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Missing the Mark: how national security strategies in Rio Grande border communities sacrifice basic human rights and fail to make Texans safe

Missing the Mark:



How national security strategies in
Rio Grande Valley border communities sacrifice
basic human rights and fail to make Texans safe

~Rio Grande Border Communities Speak Out~

American Civil Liberties Union of Texas

December 2009

ACKNOWLEDGEMENTS

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Special thanks to Myra MacPherson; reporter, editor and civil libertarian extraordinaire, whose curiosity and determination added a human dimension to this report.

Acknowledgements

We want to thank all of the courageous individuals and communities who contributed their time, knowledge, expertise and stories to the development of this report. We recognize that we were only able to portray a snapshot of their reality. Those who took time out of their schedules to share their pain, fear and frustrations as well as their hopes for a better and safer life are fighters for justice.

We have come to know that the Rio Grande Valley as a special place. In the words of one of the heroes of this story, Michael Seifert, formerly of *Projecto Digna*, “Despite the hardness of life here, we love the Valley. There is a quality of life here that is missing in San Antonio or Houston or Dallas. There is here an intangible spirit that defies the measures of the social sciences. Some call it solidarity, others a love for the extended family. Church people call it community. The Valley is one place in America where neighbors still unashamedly go door to door to ask for donations for a funeral, where no one sleeps on the streets, where no one goes without a meal, however simple that offering might be.”

We honor their struggle. It is our hope that this report can shed a national light on their reality and, in the process, serve as a catalyst for change.

– The Contributors

TABLE OF CONTENTS

I. EXECUTIVE SUMMARY	4
II. RECOMMENDATIONS	7
III. THE LOWER RIO GRANDE VALLEY IN A HISTORICAL CONTEXT	10
IV. DETENTION: ICE CHILLS TEXAS	13
a.) Why Detention Has Increased	13
b.) Inhumane Living Conditions in Detention Centers.....	16
c.) Living in Detention: Hazardous to Your Health	19
d.) Women Underserved, at Risk of Sexual Assaults	21
e.) Ineffective Monitoring of HIV and AIDS Patients	21
f.) Use of Quarantine Questioned.....	22
g.) Denial of Mental Healthcare, Inappropriate Punishment	22
h.) Hunger, Spoiled and Insect Infested Food	23
i.) Inconsistent Access to Religious Materials and Services.....	24
j.) Visitation Limited, Law Libraries and Telephone Access Insufficient.....	24
V. LIVING IN AN OCCUPIED ZONE	26
a.) Law Enforcement Authority in the Borderlands.....	26
b.) Human Rights Principles.....	27
VI. LIVING WITH THE BORDER WALL	28
a.) Economic inequity and property rights violations threaten a way of life	28
b.) Destruction of Sacred Space: Violation of Cultural & Religious Freedoms.....	29

I. EXECUTIVE SUMMARY

Information for this report was compiled over 18 months of research and two staff investigative visits to the Valley. We have looked at major issues facing this historic part of Texas:

- growing numbers of detainees being held for long periods of time in substandard conditions;
- growing militarization along the border as local law enforcement becomes more and more involved in enforcement of federal immigration law;
- denial of passports to U.S. citizens born of midwives; and
- construction of the Border Wall.

Testimony from detainees, their attorneys and advocates, residents and officials has been compiled to paint a picture of systemic and systematic civil and human rights violations.

During the ACLU delegation visit, we interviewed detainees, some held for years without a hearing, and their attorneys who tell stories of little or no medical care, and, in some instances, life-threatening medical mistakes. They describe detainees' lives without privacy, hunger because food is inedible or insufficient, isolation, deprivation, and assault. Held in a remote region with few resources, they are far from family and access to legal representation. They suffer with little or no access to counsel, friends or family.

The Obama Administration has recently pledged to overhaul immigration detention policies. While we are optimistic, few changes have been implemented as of this date. If put into effect, recommendations in the Oct. 6, 2009, report by Dr. Dora Schriro to Homeland Security and Immigration and Customs Enforcement (ICE) would address some of the violations, poor conditions and humiliations detention immigrants currently suffer. With regard to detention conditions, our recommendations are largely consistent with those in the Schriro report.



*Photo credit: James Tourtellotte
A U.S. Border Patrol bicycle unit patrols the city of Brownsville, TX looking for illegal immigrants.*

Problems relating to detention and abuse of local law enforcement powers continue making life along the border fearful for most and dangerous for many. These abuses have been committed in the name of national security, yet statistics show that cartel-driven violent crime, human trafficking and drug smuggling continue to increase. The current approaches are not the answer.

Residents of the Lower Rio Grande Valley expressed serious concerns over the actions of local law enforcement agencies stopping individuals because of their racial or ethnic appearance and in attempting to enforce federal immigration laws. They related numerous incidents of local police stopping vehicles simply because the driver, the passengers, or the vehicle looked “suspicious.” Local residents also reported that police often question drivers and passengers of vehicles and hold them until Border Patrol agents arrived.

Local law enforcement agencies and officials have been speaking out regarding the dangers of local law enforcement engaging in the enforcement of federal immigration law. The Major Cities Chiefs, comprising chiefs from the largest 64 police departments in the United States and Canada, issued a nine-point statement regarding the enforcement of immigration laws by local police agencies in June 2006. Key concerns included broken trust resulting in lack of cooperation from immigrant communities necessary to maximize public safety, threat of civil liability due to the “complexity of immigration law,” and taking away already limited local resources for public safety. Local law enforcement agencies engaging in border enforcement without oversight or guidance has created a climate of fear and mistrust of law enforcement.

In March 2009, the ACLU of Texas issued a report, *Operation Border Star: Wasted Millions and Missed Opportunities*. The 33-page report described how 11 of 40 participating Texas local law enforcement agencies used Border Star, a \$110 million, state-funded effort that is supposed to combat violent crime, drug smuggling and terrorism.

"As a law enforcement program, Operation Border Star has been a failure because it encourages police and sheriff's departments to measure their success based on everyday policing activities like arrests for disorderly conduct," said Laura Martin, ACLU of Texas Policy Analyst and the report's lead author. "It therefore takes the focus from the program's intended goal of fighting cartel-violence and organized crime." The report received statewide, national and international news coverage.

A second similar report is being prepared for issuance in the coming year.

While the matters of detention and human rights violations remain of serious concern, ACLU of Texas work has resulted in a remedy for families held in detention, promised improvements in detention facilities along the border, and won a major class action case relating to the denial of passports.

On Sept. 17, Immigration and Customs Enforcement (ICE) released the last family from the T. Don Hutto Family Residential Facility near Austin. ICE announced that it will detain only females at Hutto and will consolidate the female populations from various facilities, including Willacy and Port Isabel, into Hutto, allowing ICE to better monitor the needs of and develop programs specific to this population. Reports from immigration lawyers in the Valley indicate that as of November 2009, women continue to be housed in both the Willacy and Port Isabel facilities.

After filing suit, the ACLU of Texas, the American Civil Liberties Union (ACLU), the law firm of Hogan & Hartson LLP, and Refugio del Rio Grande, Inc. reached a legal settlement with the Department of State which should, in time, ameliorate the log jams and denials faced by passport applicants who happened to have been attended at birth in the Valley by midwives.

Unfortunately, since our visit to the Valley, the Border Wall has neared completion and the Obama Administration has issued orders for construction to continue, despite years of legal challenges and community opposition.

