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## **Constructing the Criminal Alien: A Historical Framework for Analyzing Border Vigilantes at the Turn of the 21<sup>st</sup> Century**

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What I want to contribute to this conversation today is to provide a historical framework for the eruption of anti-immigrant vigilante activity along the US-Mexico border at the turn of the 21<sup>st</sup>-century. Beginning with the South Carolina Regulator Movement of 1767-1769, there have been at least 500 vigilante movements throughout the United States. Like all other vigilante movements, including what's going on in Arizona today, the South Carolina Regulators were organized in response to a sense among elite community members that there was of a lack of adequate law enforcement. Like the American Border Patrol, Ranch Rescue and the Civilian Homeland Defense, the South Carolina Regulators believed that social order was under attack by crime and chaos. The regulators, therefore, took the law into their own hands to control a very specific criminal threat and disbanded when that criminal threat had been extinguished. This is a pattern that has been played and replayed throughout US history. The border vigilantes are just the newest incarnation of an old theme.

It is absolutely correct that Operation Gatekeeper and Operation Hold the Line were the immediate sparks to this newest wave of vigilantism, but to understand the border vigilantes we must analyze the construction of the criminal threat that has awoken them from their slumber. Along the U.S.-Mexico border the criminalization not only of migration, but of migrants has sparked a new chapter of vigilantism in the U.S.

Therefore, what I want to discuss today is the rise of the “criminal alien” in discourse and structure to locate the emergence of border vigilantes in the late twentieth century.

Despite all of the literature in criminology about whether nature or nurture makes criminals, it is the state that makes crime. Before bad parenting, violence on TV, or rock’n’roll, it is the state that makes criminals by making crime. The United States Congress devised the crime of illegal immigration in 1808 with the passage of the Ban on the African Slave Trade, but made few provisions for detecting and deporting unsanctioned immigrants until the formation of the United States Border Patrol in 1924. In 1929, Congress made the crime of unsanctioned entry a felony for second-time offenders.

Yet, while illegal immigration may have been a punishable crime in the 1920s and 1930s, agribusiness leaders in the southwest did not regard undocumented immigrants as criminal threats. Many regarded Mexico as an ideal source of cheap labor, particularly because they regarded Mexicans as docile and temporary. “If we could not control the Mexicans and they would take this country it would be better to keep them out, but we can and do control them,” advised one grower who rejected any effort to restrict Mexican immigration, legal or otherwise.<sup>1</sup> One of best control mechanisms growers believed they had was that Mexican immigrants did not remain within the United States. It was a seasonal migration that began and ended in Mexico, but left its sweat, labor, and large profit margins in the United States As S. Parker Frisselle argued, “the Mexican is a homer. Like a pigeon he goes back to roost.”<sup>2</sup> Far from a threat, the dominant discourse

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<sup>1</sup> Ibid., 305.

<sup>2</sup> United States Congress, *Seasonal Agricultural Laborers from Mexico* (Washington: GPO, 1926), 6.

depicted both legal and illegal Mexican immigrants as obedient, docile, manageable, and temporary.

Throughout the 1920s and 1930s immigration law enforcement work was embedded in the regional demands of agribusiness. Border Patrol officers suspended aggressive immigration law enforcement for a basic minimum of just guaranteeing that Mexican immigrants remained temporary. But World War II shifted the geo-politics of immigration law enforcement from the local to the national and transnational. The threat of saboteurs illegally entering the US embedded within Mexican migration flows caused many national leaders to pay attention to our land border with a poor and nominally friendly nation. When the war began, the crime of illegal immigration was pregnant with new fears of invasion and sabotage. Therefore, in 1941 Congress granted the US Border Patrol a large appropriation for additional officers and new equipment to improve their vigilance of the land and water borders. In addition to national concerns, Mexico embarked upon an intensive industrialization program and called its laborers home. When Mexican laborers refused, the Mexican government demanded that the US Border Patrol increase its vigilance of the US-Mexico border and aggressively deport Mexican nationals. . In direct response to Mexican demands, the U.S. Border Patrol immediately transferred 150 officers from the Canadian border to the Mexican border and the majority of new officers hired after 1944 were assigned to stations along the U.S.-Mexico border, which almost doubled the number of officers working in the U.S.-Mexico borderlands.<sup>3</sup> Prior to World War II, the Border Patrol's national focus was upon the U.S.-Canada border. Looking deep into Border Patrol correspondence with the Department of State,

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<sup>3</sup> Jarnagin, "The Effect of Increased Illegal Mexican Migration Upon the Organization and Operations of the United States Border Patrol, Southwest Region." Also see, "Salaries and Expenses 1946," 139. INS Historical Library.

reveals that the initial swelling of the U.S. Border Patrol personnel along the U.S.-Mexico border and the shift in national focus from the Canadian to the Mexican border occurred in response to Mexican demands.

