not be assigned to the border.

### Physical and Technological Barriers

Whether or not walls work to deter unauthorized immigration has been a major concern. Migrants have responded by crossing in different locations, which is a displacement effect (Dunn 2009; Haddal, Kim, and Garcia 2009). There have been temporarily successful efforts to tunnel under walls as well. Although walls have been represented to the public as a deterrent to unauthorized entry, the reality is that they displace migrants to more rural and remote, even hazardous, areas to cross (Garcia-Goldsmith 2007).

The Secure Fence Act of 2006 directed the DHS to build two layers of secured fencing and to place additional physical barriers, roads, and surveillance technology in five areas of Arizona, California, New Mexico, and Texas (Haddal, Kim, and Garcia 2009). Walls and fencing were to be placed along 850 miles. Border communities selected for the wall and fencing project have objected to the impact on the local environment and their properties. Former Department of Homeland Security Secretary Michael Chertoff won the right to waive seven environmental and historic preservation laws including the Endangered Species Act, the Federal Water Pollution Control Act (Clean Water Act), and the Safe Drinking Water Act. DHS has used the waivers on four locations.

Alternately represented as both successful and controversial in cost and consequences, border walls are extremely expensive to build and maintain (GAO 2009b). By 2009, 613 miles of border wall and fence authorized by the Secure Fence Act of 2006 had been built. J. D. Hayworth (2009, 3), former congressional representative from Arizona, indicates that the bills call for double-layer fencing; however, only 200 miles are double. The single-layer fence and vehicle barriers are being overcome by smugglers who use portable ramps.

Early in his term, President Obama deemphasized the need for fencing and advocated stepping up border patrols and deploying surveillance technology. Yet the likelihood that fencing and walls will be scaled back was reduced by Mexican drug-cartel violence. The problem of border violence is exacerbated by

arms smuggling from the United States to Mexico. Although DHS Secretary Janet Napolitano was initially opposed to border fencing as governor of Arizona, she came to believe that walls and fences improve operational control. She has authorized completion of the final 60 miles of fencing projected to cost \$4 million a mile (Reese 2009). Napolitano also initiated southbound inspection of entry into Mexico to curtail traffic in weapons.

Passed in 2008, the Department of Homeland Security (DHS) appropriations bill requires consultation with federal agencies, state and local officials, and local property owners before building fencing. DHS allocated \$50 million in 2009 to compensate for damage to animal and plant habitat or issues with Native American religious sites. The fence could be modified to curb flooding or restore habitats of endangered or threatened species. Previously about \$40 million had been spent on restorative activities. Jaguars, ocelots, deer, javelinas (wild pig species), and owls are among the species affected by the wall, which blocks their migratory routes and reduces habitat.

Those favoring border-fence construction use data from the San Diego Sector, where border fencing originated during Operation Gatekeeper. This sector is almost completely fenced pending a small section (Haddal, Kim, and Garcia 2009). Significantly fewer migrants are being apprehended because of the barrier. The U.S. Border Patrol believes that border fencing is a force multiplier because it allows the patrol to concentrate enforcement resources on other activities. The Border Patrol views the diversion of unauthorized migration to more remote rural regions as giving its agents a tactical advantage in apprehending unauthorized entrants (Dunn 2009). Those in opposition to extensive border-fencing expenditures view the existing fencing as funneling migrants away and not stopping undocumented entry (Garcia-Goldsmith et al. 2007). They view greatly increased U.S. Border Patrol staffing and resources as the cause of increased apprehensions, not the fencing.

The overall number of undocumented border-crossing arrests in 2004 was very close to the figure for 1992 (Haddal, Kim, and Garcia 2009). The major difference is that most arrests in 1992 occurred in San Diego while in 2004 arrests were highest in the Tucson and Yuma, Arizona, sectors. Fencing appears to funnel migrants to less densely populated and hazardous areas. In fenced areas, individuals have cut holes, used ladders, dug tunnels, and employed various other means to get across.

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This suggests that fencing only modifies the efforts of migrants who want to enter without papers. Options for dealing with these problems include more tamper-resistant and expensive fencing and investing in tunnel-detection technology.