II. RECOMMENDATIONS

a.) Detention

- **Implement Recommendations of the Schriro Report in South Texas.**
The findings of the Schriro Report, regarding the disproportionate share of detention infrastructure located in Texas, the need for an increase in the use of alternatives to detention, and the importance of adequate medical care, access to law libraries, recreation, religious services and services for special populations, are all consistent with the findings of this report and the Schriro Report's recommendations should be implemented immediately.¹
- **Stop Locating Immigration Detention Facilities in Isolated Locations.**
New detention facilities should not be located in places such as South Texas where there are not enough resources such as immigration attorneys and medical staff, including doctors, dentists and mental health professionals, to provide sufficient representation and medical care for detainees.
- **End Reliance on Contract Detention Facilities**
Due to lack of accountability to ICE, their remote locations, structural weaknesses in their physical plants, and chronic inability to staff key positions, especially healthcare professionals, reliance on contract facilities, including Willacy and the South Texas Detention Complex, should be ended.

b.) Local Law Enforcement

- **Develop Clear Grant Guidelines for Local Law Enforcement Agencies.**
Federal funding of programs such as Operation Stonegarden, Operation Linebacker, and now Operation Border Star were allocated to assist local law enforcement agencies in combating border-related criminal activity. These resources have been inappropriately used to conduct immigration enforcement in communities, resulting in civil rights violations. Future funding should have specific outcome measures that encourage training and professional development in smaller departments that will improve police effectiveness. Departments should be screened for potential corruption before grants are allocated to ensure grants do not go to corrupt departments. Departments need clear guidance to ensure criminal law enforcement activities are their focus instead of immigrant roundups. Continued civil rights violations should result in discontinuation of funding.
- **Create Community Involvement Capacity for Border Patrol and Local Law Enforcement.**
Ensuring oversight and accountability of law enforcement agencies requires ongoing communication and relationship building between key community stakeholders and law enforcement agencies. The creation of civilian oversight or community involvement capacity has worked in cities such as Detroit and New York to develop mechanisms for working towards rebuilding broken community trust.

- **There Should be Written Interagency Agreements When Local Law Enforcement and Federal Agencies Collaborate.**

Agreements between agencies must be transparent and protocols made clear to community members in order to ensure oversight and accountability.

- **Prohibit Local Law Enforcement from Enforcing Civil Immigration Laws and Revise Standard Operational Procedures.**

Local enforcement of civil immigration laws leads to racial and ethnic profiling and undermines effective policing by discouraging immigrant communities from cooperating with the police. The ACLU calls for the development of Standard Operational Procedures for border law enforcement agencies which specifically address the narrow circumstances when an inquiry into immigration status would be appropriate, in a manner that respects the human and civil rights of border communities.

- **Require Civil Rights and Crime Victim Training for Law Enforcement.**

Local law enforcement agencies should be required and provided funding to engage in civil rights training. Additional training and education is needed for officers to be able to identify crime victims, including victims of human trafficking, and help them to access available services and legal recourse. Identifying and assisting victims ensures that they are treated fairly, and bolsters prosecution efforts.

c.) Border Wall



Photo credit: Federal Motor Carrier Safety Administration

- **Mandate Fiscal Accountability Relating to Border Fence Construction.**

The border fence has thus far cost U.S. taxpayers more than \$2.4 billion with an estimated need for \$6.4 billion more over the next 20 years for maintenance.² Homeland Security and other federal agencies should be mandated to plan and allocate resources proportionate to the degree of threat, noting distinctions between violent crime and serious risk to human safety versus civil immigration violations.

- **Appoint Independent Commission to Assess Impact of Border Fence.**

Prior to developing plans for additional border security fence construction, an independent commission should assess the impact of the current construction.

The independent commission should be composed of experts in civil and human rights as well as community members who have been directly affected. The assessments should include effects of infrastructure on communities with recommendations for mitigating negative impacts.

III. THE LOWER RIO GRANDE VALLEY IN A HISTORICAL CONTEXT

The Rio Grande Valley region of South Texas has always had a distinct bicultural flavor since its earliest days in the 18th century when King Carlos of Spain granted land to dwellers in the border territory. Following the Mexican-American War of 1846, the Valley was incorporated into the United States but its unique nature lives on.

In the early days of the 20th century, Mexican nationals crossed the border to work on Texas farms and oil fields, returning to Mexico at the end of each season as routinely as if they were crossing from one American state to another. Other migrant farm workers settled in the Rio Grande Valley, making frequent cross border trips to see relatives. Although unlawful to cross into the United States without federal permission, much of the Texas border was not aggressively policed by U.S. Border Patrol or other federal law enforcement for several decades. These workers were far too essential to U.S. agriculture, from toiling as stoop labor in fields to working in packing sheds.

The Rio Grande Valley remains one of the poorest regions in the United States despite the passage of the North American Free Trade Agreement (NAFTA) in 1994. Even though the valley's economy has grown substantially since then in such areas as manufacturing, transportation, and tourism, all four Rio Grande Valley counties ranked among the 100 lowest-income counties in the United States based upon per capita income, according to U.S. Census Bureau data.

In October 2009 unemployment was 10.8% for the Brownsville-Harlingen area and 11.6% for the McAllen-Edinburg-Mission area, the highest unemployment rates in Texas and well above the national rate.³

Cameron and Hidalgo were the only two counties in the United States with median household incomes under \$25,000; one other nationally (Bronx NY) was under \$30,000. Cameron (city of Brownsville) and Hidalgo (city of Edinburg) counties also had the highest poverty rates of any counties in the United States; each had a rate of about 41 percent.⁴

In today's violent and emotionally-charged atmosphere along the Mexican side of the border, border enforcement actions often undermine basic civil and human rights and negatively affect the passage of goods through land ports. Construction of the Border Wall raises deep concerns for many reasons and anxious Valley economic leaders fear that it sends the wrong message to Texas' number one trading partner, Mexico.

A sad irony is that the Rio Grande Valley, now plagued with human and civil rights abuses, has produced the most patriotic of citizens, with a disproportionately high population of both military veterans and residents currently on active duty. The Valley has the highest per capita of individuals serving in the Iraq War, according to one community advocate. One native son, general Ricardo Sanchez was the highest ranking Latino in the U.S. armed forces at the time of his retirement. Raul Yzaguirre, who rose to become the President and CEO of the National Council of La Raza, began his career by serving his country in the U.S. Air Force.

Despite the Valley's modest population, this region has produced several landmark civil rights cases decided by the highest court in the land.

In *Castaneda v. Partida*, the U.S. Supreme Court held Mexican-Americans had been subject to racial discrimination in the selection of grand jurors. Mexican-Americans made up 79.1 per cent of the county's population but only 39 per cent of the grand jurors during the relevant time period.⁵ This important but often overlooked ruling established that Mexican Americans could be discriminated against by government action even in a county where Mexican Americans also controlled the county government.

In *Bernal v. Fainter*, the U.S. Supreme Court found unconstitutional a Texas statute that a person had to be a U.S. citizen to qualify for certification as a notary public. It ruled that the statute violated the principles of equal protection⁶ after Efrem Bernal, a lawful permanent resident, was rejected when he applied to be a notary. This ruling established that citizenship was an appropriate condition of employment for only a narrow category of occupations.



Photo credit: Gerald L. Nino
A U.S. Border Patrol check point in Hidalgo, TX

In 1975, the U.S. Supreme Court held in *United States v. Brignoni-Ponce* that the Fourth Amendment did not permit U.S. Border Patrol agents to detain vehicles in the border region to question occupants about their citizenship and immigration status based solely on their Mexican appearance.⁷ Although this ruling made “racial profiling” illegal, the Court set a standard for these stops lower than probable cause, adopting a “reasonable suspicion standard” for vehicle stops by Border Patrol in the border region. Despite this important precedent, residents continue to feel they are victims of racial profiling. Everyone in the Rio Grande knows the major checkpoint, 100 miles north of the border along U.S. Highway 77. The following chronicles an ACLU of Texas staff experience on one of our border trips.