Regardless of new attention being paid to controlling undocumented immigration by US and Mexican officials, but illegal crossings skyrocketed throughout the 1940s and 1950s. To counter the rise in undocumented emigration, Mexico collaborated with the US Border Patrol to deport Mexican nationals living illegally within the US. In the summer of 1954 the US Border Patrol and Mexican officials waged their largest campaign against undocumented Mexican immigration, “Operation Wetback” in which they deported over 1 million Mexican nationals.

Immediately after the close of Operation Wetback, the US Border Patrol instructed officers that “in our contacts with each other, the public and the press...whenever a criminal record exists, we use the words, ‘criminal alien’, and when no criminal record exists, the words, ‘deportable alien’. I feel this change will have a psychological effect on the public and courts that will benefit the Service.” Soon the term deportable alien was not deemed strong enough and was substituted with the term “border violator.”<sup>4</sup> Although the “wetback” was someone who was an “illiterate farm laborers who came from Mexico to work in the fields,” Border Patrol officials explained to the press, “the day of the Wetback was over” and that the day of the “border violator, a fugitive in a foreign country” had arrived.<sup>5</sup> Here, were the beginnings of rhetoric within the U.S.-Mexico borderlands that criminalized undocumented Mexican immigrants. The

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<sup>4</sup> November 2, 1956 and November 15, 1956 memos. NARA 56364/43.3, 94, 59A2038.

<sup>5</sup> NARA 56364/42.2, 104, 59A2038.

temporary, docile laborer was becoming a border violator, a criminal, and a fugitive. Still, nothing has done more to criminalize the undocumented immigrant than the war on drugs.

Initiated with President Nixon and escalated from Reagan onwards, the War on Drugs has been pitched as a battle against a national crisis. Urban centers and the US-Mexico border have both been foci of the campaign to get drugs off the streets. The subsequent militarization of the U.S.-Mexico border in the War on Drugs has militarized the physical and political spaces of undocumented immigration. The mounting law and order discourse of “border violators” and “criminal aliens” occurring within the Border Patrol collided with the War on Drugs’ militarization of the U.S.-Mexico border and linked the border’s flight paths from poverty with the battle zones of drug trafficking. For migrants who are unable to afford to cross the increasingly monitored border, some have agreed to carry packages for drug traffickers to fund their journey north. The entanglements of labor migration and drug smuggling have resulted in rapidly rising incarceration rates for undocumented immigrants, particularly Mexicans, within the United States.

Between 1985 and 2000, the percentage of non-citizens in federal prison increased from 15% to 29%, making immigrants the fastest growing sector of the federal prison population. (John Scalia and Marika Litras. “Immigration Offenders in the Federal Criminal Justice System, 2000.” Bureau of Justice Statistics: Special Report. August 2002). And, as of the year 2000, 54% of non-citizen inmates had been convicted of a drug charge; 35% of an immigration offense; and 11% of other offenses. As drug laws are lifting young men and women, particularly black men and women, out of

communities, they are also trapping Mexicanos, immigrant and citizen. At the same time, the incarceration rate of those convicted of immigration offenders increased from 57% to 91% between 1985 and 2000 and the average time spent in jail increased from 3.6 months to 20.6 months. (The 1996 Immigration Act requires the foreigners facing deportation be jailed while awaited a trial and verdict.) Together, drug and immigration laws, are injecting the streams of immigration from Mexico with levels of structural criminalization.

This rapid growth in the number of non-citizens in US jails, prisons and detention centers for immigration and drug offenses has contributed to the health of the prison economy in the United States. For example, in 1995 when Wicmico County Maryland needed to raise \$65,000 in three days, the county jail warden, “picked up the phone and called the INS and said, ‘send me 70 inmates.’ And it was done.” And when jails run short on inmates wardens can often depend upon the INS to fill empty beds ensuring the fiscal solvency of the growing prison system. As of the year 2000, the INS spent just over one-third of its \$800 million detention budget renting beds in 225 jails throughout the country. (“Rural Jails Profiting from INS Detainees, Washington Post, November 24, 2000).

The rising number of immigrant inmates is less evidence of increased immigrant criminality, and more a reflection of shifts in immigration and drug laws and intensified policing efforts along the border and in migrant communities. Still, this new structural basis for the discourse of the criminal alien contributes to a mounting panic about Mexican immigration to the United States.



Census reports are making it clear that Mexican immigrants are no longer temporary. Numerically speaking, Hispanics are now the largest minority group within the United States. Some extremists, like many of the vigilantes, paint Mexican immigration as a brown invasion or a reconquista and interpret each undocumented entry as a threat to national security. For others, there is a quiet anxiety about how Latino immigration is transforming the traditional racial composition and social order of the United States. Therefore, the way that the War on Drugs has transformed border spaces and filled prisons has fueled the general panic about race and migration that simmering in the United States. It is the collision of discourses of the criminal alien with the incarceration structures of the War on Drugs during this specific period of racial panic that has awoken the vigilante spirit along the U.S.-Mexico border at the turn of the twenty-first century.