There are a number of arguments against border walls and fences. Both Mexican and Canadian diplomats have protested any extension of border fencing. The Canadian government is concerned that it has not been consulted enough by the United States. Overall, opponents of border barriers consider them to be akin to the “Great Wall of China” or the “Berlin Wall.” The U.S. government needs to consider if the need for national security is more important than alienating its border neighbors and if border nations should be bilaterally consulted about fencing (Haddal, Kim, and Garcia 2009). The securitization of the border necessitates international cooperation in intelligence sharing and policing, and border fences create problems for working together.

Cross-border tunnels and subterranean passages have been used for smuggling drugs, people, and contraband. From May 1990 through 2008, 101 tunnels were discovered (Haddal, Kim, and Garcia 2009). The largest had lighting, ventilation, and drainage systems and contained two tons of marijuana when discovered. Intensive Border Patrol enforcement has thought to have increased the number and sophistication of tunnels and encouraged drug traffickers to expend the time and investment. Intelligence gathering for suspicious patterns of behavior and sophisticated tunnel-detection technology are being improved. For deterrence, the 2006 Border Tunnel Prevention Act increased criminal penalties for cross-border tunneling. There is a 20-year maximum sentence for constructing or financing tunnels.

One alternative to walls is a \$6.7 billion “virtual fence” of cameras, sensors, and other communications equipment (Heyman 2008). The Border Patrol has used airplanes and helicopters for decades, and electronic motion detectors were installed in some areas in the 1970s. In the 1980s airplanes and balloons with instrumentation were deployed to monitor unauthorized border-crossing traffic. A virtual wall increases the density of high-tech devices and upgrades them. Drones, which are unmanned flying vehicles, carry surveillance cameras. Upgraded detection equipment will use wider electromagnetic bands, near ground radar, and high-resolution cameras on towers. Even National Security Administration satellites may be used for monitoring.

Surveillance technology such as the Integrated Surveillance Intelligence System (ISIS) and the America's Shield Initiative (ASI) had operational issues in deployment, readiness, and system integration (GAO 2006, 29–44) and was later replaced by the high-tech SBInet, part of the Secure Border Initiative (SBI). The SBI was a multibillion-dollar program initiated in 2005 to sustain border security and reduce unauthorized immigration. It focused on the Mexican border at locations deemed vulnerable and had programs at the Canadian border to increase Border Patrol personnel and install radiation portal monitors to scan for radioactive material. SBI surveillance technology involved cameras, unattended ground sensors, radar systems, communication systems, mounted laptops for U.S. Border Patrol vehicles, helicopters, and drones as well as walls and fencing (GAO 2009b, 10). Command, control, and communications technologies (C3I) were to include hardware and software to produce a “common operating picture (COP),” uniform activity data presentation for command centers and agent vehicles (GAO 2009b, 13). In March, 2010, \$50 million in SBI funding was taken for use with more “tested” surveillance technologies (DHS 2010). DHS Secretary Napolitano was responding to SBI technology problems.

Theoretically, tracking of people and vehicles can be confused by irrelevant information such as animal migration, rancher activity, and even dust in the air. SBI has faced problems in system integration and a \$400 million cost overrun by the contractor, Boeing. The U.S. Government Accountability Office (GAO 2008, 2) conducted a study that concluded, “It is imperative that [DHS] immediately re-evaluate its plans and approach in relation to the status of the system and related development acquisition and testing activities.” In 2007 and 2008 tests showed that the surveillance technology often failed in application due to software, communication, and user failures. The GAO (2009b, 15) determined that SBI had problems including the failure to involve U.S. Border Patrol agents in developing its requirements, limited oversight of program contractors, and underestimation of the scope and complexity of what was needed.