Lower Rio Grande Valley residents continue to fight against this and other indignities. One grassroots community group, *La Union del Pueblo Unido* (LUPE), met with police to protest unwarranted search and seizure, unlawful detention and racial profiling.⁸ After LUPE members met with La Joya Chief of Police Joe del Angel, he conceded that his officers are “not here to deport anybody, [they] are not immigration.” He assured LUPE that he would offer “more training” to his officers and that officers were willing to have meetings with the community.⁹

Other border groups have also secured agreements with local police agencies to stop police officers from enforcing immigration, as prohibited by federal law. In El Paso, Sheriff Jimmy Apodaca promised local advocacy groups that his department would not engage in the following:

setting up checkpoints near schools and during morning or evening rush hours; targeting only older-make cars (all cars must be stopped at checkpoints); asking people not under suspicion for having broken a law for their Social Security cards or proof of citizenship; and using abusive language or tactics.¹⁰

The checkpoint looked formidable even to the three Anglos in our rental car. Five Border Patrol SUV's lined the side leading to the checkpoint. Ten more sat on the other side. Large signs, one in Spanish and one in English, warned, "K-9 on Duty. Restrain Your Pets." A guard paced the area with a leashed German shepherd. A young border patrol guard peered in and saw three pale-faced Anglos. "Are you U.S. Citizens?" he asked. "Yes," came the driver's response. "Where are you going?" "Austin." He smiled and waved our car on, adding, "Have a good trip."

Our easy passage isn't so routine for Hispanic drivers or passengers who "look Mexican." Searches based on obvious racial profiling are at the heart of many legal battles. Rio Grande Valley resident and activist Elizabeth Garcia, a naturalized citizen, explained, "Sometimes I get all kinds of questions. When they say 'Are you a U.S. citizen?' it is always hard (because I am a naturalized citizen.) If I say 'yes,' they usually don't believe me, so they ask me 'Where were you born?' If I say 'Mexico' they say 'Then, you are not U.S., you are a naturalized citizen.' And then more questions, 'Where are you going, for how long, do you own this car?' Sometimes they search my car."

– Myra MacPherson

IV. DETENTION: ICE CHILLS TEXAS

a.) Why Detention Has Increased

There has been an astonishing increase in South Texas detention in the past 13 years because of several developments: the 1996 act which enforced tough deportation measures along with stringent application of this act; politicized fear of terrorism following the September 11, 2001 attacks; dramatically expanded enforcement efforts, including the proliferation of local law enforcement partnerships; and the expansion of immigration detention capacity, particularly contract facilities, located in isolated places in the Texas border region.



*Photo credit: James Tourtellotte
A U.S. Border Patrol agent investigates a potential landing area for illegal immigrants crossing the Rio Grande River in Texas.*

The 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) stripped discretion from immigration judges in ordering the deportation of long-time lawful resident immigrants, expanded the list of crimes leading to deportation and massively expanded the categories of immigrants subject to mandatory detention. But it was Bush's Department of Homeland Security (DHS) that hammered this home.

Today, the chilling acronym, ICE for Immigration and Customs Enforcement, is a household word to

those who live along the border. Created in 2003 by DHS, ICE is responsible for overseeing the detention of persons charged with violating civil immigration laws. The rapid expansion of authority and facilities enables ICE to detain more than 300,000 individuals per year.¹¹ They are incarcerated in over 300 privately contracted for-profit detention centers, detention centers run by ICE, or local jails (via Intergovernmental Service Agreements).¹²

Independent studies and ICE's own numbers indicate that enforcement efforts intended to target serious criminals have instead led to the detention and deportation of immigrants with no criminal history. According to ICE, in fiscal years 2007 through 2009, two-thirds of initial book-ins of immigrants awaiting removal procedures had no criminal convictions.¹³ A study by the Migration Policy Institute revealed that 73 percent of the people arrested since early 2008 in ICE raids had no criminal records—even as the Homeland Security Department touted them as carefully planned dragnets for dangerous “immigrant fugitives.”¹⁴

Another 2009 report, “Local Democracy on ICE,” found that police are targeting “day laborers, street vendors, people who are driving around with broken taillights” – not dangerous illegal immigrants. ICE deputizes local police in various states to enforce U.S. immigration laws, but Judith Greene of Justice Strategies, a New York based nonprofit research organization, says it has failed in its promise to target illegal immigrants who pose a threat to public safety or national security. Meanwhile it is keeping police forces from handling local crime and costing state taxpayers.

The Obama Administration has refused to end the most controversial program that involves local law enforcement in enforcement of immigration laws, known as the 287(g) program, in spite of pressure from hundreds of civil rights and immigrants rights advocacy organizations. The new administration has continued to expand less visible programs that incorporate local law enforcement into immigration enforcement, including the Criminal Alien Program (CAP), which was recently found to encourage racial profiling by local police in a study of the program in Irving, TX,¹⁵ and Secure Communities. According to recently released ICE statistics, the Criminal Alien Program is responsible for almost half of the immigrant arrests nation-wide.¹⁶



*Photo credit: James Tourtellotte
U.S. Border Patrol agents in the Rio Grande Valley process illegal immigrants who attempted to enter the United States.*

Criminal prosecutions of immigration violators between 2003 and 2008 quadrupled to 79,400 through programs like Operation Streamline, which filed minor charges against virtually all people crossing parts of the Texas and Arizona borders. Critics argue that DHS should target criminal networks and employers who rely on illegal workers.

Harsh standards have been applied retroactively to long term immigrants who have already served sentences (and in many cases were never subject to jail time).¹⁷ The result has been devastating. In some cases, legal permanent residents for over 30 years with minor criminal records from their youth are now subject to mandatory deportation if detected, despite the fact that they have served their sentences, and, in many cases now have homes, families, well paying jobs, are little league baseball coaches and community leaders. These individuals are at risk of losing everything.

The repeated use of the phrase “criminal” aliens by corporate executives of for-profit prison companies infuriates lawyers who defend detainees. “The definition of Criminal Alien is any person not born in the U.S. or that is a U.S. citizen that at any time in his or her life was convicted for any crime. That is a ‘criminal’ alien. A criminal alien can be someone who 30 years ago was convicted for shop lifting or for driving while intoxicated,” says Jaime Diez, an attorney with Jones and Crane Law Firm in Weslaco, TX. “Two possessions of a cigarette of marijuana is an aggravated felony and you can be deported.”

The definition of who is a criminal to be detained escalated wildly to include such non-violent and often minor offenses under Michael Chertoff's all-powerful tenure as Bush's director of Homeland Security. "But," says Diez, "When the public hears the word 'criminal' they think rapists, robbers, murderers and drug traffickers."

"A good number of these people were convicted of non-violent crimes many years ago, have paid for their mistakes and today are responsible citizens with families and suddenly their past mistakes come back to haunt them," explained Diez. "It is not only not fair for them, it is surely not fair for what their family members have to go through while their father, mother or loved one is detained."

Diez cites cases regarding three detainees, all of whom were legal permanent residents of the United States.

***"It is not only fair for them, it is surely not fair for what their family members have to go through while their father, mother or loved one is detained."
– Jaime Diez, attorney***

- A 56-year-old employee in the Dallas maintenance department has been a legal resident for 28 years and raised four children, two of whom are serving in the US military, one in Iraq and one in Japan. In 1999 he was severely injured, breaking a leg, while cutting down trees for the city of Dallas. He resorted to small amounts of cocaine for his pain. Stopped by the police, he was searched and arrested for carrying a small amount of cocaine for personal use. He pled guilty and returned to his job and was a steady employee for the next 10 years. Last year he went to Mexico to visit his mother. Because he looked Mexican he was stopped on return and the decade old cocaine charge came up in the data base. "He has been in Willacy for 10 months. He will get a hearing on the 12th of March and I have no doubt in my mind he will get a waiver. He is legally entitled to it; a permanent resident who has no other record, never spent a day in prison, has worked for the same employer for years, a life-long taxpayer, has children in the service to his country. But he will probably lose his job, his pension. This is a laborer who can't start over at his age. Meanwhile the GEO corporation has made money for the 10 months that they have kept us from having that 'criminal' out on the streets."
- A 27-year-old Mexican citizen became a Legal Permanent Resident (LPR) when three years old. Alarmed at stories of rising crime four years ago, he legally purchased a gun but had it in his car, which would have been legal in Texas if he were going to a shooting range or hunting. He was convicted of a misdemeanor and given 180 days probation which ended in the summer of 2005. He has no other criminal conviction.