## Impact on Migrant Smuggling

The repeated intensification of border control has led migrants to increasingly hire coyotes (Spener 2009, 231; Andreas 2000, 21–26; Spagot 2006). Like other forms of smuggling, adaptation

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occurs when old routes are blocked. Intensive enforcement in the San Diego sector, the site of Operation Gatekeeper (Nevins 2002), is associated with attempts to smuggle people in motor boats. More unauthorized crossings are occurring through ports of entry as individuals are concealed in vehicles or purchase fraudulent documents. U.S. Customs and Border Patrol is unable to thoroughly inspect all individuals and vehicles because of the time demand on personnel and the need to quickly move people and trade over the border. Human smugglers have responded to the continual process of tightening enforcement with innovative strategies. The rising cost of assisted unauthorized entry and the reduced penalties for human smuggling, as opposed to drug smuggling, were thought attractive for organized crime. David Spener's (2009) field research on the use of *coyotes* (human smugglers) in South Texas demonstrates that the hierarchical, top-down structure of organized crime has not developed. Instead, horizontal organization and loose connections permits coyotes to flexibly adapt to heightened enforcement. In this respect, their degree of organization is characteristic of lower level transnational crime groups across the globe (Thachuk 2007).

In the negotiation between migrants and coyotes, a fee is agreed upon which is paid on delivery by their relatives in communities in the interior. Indeed, these operations are dependent on linkages between families and friends in the sending communities in Mexico and the receiving communities in the United States. According to Spener (2009, 166), migrants utilize the social capital of these network ties to try to accomplish at least a portion of the following:

- give them information they needed to cross the border successfully, including recommending them to affordable and reliable coyotes;
- being guided/advised while making the journey across the border;
- send them money at no interest to finance the crossing, including money to pay the coyotes' fee;
- drive them to their final destination in the United States after the migrants get past the last immigration checkpoint; and
- provide them with food, housing, and assistance with finding a job after arrival in the U.S. destination.

Spener (2009, 152–153) identifies the basic operational structure of human smuggling in the South Texas border region as follows:

- someone to recruit migrants in Mexico;
- someone at the border who could receive migrants, form a crossing party, and verify via telephone that migrants had respondents in the destination city who would pay for their passage;
- someone who could guide migrants through brush around the *segunda garita* [the ring of traffic checkpoints away from the border];
- someone with a car, van or truck who could pick migrants up as they emerged from the brush and drive them on to San Antonio, Austin, Dallas or Houston or other destinations; and
- someone living in the destination city who could house migrants in an apartment, mobile home or private residence and collect the remaining fees from their respondents.

Migrant deaths have been publicized in Mexico, but individuals feel financial pressure to migrate, hire smugglers and take the risk. After the expansion of border enforcement, migrants are increasingly choosing to remain in the United States and become immigrants (Massey 2009). After a successful unauthorized entry, migrants are bottled up and do not return. An unexpected consequence of the deterrent strategy is shaping circular migrants into long-term immigrants, and they are bringing family members and forming households in the United States (Casteneda 2007). This is changing a pattern of circular migration back and forth from Mexico to permanent immigration as the cost of smuggling has risen and risk has increased. This means that there are fewer times that individuals are exposed to apprehension after a successful crossing and that reduced apprehensions do not necessarily represent deterrence.

## Deportation versus Detainment

Unauthorized entrance has been handled through deportation or, as an additional sanction, mandatory detention followed by

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deportation. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) mandated that the Immigration and Naturalization Service (now ICE) detain increasing numbers of unauthorized entrants and asylum applicants who petitioned to stay. In 1996, 20,000 were detained. Annually, the figure is now over 300,000. The federal government was never prepared for this extent of detention. In 2004, Congress authorized building detention centers with 40,000 beds by 2010. This is a major expansion of what has been described as a “prison-industrial complex” (Dow 2004).

Annually, ICE detains hundreds of thousands of immigrants at its facilities or in jails and prisons where the government can purchase bed space. In 2008, 378,582 were placed in detention facilities. There were 32,000 detention beds available in FY2008 at a cost of \$90–118 per day (ICE 2008b). There are over 350 detention centers with at least one in almost every state, but most detention sites are actual jails and prisons rather than centers operated by ICE. Local governments and states subcontract their facilities through intergovernmental service agreements (IGSA). Sixty-seven percent of detainees are held in ICE IGSA facilities (Human Rights Watch 2009, 1).