In 2007 he married another Legal Permanent Resident. "Every 10 years you have to renew your card if you are a permanent resident. When he applied last fall, immigration wouldn't send the card even though he had already finished his probation two years ago. He was subject to mandatory detention or face deportation. It was clear he was not a flight risk."

His wife was 11 weeks pregnant and Diez asked the Office of Detention and Removal Operations Office that his client be released while his case was reviewed because his wife had already had three miscarriages. Diez produced doctor's letters attesting to the critical need of her husband to be with her to help, "in order to reduce the likelihood of losing their child." Diez provided current proof of employment, tax returns, his mother's certification of naturalization, his father's LPR status. After several months of red tape and a denial by ICE, Diez succeeded in getting his client's release in February, 2009 and a cancellation of his deportation. "But all the time of his wife's pregnancy he was in detention."

- A mother of four children agreed with her boyfriend to buy a car and her boyfriend wrote a \$2,000 down payment with a check that bounced. "The car owner filed a complaint with the D.A. who arrested her as well for theft by check. She paid him back but still was convicted and given two years probation. Later detained, she was deported for that conviction." Diez said that many poor and uneducated people get convicted in situations where others with legal help would not. "She thought she had the funds and trusted her boyfriend. Then someone like her goes through the system and is told that she is lucky to get probation and to 'just sign here.' Now, because her children are here she will probably try to re-enter illegally and if caught that will put her in prison. Meanwhile the children will no doubt become wards of the state."¹⁸

b.) Inhumane Living Conditions in Detention Centers

Although the average detention stay is 30 days, tens of thousands of immigrants are detained each year for months and about 2,100 persons are held for more than a year.¹⁹ More than a million individuals have at one point been in detention facilities since ICE was created in 2003.²⁰ Detainees include asylum seekers, torture survivors, crime victims, and lawful permanent residents who have committed minor crimes. They include primary care givers, sole economic providers, and family units.

Conditions in detention centers have been raised as a major concern by advocates, the press and the new administration. Detainees are denied medical care and face separation from family, friends and effective legal counsel.

Many live in fear of quick deportation if they speak out to ICE officials about detention conditions which are in violation of Human Rights obligations, *The International Covenant on Civil and Political Rights*, ratified by the United States on June 8, 1992 and other international provisions. This covenant requires that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."²¹

Maggots in the food, rampant hunger, sexual assaults, and medications withheld from the seriously ill for weeks, no doctors or nurses on duty, exposed toilets and showers next to beds in overcrowded dorms ...Thousands of people have been subjected to this kind of treatment in Texas border detention centers.

By ratifying these documents, the U.S. not only sets forth human rights obligations but it created a State obligation to protect such rights which apply to immigrant detainees.

Many of these provisions have been violated by all three Texas centers visited for this report: Willacy in Raymondville; Port Isabel Service Processing Center in Los Fresnos; South Texas Detention Complex in Pearsall. The lack of medical and mental healthcare in these facilities illustrates a wide range of serious human rights violations through neglect, despite both U.S. and human rights law mandating health care for those incarcerated. Medical care at all three facilities is directly provided by the Division of Immigration Health Services (DIHS).²² Despite the \$360 million in medical treatment that ICE has spent between 2003 and 2008 throughout the detention system—including comprehensive health screening and care management—²³ serious lapses are reported in this study.

*“Judges won’t go there [Willacy Detention Center] because of the rats.”
- Jaime Diez, attorney*

Surrounded by acres of utter desolation, the scandal-ridden Willacy Detention Center in Raymondville looms ominously with high barbed wire fencing, sentries, “no trespassing” signs, patrol cars and long rows of tents that hold 2,000 detainees. Nearby is a newly opened brick structure housing another 1,000, eagerly built by the company that makes money with each new bed that is filled. Today, as the media reports the sensational—Mexican cartel related murders—there is little focus on the people who are detained in these centers, who have broken no law except to enter the United States.

Rampant hunger, sexual assaults, and medications withheld from the seriously ill for weeks, no doctors or nurses on duty, exposed toilets and showers next to beds in overcrowded dorms. Such horror stories conjure up the worst bedlam of mental or penal institutions. Thousands of people have been subjected to this kind of treatment in Texas border detention centers.

Detainees exist daily in rooms with minimal natural light. They are deprived of contact with their families. Facilities prohibit physical contact, though detainees are routinely searched following visitation. A female detainee at Pearsall, found it unbearable to see her U.S. citizen children through the glass division and not be able to hug or touch them. “I get to see my [2] kids and husband through glass for only 30 minutes, only on Saturday,” detainee Garcia said. This has led to deterioration in her mental health.

At Willacy—nicknamed Ritmo—the word “tent,” universally used to describe the facilities, is a misnomer for what the eye sees. Originally white, these ten low slung dome-shaped structures, about the length of a football field, are now a weathered dirty grey. Wind sweeps through the center, rattling the metal chains of the United States and Texas flags against the flag poles. Inside the domes, flapping of roof material is a maddening, constant drumbeat to daily existence. Windows in the domes are placed too high to see out. About the size of a window air conditioning unit, the windows do let in some natural light. Detainees and their lawyers report a host of continuing human and civil rights abuses. “Judges won’t go there because of the rats,” says Jaime Diez, an attorney who has helped detainees.

The second largest private prison company, GEO Group, Inc. (formerly Wackenhut Corrections Corp.) includes in its nationwide axis of prisons the South Texas Detention Center in Pearsall, as well as facilities with federal contracts in Bexar, Webb, Karnes, Maverick, Val Verde, Reeves counties. George Zoley, chairman and CEO announced in February, 2009, “We expect our 2009 operating revenues to be between \$1.01 billion and \$1.03 billion.” A “primary driver for growth” was the continuing escalation of persons detained by ICE for



*Photo credit: Marc Mongenet
Men cross the Rio Grande River from Mexico to Big Bend National Park, TX.*

possible deportation. Zoley noted that Congress appropriated \$1 billion last year for an ICE initiative and optimistically predicted that “the new administration and Congress would continue to support federal initiatives to target detained and deport criminal aliens.” New GEO “detention beds” are being provided nationwide and Zoley prophesized that “detaining illegal aliens will increasingly be seen as a national imperative to protect U.S. workers and their jobs.”²⁴

The tents of Willacy are foreboding enough viewed from the “keep out” signs and the barbed wire but no outsider can imagine the desperation of being housed there. It is the largest immigration detention center in the United States. Opened in 2006, it is run by the Utah-based for-profit prison company, Management & Training Corporation (MTC) — which gained notoriety when its former director, Lane McCotter, was appointed by former Attorney General John Ashcroft to set up U.S. operations and train guards at Abu Ghraib prison.²⁵

County officials were convicted in a kick-back scheme during this tent-city construction and scandals continued after its opening when media coverage consistently exposed abusive treatment of detainees.²⁶ In 2008, there was only one dentist, one staff physician, and one part-time psychiatrist for its 2,000 detainees. A simple search on the DIHS website shows that few medical personnel want to work there. In 2008, the facility had been lacking a clinical director, psychologist, dentist, staff physician, pharmacist, pharmacy technician, dental assistant, medical records technician, and various nursing positions for at least a year. The facility was still posting openings for a psychologist, dentist, and various nursing positions in October 2009, meaning these positions have not been consistently filled for at least two years.²⁷

Willacy detainees remain isolated from the world. In 2008, immigration lawyers practicing in the Lower Rio Grande Valley did not regularly represent detainees at Willacy and thus we were able to

interview only three current detainees and one recently released detainee, all of whom are male. In 2009, Brother Albert Phillipp of Cameron City reported, “there is absolutely no privacy if you go in there; just a corner of the room, not even large enough for a table. And the bathrooms are open to the entire room, where you are sleeping.”²⁸

The only private personal space each detainee has is his or her bed. The bunks are in rows approximately three feet apart. Fifty detainees shared five showers, sinks and toilets and three telephones. Water enters the tents from underneath whenever it rains and, though the tents are purportedly insulated, in the winter there is no heat in the frigid tents. Detainees complained that the dormitories were incredibly cold, even in the summer (unless the air conditioners were broken which led to sweltering heat), forcing detainees to huddle under blankets on their bunks. A few detainees mentioned feeling this was an intentional control mechanism.

The lack of sanitation was a major concern. One detainee reported that there was not enough hand soap, and the bathroom area was consistently wet. The lack of privacy in the bathrooms was also distressing, with only a half wall (recently constructed) to separate the toilet area from the showers. Clothes arriving from laundry were reported as consistently damp. Detainees were required to immediately fold and place these items in the drawers underneath the bunk. One detainee speculated that a skin rash he developed might be due to wearing damp or moldy clothes.

Nearby, but behind another set of gates, looms a newer brick structure where detainees are housed in 20 dorms containing 50 beds each and two ceiling skylights. There are no windows.

c.) Living in Detention: Hazardous to Your Health

The geographic remoteness of these facilities, intentionally located away from major population centers and close to the southern border, hampers medical care, making it difficult to recruit and retain qualified medical staff or provide specialized services. Both Port Isabel and Willacy are more than 230 miles from the nearest major city, San Antonio, and even Pearsall is an hour away by car.

The Port Isabel Service Processing Center, known as Port Isabel and Bayview, is located in a small town, population slightly more than 5,000. On any given day, Port Isabel houses approximately 1,200 detainees (900 males and 300 females) in four separate buildings. When we visited in May 2008, the facility was near capacity. While touring its medical facilities, the ACLU staff was informed that approximately 40 per cent of the medical positions were vacant. There was one staff physician for 1200 detainees. The second staff physician position had been vacant for more than 14 months.

The third facility, the South Texas Detention Complex in Pearsall, Texas, was the country’s largest detention center facility when it opened in 2005, accommodating 1,000 ICE detainees.²⁹ The for-profit facility, run by GEO Group, Inc.,³⁰ continued to add new detention beds and can now hold 1904 detainees. At this facility-- designated to provide care for more complicated and chronic medical and mental health conditions—abuse was widespread, including lack of adequate medical

care. At the time of the ACLU visit, the facility had no dentist, no staff physician, no Health Service Administrator, minimal nursing support, neither a psychiatrist nor a psychologist on-site. Only half of the medical staffing positions were filled and only one registered nurse and two licensed vocational nurses remained on duty each night. As of October 2009, the facility had job openings for a psychologist, psychiatrist, dentist, senior staff nurse and staff nurse.³¹

This facility held a large proportion of gay and transgender detainees, many with HIV, who faced hostile discrimination from both guards and other detainees. Initially all gay/transgender detainees were placed in a segregated unit to avoid “problems”. Many detainees live with nightmares of torture, violence and/or sexual assault that happened prior to incarceration. Deteriorating mental health, a serious risk in detention, is exacerbated by segregation. One HIV positive detainee, already suffering from depression after witnessing the death of another detainee at the now closed San Pedro facility, was segregated from the population for no specified reason. His depression increased and he was not given medications previously prescribed to stabilize the depression. Due to the remoteness of the facilities, fewer detainees had access to legal counsel who could advocate for needed medical and mental healthcare.

MAN GOING BLIND FROM LACK OF MEDICAL CARE

In May 2007, Mr. Gonzalez was detained at the Santa Ana detention facility in California, where he fell and seriously injured his shoulder. When he saw medical staff at the facility, he was given medication for the pain. Several days later, when he was unable to move as a result of the fall, he was transferred to the San Pedro Service Processing Center. He was taken to an off-site hospital, where he received an MRI and was told that he would need surgery. Before he could receive surgery, he would need DIHS approval. Mr. Gonzalez was then transferred to the El Centro Service Processing Center. While at El Centro SPC, Mr. Gonzalez developed a serious eye infection that resulted in itching and pus. He was transferred back to San Pedro to receive treatment, but the on-site physician did not have the appropriate equipment to check Mr. Gonzalez’s eyes. Mr. Gonzalez was sent to have his eyes examined, and he was told he had nerve damage. He was prescribed eye drops. Mr. Gonzalez was then transferred to the STDC in Pearsall, Texas, where he arrived with three medications: prescription eye drops, Tylenol, and medication for his recently-diagnosed diabetes. During intake, Mr. Gonzalez was given only Tylenol, but did not receive his eye drops until 15 days after his arrival and did not receive his diabetes medication until 30 days after his arrival. At the time ACLU staff members visited STDC in March, Mr. Gonzalez was wearing dark glasses to protect his eyes from light and had a very difficult time keeping his eyes open without his glasses. In a letter to the ACLU from Mr. Gonzalez, he explains that he is “going blind,” and that his requests for medical attention have yielded no additional care.

d.) Women Underserved, at Risk of Sexual Assaults

Because they are not allowed in the clinic at the same time as male detainees, who comprise the majority detainee population, many women are not even seen by medical personnel. Although female detainees present special medical needs, including the need for prenatal care, there was usually only one medical staff person with specialization in obstetrics and gynecology. According to a local advocate, “women exams are not given across the board.” Also, the medical personnel do not perform a pre-screening for pap smears. In Pearsall, a pap smear is only performed after a woman has been in the facility for at least a year. Due to the relatively small number of women interviewed for this report, women’s healthcare is an area that needs additional investigation.

More information about conditions, particularly for women, has recently come to light. Kathleen Baldoni, a former nurse at the Willacy detention facility, testified at a Capitol Hill Briefing on June 24, 2009, about the lack of adequate health care services and resulting human suffering at Willacy. She worked there on a temporary assignment for six months starting at the end of 2008. “The level of human suffering was just unbelievable,” testified Baldoni, “There was inadequate food and personal items -- personal hygiene was a problem -- as was access to medical care.”³² She also noted that women there “are often subjected to extreme temperatures, inadequate nutrition, medical staffing shortages, and long delays for critically needed health care.” Baldoni had decided to end her contract three weeks early, but was subsequently fired by the health services administrator because of her decision to speak publicly about the conditions at the facility.³³

Recent developments have provided some relief for women prisoners. In September, ICE converted the T. Don Hutto Family Residential Facility in Taylor (near Austin), into a facility for adult women. All families were released Sept. 17. Portions of the female populations from Willacy and Pearsall, are being consolidated at Hutto, hopefully allowing better development and monitoring of programs for the special needs of women detainees.

e.) Ineffective Monitoring of HIV and AIDS Patients

Medical crises at Pearsall are exacerbated for detainees with HIV and AIDS which require regular testing and close monitoring. The shortage of medical personnel to handle this large population, corroborated by testimony of detainees, raises major questions about the capacity of the facility to monitor T-Cell counts and viral load.