ICE is estimated to detain 31,000 prisoners daily (ICE 2008b). Because many detainees are sent to jails or prisons, they are placed with prisoners and exposed to the same conditions. Regardless of whether a detainee has committed a civil or a criminal offense, he or she has experienced a combination of handcuffs, belly chains, and leg shackles. Journalist Mark Dow (2004) went to various ICE and IGSA detention facilities and discovered problems whether a detainee was in ICE custody or under contract to a jail or prison. Detention conditions included verbal and physical abuse, poor diet and health facilities, and use of solitary confinement—for individuals who had attempted unauthorized entry or asylum applicants who had committed no crime. It has been difficult for detainees to challenge these conditions due to lack of legal consultation, which led some to hunger strikes or attempted suicide.

The Office of the Inspector General (OIG 2006) audited six ICE and subcontracted IGSA facilities. Health violations included not giving required physical examinations, failure to respond to nonemergency health issues in a reasonable amount of time, and problems monitoring detainees on hunger strikes or suicide watch lists. In terms of environment, issues occurred

with rodents, insects, vermin and adequate temperatures when cooking meat. From 2003 to 2008, under these conditions, 74 people died in ICE detention (ICE 2008c).

The rate at which detainees are transferred, which complicates contact with relatives and receiving legal advice, has greatly increased. Because IGSA facilities are for local, state, and federal prisoners and ICE detention space is limited, detainees are being transported long distances to be placed in a facility. Detainees are first held in a location near their residence but often transferred to remote regions such as Arizona, Texas, and Louisiana (Human Rights Watch 2009, 1–2). Transfers are made between immigration gateway cities like Los Angeles to distant states like Texas. ICE data released to Human Rights First indicates that from 1999 to 2008, 1.4 million detainee transfers occurred. There were 122,783 transfers in 2003 and 261,941 in 2007. These transfers make it difficult for detainees to have access to their families and retain legal counsel.

Human Rights Watch (2009, 2–4) has compared the rights of citizens, as prisoners, to those given to noncitizen detainees. The Sixth Amendment of the Constitution provides the right to be tried in the jurisdiction in which a crime occurred. Detainees are often moved from the district in which they violated immigration law and are distant from witnesses and evidence relevant to their case. Commonly citizen prisoners are not transferred until they have received access to counsel and been convicted. Noncitizen detainees can be transferred away from their attorneys. Citizen prisoners can also be located in a state or federal locator system, often updated every 24 hours, while detainees are “lost” with no access. Noncitizen detainees, nonetheless, have a right to access an attorney under international human rights law.

The detainee-transfer system disrupts attorney-client relations because lawyers are not informed. ICE expects detainees to contact attorneys but does not typically provide the means. Attorneys are then forced to spend days or weeks determining where their clients are. A distant location can terminate attorney representation. If an attorney agrees to represent a client over the phone or by video, a particular immigration judge can deny it. Unfortunately, some detainees are transferred, often to remote locations, before they have legal representation and are unable to obtain it. In 2008 60% of noncitizens appeared in immigration court without representation (Human Rights Watch

2009, 4). The legal process is further complicated because detainees are often denied a bond hearing because the transfer prevents family and character witnesses to speak in their defense.

Human Rights Watch (2009) criticizes the transfer system for preventing detainees from gaining access to an attorney and receiving their legal rights. ICE cares for hundreds of thousands of people and argues that it needs to make transfers. It claims that limitations on its ability to transfer detainees would prevent it from making cost-effective use of access to detention beds. Requests for change of venue to return to attorneys and witnesses are most often denied (Human Rights Watch 2009, 5). Although detainees have the right to a hearing to contest removal, the transfer process often works against it.

An alternative to detention, the former “catch-and-release” policy, involved releasing unauthorized Mexican entrants at a border crossing into their home country, which led to multiple crossing attempts. Andreas (2000) referred to this as “border games.” Since 2005, Operation Streamline has required first-time undocumented entrants to be detained. This effort began in the high-traffic border zone of Del Rio, Texas (U.S. Customs and Border Protection 2005), and was extended to Tucson, Arizona, and other sectors (U.S. Customs and Border Protection 2007). Previously, the first entry without inspection (EWI) was a misdemeanor that did not require detention. Currently, a zero-tolerance policy, when available detention space allows for it, has led to detention of these migrants for up to 180 days rather than deportation over the border into Mexico or otherwise returning the migrants.

Critics of this mass-detention policy point out that it generates massive need for U.S. attorneys, public or pro bono defense lawyers, federal courthouse space, U.S. marshalls (for prisoner transport), prison beds, and other resources (Ackleson and Heyman 2010, 60). Operation Streamline has strained judicial and detention capacity. A chief judge for the U.S. District Court for New Mexico reacted to the new operation’s volume of detainees: “We were obviously alarmed because where would we put our bank robbers? Our rapists? Those who violate probation?” (Associated Press 2007). Congressional testimony by Heather E. Williams, First Assistant Federal Public Defender, District of Arizona, concluded that “Operation Streamline may well be one of the least successful, but most costly and time consuming ways of discouraging [unauthorized] entries and re-entries” (Hsu 2008).

It is difficult for Operation Streamline courtrooms to provide procedural due process and access to legal counsel. Defendants are arraigned in groups: up to 80 in Del Rio, Texas, 70 in Tucson, and 20 in El Paso (Lydgate 2010, 12). In 2009, the Ninth Circuit Court of Appeals ruled that mass proceedings in Tucson violate Federal Court Rule 11 procedures of due process before a guilty plea can be accepted. These rules include a personal address for the defendant and making sure that he or she understands constitutional rights are being waived and the plea is voluntary. Alternate procedures are being implemented in Tucson, and other districts are not yet impacted.

The end of the catch-and-release policy in 2006 raised detention costs. The states are supposed to be paid by the federal State Criminal Assistance (SCAP) program for detention costs, but they are not fully reimbursed. Unauthorized immigration has serious financial impacts on 24 counties located on the U.S.-Mexico border. From 1999 through 2006, the 24 U.S.-Mexico border counties reported \$1.23 billion in law enforcement expenditures for processing unauthorized migrants with criminal charges (U.S.-Mexico Border Counties Coalition 2008). In FY 2006, \$192 million was expended. In 2006, the SCAP program federal appropriation was \$400 million and the 24 border counties received \$4.7 million. This raises serious cost implications for U.S.-Mexico border counties receiving an increased detention population.

One reason that the United States often released Mexican migrants to Mexico after apprehension was the monumental size of the task of detention. Because the border-deterrence strategy funnels migrants rather than discouraging them for attempting entry, the end of the catch-and-release policy has meant that the federal government does not have enough detention space and is having a hard time paying for the expense. The old policy of voluntary departure was cheaper, although more individuals made multiple attempts until they succeeded without forfeiting time and earnings to detention.

Human rights organizations have argued that there are cost-effective alternatives to detention. These include a system of conditional release and bond or a financial deposit (Amnesty International 2009). Reporting and electronic monitoring can cost \$12 a day (Detention Watch Network 2009). When alternatives are used, 93% of those apprehended still appear for a hearing at an immigration court. Congress approved a funding

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increase to explore alternatives but ICE used it to monitor those eligible for release rather than persons to be detained. At present, ICE operates two supervised release programs using electronic bracelets, telephone check-in, home visits, and restricted-movement guidelines. Electronic monitoring is available throughout the nation, but it is in limited use. Amnesty International (2009) believes that individuals should only be detained if it is established that it is necessary and proportional after considering alternative measures. Further, it argues that electronic monitors should not be placed on people who are not security or flight risks.

At the end of the Bush presidency, ICE released new detention standards for staff-detainee communication. The Obama administration has responded to criticism of immigrant detention by creating an Office of Detention Policy and Planning in ICE and increasing federal oversight. DHS will move away from a decentralized, jail-oriented approach. This would reestablish a right eroded by the process of criminalization and securitization of immigration and require further change in law. DHS detention reforms include new oversight of contracted detention facilities, using detention in relation to risk, expanding alternatives to detention, and improving medical care in detention.