Carlos Duchesne, Division of Immigration Health Services (DIHS) top specialist on infectious diseases, states that “labs for AIDS patients...must be performed ASAP to know their immune status and where you are standing in reference to disease control and meds.” Some HIV+ detainees stated that they were taken to a clinic in San Antonio to receive a check up on their viral load and T-cell counts but others were not. Those sent off-site stated that they were not made aware of the results of their medical tests. When interviewed, medical personnel at Pearsall were unsure about how often detainees are sent to the clinic for specialty care. Although detainees frequently remain at Pearsall for several months, medical personnel neglected to keep track of scheduled follow up appointments made with the outside clinical facility.

f.) Use of Quarantine Questioned

Advocates questioned the frequent posting of quarantines for outbreaks of chicken pox, as means to prevent detainees from meeting with their legal advocates or attending timely court hearings. In both March and May 2008, Pearsall and Willacy posted warning signs indicating that the facilities had ongoing outbreaks of chicken pox. Despite the quarantine postings that prevented advocates from meeting with their clients, staff and detainees appeared to freely move in and out of quarantined pods.³⁴

g.) Denial of Mental Healthcare, Inappropriate Punishment

Although ICE states that it provides “31,697 types of psychological services and/or patient contact that impact detainees in a positive manner,”³⁵ very few of the detainees interviewed had knowledge about mental health services provided by their facilities. Detainees with self-identified mental health concerns had difficulty obtaining needed medications, lacked continuity of care following transfers, and had medications arbitrarily changed, reduced, or stopped altogether. Legal advocates identified the overall ratio of mental health care staff to detainees as inadequate. While some specific cases have come to the attention of advocates, there is an alarming gap in information regarding the treatment of detainees with mental health concerns throughout immigration detention facilities.

Pearsall, the facility where individuals with serious mental health conditions are often sent, displayed such deprivation of care and punishment of mentally ill detainees that in June 2007, the Chief of Psychiatry for DIHS identified a “crisis in the mental health care at [Pearsall,]” More than 140 patients awaited chart review by the facility’s clinical director, who appeared to be refusing to provide mental health care entirely.³⁶ For those detainees in Pearsall lucky enough to see a mental health care provider, they were unable to get needed medication because the clinical director would not write recommended prescriptions and ignored the recommendations of the mental health specialist.

Several detainees at Pearsall referred to being routinely placed in “the hole,” confined if they displayed mental health symptoms. Isolation frequently exacerbates mental illness and leads to a deterioration of a detainee’s general health. Mentally ill detainees housed in the general population are punished frequently for their inability to sit still during count or in their beds at night. Detainees with mental illnesses often yelled and were confused, which was taken as aggression by the guards, though other detainees recognized this as a manifestation of mental

WOMAN NOT GIVEN HIV MEDICATION FOR DAYS

Ms. D.2. is an HIV-positive, transgender woman who was transferred to the Pearsall from the San Pedro Service Processing Center. After her transfer, she did not receive her HIV medications for approximately eight days. In early 2008 she stopped taking her medications because of harsh side effects, including diarrhea and inability to eat or keep any food in her stomach. Despite submitting several requests to have her medication modified, she has received little attention by the medical staff.

illness. Detainees noticed fellow detainees with signs of serious mental health deterioration being given Benadryl as a sedative.

Legal advocates report medication being altered prior to court hearings to mask symptoms of mental illness and create the appearance of competency. In the rare cases where detainees' cases were closed due to incompetence to proceed in court, these individuals frequently continue to be detained without proper mental health care because no proper treatment facility was available for transfer.

One example recorded in 2007: A long term permanent resident was detained at the South Texas Detention Complex in Pearsall, Texas, after years of mental health care in his community. He was diagnosed with schizophrenia and before he was detained he received treatment for about 12 years at the VA hospital and a state hospital. He was subject to mandatory detention but had applied for relief.

While at Pearsall, his medication was changed and he was repeatedly put in isolation. The physician treating patients at Pearsall decided that the man was pretending to be ill to gain an immigration benefit, and after he was granted relief under the Convention Against Torture, the Department of Homeland Security continued to hold him on the belief that he was feigning a mental illness. When he was released his wife took him to the VA where he remained as an inpatient for about 6 weeks before he was back on track with his medication.³⁷

h.) Hunger, Spoiled and Insect Infested Food

Throughout tours and visits of the facilities, detainees expressed serious concerns with the quantity of food provided, the nutritional content, and the sanitation of trays and eating utensils. Detainees stated that the food was often cold, greasy and lacking any fruit or vegetables. Several detainees reported lying in order to receive healthier special meals. Detainees also reported that there was never enough food, and that people often fought over food. Those with money to purchase from the commissary supplemented their meals with Ramen noodles, chips, or other forms of junk food. Those without resources went hungry. Fights broke out over use of microwaves at Pearsall, as detainees waited in line to heat soup.

Although direct reports from detainees are limited, Willacy has a history of serving inedible, spoiled food. In 2007, extensive media coverage exposed Willacy's serving of "rancid and spoiled" food to detainees, who reported insects and maggots in their meals. In a February 23, 2007 radio interview, Jodi Goodwin, a local attorney, stated that in November 2006 she visited Willacy and when "[I] opened the door and said 'Buenos días. ¿Como estan todos?' And they responded to me, 'Muriendo de hambre'-'We're dying of hunger.' And, you know, this is just their immediate reaction to someone coming in and asking, 'How are you?'"

Detainees stated that special diets for medical and religious purposes are inconsistently respected. Some detainees reported not receiving a diet appropriate to their health and/or religious needs. Detainees have been told that Kosher or Halaal food is too expensive.

At Port Isabel in Los Fresnos, Texas detainees are allowed “outside” a couple of hours each day, in a recreation area about half the size of a basketball court. During off hours, the door leading to the recreation area remains locked. At the time of the first ACLU visit, the one washing machine for 75 people was missing. Next to the beds, an area was sectioned off area for toilets, sinks and showers, but provided no privacy. However, during our tour, the area was covered with sheets to create a temporary semblance of privacy.

At Pearsall’s South Texas Detention Complex all of the housing units are off of a narrow 1,300-foot long hallway, with the women’s wing on one side and the men’s wing on the other. The housing unit viewed by the ACLU was a pod with capacity for 100 detainees. Unlike the other facilities toured, toilets were separated by small partitions that gave detainees some sense of privacy. There were two television sets in the room and two microwaves. Unlike the pods in Willacy’s brick building, the GEO officer sat near the door looking out onto the entire room. At the far end of the room there were several banks of phones and a door to the recreation “yard,” a high walled prison-like area.

i.) Inconsistent Access to Religious Materials and Services

Although facility personnel claim detainees have adequate access to religious services and materials, detainees in all three facilities stated that access to religious services was limited and problematic. Non-denominational chaplains on contract with ICE DRO allow representatives from different faith groups to come into the facility and perform services. But in Port Isabel as a result of the loss of an Imam, Muslim services are often canceled. In March 2008, a detainee reported that Muslims had been without services for two weeks. Detainees also expressed concern that some of the Muslim services were being videotaped. The facility denied this report.

Detainees of faiths other than Christian or Catholic must fill out special requests to retain religious materials such as prayer rugs and prayer beads, while rosaries are allowed without special documentation. Three trans-gender or gay inmates who were segregated at Pearsall are additionally prohibited from attending religious services with the general male population. Instead, they are only permitted to attend with the female population. Both the men and the women felt uncomfortable during these services and as a result the segregated detainees no longer attend religious services of any kind.

j.) Visitation Limited, Law Libraries and Telephone Access Insufficient

The traditional visitation rights of maintaining family connections and enabling detainees to receive help from relatives and friends with their legal case is often missing. A large population of detainees, transferred from as far away as California, Florida, New York and New Jersey, are deprived of visiting family and friends who cannot afford the time or money to travel. Long-

distance transfers also limit or prevent detainee access to documents and other evidence, witnesses, and legal service providers.

Women are so discriminated against that access to law libraries in all facilities was severely impaired; they only have access on one specific day of the week. Limited slots for using the law library fail to accommodate all the female detainees requesting access. In most instances, immigration detainees have no right to appointed counsel and three-quarters of them represent themselves. Unlike suspects charged in criminal courts, detainees accused of immigration violations do not have a right to an attorney, and three-quarters of them represent themselves. Even those with claims to U.S. citizenship frequently maneuver on their own through a complicated system.

Those who cannot afford to pay for counsel have two options: either represent themselves (*pro se*) or, in limited circumstances, obtain the services of a free (*pro bono*) attorney. According to Executive Office for Immigration Review (EOIR) -- the Department of Justice agency that runs the nation's immigration courts -- between October 1, 2006, and September 30, 2007, approximately 84 percent of detained respondents with completed immigration court proceedings lacked representation.³⁸

Immigration detainees have no right to appointed counsel and three-quarters of them or more represent themselves.

Due to the large number of *pro se* cases, access to the law libraries is very important. Important pages of legal materials are reportedly ripped out, and legal software and programs on the computers have been removed at some facilities.

Detainees frequently wait long periods to make a call because of a lack of phones. Toll-free numbers cannot be accessed consistently, including numbers for free legal assistance and referral, the EOIR hotline, and numbers to file formal grievances. All calls made from the phones in the dormitories are recorded, including privileged communications with attorneys.

V. LIVING IN AN OCCUPIED ZONE

(Also see appended ACLU of Texas' report *Operation Border Star: Wasted Millions and Missed Opportunities*)

a.) Law Enforcement Authority in the Borderlands

The residents of the U.S-Mexico border deserve accountable law enforcement from the Department of Homeland Security agencies that now represent the largest policing presence in many border communities: U.S. Border Patrol, Customs and Border Protection and Immigration and Customs Enforcement. U.S. Border Patrol alone has over 20,000 agents, approximately 18,000 of whom are stationed on the U.S.-Mexico border at any one time.

Between 2005 and 2009 U.S. Border Patrol almost doubled in size, adding 9,000 new agent positions. To achieve this, the agency stopped requiring a high school diploma or GED as a qualification for recruits and drastically shortened the training. By October 2008, half of the agents in the field had been on the job less than two years.

This rapid expansion was criticized by the head of the Border Patrol union, who expressed concerns about the quality of new recruits and the long-term impact on the force. Less qualified, undertrained and green agents are easier to corrupt. These agents are also less likely to know and follow department rules and their conduct is more likely to lead to civil rights violations.



*Photo credit: James Tourtellotte
U.S. Border Patrol agents patrol the Rio Grande River in Texas.*

While Border Patrol has been granted broad search authority under U.S. law within 100 miles of the actual border, racial profiling is expressly prohibited as are violations of Fourth Amendment right to be free from unreasonable searches and seizures. Border Patrol agents are not legally permitted to rely solely on the fact that the driver or passengers of a vehicle appear to be of Mexican descent.³⁹ Supreme Court decisions have left plenty of wiggle room for the police by providing a list of circumstances that could constitute “reasonable suspicion” for a vehicle stop. It included, but was not limited to: vehicle proximity to the border, driver behavior, size of the vehicle, number of passengers, and even the “mode of dress and haircut typical of individuals from foreign countries.”⁴⁰

These legal loopholes mean arbitrary Border Patrol stops along the border are a common fact of life. Local law enforcement agencies engage in this profiling too, particularly when they participate in immigration enforcement.

Local law enforcement lack the authority under Texas law to make arrests for most immigration violations. They should not be engaged in stopping or arresting individuals for most immigration-related violations of law. Being in the United States without permission does not constitute a crime *per se*; it is a civil violation of federal immigration law.

There is a huge gap between the law and daily reality. Local law enforcement are known to pull over vehicles and if the driver or passengers speak only Spanish or are “dressed Mexican,” the officer calls Border Patrol. Before the officer has finished writing a traffic citation for speeding or not wearing a seat-belt, Border Patrol has arrived and started interrogating the passengers about their immigration status. This collaboration between local law enforcement and Border Patrol leads to a lack of trust between local communities and the police and sheriffs departments sworn to protect them.

Local law enforcement are known to pull over vehicles and if the driver or passengers speak only Spanish or are “dressed Mexican,” the officer calls Border Patrol.

Tens of millions of state and federal dollars have gone to local law enforcement in the valley for border enforcement over the past four years.⁴¹ Because of the lack of training, standards and guidance in how to use these resources, some departments have used the funding to harass local residents with increased traffic stops, vehicle searches, and unlawful immigration enforcement activities.⁴²

Border residents want to be protected and police-civilian relations have been undermined by increased law enforcement presence without improved training and communication between residents and law enforcement.

b.) Human Rights Principles

Use of Latino appearance as a proxy for immigration status violates several international and national human rights laws: the International Convention on the Elimination of All Forms of Racial Discrimination, the Fifth Amendment of the United States Constitution, the International Covenant on Civil and Political Rights, and the Universal Declaration of Human Rights.

VI. LIVING WITH THE BORDER WALL

a.) Economic inequity and property rights violations threaten a way of life

The Border Wall along the Lower Rio Grande border between Texas and Mexico is a tale of property seizure, cost overruns, possible corruption and discrimination against ordinary people.

In the name of homeland security, centuries of ownership, community spirit and public places are being torn apart. Here are some real life tales in the path of the Border Wall.

Last February, Daniel Garza stood in his yard, a lush garden of green bushes and scarlet flowers. He peered through a rising veil of grey dust as huge trucks and bulldozers rolled past on unpaved roads. “In strong winds my trees are coated white,” he said, pointing to a row of trees alongside the churning dirt. The noise of the trucks awakened him at 6 a.m. today as most days. The constant grinding noises doesn’t stop until well after dark.

Garza watched the frantic push to finish a planned 20-mile border-levee wall in Hidalgo County, priced at a staggering \$12 million-a-mile, far more expensive than earlier government estimates of \$4 million per mile.



*Photo credit: Wikimedia Commons
Man climbs the border wall near Brownsville, TX*

It could have been worse for Garza. A much-publicized protest along with compromises by community advocates and Department of Homeland Security officials, stopped the wall from ripping through his neat brick home. Garza’s land bumps up against the border of Granjeno, a blink-and-you’ve-missed it enclave of less than 400 people. At the time, all but four miles of this stretch that combines reconstruction of an existing levee and a wall have been completed.

To him, federal nomenclature like “fence” and “tactical infrastructure” are mild euphemisms. In some areas, opponents of the Border Wall say the solid concrete barrier more resembles the Berlin Wall. Meanwhile, the wall continues to rise. The Obama Administration has honored the previous administration’s commitment to complete the Border Wall.

Garza, a bronzed 76-year-old former migrant farm and cannery worker looks healthier than he is as he greets unannounced visitors with a strong handshake, wearing a pale blue starched guayabera and a gold wedding band. Mr. Garza’s ill wife is inside. Retired with a disability, Garza has colon cancer and has had open heart surgery, but his fierce fight for his land remains strong.

“We made a lot of noise,” Garza says with a smile. “I had a lot of help, people like Texas Rio Grande Legal Aid.”⁴³ When his fight first began more than a year ago, Garza remarked on the



*Photo credit: James Tourtellotte
U.S. Border Patrol agents patrol the Rio Grande River*

selective plan for confiscating land for the border wall and pointed to the horizon. “All of that land over there is owned by the Hunts,” Dallas billionaire Ray L. Hunt and his relatives, one of the wealthiest oil and gas dynasties in the world. “The wall doesn’t go there.⁴⁴ Money talks and we don’t have it,” he said.

Like several others in Granjeno, Garza is a descendant of pioneer families who were granted land in the Rio Grande Valley by King Carlos of Spain in 1767. His ancestors are buried in the well kept town cemetery.

“My father told me ‘never, never sell this place. Keep it beautiful.’”

b.) Destruction of Sacred Space: Violation of Cultural & Religious Freedoms

Border wall construction directly threatens the cultural and religious freedoms for indigenous tribes as well as for the landowners whose cultural ties to the land are deeply rooted.