The prosecution and detention of individuals in the United States without authorization are projected to deter new migrants. Conservatives such as Rep. James Sensenbrenner (R-WI) have argued for stronger sanctions against unauthorized migrants, but human rights activists are concerned that the detention system denies detainee rights and is not operated humanely. While the most recent increase in detention involves migrants apprehended in the U.S.-Mexico border region, asylum applicants and unauthorized immigrants apprehended in the interior are also being held. The pressure to prevent terrorism and problems in having border arrivals who are not authorized to stay present themselves before an immigration court with “absconding” have generated mass detention.

### Border Conditions

The U.S.-Mexico border region is marked by poverty and lower levels of education than in the interior (Anderson and Gerber 2007). Overall, the region has higher levels of unemployment

than in the rest of the United States. The degree of poverty increases from west to east as one travels from the affluent city of San Diego, California, east across to Texas, ending at the city of Brownsville, Texas. Economic differences between the American and Mexican sister cities are less than between comparable American and Mexican cities of the interior of these two nations. The Mexican border cities tend to be relatively better off than the Mexican interior.

There are five major U.S.-Mexico sister cities: (1) San Diego and Tijuana, Baja California; (2) El Paso and Ciudad Juarez, Chihuahua; (3) Brownsville and Matamoros, Tamaulipas; (4) Laredo, Texas, and Nuevo Laredo, Tamaulipas; and (5) McAllen, Texas, and Reynosa, Tamaulipas. U.S.-Mexico border cities function as trade routes and ports of entry with trade bridges. The railways were important in the development of trade to the interior, and NAFTA greatly increased the economic significance of these cities for both countries (Anderson and Gerber 2007). The desire to avoid customs levies means that smuggling for the black market is important. For example, Mexico has a tariff on used clothing, but much “*ropa*” is taken into Mexico with the cooperation of corrupt Mexican border guards. Regarding economic fluctuations, the border cities are typically more impacted than the interior. U.S. Border cities experience declines in Mexican consumer purchases when there are peso devaluations or Mexican layoffs in American-owned factories when the United States is experiencing a recession.

## Crime and Human Rights Violations

On the U.S.-Mexico border and in the interior, “criminal aliens” have been represented in the media as a security threat involved in the drug trade and violent crime (Dell’Agnese 2005; Mains 2004). In contrast, national crime trends indicate that immigrant destination cities have lower violent crime rates (Martinez 2006, 12). Sociologist Ruben Rumbaut and his colleagues (2006b, 70) analyzed 2000 U.S. Census data to determine that foreign-born immigrant men between age 18 and 39 were half as likely as similarly situated non-Hispanic native-born men and thirteen times less likely than African American native-born men to be incarcerated in federal or state prisons

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and local jails. Nevertheless, incarceration rates for the native-born second generation were four times that of the foreign men regardless of level of education.

Rumbaut and colleagues (2006, 73) state:

The finding that incarceration rates are much lower among immigrant men than the national norm, despite their lower levels of education and minority status, but increase significantly among their co-ethnics by the second generation, suggest that the process of "Americanization" leads to downward mobility and increased rates of involvement with the criminal justice system among a significant segment of this population.

The policy implication is that the nation needs to oversee and invest in the development of the second-generation offspring of immigrants. Progressives view investment in immigrant education and services, rather than the criminal justice system, as more cost-effective.

Research results on immigrant crime trends in U.S. border cities are contrary to public belief about the connection between unauthorized immigration and crime. Matthew Lee (2003) found that Latino immigrant neighborhoods in El Paso and San Diego had lower homicide rates. Factors associated with homicide included poverty, joblessness, and residential instability—all factors associated with social disorganization. Jacob Stowell's (2007) statistical research found that immigrants of varied national origin were less likely to commit violent crime but that immigrant groups living in high-crime impoverished neighborhoods had an increased violent crime rate.

The U.S. border cities have been ranked among the 50 safest in the United States (Albuquerque 2007, 77). Looking at crime rates from 1996 to 2001, Pedro H. Albuquerque states,

Cities on the American side of the border have experienced impressive reductions of homicide rates from peak levels, which were significantly larger than the reductions observed in most American cities outside the border region; for example, four border cities saw reductions of homicide rates varying from 72.3 to 73.1%, comparable therefore with the famed New York City reduction of 73.6%.