While the media and politicians sensationalize the border as a lawless outpost teeming with drug cartel smugglers and terrorists, to the 6 million residents of the borderlands, the border is not a war zone. It is the heart of their history, the birthplace of a hybrid culture, it is home where they and their children have lived peacefully. Struggles to evade the fence are not merely about the right to property and just compensation, they are about cultural survival and roots which residents claim cannot be replaced with a monetary value. As Eloisa Tamez states, “We talk about extinct species. We are about to become an extinct culture.”⁴⁵

Such cultural loss is matched by an attack on the religious rights of first nations peoples in South Texas. When former Department of Homeland Security (DHS) Secretary Michael Chertoff callously waived laws that protect indigenous religious rights, sacred burial land and customs were violated. These laws include: The Native American Graves Protection Act (NAGPRA),⁴⁶ which requires federal officials to consult with tribes prior to taking any action which could disrupt burial sites; The American Indian Religious Freedom Act (AIRFA),⁴⁷ which ensures access to religious sites and requires consultation between the government and tribal officials “to determine appropriate procedures to protect access and other religious rights;”⁴⁸ the Religious Freedom Restoration Act,⁴⁹ which orders “strict scrutiny be applied when a violation of the Free Exercise Clause of the First Amendment is committed by a federal actor.”⁵⁰ Waiving such laws not only threatens U.S. first amendment rights, several International Conventions are also jeopardized.⁵¹

Given the cost and rights violations, the Border Wall is serious business. Still some situations are absurd.

It is a long and lonely drive through flat land to Brownsville, some 68 miles away from Granjeno. There, on The University of Texas at Brownsville and Texas Southmost College (UTB/TSC) sits one of the more curious border wall concoctions, a wall going from nowhere to nowhere—and less than a mile long. Though hard to climb over, it is easy enough to walk around.

When the design for the planned border wall threatened to bisect the campus, months of legal battles ensued. On July 31st, 2008, DHS and the university reached an agreement which ended all condemnation and court proceedings. The compromise included repairing and heightening an existing fence—and led to a bizarre structure on a portion of UT campus atop a hill overlooking a playing field equipped with lights for night games. Wire fencing is inserted between white concrete pillars, set several feet apart. It is less than a mile long.



*Photo credit: Gerald L. Nino
A U.S. Border Patrol bicycle unit on patrol in McAllen, TX*

Slim dark-haired Elizabeth Garcia of the Coalition of Amigos in Solidarity & Action (CASA) stands with her back to the final pillar where the wall ends. She stretches her arms out wide, as if doing calisthenics. “It stops nothing. Here is one arm in Mexico and one arm in the United States!” The Rio Grande River cannot be seen from here; the view from the wall offers a view of a baseball practice field. The original design would have left campus buildings on one side of the wall and this field area on the other. “If you wanted to come to a baseball game and had no passport with you, you couldn’t go,” she said.

Garcia once lived in Arizona where “the Border Wall was in my backyard. The militarization of the wall was terrible; agents on the ground, low flying helicopters, checkpoints all over the place, constant scrutiny by sheriffs and policeman. I was depressed every day. If the wall here continues it will be devastating for our children.”

Like so many in the Rio Grande Valley, Garza sees the wall as a senseless boondoggle, tearing through their land, costing taxpayers billions while enriching companies like Boeing Corp. and failing to stop drug cartels and traffickers. As of August 2008, Boeing, the lead contractor in the Border Wall construction, had been awarded \$993 million on its three-year contract, according to the Government Accounting Office.⁵² The wall was never intended to cover the 1,969 miles of border so it will have huge gaps between fenced segments. (Melissa Del Bosque of the Texas Observer notes that there will be “about 21 different segments of fence built along the Texas-

Mexico border some under a mile long, some as long as 13 miles.”⁵³) As Garza has noted, “where the fence stops—do they really think people won’t go around?” Scott Nicol of the No Border Wall coalition says “even the Border Patrol estimates that the wall would merely slow someone down by only five minutes. All of this for ‘slowing down?’”⁵⁴

¹ Dr. Dora Schriro, "Immigration and Detention Overview and Recommendations," Immigration and Customs Enforcement, Homeland Security, October 6, 2009. The report's key recommendations are:

- ICE should establish a system of Immigration Detention with the requisite management tools and informational systems to detain and supervise aliens in a setting consistent with assessed risk. ICE should provide programs to the detained population commensurate with assessed need and create capacity within the organization to assess and improve detention operations.
- In coordination with stakeholders, ICE should develop a new set of standards, assessments, and classification tools to inform care, custody restrictions, privileges, programs, and delivery of services consistent with risk level and medical needs of the population. ICE should expand access to legal materials and counsel, visitation, religious practice. ICE should also develop unique provisions for serving special populations such as women, families, and asylum seekers.
- ICE should establish a well-managed medical care system, with comprehensive initial assessments to inform housing assignments and ongoing care management. ICE should establish clear standards of care for detainees and monitor conditions systematically.
- ICE should provide federal oversight of key detention operations and track performance and outcomes. It should place expert federal officials on-site to oversee detention operations, to intercede as necessary, and to ensure that there are appropriate grievance and disciplinary processes.

² *CBS News*, "Border Fence to Cost \$6.5 billion Over 20 Years." September 17, 2009,

<http://www.cbsnews.com/stories/2009/09/17/national/main5317298.shtml>

³ Maria Avila, "Valley Has Highest Unemployment Rates in Texas," *KGBT-TV*, October 17, 2008,

<http://www.valleycentral.com/news/story.aspx?id=364363> (accessed November 19, 2009).

⁴ Texas Politics, "Poverty in Texas," http://texaspolitics.laits.utexas.edu/12_2_0.html (accessed November 9, 2009).

⁵ *Castaneda v. Partida*, 430 U.S. 482 (5th Cir. 1977).

⁶ *Bernal v. Fainter*, 467 U.S. 216 (1984).

⁷ *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975).

⁸ *Rio Grande Guardian*, "LUPE: La Joya police need to stick to policing, not immigration matters," May 11, 2008,

http://www.lupenet.org/new_site/board.php/?b_code=news&b_no=85&c=view&page=2

⁹ *Id.*

¹⁰ Rev. Pablo Matta, and Pamela Vaughn. "Sheriff alters policies on checkpoints," *El Paso Times*, May 11 2008.

¹¹ The Business of Detention, "Profits," <http://businessofdetention.com/profits.php>

¹² Dr. Dora Schriro, "Immigration and Detention Overview and Recommendations," Immigration and Customs Enforcement, Homeland Security, October 6, 2009, page 6.

¹³ Dr. Dora Schriro, "Immigration and Detention Overview and Recommendations," Immigration and Customs Enforcement, Homeland Security, October 6, 2009, page 12.

¹⁴ Margot Mendelson, Shayna Strom, and Michael Wishnie, "Collateral Damage: An Examination of ICE's Fugitive Operations Program," Migration Policy Institute, February 2009, http://www.migrationpolicy.org/pubs/NFOP_Feb09.pdf

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- ⁴¹ Local law enforcement in Texas are eligible for federal border security funding from at least three federal sources: Operation Stonegarden, distributed and monitored by FEMA; Justice Assistance Grants (JAG), distributed by the Department of Justice through the State, and a Congressionally Mandated Award of \$ 4.5 million directly allocated to the Texas Border Sheriffs Coalition, which distributes the money to its member sheriffs departments. There is additional Texas state funding allocated for border security operations to these same police and sheriffs departments. No entity oversees the federal funding sources to prevent conflicting goals or duplicative funding. \$75.4 million were allocated to the southern border region through Operation Stonegarden for FY 2009 alone. Of that, Texas was allocated \$29.5 million.
- ⁴² On September 10, 2007, Otero County Sheriff's Department performed an operation funded by the federal Operation Stonegarden Grant which led to the violation of fourth amendment rights for families living in Chaparral, NM. The ACLU of New Mexico sued the county on behalf of a number of these families resulting in a settlement that led to a revised standard operational procedure with regards to inquiry into immigration status. <http://www.aclu.org/immigrants-rights/families-sue-otero-county-sheriffs-over-illegal-immigration-raids>
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